

Part 2:
Citizen Comments

A Concerned Citizen
Sonoma County, California

July 4, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Dear Ms. Nguyen,

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or

142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

³ http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

⁴ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

A Very Concerned Citizen

cc: Sonoma County Supervisors
Santa Rosa City Council Members
Sebastopol City Council Members
Editor, The Press Democrat
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

A Concerned Citizen
Sonoma County, California

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Dear Ms. Nguyen,

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's "preferred alternative" will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates.¹

¹ Even a cursory review of historic data suggests that the assumptions undergirding the "preferred alternative" are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area's decline in population growth from 155.61% of the national growth rate during the 1960s-1980's (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990's (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000's (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the "preferred alternative-lite" zoning standards which were first introduced in parts of the Bay Area in the 1990's and became more widespread in the 2000's. This likely relationship between population and job growth rate declines and "preferred alternative-like" zoning standards must be

Careful and thorough consideration of this hypothesis regarding the impact of the “preferred alternative” is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

- (2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.
- (3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.² Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.
- (4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and

evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

² It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous “stack and pack” developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious--the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.³

- (5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,

A Very Concerned Citizen

cc: Sonoma County Supervisors
Santa Rosa City Council Members
Sebastopol City Council Members
Editor, The Press Democrat
Brian Sussman, KSFO
Melanie Morgan, KSFO
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Mark Levin, Landmark Legal Foundation

³ Further, it's facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete.

A Concerned Citizen
Sonoma County

July 8, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Dear Ms. Nguyen,

As a native Californian I am quite concerned about this Bay Area Plan and in this letter I want to comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area.

A lead agency must not approve a "plan[]" without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. Sierra Club v. State Bd. of Forestry, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App. 3d 813.) " The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . .

which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” CEQA Guidelines § 15126.6(a) (emphasis added). “The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d). A “no project” alternative also must be evaluated, and “the ‘no project’ analysis should discuss the existing conditions at the time the notice of preparation is published.” CEQA Guidelines § 15126.6(e)(1), (2). “The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration’s Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the “no project” alternative. This data must also inform the Plan Bay Area EIR’s consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area’s “preferred alternative.”

Plan Bay Area’s enabling legislation states that AB 32 “requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020.” SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32’s mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been met. The fantastical assumptions underlying the “preferred alternative” and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990 and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to at or about 1990 levels in the first quarter of 2012. Since California’s population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000’s versus

¹ eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

² John Hanger, “Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again,” (“After the first quarter, the USA’s 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA’s latest Monthly Energy Review.”), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

³ “Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit,” November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020). http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf

9.71% nationwide, and 13.82% in the 1990's versus 13.15% nationwide), California's emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area's population grew at only 95.95% of the national rate in the 1990's (12.62%) and then plummeted to 55.72% of the nation's population growth rate in the 2000's (5.41%), the Bay Area's greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area's greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area's "preferred alternative" and its coercive and untested elements purporting to address the statutory mandates of SB 375.⁴

Sincerely,

A Very Concerned Citizen

cc: Sonoma County Supervisors
Santa Rosa City Council
Editors, *The Press Democrat*
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

⁴ Of course, the "preferred alternative" was developed as a sub-plan of United Nations Agenda 21, which has entirely different and much more sinister goals than reducing greenhouse gas emissions--but the statutory authority for SB 375 flows solely out of AB 32's mandate to reduce California greenhouse gas emissions to 1990 levels by 2020.

A Concerned Citizen
Sonoma County, CA

July 8, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Dear Ms. Nguyen,

As a lifelong California resident, I am particularly concerned with the proposed Plan Bay Area, and today I would like to comment on the necessity of evaluating takings litigation liability resulting from this Plan.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "The Lead Agency shall not knowingly release a

deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated “preferred alternative”:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as

necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A Very Concerned Citizen

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Oakland, CA 94607-4700

Dear Ms. Nguyen,

I was born and raised in California, and for the first time in my 77 years, I am greatly concerned about where we are headed with this Bay Area Plan. I would like to put into the record my concerns about this Plan's inadequate and incomplete process; and on the "preferred alternative's" undisclosed linkages to and provenance in United Nations Agenda 21.

According to the California Supreme Court,

The Legislature has made clear that an EIR is "an informational document" and that "[the] purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; Guidelines, §15003, subds. (b)-(e).)

Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal.3d 376, 392 (1988).

"The EIR process protects not only the environment but also informed self-government." Id. In order to do so, the courts will "scrupulously enforce all legislatively mandated CEQA requirements." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990). The CEQA Guidelines require an EIR to provide sufficient information for meaningful evaluation of the comparative merits of the proposed project and each alternative. § 15126.6(d).

Courts have been alert to a particularly grave threat to the principles of self-governance protected by CEQA—that being where the EIR is a sham and the entire public "decision making" process by the relevant government board is simply a "rubber-stamp[ing of] a predetermined result." Redevelopment Agency v. Norm's Slauson, 173 Cal. App. 3d 1121, 1127 (1985). There is no more egregious example of such a sham process moving inexorably toward a predetermined result than that playing out with Plan Bay Area:

(1) Plan Bay Area has prevented—rather than solicited—the public input required by both California laws and regulations and the procedural and substantive due process guarantees of the United States Constitution.

Since ABAG and MTC already decided upon and pre-committed to the “preferred alternative” prior to the beginning of the “decision-making” process,¹ public input has not only not been desired, but has been actively suppressed. Just a few examples of too many to mention here should suffice to illustrate this point:

(a) The “visioning” sessions in the fall of 2011 and winter of 2012 were carefully crafted with the assistance of trained consultants to give the “illusion” of public participation and input, but were in fact designed to manipulate attendees into “agreeing” to the already pre-determined decision (e.g., the “preferred alternative”).²

(b) Plan Bay Area’s “visioning” sessions appear to have been stacked with attendees who were either ABAG or MTC staffers, staffers of closely aligned local agencies, or staffers of non-governmental organizations (NGOs) who are proponents of the “preferred alternative” and are closely aligned professionally and financially with ABAG and MTC. This collaborative effort to script and stack the meetings with “citizens” favorable to the “preferred alternative” appears to have taken place through the active collusion of the aforementioned parties.

(c) Notwithstanding the carefully scripted nature of the “visioning” sessions, and the stacked attendees, citizen attendees who were not ABAG and MTC staffers or aligned NGO staffers were overwhelmingly in opposition to the plan and to the process by which it has been promulgated—anecdotal reports indicate up to 80-90% of those attending.³

(d) Despite the overwhelming public opposition to the Plan at the “visioning” sessions, the Plan proponents have included no mention of that public opposition

¹ And, as noted below, the “preferred alternative” is a sub-plan of the United Nations Agenda 21, rather than a plan developed for the Bay Area by Bay Area public officials and citizens.

² “Exposing the Delphi Technique in Public Meetings,”
<http://www.youtube.com/watch?v=-zpA1althjo&feature=related>

³ Compare this video of the January 9, 2012 Santa Rosa “visioning” session: “Near Riot at Delphi Meeting--Part 1”
<http://www.youtube.com/watch?v=vA4GKUUXkhA>, with ABAG’s report on the same session:
http://www.onebayarea.org/pdf/winter_2012_summary/Sonoma/Sonoma_County-Santa_Rosa_1-9-12.pdf

in their documents reporting on these sessions to the ABAG and MTC boards and to the people of the Bay Area.⁴

(e) The scoping hearings for the EIR itself were likewise designed to preclude any substantive input from the public, even though soliciting public input was their statutory and regulatory purpose. Of the five hearings held in various locations in the Bay Area between Thursday, June 21, 2012, and Wednesday, June 27, 2012, only one of those was held after business hours. Holding these “public” hearings during business hours made it particularly easy for ABAG and MTC-aligned NGO and local planning staffers to attend as they were paid to do so and came as proponents of the “preferred alternative”, and made it particularly difficult for the general public to attend.⁵ The only plausible explanation for this hearing schedule is that it was designed for precisely this outcome.

Comments made by ABAG Senior Grant Administrator and Urban Planner Ms. Joanna Bullock at the June 22, 2012 EIR scoping hearing in San Jose illustrate precisely the attitude of the Plan’s proponents towards the public opposition to the plan. Ms. Bullock said that, in her opinion, the Bay Area public overwhelmingly supports the Plan, citing as her evidence for that astonishing conclusion that only a small number of Bay Area residents attended the “visioning” sessions to offer opposition. Thus, according to this senior ABAG staffer, every one of the seven million Bay Area residents who didn’t attend the “visioning” sessions can be imputed to be informed proponents of the broad, sweeping, and irreversible changes Plan Bay Area will entail in every Bay Area resident’s way of life. This without any credible evidence that any meaningful percentage of Bay Area residents have been presented with a fair and objective depiction of the “preferred alternative’s” features and implications, let alone having formed an opinion in favor of or opposed to the plan. And, further, this senior ABAG staffer dismissed entirely the only available objective evidence regarding public response to the plan—which is that the overwhelming majority of citizens who were not aligned with ABAG and MTC who attended the “visioning” sessions strenuously objected to the Plan and the process by which it is being promulgated.

(2) The schedule for the EIR itself demonstrates that public input is not desired, and will not be considered:

The EIR process is dramatically foreshortened and truncated, and does not allow for any meaningful consideration of whatever public input is received. For example, the EIR Project Team has solicited public comment on the scope of the

⁴ See footnote 3, above.

⁵ Even at the hearing held in San Jose on Friday, June 22, 2012, attended primarily by ABAG and MTC-aligned NGOs and local planning agencies, numerous attendees remarked on the difficulties presented to the general public by the scheduling of four of the five scoping hearings during business hours.

EIR, asking that all public comments be proffered by Wednesday, July 11, 2012. However, the schedule being followed by the EIR Project Team requires them to “present final alternatives for review by Joint MTC Planning/ABAG Administrative Committees and recommendation to Commission and ABAG Executive Board” on Friday, July 13, 2012, only two days after the public input is received! This schedule facially and obviously allows no time for the EIR Team to review, let alone consider, let alone modify the scope of the EIR in response to the public comments.⁶

In fact, the EIR Project Manager herself disclosed at the scoping hearing in San Jose, June 22, 2012, that the EIR Team was aware that the schedule allows inadequate time for a complete EIR—indicating that the EIR Team was not happy about this, and adding that the schedule had been imposed on the EIR Team and they had no say in the matter.

(3) Only the “preferred alternative” is being considered.⁷

While there are grave problems with the data and assumptions underlying the “preferred alternative,” there are even greater problems with the EIR process itself. There are no meaningful alternatives being considered other than the “preferred alternative.” Alternative 1—do nothing--will be mischaracterized and marginalized, and will not be meaningfully considered. Alternatives 3, 4, and 5 are simply straw men, not even plausible and would not be proffered by any serious proponent amongst the planning community⁸—and according to the EIR Project Team at the San Jose scoping hearing on June 22, 2012, Alternatives 3, 4, and 5 will not be given any serious analysis or consideration.

⁶ This deeply troubling indication of the lack of any meaningful public input into the planning process was likewise commented on by several attendees at the June 22, 2012 scoping hearing in San Jose.

⁷ To emphasize the sham that is this “rubber-stamp[ing of] a predetermined result.” Redevelopment Agency v. Norm’s Slauson, 173 Cal. App. 3d 1121, 1127 (1985), Plan Bay Area’s published schedule concludes with “Commission and ABAG Executive Board Certify Final EIR and Adopt Final Plan” in April of 2013. Since only one alternative is being “considered” and that alternative was selected before the “decision-making” process began, why leave any doubt about the eventual result and when it will be formally “adopted”?

⁸ As an example of just how farcical alternatives 3, 4, and 5 are, alternative 4’s distinguishing characteristic is that it “eliminate[s] inter-regional commut[ing].” That is, no one who lives outside of the nine Bay Area counties would be allowed to commute for work into the Bay Area. Leaving aside the right to travel the Supreme Court has found in the Constitution—and of course, constitutional objections do not seem to have impeded the One Bay Area planners in any way—how will they implement this practically? Are they suggesting militarized checkpoints on the highways at every county line?

What is missing from the alternatives considered by Plan Bay Area is any input from individual cities, let alone individual landowners, which would enable one or more of the alternatives considered to be compliant and consistent with the mandates of the American Planning Association in their Policy Guide on Takings ratified April 11, 1995:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

(emphasis added).

(4) Plan Bay Area's "preferred alternative" has not been formulated and will not in fact be approved by a democratically accountable government body. Neither has it been formulated by Bay Area officials or citizens.

(a) There are grave and unresolved problems with having two unelected, unaccountable regional government entities allocating close to \$300 billion in tax monies, and in their making sweeping planning mandates that will impose coercive, restrictive zoning standards that will irreversibly change the lives of every Bay Area resident. At the very minimum, (i) One Bay Area's planning process must be slowed down by a minimum of six to twelve months to solicit a range of citizen input, (ii) One Bay Area's planning team must contract with independent, objective and unaligned organizations to do the data gathering and analysis required to come up with an analytically-sound range of forecasts and to develop a set of plausible, credible plan alternatives that will be responsive to the American Planning Association's "do no harm" mandates noted above, and (iii) the resulting plan must be put up to a vote by all the citizens in the Bay Area before any plan goes into effect.

(b) At least as troubling, Plan Bay Area’s “preferred alternative” has not been developed as a result of the unique conditions in the Bay Area, nor has it been developed by governmental staffers in the Bay Area, let alone by Bay Area citizens themselves. It is a sub-plan of the United Nations’ Agenda 21 blueprint for global governance that is being implemented at the local level, and its salient features have been developed by United Nations entities such as the International Council for Local Environmental Initiatives (ICLEI) and their locally-aligned operatives and NGOs.⁹

It is beyond the purview of this comment on the scope of the EIR to discuss in any detail the implications of local government officials and staffers acting as agents of a foreign power in performing their institutional functions as public servants working for the people of the Bay Area. However, it is mandatory that the EIR in particular and the One Bay Area planning process overall discuss the provenance of the “preferred alternative” and make explicit its linkages, alignments, and source as a sub-plan of United Nations Agenda 21. As part of this deliberative and fact-finding exercise, the EIR Project Team and Plan Bay Area must hold immediate public hearings¹⁰ where, at minimum, two local residents who are nationally-respected experts on United Nations Agenda 21, Mr. Michael Shaw of Freedom Advocates (freedomadvocates.org) and Ms. Rosa Koire of Democrats Against UN Agenda 21 (democratsagainstagenda21.com) are asked to testify at length. Both Mr. Shaw and Ms. Koire are life long environmentalists and Bay Area community leaders, as well as nationally known for their research and insights into Agenda 21.

Plan Bay Area’s EIR cannot be certified without performing this analysis into the “preferred alternative’s” linkages and alignment to and its provenance as a sub-

⁹ United Nations Agenda 21 and its associated NGO’s like ICLEI are themselves controlled and funded by a cartel of international banking elites who seek a global authoritarian super state. No less an authority than Georgetown Professor Carroll Quigley, who had access to the cartel’s internal documents, described their agenda in his classic work Tragedy and Hope:

The powers of financial capitalism had [a] far-reaching aim, nothing less than to create a world system of financial control in private hands able to dominate the political system of each country and the economy of the world as a whole. This system was to be controlled in a feudalist fashion by the central banks of the world acting in concert, by secret agreements arrived at in frequent private meetings and conferences. The apex of the system was to be the Bank for International Settlements in Basel, Switzerland, a private bank owned and controlled by the world's central banks which were themselves private corporations. P.324

¹⁰ These cannot be private meetings—these must be public hearings, adequately noticed to the public, and covered by the press.

plan of the United Nations Agenda 21. Attached to this letter are two sets of quotes, one from the Freedom Advocates site, and the other from the Democrats Against UN Agenda 21 site, which provide a brief introduction into Agenda 21, and an illustration of the wealth of valuable information available at each site.

Sincerely,

A Very Concerned Citizen

cc: Sonoma County Supervisors
Santa Rosa City Council
Editors, The Press Democrat
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Attachment A: on Freedom Advocates:

Michael Shaw, president of Freedom Advocates board, is a tax attorney and CPA, as well as self-employed small businessman and long time ecologist and conservationist in Santa Cruz County. He first became aware of Agenda 21 working on a county environmental task force, and recognized its chilling and authoritarian implications and plan. His bio:

<http://www.freedomadvocates.org/images/pdf/Michael%20Shaw%20bio%202009.pdf>

Telling, relevant quote from the Freedom Advocates site:

http://www.freedomadvocates.org/frequently_asked_questions/

"Participating in a U.N. advocated planning process would very likely bring out many... who would actively work to defeat any elected official... undertaking Local Agenda 21/Sustainable Development. So we call our process something else such as 'comprehensive planning', 'growth management' or 'smart growth'."

– J. Gary Lawrence, 1998 UNEP Conference U.K.

Attachment B: from the Democrats Against UN Agenda 21 site:

<http://www.postsustainabilityinstitute.org/board-of-directors.html>

Rosa Koire

Rosa Koire is a forensic commercial real estate appraiser specializing in eminent domain valuation. Her twenty-eight year career as an expert witness on land use has culminated in exposing the impacts of Sustainable Development on private property rights and individual liberty.

<http://www.democratsagainstunagenda21.com/>

“UN Agenda 21/Sustainable Development is implemented worldwide to inventory and control all land, all water, all minerals, all plants, all animals, all construction, all means of production, all information, and all human beings in the world. . . . Is that just a coincidence? That every town and county and state and nation in the world would be changing their land use/planning codes and government policies to align themselves with...what? . . . The specific plan is called United Nations Agenda 21 Sustainable Development, which has its basis in Communitarianism. By now, most Americans have heard of sustainable development but are largely unaware of Agenda 21.

In a nutshell, the plan calls for governments to take control of all land use and not leave any of the decision making in the hands of private property owners. . . . Individual rights in general are to give way to the needs of communities as determined by the governing body. Moreover, people should be rounded up off the land and packed into human settlements, or islands of human habitation, close to employment centers and transportation. Another program, called the Wildlands Project spells out how most of the land is to be set aside for non-humans.

. . .

No matter where you live, I'll bet that there have been hundreds of condos built in the center of your town recently. Over the last ten years there has been a 'planning revolution' across the US. Your commercial, industrial, and multi-residential land was rezoned to 'mixed use.' Nearly everything that got approvals for development was designed the same way: ground floor retail with two stories of residential above. Mixed use. Very hard to finance for construction, and very hard to manage since it has to have a high density of people in order to justify the retail. A lot of it is empty and most of the ground floor retail is empty too. High bankruptcy rate.

So what? Most of your towns provided funding and/or infrastructure development for these private projects. They used Redevelopment Agency funds. Your money. Specifically, your property taxes. Notice how there's very little money in your General Funds now, and most of that is going to pay Police and Fire? Your street lights are off,

your parks are shaggy, your roads are pot-holed, your hospitals are closing. The money that should be used for these things is diverted into the Redevelopment Agency. It's the only agency in government that can float a bond without a vote of the people. And they did that, and now you're paying off those bonds for the next 45 years with your property taxes.

...

Redevelopment is a tool used to further the Agenda 21 vision of remaking America's cities. With redevelopment, cities have the right to take property by eminent domain--- against the will of the property owner, and give it or sell it to a private developer. By declaring an area of town 'blighted' (and in some cities over 90% of the city area has been declared blighted) the property taxes in that area can be diverted away from the General Fund. This constriction of available funds is impoverishing the cities, forcing them to offer less and less services, and reducing your standard of living. They'll be telling you that it's better, however, since they've put in nice street lights and colored paving. The money gets redirected into the Redevelopment Agency and handed out to favored developers building low income housing and mixed use. Smart Growth. Cities have had thousands of condos built in the redevelopment areas and are telling you that you are terrible for wanting your own yard, for wanting privacy, for not wanting to be dictated to by a Condo Homeowner's Association Board, for being anti-social, for not going along to get along, for not moving into a cramped apartment downtown where they can use your property taxes for paying off that huge bond debt. But it's not working, and you don't want to move in there. So they have to make you. Read on.

Human habitation, as it is referred to now, is restricted to lands within the Urban Growth Boundaries of the city. Only certain building designs are permitted. Rural property is more and more restricted in what uses can be on it. Although counties say that they support agricultural uses, eating locally produced food, farmer's markets, etc, in fact there are so many regulations restricting water and land use (there are scenic corridors, inland rural corridors, baylands corridors, area plans, specific plans, redevelopment plans, huge fees, fines) that farmers are losing their lands altogether. County roads are not being paved. The push is for people to get off of the land, become more dependent, come into the cities. To get out of the suburbs and into the cities. Out of their private homes and into condos. Out of their private cars and onto their bikes.

...

High density urban development without parking for cars is the goal. This means that whole towns need to be demolished and rebuilt in the image of sustainable development.

...

Slowly, people will not be able to afford single family homes. Will not be able to afford private cars. Will be more dependent. More restricted. More easily watched and monitored.

This plan is a whole life plan. It involves the educational system, the energy market, the transportation system, the governmental system, the health care system, food production, and more. The plan is to restrict your choices, limit your funds, narrow your freedoms, and take away your voice. One of the ways is by using the Delphi Technique to 'manufacture consensus.' Another is to infiltrate community groups or actually start neighborhood associations with hand-picked 'leaders'. Another is to groom and train future candidates for local offices. Another is to sponsor non-governmental groups that go into schools and train children. Another is to offer federal and private grants and funding for city programs that further the agenda. Another is to educate a new generation of land use planners to require New Urbanism. Another is to convert factories to other uses, introduce energy measures that penalize manufacturing, and set energy consumption goals to pre-1985 levels. Another is to allow unregulated immigration in order to lower standards of living and drain local resources.

From: eircomments
To: Aaron Goodman
CC: board.of.supervisors@sfgov.org; linda.avery@sfgov.org
Date: 7/2/2012 6:25 PM
Subject: Re: Plan Bay Area EIR - Comment Memo - A.Goodman

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> Aaron Goodman <amgodman@yahoo.com> 6/25/2012 1:33 PM >>>

Attn: Ashley Nguyen EIR Project Manager, Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607
email: eircomments@mtc.ca.gov; fax: 510.817.5848.

To whom it may concern @ ABAG/SFMTC

I will not be able to attend the meetings held regarding the plan bay area now EIR, however I would like to submit comments especially regarding the San Francisco portion of the EIR and projects proposed for transit development areas, and densification that did NOT seek to look adequately at alternatives and proposals submitted that include direct transit connectivity up front, a more cumulative based proposal on the multiple projects proposed on and along 19th ave., bi-county transit linkage and adequate development of essential rental housing stock for existing communities.

I am seriously concerned about the issues related to housing, transit-open-space and the impacts of density and development on existing communities in San Francisco especially due to the LACK of rental housing affordable to existing communities being created EQUITABLE and at an EQUAL RATIO to for-sale for-max-profit mortgage backed/based development. The lack of sincere efforts to spearhead transit development that directly connects and provides development impetus along and above transit routing. The need to link open-space, infrastructure, and amenities (Public Pools, Outdoor Parks and Recreation Areas, new Schools, and commercial amenities adjacent, while implementing low-scale/low-impact development ideas up-front.

The biggest project and concern is the 19th Avenue transit corridor projects and proposals which do little to directly address transit, traffic, parking, and housing impacts on the southwestern side of San Francisco. The loss of over 1,000 units of rental housing meant for families and working class citizens in Parkmerced and Stonestown Apartments due

to the purchase of land/housing by SFSU-CSU has created a vacuum of housing available due to predatory equity lending and student/university/institutional growth impacts on the city's housing stock. Currently the city and county of San Francisco is in court regarding the concerns raised on the Parkmerced project, and has not corrected the issues raised on the SF General Plan and Housing Element sections related to the EQUITABLE construction of affordable rental units and the need to enforce the OPTION of RENTING vs BUYING into the housing stock created. Initially Section 8.1 of the SF General Plan Housing

Element there was wordage that supported the need to provide the OPTION of renting vs. buying. Due to changes that are still being challenged on the housing element issues raised by neighborhood organizations we still have not seen a relevant change in the type and financial modeling used to promote the current housing standards in the city.

The lack of direct connectivity proposed on the Parkmerced project EIR and SFSU-CSU Masterplan EIR were both challenged by memo's I sent regarding DIRECT linkage of the M-Line to the Daly City Bart Station along the existing transit corridor as the shortest distance between two points which is a straight line. The Options I have submitted on the parkmerced project outline additional transit hubs, new lines that can be developed, and grade-separated solutions for the transit along the 19th ave. corridor.

The CPUC rail engineer's memo submitted on the Parkmerced project emphasized for rail-safety that the project should be "grade-separated" and that though the costs were higher the resultant speed and safety of transit would be improved.

The major street thoroughfares along Holloway, Sunset Boulevard, Lakeshore Boulevard, Sloat Boulevard and Junipero Serra Boulevard are all primary arterials in the western end of SF. The need to look more closely at options that get people OUT of their cars and into public transit through BRT and/or new rail/systems lines is a priority due to traffic/transit/parking congestion currently in this area. The SFSU-CSU Masterplan ignored the prior MOU and lack of co-funding of transit improvements. The SFMTA lead Peter Albert I have spoken to on the need to pull the transit improvements to the fore-front prior to allowing density and multiple developments. The SFMTA/SFCTA approach is the cart in front of the horse, with most of the connectivity to regional transit occurring at the Tier-5 Federal Funding level. The areas in question are already in GRIDLOCK and allowing a developer to re-route the Muni M-Line into a residential neighborhood for their project

approvals ignores the more adequate and direct line that could be done by removing the easternmost towers in Parkmerced, or at a minimum the parking structure on the eastern edge at Junipero Serra and 19th and utilize the 77 Cambon drive site as a catalyst to develop housing OVER the transit and roadway "X" crossing here (please see google maps and the suggestions I submitted in drawings on the parkmerced project)

The SFSU-CSU masterplan denotes the need to shift the line (M-Line westbound) but ignores the grade separation required for muni to cross 19th ave near ocean ave.

The Parkmerced and SFSU-CSU EIR's ignore the future possible direct density above the many empty parking lots @ the Stonestown mall.

The projects all ignore the use of land-exchanges for development vertical rights above rail or grade separated proposals that could densify above the 1952 cloverleaf interchange at 19th and Brotherhood Way out to Daly City Bart where there is another older overpass unretrofitted, and side lots that could assist in new housing development.

The dead-ending of the M-Line in Parkmerced ignores a direct eastern alignment adjacent on the eastern side, and an alternative that disrupts the Parkmerced community the least. Even a basic alternative to wrap the transit around Parkmerced down Holloway, or through Stonestown and around Lake-Merced and up Sunset Blvd. or Brotherhood Way is ignored.

The future lines of a rail system on the western side could easily be done by extending the L-Taraval line from the development at 2800 Sloat back up Sloat Blvd. to reconnect with the Lakeshore Mall, STERN GROVE, and back to the M-K interchange at St. Francis Woods.

Alternatives that promote density at Stonestown, or Along West Portal to energize foot-traffic on that street, are

ignored.

Alternatives that promote a better spreading of density in multiple neighborhoods vs. just bulldozing Parkmerced are not looked at significantly, when it is a proven fact that sustainable preservation based alternatives and infill are far more green an endeavour than directly destroying a built community and landscape. Many memos were sent on the parkmerced project by preservation based local, state and national organizations that supported a more preservation based alternative which was not looked at by the SF Planning Department in there approvals. In essence the planning dept. and SFBOS ignored proper and adequate memo's that indicated the mandate to look more closely at the project for a better preservation based alternative. The mills-act and ways to provide density and infill were ignored by the project proponents.

Open space and ammenities are lost for an existing community in Parkmerced, through attrition and land-acquisition many acres of land were removed, without looking at new concepts of "green-linkage" along brotherhood way by "day-lighting" the older creek bed along brotherhood way, or promoting infill at the parking lots in Parkmerced.

The regional approach should improve the existing proposals by mandating that alternatives that promote direct transit connectivity are given priority and additional funding mechanisms to ensure that the connections are made initially to reduce parking/traffic/transit impacts.

The SFSU-CSU impacts on parkmerced and neighboring streets is visible and obvious when school is in session, yet they reduced the shuttle bus, propose removing a major parking structure on campus, and promote media/arts center features along lake-merced blvd. at Font without providing adequate direct transit linkage or direct funding for the density increases.

Housing wise the lack of essential low-cost rental housing is the biggest issue in San Francisco. As many market rate end housing is built with minimal BMR units most famillies have been unable to pay for the mortgages in this financial downturn, and many existing communities have lost there housing. The need for basic "stepping-stones" towards saving for home ownership is required.

A reminder that Parkmerced was built with met-life and had only a 3% profit margin vs. today's noted need for 20%+ on Parkmerced. The need for social housing, basic simple utilitarian, along with ammenities far-exceeds any need for market rate housing in San Francisco Currently.

Other districts and cities may differ in regards to housing needs, but when districts lose housing stock, to institutional and developer pressures, it is incumbent on the state and local governmental agencies to analyze the numbers and provide a more detailed and correct analysis on the housing problems of counties.

San Francisco currently has a major negative number in affordable base units for families, seniors, students, and working class existing community members.

The time is ever more pressing for agencies involved in planning for density to recognize that San francisco cannot fund the essential housing needs in equal amounts to other surrounding counties when those counties acquire funding easier for typical sprawl based developments and associated tax-base.

Transit needs to be the new "bike" in terms of systems and implementation on the cities western edge. There is no current North-South transit line besides the 28 on the western side of SF. By providing a new link line from the N-Judah, K or L lines heading north to south would promote a better system and help alleviate traffic issues. By promoting density over new grade seperated lines even along older Muni lines in SF we can easily engender more favorable conditions for density and infill. The "Bart-to-the-beach" suggested route currently being discussed misses the point of having a line extend from Golden Gate Park to Daly City Bart.... We need to envision this type of transit to ensure the southwestern section of the city is not left behind in terms of being a bedroom community, and ensure that they also have adequate future transit to support the housing requirements being pushed onto city planners.

The Bay View, Excelsior, Balboa Park plans all can be connected up through the T-Third St. lightrail line and future

transit proposals for San Bruno Ave up to Oakdale and the Bayshore development proposals for a home improvement district.

Balboa Park and Ocean Avenue can absorb more density if and only if, transit systems are improved and right-a-ways created to directly get people out of their automobiles.

Please note again that the Parkmerced and 19th Ave. Traffic studies were only that "STUDIES" and were not official EIR documents on impacts and cumulative impacts adequately analyzed and addressing issues. The SFCTA document that was submitted to initialize the study of 19th ave. submitted by Tilly Chang, was missing and incorrectly stated the developments and proposals that had been or were being considered. By pushing the 19th ave. traffic study through for funding we are missing the real need of addressing both the housing loss, open-space loss, amenities loss, and need for better and more thorough cumulative analysis on how and in what ways the best transit system improvements can be done FRONT-ENDED to ensure we get out of the gridlock situation we currently have in District 7 of SF.

I attach an image of Parkmerced inclusive of the lots bought by SFSU-CSU, which show its original boundaries, the comments by SF Heritage and a memo by 6 organizations on the issues of Parkmerced's EIR. I also submit bullet points on the concerns. I will not be able to attach the drawings submitted to the SF Planning Department on transit alternatives for ZN12-13 for the southwest district, however they are available from the planning department's Parkmerced EIR submitted comments section, and show clearly options that would provide direct linkage and density infill options to meet the project proponents needs for a profit margin over 3%.

Thank you for your addressing these concerns and opening the discussion more towards grade-separation along 19th ave. reducing travel time for the M-Line and ensuring that the connectivity occurs up front and not 20 years down the road to appease a developer's project proposal over the PUBLIC's best interests.

Sincerely

Aaron Goodman
25 Lisbon St.
San Francisco, CA 94112
amgodman@yahoo.com

cc: Craig Noble, MTC 510.817.5867 c/o Ashley Nguyen
Kathleen Cha, ABAG c/o Ashley Nguyen
SF Board of Supervisors c/o board.of.supervisors@sfgov.org
SF Planning Department c/o linda.avery@sfgov.org

Note: the EIR for Bay-Area Plan denotes the following below for multiple projects adjacent to 19th Ave. ignoring the cumulative impacts on transit/traffic/parking/housing/open-space currently and incorrectly denotes the projects of SFSU-CSU and Parkmerced as a "transit-town-center" when the projects NEVER were cumulatively imagined or designed to include a more integrative transit approach to the housing being proposed. Transit is being done as an after-thought, or co-sponsored by the developer's private interests. The public's best interests are not being served by these large "multi-family" developments when many people in the existing communities cannot afford any new housing being built (ex: Ocean Ave Avalon Apartments adjacent to city college). It states incorrectly that it improves pedestrian safety when direct grade separated solutions were NEVER analysed to any potential. It ignores how bi-county transit/density development at 19th and

Brotherhood Way and the elimination of the eastern most un-reinforced towers in Parkmerced with newer construction could provide a new gateway and entrance to the city/county of SF and Daly City instead of grid-lock and a monstrous interchange at Daly City that separates vs. joins, the counties at the border. Transit can be the improved linkage along with open-space and development, but without initially planning those transit appendages

first, we lose vital "elbow-room" to design future changes needed for density proposed. The "mix" of housing noted IGNORES the need for rental housing affordable to EXISTING communities. The statement below ignores the 800 Brotherhood way project whose CU permit expired, and the Honorable Judge Quentin Kopp reprimanded the planning dept. on in terms of the need to re-submit for any proposed project at that location. It ignores the 77 Cambon project proposal which was a larger building project with housing, and it ignores completely the future housing opportunities @ Stonestown, and how that site could alleviate density at Parkmerced.

TRANSIT TOWN CENTER 19th Avenue Corridor Neighborhood transportation improvements in this area are closely linked with new development, to both accommodate future residents and improve pedestrian safety. The existing neighborhood along the corridor crosses from San Francisco County into San Mateo County, and includes a regional retail shopping center, San Francisco State University (SFSU) and Park Merced, a large multi-family residential development. When complete, new residential development at Brotherhood Way, Park Merced and Chumasero Drive, and new development around the Daly City BART Station will increase the diversity of housing, both in terms of affordability and housing type. The SFSU campus expansion will include new education and residential buildings, while a rebuilt Stonestown Shopping Center will offer new retail. The 19th Avenue Corridor will add to the mix of housing and transit, benefiting both the city and the region.





SAN FRANCISCO
ARCHITECTURAL
HERITAGE

July 12, 2010

Bill Wycko
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: 2008.0021E: Parkmerced – Draft Environmental Impact Report

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Dear Mr. Wycko,

Thank you for the opportunity to comment on the Parkmerced Draft Environmental Impact Report (“DEIR”). Founded in 1971, San Francisco Architectural Heritage (“Heritage”) is a non-profit 501(c)(3) membership organization charged to preserve and enhance San Francisco’s unique architectural and cultural identity.

The Parkmerced project sponsor presented to the Heritage Issues Committee on June 2, 2009. While the proposed project has many laudable goals, we noted that it did nothing to preserve the existing California Register eligible resource. After review of the Page & Turnbull Historic Resources Alternatives Study (“Alternatives Study”), and the DEIR we have feedback on potentially feasible preservation options, including a new alternative described here. This new alternative would be a “hybrid” of options from the Alternatives Study that would allow limited development along the periphery of the complex (as described in DEIR Alternative C) along with limited infill development within the Historic District (similar to alternative #3 in the Alternatives Study, though scaled down). This hybrid approach would both retain Parkmerced’s historic core and retain its California Register eligibility, while meeting many of the stated project objectives.

If the city will not consider this hybrid alternative, Heritage supports Alternative C as the recognized environmentally superior alternative, and the only option included in the DEIR that maintains the eligibility of Parkmerced as a California Register historic district.

I. Parkmerced Is Historically Significant and Register Eligible

All parties, including the project sponsor, agree that Parkmerced is eligible for inclusion in the California Register of Historical Resources as a historic district under Criterion 1 (Events) and Criterion 3 (Design/Construction). Built in the early 1940’s, Parkmerced is an outstanding example of early modern landscape design, and an exceptional garden apartment development. Parkmerced’s sophisticated landscape was designed by Thomas Church, the father of modern landscape design. It displays many of the design concepts that made Church’s work unique and influential, including the use of abstract and organic forms. It is believed to be one of the largest Church projects remaining intact.

As an example of a planned development, Parkmerced represents an early example of large scale garden apartment design. It was one of similar four apartment developments funded by Metropolitan Life Insurance, which include Parkfairfax in Alexandria, Virginia, listed on the National Register because of its significance as an early planned development. Of the four complexes, only Parkmerced has a notable landscape design. Most of the complex's features retain a high degree of integrity from MetLife's period of ownership and, taken together, its collection of buildings, landscapes, and associated elements reflect Parkmerced's original design and functionality as a planned residential community.

II. The EIR Should Scrutinize the Ability of the Proposed Project to Meet Sustainability Objectives

To ensure fair consideration of the preservation alternatives Heritage supports (as described below) the EIR should evaluate the proposed project's ability to meet the sponsor's own stated objectives. The proposed project seeks to meet LEED certification standards and is touted as an "innovative model for environmentally sustainable design practices." We question how sustainable it is to demolish over 170 two-story buildings and 152 acres of landscape features and open space. Clearing the site would likely take several years, followed by protracted excavation and construction work. The EIR should closely scrutinize any claimed environmental benefits of the proposed project within this context, taking into account the embodied energy that would be lost with demolition of 1,538 units and the additional resources needed to haul away debris and erect 5,679 new units.

While the project sponsor has plans to build new construction with green technology, the DEIR does not study the possibility of upgrading the existing buildings to meet sustainability objectives. In assessing the feasibility of preservation options, the EIR should explore options for greening the existing garden courtyard apartments. Sensitive strategies for improving energy performance should be incorporated into all preservation alternatives. Including LEED upgrades for all the existing buildings, regardless of the final project design, will certainly help the project sponsor to meet sustainability objectives.

III. There Are Feasible Alternatives to the Proposed Project that Substantially Lessen Significant Adverse Impacts on Historic Resources

A. The EIR Should Consider a "Hybrid" Alternative that Retains Parkmerced's Historic Core, While Meeting Stated Project Objectives

Other than the No Project Alternative, the DEIR only includes one option (Alternative C) that would avoid significant adverse impacts on historic resources. In order fulfill the

mandate of CEQA,¹ the EIR should explore an additional alternative that retains Parkmerced's historic core and meets more of the sponsor's objectives, such as the desire for sustainable density and affordable rental housing.

A hybrid of Alternative C and the rejected Alternatives Study option, "Infill Development within the Historic District," would not only maintain the eligibility of the historic district, but also attain key project objectives not met by Alternative C alone. The "Infill Development" alternative was rejected, in part, because it would render the Parkmerced historic district ineligible for listing in the California Register. A hybrid alternative that allows for infill development on a smaller scale – as opposed to the three-story-plus new construction proposed in the rejected "Infill Development" alternative – would largely avoid negative impacts on the integrity of setting. Moreover, by adjusting the footprint of Alternative C, a hybrid alternative would increase the amount of developable area by removing the courtyard blocks immediately north and south of the four-tower cluster bounded by Serrano Drive, Arballo Drive, Gonzalez Drive, Bucareli Drive, and Font Boulevard.

Based on the impacts analysis in the DEIR for Alternative C, the removal of these courtyard blocks would not jeopardize the eligibility of the historic district. In addition to retaining the central core, the majority of the character-defining features would be preserved, including the cluster arrangement of the garden apartment blocks, landscaped drives, landscaped courtyards, vegetation, and small-scale features, as well as the radial arrangement of the garden courtyard apartments around Juan Bautista Circle.

Historic preservation and other General Plan goals, such as sustainability and affordable housing, can work together at the Parkmerced site with creative solutions. A hybrid alternative that incorporates elements of Alternative C and the rejected "Infill Construction" option would realize many of the project sponsor's objectives, while still retaining enough historic fabric to maintain the site's eligibility on the California Register. We urge the city to study this option in detail to assure that a reasonable range of potentially feasible alternatives are included in the EIR.

B. Alternative C Maintains California Register Eligibility and is the Environmentally Superior Alternative

Should the city not analyze this hybrid alternative, Heritage supports Alternative C, "Historic District Central Core," as the most sensitive option from a preservation standpoint, and as the recognized environmentally superior alternative. As the

¹ CEQA requires consideration of a range of alternatives in the EIR, with an emphasis on options capable of "substantially lessening" the project's significant adverse environmental effects. *Sierra Club v. Gilroy City Council* (1990) 222 Cal. App.3d 30, 41; *also see* PRC §§ 21002, 21002.1.

Alternatives Study indicates, Alternative C would retain the essential portions, features and characteristics of Parkmerced that justify its eligibility for the California Register of Historic Resources as an historic district. It also advances the project sponsor's sustainability objectives by conserving embodied energy and reducing energy consumption and landfill debris.

Finally, in assessing the financial feasibility of Alternative C, the EIR should take into account the cost savings that would result from maintaining the existing stream of rental revenue and by significantly reducing the scope of new construction. The EIR should also include a detailed accounting of projected rehabilitation costs for all preservation alternatives, incorporating potential regulatory and tax relief available under the California Historical Building Code, Mills Act, Federal Rehabilitation Tax Credits, and through conservation easement donation.

IV. Additional Mitigation is Needed to Safeguard Against Preemptive Demolition

Given the widely publicized financial uncertainty surrounding the proposed project, we urge the city to adopt protections against any preemptive demolition of Parkmerced, including a mitigation measure barring issuance of any demolition permit for any phase of construction until a permanent replacement project is pending and the sponsor has demonstrated the financial resources necessary to complete the proposed replacement project within a reasonable timeframe (i.e., construction to commence within six months of receipt of all necessary city approvals).

Thank you very much for the opportunity to comment. Please do not hesitate to Alexandra Bevk, Preservation Advocate, at 415.441.3000 or abevk@sfheritage.org should you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Cannon", with a long horizontal flourish extending to the right.

David Cannon
Chair of Issues Committee

Cc: San Francisco Planning Department
San Francisco Historic Preservation Commission
National Trust for Historic Preservation
California Preservation Foundation

January 28, 2011

Mr. Ron Miguel, President
San Francisco Planning Commission
Attn: Jonas Ionin, Acting Commission Secretary
1650 Mission Street, Suite 400
San Francisco, CA 94103

Submitted via email: jonas.ionin@sfgov.org

Re: Parkmerced Project (SFPD File No. 2008.0021E)

Dear Commissioner Miguel,

As the San Francisco Planning Commission meets to consider the environmental and planning impacts of the proposed Parkmerced Project, the historic preservation community remains deeply concerned about the destructive impact of the Project on the Parkmerced Historic District.

Parkmerced was determined eligible for the National Register of Historic Places and the California Register of Historical Resources as a significant example of planned residential development in San Francisco and the work of master landscape architect Thomas Dolliver Church and his celebrated colleague Robert Royston. According to the Cultural Landscape Foundation, Parkmerced is one of only four remaining examples of large-scale, pre- and post-World War II residential developments in the country and is without question of national significance. The Foundation has identified Parkmerced as a potential National Historic Landmark candidate—an elite group of less than 2,600 such properties in America. As one of Thomas Church's largest and most publicly accessible works, Parkmerced is also an important community resource.

The six undersigned local, state, regional, and national historic preservation organizations urge the City of San Francisco to adopt Project alternatives or components of alternatives that maximize preservation of the Parkmerced Historic District and retain its eligibility for the California Register of Historical Resources and the National Register of Historic Places. We question the consistency of the proposed Project with San Francisco's Planning Code Priority Policies and urge the City to require additional, more substantive mitigation measures for the severe impact to historic resources that could result from the Parkmerced Project.

Requirements of the California Environmental Quality Act

CEQA reflects the statewide policy that projects with significant environmental impacts, including impacts to the State's historic environment, should not be approved "if there are

feasible alternatives ... available which would substantially lessen the significant environmental effects ..." (Pub. Resources Code § 21002.) CEQA thus requires that alternatives be analyzed that would "feasibly obtain most of the basic objectives of the project." (Guideline § 15126.6 subd.(a).)¹ Findings supporting the infeasibility of an alternative must be supported by "substantial evidence" based on an independent analysis by the lead agency. (Pub. Resources Code § 21081.5; Preservation Action Council v. City of San Jose (2001) 141 Cal. App.4th 1336.) An alternative need not accomplish every project objective, or maximize profitability, to be considered feasible under CEQA.²

Any project that would demolish a historic resource necessarily has a significant effect on the environment, requiring a lead agency to study and adopt feasible alternatives such as rehabilitation, if available and practical. (See Pub. Resources Code § 21081; 21084.1.) CEQA's requirements to identify and analyze feasible alternatives in an EIR are manifest when a project threatens historic resources, as is its substantive mandate that the lead agency not approve a project if a feasible alternative exists.

The Project Alternative Analysis Indicates that an Environmentally Superior Alternative is Feasible

As noted in the DEIR, Project alternatives proposing retention of portions of the Parkmerced Historic District result in substantially fewer impacts to historic resources and a range of other environmental qualities. Under Alternative C, Retention of the Historic District Central Core Alternative, the Parkmerced Historic District would retain eligibility for the California and National Registers while allowing for new development and densification on other parts of the Project site. The DEIR further identifies Alternative C as the environmentally superior option. This alternative is preferable not only because it would preserve an important part of San Francisco's history, but because the reuse of existing infrastructure would result in substantially fewer emissions of greenhouse gases, making Alternative C the truly sustainable alternative (see DEIR VII.32). Finally, Alternative C would provide cost savings by maintaining the existing stream of rental revenue and significantly reducing the scope of new construction.

To date, the City has provided no information to justify the rejection of environmentally superior alternatives based on "economic, environmental, social, and technological factors." (Guideline § 15126.6(b).) The City acknowledges that all of the proposed alternatives are "potentially feasible in that *they would attain most of the basic objectives* identified in Chapter III, Project Description, all are within boundaries of the property under the control of the Project sponsor and all are capable of being constructed on the Project Site." (Comments and Responses, Master Response A.4, emphasis added.)

¹ "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code § 21061.1.)

² Citizens of Goleta Valley v. Board of Supervisors (1998) 197 Cal.App.3d 1167, 1181.

CEQA requires that the EIR provide sufficient information about each alternative “to allow meaningful evaluation, analysis, and comparison with the proposed project.” (Guideline at § 15126.6(d).) The reasons and facts for which the sponsor or City has rejected alternatives is essential information that must be provided to the public in the EIR.³ In contrast, the DEIR and Comments and Responses documents for the Project contain no discussion of why various alternatives may be considered infeasible. Contrary to the public disclosure function of the EIR, the City maintains that this information need not be presented in the EIR documents, but can be held back until the CEQA findings are released just prior to project approval.⁴

The Proposed Project is Inconsistent with the City’s Planning Priority Policies

The undersigned organizations take exception to the statements in the DEIR and the Comments and Responses document that the Parkmerced Project is consistent with the City’s Planning Priority Policies, particularly Priority Policy 7, which states “that landmarks and historic buildings be preserved” (Planning Code at § 101(b)(7).). The DEIR stated that the Parkmerced Historic District does not qualify for such protection, because it “is not currently included in any federal, state or local register.” (DEIR IV.1 fn1). Nothing in the Planning Code, however, indicates that protection of the City’s landmarks and historic structures is limited to formally listed sites on a register. This narrow interpretation of City policy also runs counter to CEQA, which makes no distinction between eligible and listed resources in determining what is historic.⁵

In the Comments and Responses volume of the Project EIR, the City again posits that the project is consistent with Priority Policy 7 because the policy specifically references “historic buildings,” and the buildings at Parkmerced are not individually significant. (Response TR.34.1). Parkmerced is a historic district composed of individual elements that lack individual distinction, however, the contributing elements of the district—both buildings and landscape elements—have historic value. There is also a clear distinction between demolishing individual contributing resources in a historic district and demolition of nearly the entirety of a historic district. The conclusion that this degree of destruction is consistent with the City’s policy to protect its architectural and cultural heritage is nonsensical. We maintain that the Parkmerced Project is not consistent with Priority Policy 7.

³ See Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d. 376, requiring preparation of a new EIR because the lead agency had failed to “explain in meaningful detail...a range of alternatives to the proposed project and, if [it] finds them to be infeasible, the reasons and facts that [it] claims support its conclusion.” *Id.* at 406.

⁴ Comments and Responses, Master Response A.5.

⁵ Cal. Pub. Res. Code § 21084.1; “For purposes of this section, an historical resource is a resource listed in, or *determined to be eligible* for listing in, the California Register of Historical Resources” (emphasis added.)

Proposed Mitigation Measures Remain Grossly Inadequate

While the undersigned are opposed to any demolition of the existing resource, in the event it occurs, the mitigation measures must be much stronger than those proposed in the EIR. Although it is undisputed that the Parkmerced Project would cause significant and unavoidable impacts to historic resources, the Project sponsors continue to offer insufficient mitigation or compensation for this potential loss. The proposed project would result in the near total destruction of a historic district spanning over 192 acres, including demolition of 170 contributing resources and the majority of Thomas Church's designed landscape. The proposed mitigation measures outlined in the DEIR and the Comments and Responses document, consisting of HABS, HAER, and HALS documentation, donation of archival materials, and permanent public interpretation, are tokenisms of little benefit to preservation of historic resources in San Francisco. Given the sheer enormity of the loss at stake, we believe much more should be required.

In its review of the Project DEIR, the California Office of Historic Preservation (OHP) stated that the mitigation measures proposed in the DEIR, specifically HABS/HAER documentation, "does not... in any way mitigate such a devastating alteration to a historic district." The OHP further stated that "the proposed demolition of the Parkmerced resources is indeed a circumstance in which HABS/HAER documentation is clearly insufficient mitigation in relation to the significant adverse effect that wholesale demolition would have on Parkmerced's historic resources..." (Comments and Responses, Letter 3, page 2.)

Indeed, it is a well-established precedent under CEQA that documentation and interpretation do not meaningfully compensate for the destruction of historic resources. As recognized by the court in League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896: "Documentation of the historical features of the building and exhibition of a plaque do not reasonably begin to alleviate the impacts of its destruction. A large historical structure, once demolished, normally cannot be adequately replaced by reports and commemorative markers." (*Id.* at 909.)

Echoing this point, the court in Architectural Heritage Association v. County of Monterey (2004) 122 Cal.App.4th 1095 proclaimed: "As drawing a chalk mark around a dead body is not mitigation, so archival documentation cannot normally reduce destruction of an historic resource to an insignificant level." (*Id.* at 1119.)

The severity of the historic resource impacts at Parkmerced demands proportional mitigation measures with an appropriate nexus to the project impacts. Alternative or additional mitigation measures may include:

- Funding to complete a cultural resource survey of historic landscape resources in San Francisco, including development of landscape-specific survey methods and tools;
- Funding to complete a comprehensive, professional cultural resource survey of the southwest quadrant of the City of San Francisco; and/or
- Funding to complete a context study and survey of Modern and post-World War II historic and architectural resources in the City of San Francisco.

Certainly, Planning Department staff with expertise and experience in conducting and managing historic resource survey projects in San Francisco can advise the Commission and sponsor on the likely costs associated with these mitigation measures.

Mitigation could also include funding for the established San Francisco Historic Preservation Fund, administered by the Historic Preservation Fund Committee and the Mayor's Office of Economic and Workforce Development. Contributing to publicly administered funds supporting historic preservation activities as a form of mitigation has several precedents in California, including the Long Beach Navy Memorial Heritage Fund established in association with demolition of the Long Beach Naval Complex in Long Beach, CA; the Historic Schools Investment Fund established in connection with demolition of the Ambassador Hotel in Los Angeles; and the San Francisco Historic Preservation Fund itself, established following illegal demolition work on the Emporium Department Store.

In addition to the mitigation measures proposed here, the undersigned organizations request that the City adopt protections in the Project Development Agreement and CEQA findings prohibiting preemptive demolition of any contributing elements or alteration of character-defining features of the Parkmerced Historic District, including spatial organization, circulation, topography, buildings and structures, vegetation, landscape features, and views. Specifically, the City should impose a mitigation measure barring issuance of demolition permits until a permanent replacement project is pending and the sponsor has demonstrated the financial resources necessary to complete the proposed replacement project within a reasonable timeframe (i.e. construction to commence within six months of receipt of all necessary City approvals). We understand that the Planning Code already includes similar requirements, but feel it is important to codify and reinforce these protections in Project-specific documents.

Conclusion

Parkmerced is a nationally significant example of landscape design and World War II-era heritage in the San Francisco Bay Area, as well as one of the largest, and few publicly accessible, works by master landscape architect Thomas Church. The undersigned organizations strongly urge the City to adopt Project alternatives or components of Project alternatives maximizing preservation of the Parkmerced Historic District and

retaining its eligibility for the California Register of Historical Resources and National Register of Historic Places. In addition, we believe that the proposed project is patently inconsistent with the City's Priority Policies. Finally, while we remain opposed to any demolition of the existing resource, in the event the Project is approved, additional mitigation measures are necessary to meaningfully compensate for the severe impacts on the City's irreplaceable heritage.

Thank you for the opportunity to comment on the Parkmerced Project. Please do not hesitate to contact our organizations with regard to any questions related to these comments.

Sincerely,



Anthea M. Hartig, Ph.D.
Director, Western Office
National Trust for Historic
Preservation



Cindy Heitzman
Executive Director
California Preservation
Foundation



Mike Buhler
Executive Director
San Francisco Architectural
Heritage



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President
The Cultural Landscape
Foundation



Bob Pullum
Director of Advocacy
Northern California Chapter,
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Janet Gracyk
President
Northern California
Chapter, Historic American
Landscape Survey

cc: Rick Cooper, Major Environmental Analyses, San Francisco Planning Department
M. Wayne Donaldson, California State Historic Preservation Officer
San Francisco Historic Preservation Commission
San Francisco Preservation Consortium
Gabriel Metcalf, Executive Director, SPUR

PARKMERCED BULLET POINTS

- Sustainability **MUST** include Preservation alternatives including **INFILL**.
- Tearing down **SOUND** garden units without proof of deterioration is against the SF General Plan. An independent analysis on the existing buildings conditions is required.
- The project would destroy the unique and diverse community of over 8,000 people at Parkmerced. Parkmerced was built after World War II as an affordable rental housing community for working families. It must be preserved, not bulldozed;
- The project would demolish over 1500 units of sound, rent-controlled housing. With our city's rental housing scarcity, San Francisco needs to preserve, not demolish, its rent-controlled housing units;
- The project would subject residents of southwest San Francisco to decades of large scale construction, including traffic, noise, utility disruptions and pollution. The project is scheduled to last an astounding 20 – 30 years;
- The proposal would turn the fate of more than 8000 San Franciscans over to speculators engaged in the type of reckless real estate schemes that have failed across the nation. Even the city's consultants concluded that the project is on shaky financial footing
- No information provided on the water consumption to regrade and replant 191.2 acres
- Direct Tier-5 stated future routing of transit along 19th through grade level change is not explored sufficiently as a current proposal/alternative to relieve traffic issues.
- No information on structural stability of the existing 11 towers.
- Financial lack of analysis on savings utilizing the Mills Act for preservation restoration
- The lack of alternatives being explored, or adequately analyzed and commented on by the SF Planning Department, Commissioners, and SFHPC.
- No information on the total loss of amenities to tenants since 2000 sell off of lands.
- The lack of any historical analysis that adequately reviews the total cumulative impact on parkmerced as a historic district. Both the SFSU-CSU "Masterplan" and Parkmerced "Vision" projects ignore intentionally the other's impact on Parkmerced as an entity circumventing CEQA analysis on historical eligible properties.
- Overall tree-scape/landscape loss since the sale from Leona Helmsley to today
- The lack of a cumulative plan that diverts development pressures to the SFSU-CSU Stonestown, and South/Eastern commercial and sold off sites along the outer edges of Parkmerced's designed core.
- The lack of any ecological low-impact project as proposed by the SFPUC such as a green-belt-way concept down brotherhood along the existing creekbed, and with a new public park at 800 brotherhood way
- The false equation and lack of value assessed in the developer agreement that the open-space loss, private patios, public shared spaces, private courtyards, walkways, hardscape and softscape, and national landmark eligible design as a cultural landscape is being "equated" to a new washer-dryer-dishwasher in the statement by the MOEWD. The landscape is "**PRICELESS**" as the only public accessible example of Thomas Dolliver Church's work. Garden unit residents are losing 2/3rds of there current open-space from 1,100sf per unit to almost 333 sf per unit per the National Trust for Historic Preservation's memo submitted on the draft EIR of Parkmerced.
- The energy carbon footprint of the new development vs. a more preservation based alternative utilizing infill and options needs to be submitted by separate third party organizations to adequately determine the "green-levels" of the project being claimed by the developer including recent renovations to date and the cumulative impacts by SFSU's project jointly.
- **SB375** is being used to circumvent adequate CEQA analysis
- State tenancy laws such as costa-hawkins, and other recent case law state clearly in appeals that the city **CANNOT** contract around state law in its agreements with developers on rent-controlled housing and replacement units.

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: albertd@maiam.net

BC:

Date: Tuesday - July 10, 2012 10:08 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "albertd" 07/07/12 8:56 AM >>>

I am a homeowner and 50-year resident of the Bay Area. As a former and repentant elitist, I know what you're up to. Here's what I think of your instrument.

Albert Duro
405 Mariposa Street
Brisbane, CA 94005
albertduro@sbcglobal.net

Summary Statement

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.
 - * THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.
 - * The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.
 - * THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.
 - * The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.
 - * The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.
 - * Even in the unlikely event that the aggregate forecasts of

economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

- * The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

- * California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

- * Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

- * Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

- * THE PROCESS does not address alternative - and more likely - consequences of various elements of the plan.

- * For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

- * THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

- * In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

- * THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

- * THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

- * THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles,

diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

* THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

* THE PROCESS ignores "real-world" experience under "smart growth" policies.

* Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

* Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

* Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

* In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

* Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

* A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.

* Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

* MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

* THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

* The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

* The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an

independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.

* At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.

* MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

* The plan does not fully state the costs of the various elements of Plan Bay Area - the Plan includes \$277 billion for the public transportation element alone.

* The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, "affordable housing" subsidies, and other essential public services.

* While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

* The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

* Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

* THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: abrierly@earthlink.net

BC:

Date: Tuesday - July 10, 2012 10:09 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Alberta Brierly 07/08/12 2:42 PM >>>

To: Ashley Nguyen,

As a 49 year resident of Santa Clara County (24 years now in San Jose), I'm concerned about the quality of our future. I attended the Santa Clara Co. One Bay Area Visioning meeting in January, as well as the El Camino Real/Grand Boulevard meeting in Mt. View in April. I was shocked at what I learned the plans are for the Bay Area. It seems this is a forgone conclusion that is being foisted on our counties with relatively no publicity to the general citizenry. The unelected bureaucrats running these meetings were not sincerely open to the dissenting public. The following sums up more of my analysis on this matter:

The scoping stage of the EIR "PROCESS" is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. The PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. The PROCESS does not address the availability of the massive funding required to execute the plan or the

likely results if the anticipated resources are not available.

Sincerely,
Alberta Brierly

Ashly J Reeves
919 Central Ave
Livermore, CA 94551

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. Their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that

"The Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the "preferred alternative" contemplated by Plan Bay Area.

The "preferred alternative" will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court's regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government's regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court's opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that "the Fifth Amendment is violated when land-use regulation "denies an owner economically viable use of his land." 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, "the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay

Area. This is the essence of "unbridled, uncompensated qualification under the police power." Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

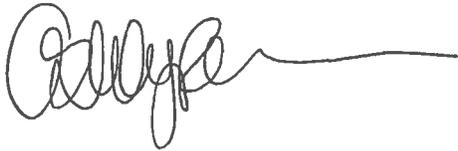
At a minimum:

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ashley', with a long horizontal line extending to the right.

Ashly Jean Reeves

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Mayor John Marchand
Vice Mayor Doug Horner
Councilmember Stewart Gary
Councilmember Laureen Turner
Councilmember Bob Woerner

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

Ashly J Reeves
919 Central Ave
Livermore, CA 94551

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

I have been a resident of Alameda County for my entire life. I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. Their elitist attitude has driven me to get involved.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%-142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for

population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally

important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



Ashly J Reeves

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Mayor John Marchand
Vice Mayor Doug Horner
Councilmember Stewart Gary
Councilmember Laureen Turner
Councilmember Bob Woerner

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

Ashly J Reeves
919 Central Ave
Livermore, CA 94551

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

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Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and

balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "[t]he Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's "preferred alternative" will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

(1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1] Careful and thorough consideration of this hypothesis regarding the impact of the "preferred alternative" is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

(2) The EIR must quantitatively and explicitly identify the subsidies required to develop the "stack and pack" mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the "preferred alternative" zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond

any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

(3) There are already a number of "stack and pack" developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of "preferred alternative-lite" restrictive zoning standards in individual jurisdictions mandating "stack and pack" development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these "stack and pack" developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.[2] Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

(4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.[3]

(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in "transit villages" which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the "transit villages" will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan

will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



Ashly J Reeves

cc:

Supervisor Scott Haggerty

Supervisor Richard Valle

Supervisor Wilma Chan

Supervisor Nate Miley

Supervisor Keith Carson

Mayor John Marchand

Vice Mayor Doug Horner

Councilmember Stewart Gary

Councilmember Laureen Turner

Councilmember Bob Woerner

Brian Sussman, KSFO

Melanie Morgan, KSFO

Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] Even a cursory review of historic data suggests that the assumptions undergirding the "preferred alternative" are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area's decline in population growth from 155.61% of the national growth rate during the 1960s-1980's (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990's (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000's (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the "preferred alternative-lite" zoning standards which were first introduced in parts of the Bay Area in the 1990's and became more widespread in the 2000's. This likely relationship between population and job growth rate declines and "preferred alternative-like" zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

[2] It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous "stack and pack" developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

[3] Further, it's facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete

July 8, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Problems with the Plan Bay Area forecasting methodology and the forecasts themselves

Dear Ms. Nguyen:

I am a homeowner in San Francisco, and I am extremely concerned about Plan Bay Area's plan for the Bay Area. This scary plan is being rushed through the approval process without much fanfare and is clearly under the radar. I only found out about the plan quite by accident, and hardly anyone I know has any idea what Plan Bay Area is up to.

Section 15151 of the CEQA Guidelines states: "An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which allows them to make an intelligent decision that takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main point of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."

Unfortunately, Plan Bay Area's forecasts for population, job, and household growth are totally inadequate and incomplete and fail to meet the standards of Section 15151. These deficiencies have a material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews. These forecasts need to be fixed before going any further.

Plan Bay Area's forecasts are way too high. The Bay Area had population growth rates between the 1960's and the 1990's much higher than the overall US growth rate. However, the Bay Area's population growth rate dropped dramatically since 2000. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17%, which was 142.46% of the national average population growth rate of 11.94% over those 40 years. But in the 2000's, the Bay Area's population growth rate dropped to 5.4%, which is only 55.72% of the national growth rate for that decade (9.71%). This cannot be explained by the two recessions in the past decade, since there were recessions in each of the four decades prior to the decade of the 2000's, when the Bay Area's population growth rate remained far above the national growth rate. The national population growth rate in the decade of the 2000's was about the same as it had been in

the prior 40 years despite the two recessions, yet the Bay Area's population growth dropped drastically in the decade of the 2000's. Plan Bay Area's forecasts wildly predict a growth rate of 8.87% per decade for the next three decades, which is much higher than the 5.4% growth rate of the decade of the 2000's.

Plan Bay Area's forecast for job growth is even more unsound. The City of Palo Alto has often questioned ABAG's forecasting methodology. In a January 25, 2012 memo, staff was surprised that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."

In order to have a sound basis for valid economic and environmental impact reports, Plan Bay Area's forecasting methodology should be open, transparent, and accessible to third parties. This will help to evaluate the underlying assumptions and resulting forecasts, and this should also help to modify the forecasts as more data is gathered during the forecast period.

Plan Bay Area's forecasts should have a range of outcomes rather than a single point estimate to account for different underlying assumptions. This is critical to perform the necessary analysis needed to make sound policy decisions. The forecasts must provide a range (low, middle, and high) of growth estimates in order for its economic and environmental analysis to be complete and for the EIR to be valid and certifiable. What ABAG and MTC are proposing is very drastic and will affect the lifestyle of every Bay Area resident (current and future). A single point estimate for population, jobs, and households is inadequate. Furthermore, the mid-range forecast (probably the most likely), should be no higher than the growth rates in the decade of the 2000's to be credible. The assumption that Bay Area growth rates dropped dramatically in the 2000's as compared to national growth rates due to the economy makes no sense.

There must be an objective, independent agency to perform an unbiased forecasting analysis either to replace the current forecasts or for comparison purposes. This should be done before environmental and economic impact reports can be completed. There have been repeated complaints against ABAG and MTC for their forecasts over the years. On ABAG's own website, the City of Berkeley noted on September 14, 2007 that ABAG's "unrealistic goals... may have unintended consequences in regard to meeting overall regional housing needs." Also the City of Palo Alto has called for "independent analysis of the demographic and employment projections by ABAG" (memo dated 01/25/12). The fact that ABAG and MTC have not provided this independent analysis is a critical inadequacy in Plan Bay Area's forecasts, plan, and methodology. No decisions should be made about Plan Bay Area's draconian proposed plans until an independent analysis is done.

Furthermore, Plan Bay Area's forecasts should be compared with (and evaluated) in the light of forecasts made by Bay Area counties, cities, and towns themselves. This should be done completely independent of the Plan Bay Area top-down forecasts to see if Plan Bay Area's forecasts are even reasonable. This will provide a reality check on the

validity of ABAG's estimates (even once they are prepared through a valid methodology) both as a whole and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's numbers and a town or city's own informed estimates, those differences will probably indicate flaws with ABAG's estimates. This would not bode well for the success of any plan based on faulty estimates. The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own better-informed estimates proves that this is a vital part of any EIR.

Sincerely,



Aubrey Freedman

Cc: Eric Mar, District 1 Supervisor, City & County of San Francisco
Mark Farrell, District 2 Supervisor, City & County of San Francisco
David Chiu, District 3 Supervisor, City & County of San Francisco
Carmen Chu, District 4 Supervisor, City & County of San Francisco
Christina Olague, District 5 Supervisor, City & County of San Francisco
Jane Kim, District 6 Supervisor, City & County of San Francisco
Sean Elsbernd, District 7 Supervisor, City & County of San Francisco
Scott Weiner, District 8 Supervisor, City & County of San Francisco
David Campos, District 9 Supervisor, City & County of San Francisco
Malia Cohen, District 10 Supervisor, City & County of San Francisco
John Avalos, District 11 Supervisor, City & County of San Francisco
Ward Bushee, Editor and Executive VP, San Francisco Chronicle
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: bcalvert7755@yahoo.com

BC:

Date: Tuesday - July 10, 2012 10:29 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Beth Calvert 07/09/12 11:11 AM >>>

I live in South County and attended the San Jose EIR meeting on June 21, 2012. I have also attend the One Bay Area Plan meetings earlier this year. I am very concerned about how these meetings were conducted. At the June 21st meeting we were given a hand out of the powerpoint presentation but several of the slides presented were not included in our handout, why? Also, on the speaker card that we were required to fill out in order to speak was a statement of "Meeting Conduct" which included this statement: ".the Chair may order the removal of those individuals who are willfully disrupting the meeting. Such individuals may be subject to arrest." Why are you trying to discourage the public from having their voices heard and threatening arrest? I feel this is an attempt to intimidate individuals from speaking up in disagreement with what is happening in these meetings.

Now for the actual annalysis of the EIR Process:

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. .

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.

* THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

* The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

* THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

* The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

* The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

* Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

* The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

* California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

* Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

* Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

* THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.

* For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

* THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

* In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

* THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

* THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

* THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

* THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

* THE PROCESS ignores "real-world" experience under "smart growth" policies.

* Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland,

OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

- * Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.
- * Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.
- * In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.
- * Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.
- * A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of “boutique cities” affordable only to the elite.
- * Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

- * MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.
- * THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.
- * The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.
- * The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.
- * At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.
- * MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- * The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.
- * The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.
- * While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.
- * The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.
- * Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must

address the impact of imposing land use restrictions in areas that will not be developed for years to come.

* THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Please reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner with more public input.

Sincerley,
Beth Calvert
Gilroy, California

From: eircomments
To: Bill Mayben
Date: 6/22/2012 5:02 PM
Subject: Re: EIR Comments

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> "Bill Mayben" <bmayben@comcast.net> 6/12/2012 11:39 PM >>>

* What environmental issues should be analyzed?

The scoping of this EIR is important. If specific goals are not properly addressed in the beginning, it will become too large and unwieldy to manage, and expensive; and will ultimately be rejected because it will not be cohesive enough to have the potential effects evaluated. Ideally, this EIR would be overarching, and would require additional EIR studies prior to construction of specific areas of the project. I believe the outside timeframe of the proposal(s) evaluated by the EIR must be less than 25 years.

* Are there alternatives that should be evaluated?

If the EIR is a transportation-oriented package of solutions, essentially, then the alternatives would be based in strategies that grow local jobs. The effects would be essentially the same; fewer trips per day.

If suburban communities are still considered bedroom communities, and sources of commuter traffic of one type or another, then the alternative would be to consider these communities in a different light; or a combination of effective public transportation coupled with adding more dimensions to communities surrounding the Bay Area. One has to consider one's bias. If the majority of the planners are into transportation; focus has to be given to creating communities that don't need it; at least to move workers. Transportation would then be set up primarily to facilitate the movement of materials and goods.

A Bay Area wide, blindingly fast high speed internet system could allow teleconferencing, meetings, and the exchange of information without people needing to be in the same location. What if we built high speed optical fiber systems rather than highways and rail systems?

Consider the process of the California High Speed Rail Authority. Where did they go wrong? The project you are proposing is at least as expensive, if not more so. How will it be paid for? Consider BART; the dream verses the reality. The finances still do not work smoothly. A lot of work needs to be done on the financing of this proposal. See below regarding the buy-in of

agencies and jurisdictions.

What if this work is not done at all? What would emerge in its place? Would the economics of fuel, and power, drive a very different set of outcomes? How can the EIR incorporate the potential of these scenarios?

* What mitigation measures would help avoid or minimize any negative impacts?

You realize that over the next 50 years, that the Bay Area will be flooded due to global warming, don't you? There is the distinct possibility that planning for a Bay Area wide transportation system without effectively accounting for sea level rise and the real possibility of storm surge from radical weather changes; would be a waste of money. I read that the Bay Area was planning for an 18" rise in sea level. This is clearly inadequate. 36" is inadequate. If the investment is not made Bay Area wide, to mitigate the effects of sea level rise, nothing you can do will have a basis. I understand that the onramp on the Oakland side of the brand new Bay Bridge, is likely to be under water; first periodically, and then permanently. This is an example of wasted money, and poor reality testing. Google maps will allow you to graphically postulate an assumed rise in sea level. Read the book, "Hot", before proceeding. How does one mitigate against this? Does this issue qualify as the largest environmental issue you could consider? Consider the effects of \$10-15 per gallon gasoline. We are past peak oil. What if we built a system that nobody could afford to use? This is not the Eisenhower administration, and we are not going to be driving Buick station wagons on the Interstate. We must depart from our expectations that the future will look like the past. We are riding exponential growth curves now. We will be hotter, dryer, and probably more frugal. It is likely that things will slow down as a result of fuel costs.

* How can local jurisdictions and other agencies use this EIR?

I always felt that if local jurisdictions and agencies did not buy into the process from the start, that they would not participate in it later. You need to obtain buy-in. They need to participate. If they are not bought in and participating, you do not have a project worth writing and EIR for. The features and benefits of the plan need to be clearly understood, or they won't be willing or able to defend the plan in their turf. If the EIR is written without this; it will be put in a drawer. What incentives, what specific works, what initiatives will make the EIR a living document?
Bill Mayben

Re: Requesting the "EIR Process" be put on hold and a re-start to occur!

From: eircomments

To: bruce@dvk.com

BC:

Date: Tuesday - July 10, 2012 11:04 AM

Subject: Re: Requesting the "EIR Process" be put on hold and a re-start to occur!

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "Bruce" 07/10/12 9:24 AM >>>

Attention: Ashley Nguyen, EIR Project Manager,

Metropolitan Transportation Commission

101 Eighth Street, Oakland, CA 94607

Hello Ashley,

My Name is Bruce Smith and I live in Los Gatos, Ca - I recently became aware of your efforts and need you to understand that many Bay Area citizens do not know about your group's efforts.

I happened to hear about what is going by listening to a radio talk show that airs on the weekend. That was a chance encounter or I still would not know that you are apparently about to call this EIR process (scoping or whatever) a done deal.

I am asking you to put your current efforts (EIR Process / scoping?) on hold and re-start the public meetings so that more people can provide you with feedback and input.

Since first hearing about your meeting(s) I have talked to lots of people and almost no one has heard anything about what you are doing.

1) PLEASE PUT YOUR PROGRAM/PROCESS OR WHAT EVER ON HOLD NOW .

7/10/12

Re: Requesting the "EIR Process" be put on hold and a re-start to occur!

- 2) RESTART AND USE MORE MEANS OF BRINGING THE PUBLIC INTO THE PROGRAM/PROCESS.

- 3) HAVE MEETINGS IN THE EVENINGS AND WEEKENDS SO WORKING TAXPAYERS CAN ATTEND.

Sincerely,

Bruce Smith,

Los Gatos, CA

Re: power grab for personal gain

From: eircomments

To: byrnemath@comcast.net

BC:

Date: Tuesday - July 10, 2012 10:07 AM

Subject: Re: power grab for personal gain

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "Byrne Mathisen" 07/06/12 3:06 PM >>>

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The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

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IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

M. Byrne Mathisen
Lafayette CA

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: cdunlap@dunlapequity.com

BC:

Date: Tuesday - July 10, 2012 10:10 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

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The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Carter Dunlap 07/08/12 7:03 PM >>>

Dear Ms. Nguyen,

I am a resident of Piedmont CA. I run a business in San Francisco. I own a home in Piedmont and commercial property in Contra Costa County.

Summary Statement

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- * THE PROCESS ignores "real-world" experience under "smart growth" policies.

- * Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.
- * Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.
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- * THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.
- * The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.
- * The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.
- * At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.
- * MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- * The plan does not fully state the costs of the various elements of Plan Bay Area - the Plan includes \$277 billion for the public transportation element alone.
- * The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, "affordable housing" subsidies, and other essential public services.
- * While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.
- * The Plan simply assumes that such resources will be available from various sources, including local

communities and federal and state assistance programs.

* Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

* THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

I urge you to delay the EIR deadline and open the process to a true public response cycle.

Sincerely,
Carter Dunlap

[Description: dem_logo_smaller]

Carter Dunlap
Dunlap Equity Management, LLC
199 Fremont St., Suite 1110
San Francisco, CA 94105
Main:415.568.9600 Direct:9610
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www.DunlapEquity.com

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Charles Cagnon
P.O. Box 156486
San Francisco, CA 94115

July 9, 2012

Ms. Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

I am a San Francisco resident who has followed the One Bay Area planning process. I have significant concerns with the Plan and the process under which it was developed, and now, with the EIR. I am requesting that the EIR process be extended to evaluate the environmental contingencies in full. In addition to other concerns, the main point of this letter is that the USA has already returned to 1990-level emissions (in part due to substituting natural gas for coal in electricity generation). Since this was a principle goal of the Plan, revisiting the spending and very disruptive changes to lifestyles, property rights, housing and land use proposed in the Plan is necessary.

A lead agency must not approve a "plan[]" without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. Sierra Club v. State Bd. of Forestry, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App. 3d 813.) " The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a) (emphasis added). "The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). A "no project" alternative also must be evaluated, and "the 'no project' analysis should discuss the existing conditions at the time the notice of preparation is published." CEQA Guidelines § 15126.6(e)(1), (2). "The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration's Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the "no project" alternative. This data must also inform the Plan Bay Area EIR's consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area's "preferred alternative."

Plan Bay Area's enabling legislation states that AB 32 "requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020." SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32's mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been met. The fantastical assumptions underlying the "preferred alternative" and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport

¹ eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

² John Hanger, "Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again," ("After the first quarter, the USA's 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA's latest Monthly Energy Review."), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990 and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to at or about 1990 levels in the first quarter of 2012. Since California's population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000's versus 9.71% nationwide, and 13.82% in the 1990's versus 13.15% nationwide), California's emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area's population grew at only 95.95% of the national rate in the 1990's (12.62%) and then plummeted to 55.72% of the nation's population growth rate in the 2000's (5.41%), the Bay Area's greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area's greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area's "preferred alternative" and its coercive and untested elements purporting to address the statutory mandates of SB 375.⁴

Thank you for your consideration of my comments.

Sincerely,

Charles Cagnon

cc: SF Mayor and SF Board of Supervisors

³ "Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit," November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020).

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Re: Extend One Bay Area EIR due to deficiencies

From: eircomments

To: ccagnon@gmail.com

BC:

Date: Tuesday - July 10, 2012 10:53 AM

Subject: Re: Extend One Bay Area EIR due to deficiencies

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> C Cagnon 07/09/12 3:01 PM >>>
Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

101 Eighth Street, Oakland, CA 94607

Dear Ms. Nguyen:

Please find attached my comments on the One Bay Area EIR. I am requesting that the EIR evaluation be extended because it is inadequate and incomplete. Among other reasons, the USA has already returned to 1990 emissions levels (which was a principle goal of One Bay Area), in large part due to the substitution of natural gas for coal in electricity generation. Therefore, the major changes in land use, transportation, housing and property rights, along with the spending proposed in the Plan appear to be inappropriate.

Thank you for your consideration of my comments.

Sincerely,

Charles Cagnon

cc: San Francisco Mayor and Board of Supervisors

Charles Cagnon
P.O. Box 156486
San Francisco, CA 94115

July 9, 2012

Ms. Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

I am a San Francisco resident who has followed the One Bay Area planning process. I have significant concerns with the Plan and the process under which it was developed, and now, with the EIR. I am requesting that the EIR process be extended to evaluate the environmental contingencies in full. In addition to other concerns, the main point of this letter is that the USA has already returned to 1990-level emissions (in part due to substituting natural gas for coal in electricity generation). Since this was a principle goal of the Plan, revisiting the spending and very disruptive changes to lifestyles, property rights, housing and land use proposed in the Plan is necessary.

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Re: Comments on Inadequacy and Incompleteness of EIR

From: eircomments

To: charlessteiner@att.net

BC:

Date: Tuesday - July 10, 2012 9:53 AM

Subject: Re: Comments on Inadequacy and Incompleteness of EIR

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Charles Steiner 07/06/12 7:18 AM >>>>

Dear Ashley Nguyen, EIR Project Manger,

I live in San Francisco and I attended the visioning session in January of 2012 and I have attended ABAG/MTC meetings.

What a ridiculous and inadequate public forum the whole process has been, of trying to "inform" the public with scripted answers and preplanned choices and literally no public discussion and debate beyond those few who attended or even knew about these meetings! A secret cabal of Communistic overthrowers of the U.S. government could model their approach after this (inadequate) plan and (covert) strategy.

I am horrified by the whole process and by the lies and deceptions that are being communicated about how important and helpful is the One Bay Area Plan to San Francisco and the other Counties. I have the impression that you as well as the whole gang of bureaucratic defrauders of local, city and state government that make up this ABAG/MTC team for the One Bay Area Plan are not listening to any public input but are doing its level best to avoid listening to the public as doing so would otherwise delay a must-do agenda that is fairly secret in nature and frankly anti-democratic. I have seen the YouTube videos as well of these meetings, and the people seated behind the tables, with their blank faces and their deliberately robotically controlled tones of voice speaking in technical jargon hardly demonstrate the kind of "public listening" that is required for something a Plan this dangerous and destructive.

Summary Statement

The draft EIR is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

The major inadequacies of the draft EIR fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. The EIR is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants who prepared the draft EIR.
- IV. The EIR does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.

The EIR is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

The EIR does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. The EIR does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

Throughout the EIR the bias of the authors is evident, equating intended consequences with likely results.

The EIR does not address alternative – and more likely – consequences of various elements of the plan.

For example, both the authors of Plan Bay Area and the authors of the draft EIR assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

The EIR ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implement.

In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

The EIR ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

The EIR does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

The EIR accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

The EIR provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the entire draft EIR.

The draft EIR ignores "real-world" experience under "smart growth" policies.

Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of “boutique cities” affordable only to the elite.

Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the draft EIR were inadequate and biased.

MTC and ABAG must disclose the process by which the consultants who prepared the draft EIR were selected.

The draft EIR consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. The draft EIR is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

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for the public transportation element alone.

The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.

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The EIR totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Charles Steiner
1424 Polk Street #22
San Francisco, CA 94109-4622

July 7, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: *Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves*

Dear Ms. Nguyen,

I live in San Francisco and I attended the visioning session in January of 2012 and I have attended ABAG/MTC meetings.

What a ridiculous and inadequate public forum the whole process has been, of trying to "inform" the public with scripted answers and preplanned choices and literally no public discussion and debate beyond those few who attended or even knew about these meetings! A secret cabal of Communistic overthrowers of the U.S. government could model their approach after this (inadequate) plan and (covert) strategy.

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Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is

to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) *Plan Bay Area's forecasts are too high and lack analytical and empirical support*

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%–142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the

Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

- (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,***
- 3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,***

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.¹ The type of planning that ABAG and MTC are

¹ The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts.

proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

- (4) *There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.***

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and

"To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf . The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions.

rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf . This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
July 7, 2012
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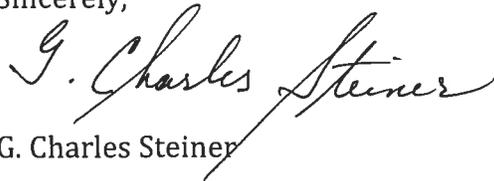
severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) *Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.*

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



G. Charles Steiner

cc: Mayor Edwin Lee
City and County of San Francisco
Room 244 City Hall,
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
July 7, 2012
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July 7, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: *Comment on the necessity of evaluating takings litigation liability
resulting from Plan Bay Area*

Dear Ms. Nguyen,

I live in San Francisco and I attended the visioning session in January of 2012 and I have attended ABAG/MTC meetings.

What a ridiculous and inadequate public forum the whole process has been, of trying to "inform" the public with scripted answers and preplanned choices and literally no public discussion and debate beyond those few who attended or even knew about these meetings! A secret cabal of Communistic overthrowers of the U.S. government could model their approach after this (inadequate) plan and (covert) strategy.

I am horrified by the whole process and by the lies and deceptions that are being communicated about how important and helpful is the One Bay Area Plan to San Francisco and the other Counties. I have the impression that you as well as the whole gang of bureaucratic defrauders of local, city and state government that make up this ABAG/MTC team for the One Bay Area Plan are not listening to any public input but are doing your and its level best to avoid listening to the public as doing so would otherwise delay a must-do agenda that is fairly secret in nature and frankly anti-democratic. I have seen the YouTube videos as well of these meetings, and the people seated behind the tables, with their blank faces and their deliberately robotically controlled tones of voice speaking in technical jargon hardly demonstrate the kind of "public listening" that is required for a Plan this dangerous and destructive.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic,

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
July 7, 2012
Page 2 of 6

environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). *Citizens Association For Sensible Development of Bishop Area v. County of Inyo* 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. *Id.* In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land

owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in *Lucas* is particularly apposite here. In *Lucas*, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Ibid*.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled,

uncompensated qualification under the police power.” *Id.*
at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated “preferred alternative”:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,



G. Charles Steiner

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July 7, 2012

Ashley Nguyen, EIR Project Manager
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Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: *Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area itself*

Dear Ms. Nguyen,

I live in San Francisco and I attended the visioning session in January of 2012 and I have attended ABAG/MTC meetings.

What a ridiculous and inadequate public forum the whole process has been, of trying to "inform" the public with scripted answers and preplanned choices and literally no public discussion and debate beyond those few who attended or even knew about these meetings! A secret cabal of Communistic overthrowers of the U.S. government could model their approach after this (inadequate) plan and (covert) strategy.

I am horrified by the whole process and by the lies and deceptions that are being communicated about how important and helpful is the One Bay Area Plan to San Francisco and the other Counties. I have the impression that you as well as the whole gang of bureaucratic defrauders of local, city and state government that make up this ABAG/MTC team for the One Bay Area Plan are not listening to any public input but are doing your and its level best to avoid listening to the public as doing so would otherwise delay a must-do agenda that is fairly secret in nature and frankly anti-democratic. I have seen the YouTube videos as well of these meetings, and the people seated behind the tables, with their blank faces and their deliberately robotically controlled tones of voice speaking in technical jargon hardly demonstrate the kind of "public listening" that is required for a Plan this dangerous and destructive.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
July 7, 2012
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state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). *Citizens Association For Sensible Development of Bishop Area v. County of Inyo* 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. *Id.* In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment

in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates.¹ Careful and thorough consideration of this hypothesis regarding the impact of the "preferred alternative" is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

¹ Even a cursory review of historic data suggests that the assumptions undergirding the "preferred alternative" are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area's decline in population growth from 155.61% of the national growth rate during the 1960s-1980's (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990's (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000's (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the "preferred alternative-lite" zoning standards which were first introduced in parts of the Bay Area in the 1990's and became more widespread in the 2000's. This likely relationship between population and job growth rate declines and "preferred alternative-like" zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete

- (2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.
- (3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.² Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.
- (4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in

²] It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous “stack and pack” developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.³

- (5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



G. Charles Steiner

³ Further, it's facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
July 7, 2012
Page 6 of 6

cc: Mayor Edwin Lee
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From: eircomments
To: Dave Fadness
Date: 7/11/2012 5:21 PM
Subject: Re: Plan Bay Area/Regional Transportation Plan

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> "Dave Fadness" <drfadness@sbcglobal.net> 7/11/2012 2:04 PM >>>
Ashley Nguyen, EIR Project Manager:

Please find attached my letter (and one enclosure) in response to your request for comments on the Plan Bay Area/Regional Transportation Plan EIR.

Your help will be appreciated in distributing this letter to MTC's Planning Committee in time for their July 13, 2012 meeting.

Thank you,

David Fadness
(408) 578-6428

July 11, 2012

Emailed this date to: eircomments@mtc.ca.gov

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607

Subject: Plan Bay Area/Regional Transportation Plan

Ms. Nguyen, MTC Commissioners, and Staff:

The proposed shift (see enclosed) of another \$1-billion in funding from Freeway Performance Initiative (FPI) to Transit Operations is not acceptable. Doing so would take away much of the funding we use to make operational improvements on Santa Clara County expressways.

FPI is one of the few sources of funding for ITS improvements, operations, and maintenance of freeway and arterial infrastructure. Without that money, we will be hard-pressed to support signal timing updates and other ITS enhancements on facilities that provide daily transportation services to hundreds of thousands of motorists, bus transit users, bicyclists, and pedestrians in our county.

Our street and road infrastructure is crumbling, threatening our quality of life and undercutting the viability of our local economy. As part of a solution to address this worsening situation, FPI funding should be increased to support Arterial Operations and O&M for both freeway and arterial ITS infrastructure. Diverting desperately needed street and road funds to transit operations will not help.

On behalf of the pedestrians, bicyclists, transit and auto users--the citizens and businesses of Santa Clara County and the Bay Area--I ask that you please not agree to a Freeway Performance Initiative funding cut back.

Sincerely yours,



David R. Fadness
445 Stratford Park Court
San Jose, CA 95136
(408) 578-6428

cc: MTC Planning Committee (Ref: July 13, 2012 meeting); MTC Commissioners Dave Cortese and Sam Liccardo; VTA Board of Directors, c/o Board Secretary; Santa Clara County Roads Commission c/o County Clerk; Michael Murdter, Director, Santa Clara County Roads.

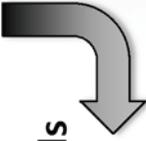
encl: *Bay Area Plan; Scoping the Alternatives*, page 18.

Redirect Funding to Increase Transit Service for Certain EIR Alternatives

Potential Shifts to Transit Operating

Project/ Program	Investment Strategy	Possible Shifts
Transit Capital Replacement	\$8.3 billion	\$2.6 billion
OBAG	\$14.0 billion	\$2.0 billion
Regional Express Lanes Network	\$0.6 billion	\$0.3 billion
Freeway Performance Initiative	\$2.7 billion	\$1.0 billion
TOTAL	\$25.6 billion	\$5.9 billion

Shift funding towards
EIR alternatives'
investment priorities




Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: jane.hendricks@comcast.net

BC:

Date: Tuesday - July 10, 2012 11:01 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "E Jane" 07/09/12 4:12 PM >>>

My name is E Jane Hendricks and live in San Jose where I have attended two of the One Bay Area 'visioning' workshops on two occasions. The workshops I attended in the San Jose area, were poorly represented by the people who live and work in this community and there was an over representation of self-interested governmental staff (Federal, State, County & City) along with those interest groups who would wish to benefit from their participation in putting this plan into place. For those of us who are from the community, live and work and support with their tax revenues, it appears that MTC/ABAG have already set up the plan as they wish to have it implemented and were not really interested in the concerns put forth by those who actually live in the city of San Jose. The recent Visioning meeting held in San Jose, June 2012, had less than 50 people in attendance and the majority of those in attendance were staff, governmental agencies and interest groups/organizations, this is NOT community representation or participation! I concur with the statements below in accordance to the One Bay Area Plan.

Summary Statement The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were

seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.

IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

I. The forecasts of population and economic growth are fatally flawed.

a.. THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

b.. The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

c.. THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

d.. The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

e.. The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

f.. Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

g.. The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

h.. California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

i.. Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

a.. Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

b.. THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.

c.. For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

d.. THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

e.. In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the

growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

f. THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

g. THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

h. THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

i. THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

j. THE PROCESS ignores “real-world” experience under “smart growth” policies.

k. Actual experience with “smart growth” and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

l. Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

m. Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

n. In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

o. Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

p. A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of “boutique cities” affordable only to the elite.

q. Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

a. MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

b. THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

c. The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

d. The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.

e. At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.

f. MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

a.. The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

b.. The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.

c.. While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

d.. The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

e.. Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

f. THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

g.. THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Respectfully

E. Jane Hendricks

830 Cape Town Pl

San Jose, CA 95133

TO:

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Fax: 510-817-5848

RE: ONE BAY AREA PLAN

Comment on the inadequacy and incompleteness of the Plan
Bay Area forecasting methodology and of the forecasts
themselves

TOTAL NUMBER OF PAGES = 5 (INCLUDING COVER
PAGE)

CC:

SANTA CLARA COUNTY BOARD OF SUPERVISORS
SAN JOSE MAYOR REED
SAN JOSE CITY COUNCIL

July 11, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Fax: 510-817-5848

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My name is E Jane Hendricks and live in San Jose where I have attended two of the *One Bay Area* 'visioning' workshops on two occasions. The workshops I attended in the San Jose area, were poorly represented by the people who live and work in this community and there was an over representation of self-interested governmental staff (Federal, State, County & City) along with those *interest groups* who would wish to benefit from their participation in putting this plan into place. For those of us who are from the community, live and work and support with their tax revenues, it appears that MTC/ABAG have already set up the plan as they wish to have it implemented and were not really interested in the concerns put forth by those who actually live in the city of San Jose. The recent *Visioning* meeting held in San Jose, June 2012, had *less than 50 people* in attendance and the majority of those in attendance were staff, governmental agencies and interest groups/organizations, this is NOT community representation or participation!

Regarding the above subject line, Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for

the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%—142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

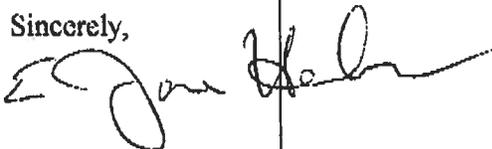
(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down

estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



E. Jane Hendricks
830 Cape Town Pl
San Jose, CA 95133

cc: County of Santa Clara: Distribution List

District 1 Supervisor Mike Wasserman Fax: 408-295-6993
District 2 Supervisor George Shirakawa Fax: 408-295-8642
District 3 Supervisor Dave Cortese Fax: 408-298-6637
District 4 Supervisor Ken Yeager Fax: 408-299-2038
District 5 Supervisor Liz Kniss Fax: 408-290-0418

City of San Jose: Distribution List

Mayor Chuck Reed Fax: 408-292-6422
District 1 Councilmember Pete Constant Fax: 408-292-6731
District 2 Councilmember Ash Kaira Fax: 408-292-6731
District 3 Councilmember Sam Liccardo Fax: 408-292-6731
District 4 Councilmember Kansen Chu Fax: 408-292-6731
District 5 Councilmember Xavier Campos Fax: 408-292-6731
District 6 Councilmember Pierluigi Oliverio Fax: 408-292-6731
District 7 Councilmember Madison Nguyen Fax: 408-292-6731
District 8 Councilmember Rose Herrera Fax: 408-292-6731
District 9 Councilmember Donald Rocha Fax: 408-292-6731
District 10 Councilmember Nancy Pyle Fax: 408-292-6731

Eleanor S. Hansen
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June 28, 2012

Ms. Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort Metro Center
101 Eighth Street
Oakland, CA 94607-4700

Re: Bay Area Plan EIR Scoping Comments

Dear Ms. Nguyen:

This letter contains an amplification of a couple of the comments I made at the SPUR offices at your (plural) hearing on Tuesday morning, June 26, 2012, as well as a couple more comments.

1. Use of all required baselines

Based on what was admittedly a brief discussion on Tuesday morning, of what the traffic impact analysis would consist of, I want to emphasize that you need to have a description of and a comparison of "the project" with a baseline of "current and existing" conditions and description of and a comparison of the project with a baseline of projected "cumulative conditions," as well. I enclose a copy of the Appellate level decision to which I was a plaintiff that says quite clearly the "current and existing" means "current and existing" and not what the young man at the hearing described would be the baseline. I also enclose a Transportation Impact Analysis prepared for the Jay Paul Company by Fehr & Peers for the Ariba and Moffett Towers Expansion Projects (in Moffett Business Park), Sunnyvale, CA.

Even a review of the table of contents of the Ariba and Moffett Towers Expansion Projects T.I.A. will indicate that there are three "baseline" comparisons here. There is a description and a comparison of the project(s) to "current and existing," there is a description and a comparison of the project(s) to background, which is what I believe that young man at the meeting on Tuesday morning was referring to, and a description of and a comparison of the project(s) to "cumulative conditions", which is clearly required under the law and also was not mentioned on Tuesday morning. A careful review of the Ariba and Moffett Towers Expansion Project T.I.A. indicates that a requirement for mitigation measures appeared in some baseline comparison(s) although not in others. That is why

you need to do the "current and existing" and the "cumulative conditions" studies as well as the background study. (As an aside, if Jay Paul Company can do this part correctly, so can you.)

2. CEQA Streamlining per SB 375 (page 3 of your handout)

Let's review the basics of SB 375 (from California's Sustainable Communities Planning Act (SB 375)
www.pcl.org/resourcecenter/sb375.html [*Italics added*])

California's Sustainable Communities Planning Act (SB 375) was enacted in 2008 to help California fight global warming by addressing one of the largest and most rapidly growing sources of greenhouse gas emissions – the vehicle miles an average California family travels. Poor land use and transportation decisions have left an increasing number of Californians stuck with long car commutes to meet basic needs. By integrating greenhouse gas reduction goals into the existing regional transportation planning process, SB 375 aims to reduce vehicle miles traveled, developing sustainable growth patterns and transportation infrastructure decisions that redirect new growth to places where people already live and work. Achieving that outcome can bring a host of other benefits to California communities, from re-investment in existing neighborhoods to preservation of vital farmlands and habitats that are threatened by sprawl development.

So, I hope you will be able to show how any of the indicated proposals on page 3 is supposed to lead to the increased formation of sustainable communities (or a reduction in per capita VMT). First, I do not see why the fact that a mixed use project is at least 75% residential should entitle it any special CEQA streamlining since there is even now such a severe excess of retail that no one wants to build it anyway. And otherwise what would the other 25% consist of? Office, manufacturing, a restaurant or entertainment facilities?

Second, your plan appears to give CEQA streamlining to Transit Priority Projects (TPP) that (1) have a floor area ratio of .75 or greater, and (2) a minimum density of 20 units per acre [which is certainly desirable to developers but is the kind of project most likely to need a CEQA traffic impact analysis and, very likely, mitigation of the traffic impacts of the project], as long as they are within 1/2 mile of a major transit stop or high-frequency transit corridor (15 minute headways). These of course will be infill projects. This means, to be specific, that any 1/2 mile infill site from any 38 Geary stop on Geary Boulevard will be a candidate for CEQA streamlining, despite the fact that no one uses the 38 to go downtown -- it is too slow -- and waits instead for the 38 L. This also applies in Silicon Valley to the bus route on El Camino Real. The 22 route runs frequently, but knowledgeable riders wait for the 522 route. And drive on Sunday when the 522 does not run.

Also, in general, the fixed rail alternatives being suggested for El Camino Real in Silicon Valley, and in San Francisco for Van Ness Avenue and for Geary Boulevard do not help the growth of sustainable communities because they do not shorten the commute time. They may or may not produce a more comfortable riding experience (that will depend on the whether one needs to stand or not), but they do not shorten the commute time which can only be shortened by stopping only at major intersections and being able to pass the other buses. And if, for instance, the 38 L is eliminated as part of the "cost" of having a fixed rail public transportation on Geary Boulevard, which will likely increase the length of commute time for the average rider. And make the idea of having any TPP within 1/2 mile of Geary Boulevard even less appropriate than otherwise.

In general, the requirements for the Transit of the Transit Priority Project need to be stiffened to be meaningful in order that the project be part of a sustainable community -- the transit needs to go to places where the people in the project will go to work (at the very least), it needs to get people to work meaningfully quicker or cheaper or both than using automobile. If the transit does not get people where they want to go at all or does not get them their reasonably quickly, then the fact that it has an (average) 15 minute headway is a meaningless measure or statistic.

Also, the Plan needs to make it clear, the transportation needs to be more than in the planning stage when the project is approved. No project should be approved based on the mere speculative planning of the appropriate transit for a transit priority project. And as, I indicated earlier, the transit needs to be appropriate to produce a sustainable community, and actually reduce per capita VMT.

I could go on. First, the point of SB 375 is to produce sustainable communities and this CEQA streamlining for TPP is not on point at all, because there is no provision for parks, or for access to places to eat, get groceries etc. Second, 1/2 mile from a transit stop is too far to be of meaningful [sorry, meaningful is my most overused word today] use to the elderly, most disabled and many parents with small children. Other writers may add to the discussion on this subject.

To summarize, you need to tie this entire scheme of CEQA streamlining to SB 375's call for reducing VMT through improving people's ability to use public transportation to get to work and not just provide an easier infill development approval process within 1/2 mile of major transit corridors.

3. Issues for Evaluation -- Increase in VMT on facilities having a Level of Service (LOS) of F or worse.

First of all, I want to attempt to provide a barrier against the idea that an appropriate mitigation of the increased traffic from infill projects would be to shift traffic into residential or other neighborhoods have had, previously, a better level of service. This is not appropriate. That does not lead of a reduction in per capita VMT.

Second, we are not stupid and you should stop acting like our parents. If a place gets sufficiently congested, people will start to figure out how to avoid the places of lower

LOS. (F). They will also more seriously consider the advantages of public transportation, and that will lead to a reduction in per capita VMT.

To summarize, although an increase in VMT on a facility indicates that a reduction in per capita VMT is not being achieved, or likely to be achieved, there is no particular reason that facilities having a LOS of F should be signaled out for special consideration.

4. Potential EIR Alternative #4. Eliminate Inter Regional Commute.

I mentioned this on Tuesday. This possibility is what I am inclined to call "just a lot of hand waving." First people do not commute from Stockton, Vallejo, or Davis because there is inadequate housing in the bay area. They do so because they want 2000 - 3000 sq foot homes with a 1/8 acre or more for a few \$100 thousand. They do not want to live in a TPP project with 20 units to the acre. Until they are geriatric, and maybe even not then, they will not want to live in a place with 20 units per acre. Second, although improving public transit alternatives from outside the area to San Francisco and perhaps even Oakland-Berkeley might be a viable way to reduce per capita VMT, it would not work for Silicon Valley because the major employers in this area are too spread out and too far from public transportation for most workers to do without their automobiles to get to work. I know that San Jose hopes to be able to get workers to its north San Jose business locations from BART at Berryessa, and I wait to see what they can achieve. But the remedy will require solutions, I believe, that are carefully fitted to each situation and a broad "eliminate inter-regional commute" mandate will not do it.

5. Issues for Evaluation (In General)

I hope that the extensive list of Issues for Evaluation will in fact, all be issues of evaluation of the plan in the EIR. I hope this is not some kind of bait and switch and we later find that this is the only time we see any mention of them.

Very truly yours,



Eleanor S. Hansen

Enc.

CEQA Streamlining per SB 375

Residential/Mixed Use Project

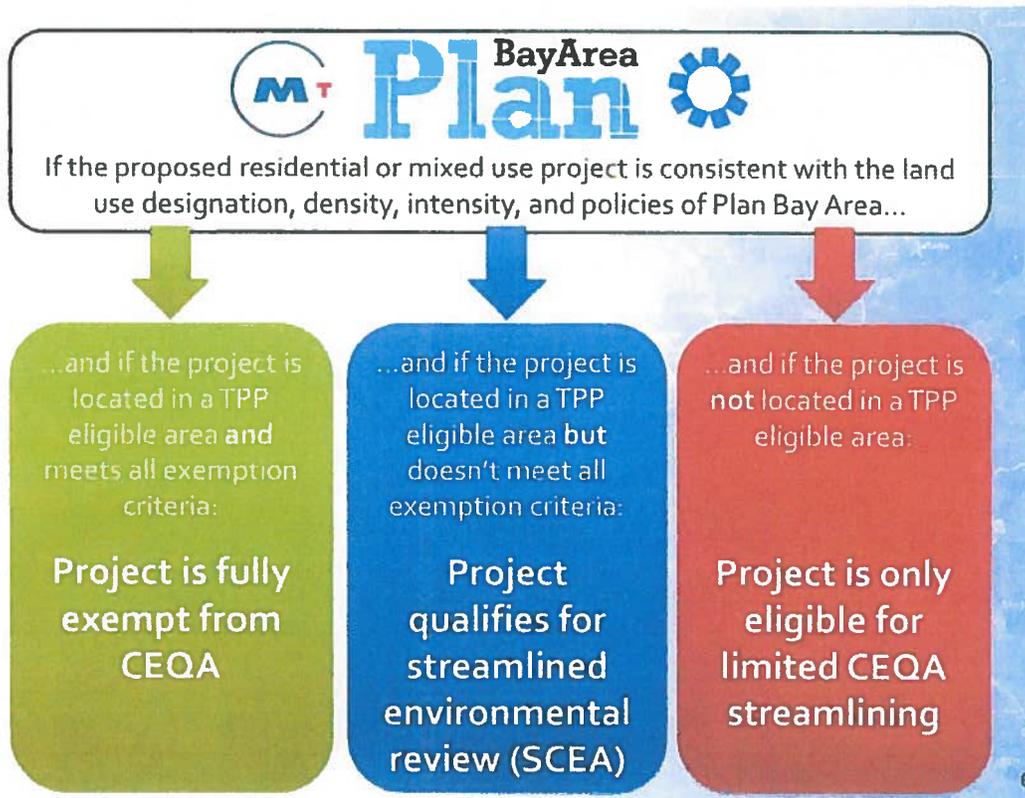
- At least 75% of building square footage is residential use

Transit Priority Project (TPP)

- At least 50% residential use & minimum of 0.75 floor/area ratio
- Minimum density of 20 units/acre
- ***Within ½ mile of a major transit stop or high-frequency transit corridor (15 minute headways)***



BayArea
Plan



CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SUNNYVALE WEST NEIGHBORHOOD
ASSOCIATION, et al.,

Plaintiffs and Respondents,

v.

CITY OF SUNNYVALE CITY
COUNCIL,

Defendant and Appellant.

H035135
(Santa Clara County
Super. Ct. No. CV127528)

In this California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)¹ case, the superior court granted a peremptory writ of mandate compelling the City of Sunnyvale City Council ("City Council") to set aside its October 28, 2008 approval of the proposed Mary Avenue Extension (MAE) Project and its certification of the Final Environmental Impact Report (FEIR). The FEIR used projected traffic conditions in the year 2020, based on expected growth under the City of

¹ All further statutory references are to the Public Resources Code unless otherwise specified. The administrative guidelines for implementing CEQA are set forth in title 14 of the California Code of Regulations, section 15000 et seq. and are statutorily authorized (see § 21083). "In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5.) All references to the CEQA Guidelines are to the administrative regulations implementing CEQA.

Sunnyvale's general plan and in neighboring communities, as its "baseline" to evaluate the roadway project's traffic and related impacts. The FEIR did not consider the project's traffic and related impacts on the existing environment.

The City Council appeals, arguing that the EIR's "use of 2020 conditions as a baseline offers the most accurate and informative portrayal of the environmental impact of the MAE." Respondents Sunnyvale West Neighborhood Association and named individuals maintain that the impacts of the project must be measured against current, existing physical conditions and a comparison against "a baseline as it might exist in 2020 cannot substitute for a comparison with current, existing conditions."

We affirm.

A. Procedural History

Respondents sought to compel the City Council to set aside its approval of the MAE Project until a legally adequate EIR had been prepared and considered. Respondents filed a petition for writ of mandate, alleging, among other things, that the EIR prepared for the project was legally deficient because it used a 2020 "baseline" for assessing the project's impacts.

The superior court granted the petition. It concluded that the administrative record did not contain substantial evidence supporting the city's decision to deviate from the normal procedure of using a baseline of current environmental conditions and to instead "use estimates of the conditions in the year 2020 that assumed a complete build-out of projects in the City's General Plan." The superior court further concluded that this decision "constituted a failure to proceed in the manner required by law." It determined that the "decision had the effect of minimizing potential project impacts on traffic, noise, and air quality and tainted the comparison of the proposed project with project alternatives."

The court stated that, under cited case law, deviation from normal procedures is limited to "unusual circumstances properly documented in an administrative record." It

found that the situation in this case resembled the circumstances in *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683 ("*Woodward*").

In *Woodward*, the City of Fresno had approved new commercial development on vacant land based upon an EIR that "in many instances" "evaluate[d] environmental impacts by comparing the project's impacts with those of the maximum buildable development under existing zoning and plan designations." (*Id.* at p. 707.) The appellate court in *Woodard* agreed that the EIR would have been legally sufficient if it had "evaluated the proposed project's impacts in relation to *both* a vacant lot *and* a large development permissible under existing zoning and plan designations." (*Ibid.*) It also determined, inter alia, that "[t]he EIR's air pollution discussion" was inadequate because "it proceed[ed] from the wrong environmental baseline, assessing the project's impacts as slight because they are not much greater than the impacts of a built-out development under preexisting zoning and plan designations." (*Id.* at p. 731.)

Here, the superior court further explained its decision: "The only grounds advanced by Respondent to justify the use of projections for the year 2020 as the environmental baseline in the EIR are that such projections are used by the Santa Clara Valley Transportation Authority ('VTA') in its Transportation Impact Analysis Guidelines (2004), as part of the VTA's responsibilities under the Congestion Management Law (Gov. Code, §§ 65088-65089.10), and that the proposed MAE would not be complete and in use until the year 2020. . . . As to the latter, there is not substantial evidence in the record establishing when the proposed project would be complete and statements by city personnel in the record are inconsistent. As to the former, efforts undertaken by the VTA and local governments to comply with the Congestion Management Law are irrelevant to whether a proposed project complies with CEQA."² (Fn. omitted.)

² A county agency's congestion management program must contain "[a] program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems" (Gov. Code, 65089, subd. (b)(4).) A congestion

The superior court in this case further stated that "[e]ven if Respondent's claim (presently unsupported by substantial evidence) that there is little or no practical difference in project impacts measured against present conditions versus 2020 estimates proves correct, that does not justify the decision to use 2020 as a baseline in the EIR without an analysis of present conditions." The court granted a peremptory writ of mandate, ordering the City Council to set aside its approvals of the MAE Project and its certification of the FEIR and desist from any further action to approve the project without prior preparation and consideration of a legally adequate document using current conditions as a baseline.

B. Relevant Administrative Record

1. August 2007 Draft EIR

The August 2007 draft EIR states that Mary Avenue presently extends north from Homestead Road in south Sunnyvale and terminates at Almanor Avenue just south of

management program must be submitted to the regional agency, which must "evaluate the consistency between the program and the regional transportation plans required pursuant to [Government Code] Section 65080." (Gov. Code, § 65089.2, see Gov. Code, § 65088.1, subd. (a).) Under Government Code section 65080, subdivision (a), each designated transportation planning agency must "prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services." The VTA's Congestion Management Program contains Transportation Impact Analysis (TIA) Guidelines. Its TIA Guidelines state that "[t]ransportation impacts shall be evaluated for at least the following [four] study scenarios: "existing conditions, background conditions (existing trips plus trips from approved developments in the area), project conditions (existing trips plus trips from approved developments in the area plus estimated project-generated trips), and near-term cumulative conditions (includes expected growth). CEQA does not apply to "a congestion management program prepared pursuant to Section 65089 of the Government Code" (§ 21080, see CEQA Guidelines, § 15276), but individual roadway projects remain subject to CEQA. The VTA's TIA Guidelines expressly state in italicized text: "*It is not intended that the TIAs will provide all the information required for California Environmental Quality Act (CEQA) purposes.*"

U.S. 101; it provides local access to residential and commercial properties in Sunnyvale. The proposed project involves a four-lane northerly extension of Mary Avenue over U.S. 101 and SR 237 to Eleventh Avenue at E Street. It includes construction of a bridge over the two freeways and light rail transit tracks. The stated objectives of the project are to provide an alternative "north-south connector to lands north of US 101 and SR 237 (including the Moffett Park area)" and to "[a]lleviate existing and future traffic congestion in the Moffett Park area and other areas adjacent to Mary Avenue."

The draft EIR separately discusses the project's impact in 12 categories, including but not limited to transportation, noise, and air quality.³ It also contains sections on the project's growth-inducing impacts and cumulative impacts.

In the section concerning transportation impacts, the draft EIR describes the existing roadway network. It also contains tables indicating the existing traffic conditions in terms of the average traffic volume on particular roadway segments and the qualitative level of service (LOS)⁴ at certain intersections and on certain freeway segments. The draft EIR then describes "future transportation conditions in the year 2020 in the project area without the proposed extension of Mary Avenue" using the city's traffic demand model. According to the draft EIR, this model "accounts for both existing traffic as well as future traffic based on the buildout of the land uses identified in the adopted Sunnyvale General Plan" and for "projected growth in neighboring jurisdictions" affecting traffic volumes on Sunnyvale streets. In analyzing the transportation impacts,

³ Those areas of impact are land use, visual and aesthetics, transportation, noise, air quality, cultural resources, biological resources, geology and soils, hydrology and water quality, hazards and hazardous materials, utilities and service systems, and energy.

⁴ The draft EIR defines "level of service" and explains "level of service" methodology. It states in part: "The operations of roadway facilities are described with the term Level of Service (LOS). LOS is a qualitative description of traffic flow based on such factors as speed, travel time, delay, and freedom to maneuver."

the draft EIR assumes numerous roadway improvements in the project area to be in place by the year 2020 regardless of the proposed project.

Table 2.6 compares average daily trips (ADT's) on various segments of Mary Avenue and surrounding roadways. As to each roadway segment, it specifies the number of ADT's under current circumstances, under projected conditions in 2020 without the project, and under projected conditions in 2020 with the project. The table does not provide information about the ADT's under existing conditions with the project and therefore, no direct comparison can be made to the existing conditions without the project. The table states the percent change in traffic volume from the "2020 no project" scenario to the "2020 project" scenario. The draft EIR explains that the table's data indicates that the "future traffic volumes would be substantially greater than existing ADT volumes" and stated that "[s]uch increases are the result of planned growth in Sunnyvale and the surrounding areas" and "[t]his increase will occur irrespective of any decision to approve the proposed Mary Avenue Extension."

The draft EIR describes a number of thresholds of significance⁵ with regard to transportation impacts, including the following two. It states that a transportation impact is significant if the project would "[c]ause an increase in traffic which is substantial in relation to the *existing traffic load and capacity of the street system* (i.e. result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)" or if the project would "[e]xceed, either individually or cumulatively, a level of service standard established by the county

⁵ The CEQA Guidelines define "a threshold of significance" as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (CEQA Guidelines, § 15064.7, subd. (a).) The petition for writ of mandate does not challenge the adopted thresholds of significance or their general application.

congestion management agency or the City of Sunnyvale for designated roads or highway." (Italics added.) The draft EIR emphasizes that the "proposed project is designed to accommodate existing and projected traffic demand" and "would not change overall traffic volumes in the area." It further states that "because the project consists of a new north-south roadway connection, its primary effect will be to change the traffic distribution in the area."

The draft EIR discusses the 2020 traffic volumes with the project and reiterates that "the project will redistribute traffic in the area since it will provide an alternative north-south connection across two major freeways." It notes that the major effects of the project in terms of increased traffic volume would occur on Mary Avenue north of Central Expressway and minimal change in traffic patterns are expected south of Central Expressway. In addition, it states that the project would cause some traffic to shift from Mathilda Avenue, a major north-south arterial roadway, to Mary Avenue. It indicates the project's impacts on traffic volume would not be significant.

The projected LOS in 2020 with and without the project are compared to determine the impact on intersection operations. The draft EIR states, and the data reflects, that the project would generally improve intersection operations with some exceptions under 2020 conditions. The table comparing intersection LOS with and without the project in the year 2020 indicates minimal change on Mary Avenue at the Central Expressway intersection and at more southerly intersections. The draft EIR concludes that the project would cause a significant deterioration in operations at one intersection (Mary Avenue/Maude Avenue) during the PM peak hour. It identifies a mitigation measure to reduce that impact to a less than significant level. Otherwise, no significant transportation impacts are found.

The draft EIR's section regarding noise impacts explains that "[n]oise is measured on a 'decibel' scale." It states that "[f]or traffic noise, ten times as many vehicles per hour results in ten times as much sound energy, resulting in a ten-decibel increase, and

perceived doubling of loudness" while "[t]wice as many vehicles per hour means twice the sound energy, resulting in a three-decibel increase, and a just-noticeable increase in loudness." It indicates that "[t]wenty-six percent more vehicles per hour" would result "in a one-decibel increase, usually considered to be an imperceptible increase in loudness." In addition, it explains: "The speed of traffic also affects noise levels: for every five mph increase in speed there is a 1 to 2-decibel increase in average noise levels."

The stated thresholds of significance for noise impacts include "[a] substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project." The draft EIR indicates that it is using the city's General Plan definition of significant noise impact from new development, under which a project-caused noise increase of more than 5 dBA⁶ is significant if existing and post-project noise levels are in the "normally acceptable" category and a project-caused noise increase of more than 3dBA is significant if "the existing noise level on the site is in the 'normally acceptable' category but the post-project noise level on the site exceeds the 'normally acceptable' category" or if "the existing noise level on the site exceeds the 'normally acceptable' category"

The draft EIR describes the existing noise conditions and indicates ambient noise measurements were made. It states that "traffic-related noise exceeds the City's General Plan goal of having an outdoor L_{dn} no greater than 60 dBA at residences."⁷ A table

⁶ The noise assessment report, attached as Appendix C to the draft EIR, explains that "[a] *decibel (dB)* is a unit of measurement which indicates the relative amplitude of a sound." The draft EIR indicates that sound levels adjusted or weighted to correspond to human hearing are measured in adjusted units "known as the 'A-weighted' decibel or dBA."

⁷ According to the draft EIR, " L_{dn} stands for Day-Night Level and is a 24 –hour average of noise levels, with a 10 dB penalty applied to noise occurring between 10:00 PM and 7:00 AM."

summarizing ambient noise measurements taken in the project vicinity shows existing noise levels range from 64 to 69 dBA L_{dn}.

The draft EIR discusses the construction-related noise impacts in relation to the existing ambient noise environment. In assessing the long-term noise impacts, however, the draft EIR compares "future 2020 traffic volumes without the project and future 2020 traffic volumes with the project" and calculates "noise level increases resulting from the build-out of the General Plan and as a result of the project plus General Plan build-out." The draft EIR considers the long-term noise impacts with regard to the "nearest residential receivers" for whom noise levels were expected to increase "about four to six dBA L_{dn} by the year 2020" without the project. It concludes, based on future 2020 traffic volumes, that the proposed project "would be responsible for a traffic noise level increase by less than one dBA L_{dn} *above the noise levels expected as a result of General Plan build-out*" (italics added), which "would not be measurable or perceptible, and would not exceed the significance criterion of three dBA L_{dn} established by the City of Sunnyvale" and "[f]or this reason, project-generated traffic would not result in significant noise impacts."

As to air quality, the draft EIR explains that "[b]oth ozone and PM₁₀ [particulate matter with a diameter of less than 10 micrometers] are considered regional pollutants in that concentrations are not determined by proximity to individual sources." It recognizes that carbon monoxide is "a local pollutant because elevated concentrations are usually only found near the source." It reports that the Bay Area is considered in nonattainment for both ozone and PM₁₀.

The draft EIR sets forth thresholds of significance for air quality impacts.⁸ In discussing long-term air quality impacts, the draft EIR explains that the "project would

⁸ For purposes of this project, an air quality impact is considered significant if the project would "[c]onflict with or obstruct implementation of the applicable air quality plan," "[v]iolate any air quality standard or contribute substantially to an existing or

provide an alternative to the existing north-south connections in the City and help alleviate regional operation deficiencies." It states that "[t]he proposed project would accommodate existing and future traffic rather than generate traffic." The draft EIR finds no significant long-term air quality impacts for the following reasons. The first is that "[t]he proposed project would improve long-term air quality by providing an alternate north-south route of travel as well as alleviating congestion on existing north-south connections such as Mathilda Avenue." The second is that carbon monoxide would not "exceed standards along Mary Avenue" based on published data from the Bay Area Air Quality Management District ("BAAQMD").

The draft EIR's discussion of growth-inducing impacts of the MAE project reports that "[t]he proposed project will likely have an indirect growth-inducing effect since it increases the capacity of the area's transportation network" and "[t]o the extent that the provision of an adequate transportation network is essential to growth, the lack of such capacity is a constraint to growth." It further states: "The environmental effects of growth would generally include increased traffic, noise, air pollution, and water pollution."

As to cumulative traffic impacts, the draft EIR states that the "proposed project would not generate any new traffic, and therefore, would not contribute to the cumulative increase in the traffic in the project area." It again indicates that the traffic analysis for the project had "utilize[d] the City's traffic forecasting model, which takes into account existing traffic, as well as any increases in traffic from future planned development" and

project air quality violation," "[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)," "[e]xpose sensitive receptors to substantial pollutant concentrations," or "[c]reate objectionable odors affecting a substantial number of people." Residences located north of US 101 and east of Mathilda Avenue are identified as sensitive receptors near the project site.

states that this "methodology accounts for the effects of cumulative growth in the project area." As to cumulative noise impacts, the draft EIR states: "The largest source of increased noise in the immediate project area is motor vehicle traffic. Cumulative traffic-related noise will continue to increase as traffic volumes increase" The discussion regarding cumulative air quality impacts addresses the short-term construction-related air quality impacts but says nothing about the long-term cumulative impacts.

The draft EIR considers a number of alternatives to the proposed MAE Project. The discussion regarding the "no project" alternative is brief, stating in summary that "although the No Project Alternative would avoid all significant environmental effects of the proposed project, it would not meet any of the project objectives." A table compares delay and LOS at various intersections under existing conditions without the project and under future traffic conditions in 2020 without the project, with the project, and with two alternatives.

2. Peer Review

The administrative draft Final EIR was submitted for peer review to Amy Skewes-Cox, an environmental planner. She stated in a September 2, 2008 letter to Jack Witthaus, the Transportation and Traffic Manager in the city's Department of Public Works, that her "greatest concern" was whether the EIR had adequately "evaluated the project's impacts as related to the 'existing condition.'" She stated: "Using the base year of 2020 can underestimate the impacts, especially if the project is constructed before that year. Project impacts should be more correctly shown in relation to current day conditions, especially as related to noise, air quality, and traffic. Any future comparisons (i.e. 2010 or 2020) could be additionally done, but should be secondary to comparing existing conditions." As to the provision of master responses to public comments in the Final EIR, she advised: "A master response should also address the standards of significance for air quality impacts and the various thresholds. . . . If the City decides to compare project impacts to existing conditions, there could be significant impacts with

increased traffic on this corridor. If these cannot be mitigated, the City may need to make Findings of Overriding Consideration related to air quality impacts. (Note: the same may apply for noise impacts if this changed methodology occurs[.])" She also warned that "recirculation may be necessary because the 'Existing' condition should be the basis of comparison for the project and new, significant impacts may be identified."

Witthaus responded to the peer reviewer's comments in an October 18, 2008 letter. He explained: "The traffic impacts of the project were evaluated against future 'background' conditions in accordance with the procedures described in VTA's Transportation Impact Analysis Guidelines (2004). These guidelines were adopted for use by all of the cities in Santa Clara County. The guidelines state that projects should be compared to background conditions, which is defined as existing traffic plus traffic from approved projects. For an infrastructure improvement project such as the Mary Avenue Extension, 'approved' projects are those that will be constructed per the adopted land use plans of Sunnyvale and the surrounding jurisdictions. This approach is utilized because it provides full disclosure of the reasonably foreseeable consequences of a project such as the extension of Mary Avenue. [¶] The future horizon year of 2020 was chosen because it approximates the time when the Mary Avenue Extension, if approved, would be open to traffic. . . . [T]here is currently no funding for the project. Even assuming full funding becomes available in the next few years, an assumption which is questionable in the current transportation funding environment, it would take several years to design and construct the project." He also asserted: "The City believes that utilizing the 2020 scenario best describes the reasonably foreseeable consequences of the project, and better represents the true time frame that this project may be realized. It is also the approach outlined in VTA's guidelines for preparation of Transportation Impact Analyses."

Witthaus's response also included a table, which showed the average daily traffic volumes for segments of Mary Avenue and other affected roadways, with and without the project under current conditions, and which stated the percent change compared to the

existing traffic volume. His letter explained that the table "shows how . . . traffic would be redistributed if the Mary Avenue Extension was in place today." The table showed the following percent increases in volume over the existing traffic volumes: 220 percent on Mary Avenue south of Almanor Avenue (resulting in more than three times existing volume), 94 percent on Mary Avenue north of Maude Avenue (resulting in close to two times existing volume), 23 percent on Mary Avenue south of Maude Avenue, 17 percent on Mary Avenue north of Central Expressway, and 75 percent on Almanor Avenue east of Mary Avenue (resulting in 1.75 times existing volume) if the project were built today. The table indicated that the project would additionally generate an average daily traffic volume of 7,400 on the new Mary Avenue extension north of Almanor Avenue. The underlying methodology used to determine those figures was not explained. No data was presented regarding the project's impact on intersection delay or LOS under existing conditions without the other assumed roadway improvements.

Witthaus stated, under either the present scenario or the 2020 scenario, the project resulted in "notable changes in traffic volumes" to the same roadway segments. Without any supporting analysis, he stated that "comparing this 'Existing Condition + Project' scenario to the 'Existing' condition does not result in any significant traffic impacts."

As to noise, Witthaus responded that there were no residential streets where the project would result in 3-dB increase in noise and, as to air quality, he indicated that "since the EIR concludes that the higher 2020 [traffic] volumes would not result in significant air quality impacts . . . the same conclusion can be reached for the data represented in the attached table."

By letter dated October 17, 2008, the peer reviewer replied. Although she expressed some understanding of Witthaus's rationale for using the 2020 traffic conditions, she stated that, based upon her CEQA experience, assessing project impacts in light of assumed "background" conditions rather than the "existing" conditions "may not comport with the CEQA Guidelines" She acknowledged that the city's

methodology in selecting 2020 "would seem to comport with the VTA Guidelines," but she also stated, "while you have followed the VTA Guidelines for impact analyses, the adequacy of this under CEQA remains unclear."

This correspondence between Witthaus and the peer reviewer regarding the adequacy of the administrative draft FEIR was not included in the final version.

3. *Final EIR*

The FEIR includes the draft EIR, responses to comments received on the draft EIR, and revisions to the draft EIR. (See CEQA Guidelines, §§ 15132, 15362, subd. (b).) The EIR process provides for public review of a draft EIR and requires the lead agency to consider comments received during the public review period and provide written responses. (See §§ 21091-21092; CEQA Guidelines, §§ 15087-15088, 15105.)

A large number of comments express the view that the project's negative impacts on the residents and neighborhoods in the vicinity of Mary Avenue had not been adequately considered. Many comments voice concern that the MAE Project would reduce the quality of life for Sunnyvale residents in the vicinity of Mary Avenue as a result of increased traffic, noise, and air pollution.

Master Response Number One discusses the origins of traffic growth due to planned development in the City of Sunnyvale and surrounding cities.

Master Response Number 10 regarding Air Quality Issues acknowledges that "[v]arious comments on the Draft EIR expressed concern that the project would result in significant air quality impacts to residents living along Mary Avenue" and "commentors questioned why a quantitative analysis was not undertaken for the Mary Avenue Extension to determine the extent to which such air quality impacts might occur." The response recognizes that "[w]ith regard to local pollutants, carbon monoxide (CO) is the pollutant of greatest concern because concentrations tend to be higher along major roadways." The response explains why a quantitative carbon monoxide analysis was not done for the MAE Project. The reasons include the following: (1) the Bay Area is

classified as an "attainment" area for carbon monoxide under the federal and state standards, (2) BAAQMD's published data show background concentrations of carbon monoxide are "sufficiently low" that it is unlikely that clear air act standards will be exceeded, (3) in 2006, the city determined that worst case carbon monoxide concentrations along Lawrence Expressway, described as a "roadway with traffic volumes and congestion substantially greater than Mary Avenue," would not exceed the federal or state standards, from which it is inferred that carbon monoxide standards would not be exceeded anywhere along Mary Avenue as a result of the project, and (4) carbon monoxide emissions will continue to decrease as older vehicles are replaced by newer and cleaner vehicles. The response reiterates that the MAE Project "will not generate additional traffic in the Sunnyvale area" but "will provide additional capacity, which will reduce congestion." It is stated that "[a] reduction in congestion typically leads to a reduction in emissions because overall emissions are highest in idling and stop-and-go conditions."

Master Response Number 11 addresses the issue of future traffic with regard to overall growth versus project impacts. It emphasizes that roadways do not create traffic but rather accommodate demand, and planned growth would cause an increase in overall traffic with or without the project. It explains that not building a planned roadway improvement would simply divert traffic to alternate streets. Other responses repeat that the project would not change overall traffic volumes because roadways accommodate traffic demand and do not create it but the responses recognize that the project would change traffic distribution in the area.

An individual response to a comment concerned with increased traffic congestion on Mary Avenue and the resulting pollution and noise reiterates that the MAE Project will not cause overall traffic to increase but instead will provide an alternate to the existing north-south connections in the city and "help to alleviate regional deficiencies," which "will decrease overall congestion" and "reduce emissions as higher emissions are

associated with congested conditions." Other responses addressing concerns with traffic on Mary Avenue indicate that Mary Avenue has been designated as a Class 2 Arterial in the city's General Plan for many years rather than a local or collector roadway and that "[t]he General Plan Land Use and Transportation Element identifies the extension of Mary Avenue north of Almanor as one of the traffic improvements needed as mitigation for the buildout of the General Plan"

A response to a comment regarding the prospective increase in noise pollution states that the project will have a minimal effect on traffic volumes south of Central Expressway and refers to the draft EIR's table regarding traffic volumes (under 2020 conditions). It points out that the table shows that the project as compared to "no project" (both in the year 2020) "would result in the percentage changes of average daily trips of -3 percent to +4 percent for the portion of Mary Avenue south of Central Expressway." Another response explains that traffic-related impacts on the residential areas along the southerly portion of Mary Avenue "were not discussed since the project will have only a negligible effect on traffic volumes at that location" It states that the draft EIR indicates the project would result in a less than one decibel increase in noise for residences along Mary Avenue in the vicinity of Maude Avenue (above the noise resulting from projected traffic volumes in 2020).

Another response reiterates that "[t]he transportation impacts of the project were evaluated against 2020 No Project Conditions" and the "traffic volumes for the 2020 No Project conditions include future traffic anticipated from the buildout of the land uses designated in the General Plan . . . as well as projected growth in neighboring jurisdictions."

The text revisions to the draft EIR include adding additional information regarding the land use setting. A revision clarifies the locations of industrial and residential land uses along Mary Avenue. It makes clear that the predominant land use along Mary Avenue south of Central Expressway is residential. The table regarding traffic volumes,

which shows the ADT's for segments of Mary Avenue and vicinity roadways, is revised to additionally state the percent change between the ADT's under existing conditions and under 2020 conditions without the project. The table indicates considerable increases in traffic on all segments by 2020 without the project, impliedly from other causes. Two additional alternatives to the proposed MAE Project are added to the final EIR. The table comparing delay and LOS at certain intersections is revised to add the two new alternatives (considered under future traffic conditions in 2020).

4. Staff Report and Staff Presentation before EIR Certification and Project Approval

The staff report to appellant City Council for its October 28, 2008 meeting, at which the City Council certified the FEIR and approved the project, states, with regard to use of the 2020 traffic "baseline," that the peer reviewer was not familiar with the VTA's TIA standards and consequently could not come to a conclusion regarding CEQA compliance. The correspondence was provided as Attachment H to the staff report.

On October 28, 2008, Witthaus gave an overview of the MAE Project to the City Council. With respect to traffic issues, he stated: "Traffic modeling has been the focus of many questions. Forecasting was done using the City's computerized transportation model. This model uses land-use forecasts from the City Planning Department and from the Valley Transportation Authority's model for the rest of Santa Clara County and the Bay Area. . . . [¶] This model follows a methodology adopted by all Santa Clara County jurisdictions, as required by State Congestion Management Program Law. [¶] The City's model is approved for use by the Santa Clara Valley Transportation Authority, which is Santa Clara County's Congestion Management Agency, as required by state law." He further stated that traffic growth "occurs in Sunnyvale and on Mary Avenue with or without the Mary Avenue Extension" and the proposed project "relieves traffic congestion created by planned growth by creating new roadway capacity and shifting traffic flow" and "[i]t does not add new traffic to the overall roadway system, but rather, serves existing and forecast traffic on the roadway system."

Witthaus explained: "The traffic impacts of the Project were evaluated against future background conditions, in accordance with the procedures described in the Valley Transportation Authority's Transportation Impact Analysis Guidelines. These Guidelines were adopted for use by all cities in Santa Clara County. The Guidelines state that projects should be compared to background conditions, which is defined as 'existing traffic plus traffic from approved projects.' " He stated that "[t]he future horizon year of 2020 was chosen because it approximates the time when the Mary Avenue Extension, if approved, would be open to traffic. [¶] Currently, there is no construction funding available for the Project. Even assuming full funding becomes available in the next few years, an assumption which is questionable in the current transportation funding environment, it would take several years to design and construct the Project."

He disclosed that the city "did provide additional information on an 'existing condition plus project' scenario as a response to the Peer Review process that we went through." He told the City Council, as he had told the peer reviewer, there were no significant traffic, noise, or air quality impacts and repeated what he had told the peer reviewer. Witthaus explained the peer review process and represented that "[t]he Peer Reviewer has determined that the document and the City's response to the Peer Review appear to adequately disclose potential impacts."

Witthaus told the City Council that the MAE project is "integral to mitigating the traffic impact of planned development in the Moffett Industrial Park." He warned that there would be significant implications for the city's current land-use plans and previously approved development projects and other problems if the city did not proceed with the project.

The City Council voted to certify the EIR and approve the MAE Project.

C. Standard of Review

In reviewing the agency actions under CEQA, this court's review extends "only to whether there was a prejudicial abuse of discretion." (§ 21168.5.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Ibid.*) "As a result of this standard, '[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189 . . .)" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) "In the context of review for abuse of discretion, an agency's 'use of an erroneous legal standard constitutes a failure to proceed in a manner required by law.' (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 88 . . . ; see also *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 . . . [questions of interpretation or application of the requirements of CEQA are matters of law'.])" (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 355-356.) In contrast, "the abuse of discretion standard "command[s] much deference to factual and environmental conclusions in the EIR based on conflicting evidence (e.g., *Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d 376, 393, 409 . . .)" (*Id.* at p. 355.)

"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th 412, 427; cf. *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 479.)

D. CEQA Requirements

CEQA generally requires preparation and certification of an EIR on any proposed project that may have a significant effect on the environment before the project is approved.⁹ (See §§ 21080, subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151; CEQA Guidelines, §§ 15064, subd. (a)(1), 15089-15090.) The EIR must include, among other things, a detailed statement setting forth "all significant effects on the environment of the proposed project." (§§ 21061, 21100, subd. (b); see §§ 21065 [defining "project"]; 21068 [defining "significant effect on the environment"]; see also CEQA Guidelines, §§ 15002, subd. (g) ["A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project"], 15143 ["The EIR shall focus on the significant effects on the environment"]; 15382 [defining "significant effect on the environment"].) "Environment" is defined as "the physical conditions which *exist* within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5, italics added; see § 21151, subd. (b); CEQA Guidelines, § 15360 [defining environment to mean "the physical conditions which exist within the area which will be affected by proposed project . . ."].) "The 'environment' includes both natural and man-made conditions." (CEQA Guidelines, § 15360.) Significant effects on the environment are "limited to substantial, or potentially substantial, adverse changes in physical conditions which *exist* within the area as defined in Section 21060.5 [defining 'environment']." (§§ 21100, subd. (d), italics added; 21151, subd. (b) [same].)

⁹ "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (CEQA Guidelines, § 15064, subd. (d).)

The implementing CEQA Guidelines state with regard to an EIR's description of a proposed project's environmental setting: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they *exist at the time the notice of preparation is published*, or if no notice of preparation is published, *at the time environmental analysis is commenced*, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."¹⁰ (Guidelines, § 15125, subd. (a), italics added.)

With regard to an EIR's evaluation of a proposed project's significant impacts on the environment, the CEQA Guidelines state: "An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the *existing* physical conditions in the affected area as they *exist* at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, italics added.)

¹⁰ "Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project." (CEQA Guidelines, § 15082, subd. (a).) "Within 30 days after receiving the notice of preparation . . . , each responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR." (CEQA Guidelines, § 15082, subd. (b).)

Case law makes clear that "[a]n EIR must focus on impacts to the existing environment, not hypothetical situations. (See *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247 . . . ; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 352-355 . . .)" (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.) "It is only against this baseline that any significant environmental effects can be determined. (Guidelines, §§ 15125, 15126.2, subd. (a).)" (*Id.* at p. 952.)

Recently, in *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310 ("*Communities For A Better Environment*"), the Supreme Court concluded that the South Coast Air Quality Management District abused its discretion in evaluating a petroleum refinery project proposed by ConocoPhillips Company by using a "baseline" of the maximum operating capacity of the equipment under existing permits. (*Id.* at p. 316.) The district had "treated any additional NOx emissions stemming from increased plant operations within previously permitted levels as part of the baseline measurement for environmental review" (*Id.* at p. 318.) The court held that the district had "erred in using the boilers' maximum permitted operational levels as a baseline" because "operation of the boilers simultaneously at their collective maximum was not the norm." (*Id.* at p. 322.)

The Supreme Court stated: "By comparing the proposed project to what *could* happen, rather than to what was actually happening, the District set the baseline not according to 'established levels of a particular use,' but by 'merely hypothetical conditions allowable' under the permits. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at p. 658) Like an EIR, an initial study or negative declaration 'must focus on impacts to the existing environment, not hypothetical situations.' (*County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at p. 955)" (*Id.* at p. 322.) It concluded that "the District's use of the maximum capacity levels set in prior boiler permits, rather than the actually existing

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levels of emissions from the boilers, as a baseline to analyze NOx emissions from the Diesel Project was inconsistent with CEQA and the CEQA Guidelines." (*Id.* at pp. 326-327.)

The Supreme Court explained: "An approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent. (*Environmental Planning Information Council v. County of El Dorado, supra*, 131 Cal.App.3d at p. 358)" (*Id.* at p. 322.) The court stated: "A long line of Court of Appeal decisions holds, in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework. This line of authority includes cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred, as well as cases where actual development or activity had, by the time CEQA analysis was begun, already exceeded that allowed under the existing regulations. In each of these decisions, the appellate court concluded the baseline for CEQA analysis must be the 'existing physical conditions in the affected area' (*Environmental Planning Information Council v. County of El Dorado, supra*, 131 Cal.App.3d at p. 354 . . .), that is, the "'real conditions on the ground'" (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra*, 87 Cal.App.4th at p. 121 . . .; see *City of Carmel-by-the-Sea v. Board of Supervisors, supra*, 183 Cal.App.3d at p. 246 . . .), rather than the level of development or activity that *could* or *should* have been present according to a plan or regulation." (*Id.* at pp. 320-321, fns. omitted.) The court cited *Woodward Park Homeowners Assn., Inc. v. City of Fresno, supra*, 150 Cal.App.4th 683 (the case relied on by the trial court in the present case) as one case example. (*Communities For A Better Environment, supra*, 48 Cal.4th at p. 321, fn. 6.)

The Supreme Court recognized, however, that some flexibility existed for the determination of baseline conditions. "Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the *existing* conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the *existing* physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 435 . . .)" (*Communities For A Better Environment*, *supra*, 48 Cal.4th at p. 328, italics added.) The court indicated that, since environmental conditions may vary from year to year, the baseline might take into consideration conditions that have existed over a range of time. (*Id.* at pp. 327-328) "In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval, rather than to conditions at the time analysis is begun. ([*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99,] 125-126 . . .) A temporary lull or spike in operations that happens to occur at the time environmental review for a new project begins should not depress or elevate the baseline; overreliance on short-term activity averages might encourage companies to temporarily increase operations artificially, simply in order to establish a higher baseline." (*Id.* at p. 328.) The Supreme Court never sanctioned the use of predicted conditions on a date subsequent to EIR certification or project approval as the "baseline" for assessing a project's environmental consequences.

As to the particular project at issue in *Communities For A Better Environment*, the Supreme Court recognized that "refinery operations fluctuate over time." But it made clear that, regardless of the method ultimately adopted, the district must compare

"existing physical conditions" without the project to the conditions expected to be produced by the project because "[w]ithout such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates. (§ 21100.)" (*Ibid.*)

In addition to assessing potential significant effects, "[a]n EIR must include a description of feasible project alternatives that would substantially lessen the project's significant environment effects. (Pub. Resources Code, § 21061; Cal.Code Regs., tit. 14, § 15126.6, subds. (d), (f).)" (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1167; see §§ 21061 [EIR "means a detailed statement setting forth the matter" specified in section 21100], 21100, subd. (b)(4) [EIR must include a detailed statement setting forth the alternatives to the proposed project]; CEQA Guidelines, § 15126.6, subd. (a) [EIR "must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation"].) "Under CEQA, the range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts of the proposed project. . . . The project's environmental effects, in turn, are determined by comparison with the existing 'baseline physical conditions.' (Cal. Code Regs., tit. 14, § 15125, subd. (a); see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952 . . .)" (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, supra*, 43 Cal.4th at p. 1167.)

The CEQA Guidelines require "[t]he specific alternative of 'no project' " to "be evaluated along with its impact." (Guidelines, § 15126.6, subd. (e)(1).) Those guidelines explain that the "purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." (*Ibid.*) The CEQA Guidelines clarify that "[t]he no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the

existing environmental setting analysis which does establish that baseline (see Section 15125)." (*Ibid.*, italics added.)

E. *Abuse of Discretion*

1. *Standard for Evaluating Determination to Use a 2020 "Baseline"*

"In evaluating an EIR for CEQA compliance, . . . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 435.) Appellant City Council insists that the decision to use a "baseline" of the traffic conditions projected for the year 2020 was a factually-based discretionary determination, which "is supported by substantial evidence in the administrative record." We first examine whether that decision constituted a failure to proceed as required by law, as concluded by the superior court.

2. *Compliance with CEQA*

As clearly indicated by our overview of CEQA law, the baseline for assessing the impacts of a project is ordinarily the existing physical conditions in the affected area. The only cases cited by appellant to support the city's use of the traffic conditions predicted for the year 2020 as a "baseline" are *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 ("*Fairview Neighbors*") and *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99 ("*Save our Peninsula*").

In *Fairview Neighbors*, *supra*, 70 Cal.App.4th 238, the Ventura County Board of Supervisors approved a conditional use permit (CUP) to expand the mining operation of a private company. The mine had been operating under a previously approved CUP and then, following expiration of that CUP, under a compliance agreement with the County considered an application to modify the prior CUP. (*Id.* at pp. 240-241.) The appellants challenged the FEIR for the expanded mining operations, arguing that "the EIR arbitrarily

and speculatively determined that the existing traffic limit is 810 truck trips, rather than the actual, existing traffic." (*Id.* at p. 242.) They asserted that "the EIR should have compared existing traffic without the mining operation against the 'new' proposal." (*Ibid.*)

The appellate court recognized that "[t]he flow of traffic for a mining operation fluctuates considerably based on need, capacity and other factors. [Citation.]" (*Id.* at p. 243.) The expired CUP, which had been renewed in 1976 after preparation of an EIR, in effect permitted a daily average of 810 truck trips. (*Id.* at pp. 240-241, 243.) The mine had "generated 837 daily truck trips" during its peak operation in 1989. (*Id.* at p. 243.)

The appellate court reasoned that "[t]he ongoing mining operation is an existing facility and the instant situation is akin to ones in which categorical exemptions to CEQA have been granted. [Citations.]" (*Id.* at p. 243.) It also stated that "[a] complete new EIR may not have been necessary here; a supplemental EIR, a narrowed EIR under the concept of 'tiering' or a partial exemption may have been reasonable here. [Citation.]" (*Ibid.*) The appellate court concluded that the final EIR "appropriately assumes the existing traffic impact level to be the traffic generated when the mine operates at full capacity pursuant to the entitlement previously permitted by CUP-1328, as extended by the compliance agreement." (*Fairview Neighbors, supra*, 70 Cal.App.4th at pp. 242-243.)

The *Fairview Neighbors* case and similar decisions were distinguished in *Communities For A Better Environment*. (*Communities For A Better Environment, supra*, 48 Cal.4th at p. 326.) The California Supreme Court stated: "The District and ConocoPhillips cite several Court of Appeal decisions as supporting the use of maximum operational levels allowed under a permit, rather than existing physical conditions, as a CEQA baseline. In each of these decisions, however, the appellate court characterized the project at issue as merely a modification of a previously analyzed project and hence requiring only limited CEQA review under section 21166 and CEQA Guidelines section

15162 (Cal. Code Regs., tit. 14, § 15162), or as merely the continued operation of an existing facility without significant expansion of use and hence exempt from CEQA review under CEQA Guidelines section 15301 (Cal. Code Regs., tit. 14, § 15301), or both." (*Ibid.*, fn. omitted.) The project here was not previously analyzed under CEQA and is not entitled to a categorical exemption for existing facilities.

In *Save our Peninsula*, *supra*, 87 Cal.App.4th 99, it was argued that the Monterey County Board of Supervisors acted within its discretion in selecting a particular formula for determining baseline water usage based on evidence contained in the EIR. (*Id.* at p. 119.) This court stated: "If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence. (*Barthelemy v. Chino Basin Municipal Water District*, *supra*, 38 Cal.App.4th 1609, 1617) [¶] If an EIR presents alternative methodologies for determining a baseline condition, however, we believe CEQA requires that each alternative be supported by reasoned analysis and evidence in the record so that the decision of the agency is an informed one. We further find that the EIR must set forth any analysis of alternative methodologies early enough in the environmental review process to allow for public comment and response." (*Id.* at p. 120.) Although the issue was baseline water usage, this court in that case stated: "For instance, where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project. [Citation.]"¹¹ (*Id.* at pp. 125-126.) That dictum was impliedly approved

¹¹ Appellant's statement in its opening brief that this court "directly addressed the baseline issue in the context of a traffic study" in *Save Our Peninsula* is misleading. The traffic issues in that case "center[ed] around the EIR recommending, and the Board adopting, the payment by the applicants of in-lieu fees into county traffic impact fee

by the California Supreme in *Communities For A Better Environment, supra*, 48 Cal.4th at page 328, when it suggested that the baseline might be the "predicted conditions at the expected date of approval" "[w]here environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project"

But in *Save our Peninsula, supra*, 87 Cal.App.4th 99, this court concluded that the EIR's baseline discussion of water usage was inadequate for a number of reasons. (*Id.* at p. 128.) This court observed: "[A]lthough the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564)" (*Id.* at p. 118.) The same is true here.

While *Communities For A Better Environment* endorsed the use of a baseline consisting of the reasonably foreseeable conditions on the expected date of project approval under limited circumstances (*id.* at pp. 125-126), the FEIR in this case did not use the anticipated traffic conditions on the expected date of project approval, which actually turned out to be October 28, 2008. Rather, the lead agency chose the projected conditions in the year 2020, more than a decade after approval, as the "baseline" against which to assess the traffic and related impacts of the proposed project.

Appellant City Council has not cited any decision upholding the use of a future "baseline" beyond the expected date of project approval. We do not construe the word "normally," as used in CEQA Guidelines section 15125, subdivision (a), (the "physical environmental conditions in the vicinity of the project, as they exist at the time the notice

programs as mitigation for traffic increases attributed to the project." (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 135.)

of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced" "normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant") to mean that a lead agency has carte blanche to select the conditions on some future, post-approval date as the "baseline" so long it acts reasonably as shown by substantial evidence.

It is important to keep in mind that the administrative regulations implementing CEQA (§ 21083) cannot contravene that governing statute (see Gov. Code 11342.2;¹² see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 105 [upholding invalidation of certain CEQA Guidelines]), which consistently requires a determination whether a project would significantly impact the *existing* environment. The word "normally" as used in the regulation is most reasonably understood as recognizing, with respect to individual projects not previously analyzed under CEQA, that the physical conditions existing exactly at the time the notice of preparation is published or at the time the environmental analysis begins (if a notice of preparation is not published) may not be representative of the generally existing conditions and, therefore, an agency may exercise its discretion to apply appropriate methodology to determine the "baseline" existing conditions. Thus, for example, if traffic congestion and vehicular travel has temporarily decreased due to an unusually poor economy so that traffic conditions at the time specified by CEQA Guidelines section 15125 are inconsistent with the usual historic conditions, a lead agency might use appropriate methodology, perhaps historical data and traffic modeling, to determine the

¹² Government Code section 11342.2 provides: "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute."

generally existing conditions. Similarly, where evidence shows traffic levels are expected to increase significantly during the environmental review process due to other development actually occurring in the area, the projected traffic levels as of the expected date of project approval may be the appropriate baseline. (See *Communities For A Better Environment, supra*, 48 Cal.4th at p. 328; *Save our Peninsula, supra*, 87 Cal.App.4th at pp. 125-126.)

Appellant suggests that the MAE Project is different from other development projects because it is not a "traffic generator" but rather a "traffic congestion-relief project." But appellant has not pointed to anything in CEQA, the implementing administrative guidelines, or case law that permits a roadway infrastructure project to be evaluated differently than other projects. The statute requires the impact of any proposed project to be evaluated against a baseline of existing environmental conditions (see §§ 21060.5, 21100, subd. (d), 21151, subd. (b); see also CEQA Guidelines, § 15125, subd. (a)), which is the only way to identify the environmental effects specific to the project alone.

Although "[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the *existing* conditions baseline" (*Communities For A Better Environment, supra*, 48 Cal.4th at p. 328, italics added), nothing in the law authorizes environmental impacts to be evaluated only against predicted conditions more than a decade after EIR certification and project approval. The amici briefs filed by the League of California Cities and the California State Association of Counties and by the VTA in support of appellant do not supply any authority authorizing the use of such a future, post-approval "baseline." Use of such a "baseline," cannot be upheld since that approach contravenes CEQA regardless whether the agency's choice of methodology for projecting those future conditions is supported by substantial evidence. The "industry practice" of evaluating transportation improvement projects based on future scenarios does not alter CEQA's mandates.

This is not to say, however, that discussions of the foreseeable changes and expected future conditions have no place in an EIR. To the contrary, such discussions may be necessary to an intelligent understanding of a project's impacts over time and full compliance with CEQA.

Although "[in] assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area . . . ," the EIR must still clearly identify and describe the "[d]irect and indirect significant effects of the project on the environment" and give "due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, subd. (a).) Further, "[w]here a proposed project is compared with an adopted plan, the [EIR's] analysis shall examine the *existing physical conditions* at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced *as well as the potential future conditions discussed in the plan.*" (Guidelines, § 15125, subd. (e), italics added.)

An EIR must "discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable," which "means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."¹³ (CEQA Guidelines, §§ 15130, subd. (a), 15065, subd. (a)(3); see § 21083, subd. (b)(2).) An adequate discussion of significant cumulative impacts ordinarily includes either "[a] list of past, present, and probable future projects producing related or cumulative impacts" or "[a] summary of projections contained in an adopted local,

¹³ "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, § 15355.)

regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect." (CEQA Guidelines, § 15130, subd. (b)(1).) "Previously approved land use documents, including, but not limited to, general plans . . . , may be used in cumulative impact analysis" in an EIR. (§ 21100, subd. (e); see CEQA Guidelines, § 15130, subd. (d).)

Appellant's and the VTA's contention that use of existing traffic conditions as a "baseline" in this case may understate traffic-related impacts and the VTA's suggestion that use of a future "baseline" may place a greater burden on the lead agency to mitigate are red herrings. "An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR." (CEQA Guidelines, § 15130, subd. (a)(1).) But an EIR must discuss the cumulative impact of a project when the project has any "cumulatively considerable" incremental effect and it must "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (CEQA Guidelines, § 15130, subs. (a)(1), (b)(5).)

Increased future traffic expected to result from planned growth under approved general plans should also come to light in the EIR's discussion of the "no project" alternative. An EIR's "no project" analysis must "discuss the *existing* conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, *as well as what would be reasonably expected to occur in the foreseeable future* if the project were not approved, based on current plans and consistent with available infrastructure and community services." (CEQA Guidelines, § 15126.6, subd. (e)(2), italics added.) "[W]here failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment." (CEQA Guidelines, § 15126.6, subd. (e)(3)(B).)

The EIR must provide sufficient information for meaningful evaluation of the comparative merits of the proposed project and each alternative. (See CEQA Guidelines, § 15126.6, subd. (d).) "Drafting an EIR . . . necessarily involves some degree of forecasting" and "an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, § 15144.) We see no problem with evaluating the project and each alternative under existing conditions and reasonably foreseeable conditions where helpful to an intelligent understanding of the project's environmental impacts. (See CEQA Guidelines, § 15125, subd. (e); see also *Woodward Park Homeowners Ass'n v. City of Fresno*, *supra*, 150 Cal.App.4th at p. 707.)

There is no doubt that comprehensive regional transportation planning must look at the big picture and take the long view. But we emphasize that the methodologies for forecasting traffic conditions and planning sound transportation systems and projects are not being challenged here. Once a specific roadway project is proposed and becomes the subject of an EIR under CEQA, however, a straightforward assessment of the impacts produced by the project alone on the existing environment is the foundational information of an EIR even where secondary analyses are included. Nothing prevents an EIR from also examining a project's beneficial impacts over time, if reasonably foreseeable, but it must be remembered that the purpose of an EIR is to avoid or lessen each significant environmental effect of a proposed project whenever feasible. (See § 21002.1, subds. (a), (b).)

Further, it must be recognized that a roadway infrastructure project aimed at reducing regional traffic and related problems might still have growth-inducing impacts with indirect adverse impacts on the environment and might also result in adverse environmental impacts in the immediate vicinity of the project, such as a localized increase in traffic problems, noise or air pollutants, which may only become apparent when the project is evaluated directly against existing conditions. Even when such localized significant effects are uncovered, the lead agency may ultimately determine that

the project's overriding benefits from a long-term, regional transportation point of view outweigh any unavoidable localized significant environmental effect.¹⁴ "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.' " (Guidelines, § 15093, subd. (a).) "A statement of overriding considerations reflects the final stage in the decision making process by the public body." (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222.)

In this case, however, the decision makers and the public lacked complete information because an improper baseline was used for determining traffic and related impacts. This constituted a failure to proceed in the manner required by law.

F. *No Substantial Evidence*

Even if we were to assume that the decision to use projected 2020 conditions as a "baseline" did not constitute a failure to proceed in a manner required by law (a proposition to which we do not subscribe), the administrative record does not contain substantial evidence to support the decision to deviate from the norm. In response to the peer reviewer's concern that the EIR used the projected 2020 conditions as a "baseline" instead of using existing conditions, Witthaus stated that "[t]he future horizon year of

¹⁴ CEQA Guidelines provide: "When a final EIR identifies one or more significant effects, the lead agency . . . shall make a finding under Section 15091 [possible mitigation findings] for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project." (CEQA Guidelines, § 15064, subd. (a)(2).)

2020 was chosen because it approximates the time when the Mary Avenue Extension, if approved, would be open to traffic" since there was no current funding for the project and "[e]ven assuming full funding becomes available in the next few years, an assumption which is questionable in the current transportation funding environment, it would take several years to design and construct the project." He made the same comments to the City Council on October 28, 2008. These remarks do not constitute substantial evidence.

"Substantial evidence" is defined in the CEQA Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) Substantial evidence does not include speculation or unsubstantiated opinion. (*Ibid.*) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines, § 15384, subd. (b).) His comments indicate that the year of anticipated project completion was merely a guesstimate.¹⁵

The evidence that the city was relying on the VTA's TIA Guidelines is not substantial evidence supporting its decision to deviate from the normal existing conditions baseline. Appellant acknowledges in its reply brief that those guidelines did not require the city to use a 2020 "baseline" for CEQA purposes. As we have noted, the VTA Guidelines warn that the TIA's are not intended to cover the requirements of CEQA.¹⁶ Appellant nevertheless argues that VTA's TIA Guidelines "reinforce the sound principle . . . that regional traffic planners should account for future growth in a project area when assessing a traffic infrastructure's [sic] project's environmental impact." We again state that there is no issue in this appeal concerning the propriety of the methodology

¹⁵ The staff report prepared for the October 28, 2008 City Council meeting stated that the project design phase had been fully funded and that, "should the project be approved, staff estimates that construction could be complete within 5-10 years."

¹⁶ See *ante*, footnote 2.

used to predict the traffic conditions in the year 2020 or the use of the VTA's TIA Guidelines to plan the proposed roadway project.

G. *Standard of Prejudice*

"Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).)"¹⁷ (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391.) Section 21005, subdivision (a), states: "The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions."

In *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, Pacific Lumber Company refused to provide information regarding the presence of old-growth-dependent wildlife species within the old growth forest covered by proposed timber harvesting plans submitted for approval to the Department of Forestry. (*Id.* at p. 1219.) The California Supreme Court concluded that the State Board of Forestry abused its discretion "when it evaluated and approved [Pacific Lumber Company's timber harvesting] plans on the basis of a record which lacked information regarding the presence in the subject areas of some old-growth-dependent species, information which both the [Departments of Forestry] and Fish and Game had determined was necessary." (*Id.* at p. 1220.) The court stated: "By approving the plans without the necessary information regarding those species the board

¹⁷ Section 21005, subdivision (b), provides: "It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial."

failed to comply with the obligation imposed on it by the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)" and another statute. (*Ibid.*)

The Supreme Court concluded that "[t]he failure of the board to proceed as required by law was prejudicial." (*Id.* at p. 1236.) It explained that "[t]he absence of any information regarding the presence of the four old-growth-dependent species on the site" "made any meaningful assessment of the potentially significant environment impacts of timber harvesting and the development of site-specific mitigation measures impossible." (*Id.* at pp. 1236-1237.) The court stated that "[i]n these circumstances prejudice is presumed. (See *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 . . . ; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1023 . . .)" (*Id.* at p. 1237.)

In *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, *supra*, 44 Cal.4th 459, the California Department of Forestry and Fire Protection failed to consider some public comments regarding Pacific Lumber's Sustained Yield Plan (SYP). (*Id.* at p. 482.) The Supreme Court considered the rule, articulated in *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, that an error consisting of a failure to comply with CEQA is prejudicial where it results in a subversion of the purposes of CEQA by omitting information from the environmental review process. (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, *supra*, 44 Cal.4th at p. 486.) The Supreme Court stated that the "rule emerges out of the difficulty courts have in assessing the effects of the omitted information, much of it generally highly technical, on the ultimate decision." (*Ibid.*) It recognized that "[a] trial court's 'independent judgment that the information was of 'no legal significance' amounts to a 'post hoc rationalization' of a decision already made, a practice which the courts have roundly condemned." (*Rural Landowners Assn.*, *supra*, 143 Cal.App.3d at p. 1021 . . .)" (*Ibid.*) But the court also recognized that

insubstantial or de minimis errors in the CEQA process are not prejudicial. (*Ibid.*; see *id.* at p. 487, fn. 10)

The Supreme Court stated: "If it is established that a state agency's failure to consider some public comments has frustrated the purpose of the public comment requirements of the environmental review process, then the error is prejudicial. (See *Sierra Club, supra*, 7 Cal.4th at pp. 1236-1237 . . . ; *Rural Landowners Assn., supra*, 143 Cal.App.3d at pp. 1022-1023 . . .)" (*Id.* at p. 487.) In that case, however, the department's failure to consider public comments was not prejudicial because the unconsidered comments were merely duplicative of other comments that had been considered. (*Id.* at pp. 487-488.) The court stated: "[W]hen a SYP or EIR is challenged for failing to consider comments alleged to contain significant new information, it is the burden of the agency that erroneously omitted the comments to establish they are merely duplicative" unless "their duplicative nature essentially is not contested." (*Id.* at p. 488.)

Use of an incorrect baseline for assessing the impacts of a proposed project is generally treated as a prejudicial abuse of discretion. (See e.g. *Communities For A Better Environment v. South Coast Air Quality Management Dist., supra*, 48 Cal.4th 310; *Save our Peninsula, supra*, 87 Cal.App.4th at pp. 119-128, 143.) In this case, however, appellant urges us to conclude that there was no prejudice because the project's traffic and related impacts were evaluated under future traffic conditions much worse than those presently existing, which appellant asserts resulted in a "more conservative and realistic" assessment and overstated the adverse effects of the project. This contention has some surface appeal but must be rejected upon closer examination.

First, in support of this claim, appellant merely points to Witthaus's own remarks to the peer reviewer and to appellant City Council explaining why the 2020 horizon was chosen as the basis of comparison. This contention is simply a repackaging of the argument that the projected 2020 traffic conditions, predicated on certain assumptions, was an appropriate "baseline." It does not establish that the decision makers and ordinary

citizens were provided with the essential information regarding the project's traffic and related impacts on the existing environment.

Second, appellant's argument does not respond to the problem that the EIR fails to identify and consider the *incremental* effects of the MAE Project, individually, on the existing traffic, noise, and air quality conditions. The EIR instead evaluates any *incremental* change in those conditions due to the project against the already worse traffic environment of the future. Evaluation of the MAE project under those projected worse traffic conditions of the future obscures the existence and severity of adverse impacts that would be attributable solely to the project under the existing conditions without the other assumed roadway improvements. While appellant maintains that use of the predicted traffic conditions in the year 2020 caused the project's adverse environmental impacts to be overestimated, that conclusion is not self-evident from the FEIR.¹⁸

Alternatively, appellant insists that the city did analyze the traffic and related impacts of the project on the existing environment and presented that information to appellant City Council and the public prior to EIR certification. The appellate record shows that the internal correspondence with the peer reviewer was not incorporated into the FEIR and was merely one of many attachments to the staff report provided to the City Council for the October 28, 2008 meeting, at which the project was approved. Witthaus's response to the peer reviewer's concerns about the chosen "baseline" included a revised table of average daily traffic volumes with columns for "existing" and "existing plus project" (not included in the FEIR), which was unaccompanied by any analysis, and his

¹⁸ Appellant also asserts that "use of the current conditions baseline understates the positive environmental impacts . . . that will be realized when the Project is actually completed." If the assumptions underlying its traffic analysis based on the projected future traffic conditions are not realized, the EIR may overstate the project's future benefits. In any event, as our discussion regarding CEQA requirements indicates, the full picture provided by an EIR includes reasonably foreseeable future conditions but the foundational information of an EIR is its assessment of the project's impact on existing conditions.

conclusory assertion that the table disclosed no significant traffic impacts even though the table showed considerable increases in traffic along Mary Avenue north of Central Expressway and along Almanor Avenue east of Mary Avenue. In addition, that table's data is unsubstantiated in contrast to the draft EIR's transportation discussion, which is based on a traffic operations report completed by transportation consultants in April 2007 and attached to the document as an appendix.

" 'To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.' (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 . . . ; *People v. County of Kern, supra*, 39 Cal.App.3d 830, 841-842 . . . [conclusory statements fail to crystallize issues]; see also *Citizens for Quality Growth v. City of Mount Shasta, supra*, 198 Cal.App.3d 433, 441 . . . [agency's findings under section 21081 as to mitigation must be sufficiently detailed].)" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404-405.) "[T]he public and decision-makers, for whom the EIR is prepared, should . . . have before them the basis for [an agency's] opinion so as to enable them to make an independent, reasoned judgment." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) In addition, information introduced at the end of the environmental review process without analysis or the benefit of public scrutiny or participation does not fulfill the informational function of an EIR. (See *Save our Peninsula, supra*, 87 Cal.App.4th at pp. 124-128.) An EIR "must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at pp. 449-450.) Appellant has failed to demonstrate that adequate information regarding the project's traffic and related impacts on the existing environment was properly presented to the general public and decision makers in the EIR

process. (Cf. *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, *supra*, 44 Cal.4th 459, 488 [burden on agency to establish lack of prejudice].)

" '[T]he conventional "harmless error" standard has no application when an agency has failed to proceed as required by the CEQA.' (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 897-898 . . .)" (*East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174.) Thus, even if a complete analysis of the project's traffic and related impacts on the existing environment would have produced no findings of different or greater significant environmental effects than the city found based on the anticipated traffic conditions in 2020 and such analysis would not have altered the City Council's decisions, such circumstances do not establish a lack of prejudice for purposes of CEQA review. (See *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492-493, *Rural Landowners Assn. v. City Council*, *supra*, 143 Cal.App.3d 1013, 119-121, 123.) As the California Supreme Court has stated, "courts are generally not in a position to assess the importance of the omitted information to determine whether it would have altered the agency decision, nor may they accept the post hoc declarations of the agencies themselves. (*Rural Landowners Assn.*, *supra*, 143 Cal.App.3d at p. 1021 . . .)" (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, *supra*, 44 Cal.4th at p. 487, fn. omitted.) A "determination of whether omitted information would have affected an agency's decision" is "highly speculative, an inquiry that takes the court beyond the realm of its competence." (*Id.* at p. 488.) Consequently, the appellant's repeated assertion that the EIR's assessment of traffic and related impacts using only the 2020 "baseline" resulted in a more conservative and realistic analysis, than would the omitted assessment using a proper baseline, is unavailing.

We also reject appellant's attempt to characterize the failure to use the proper baseline as a mere "immaterial, technical error." The underlying assumptions of the traffic-related analyses, that the city's general plan was completely built-out, a number of anticipated roadway improvements were in place, and traffic volumes had reached the level predicted for the year 2020, made it impossible for decision makers and the general lay public to readily grasp the traffic and related impacts of the project itself on the environment as it presently exists.

One of the EIR's stated thresholds of significance states that a transportation impact is considered significant if the project would "[c]ause an increase in traffic which is *substantial in relation to the existing* traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)." (Italics added.) While the EIR describes the existing roadway network and the existing traffic volume on certain roadway segments and the existing LOS at certain intersections, the EIR does not use the existing conditions as its baseline and, consequently, fails to answer how and to what extent the proposed project itself would adversely change the existing traffic conditions *without* those other roadway improvements assumed to be in place by the year 2020. How would the project change the delay and LOS at the various intersections under the existing conditions? Would the project alone substantially increase existing traffic volumes on certain roadway segments or substantially increase the existing traffic congestion and delay at certain intersections? The FEIR does not address those questions.

The EIR describes the existing noise conditions in the project vicinity and indicates that the noise sub-element of the city's general plan states the noise goal of "[p]reserv[ing] and enhance[ing] the quality of neighborhoods by maintaining or reducing the levels of noise generated by transportation facilities" and the noise policy to "[r]efrain from increasing or reduce the noise impacts of major roadways." One of the

thresholds of significance for noise provides that a noise impact would be considered significant if the project would result in "[a] *substantial* permanent increase in ambient noise levels in the project vicinity above levels *existing* without the project."¹⁹ (Italics added.) The EIR sets out the relationship between noise and traffic but, without an accurate assessment of the traffic impacts of the project alone on the existing environment, it does not make plain whether the project's traffic-related noise impacts on the existing environment would reach the stated thresholds of significance. Nowhere in the FEIR is the impact of the project measured against the baseline of the existing ambient noise levels in the project vicinity.

The FEIR also fails to describe existing air quality conditions, either quantitatively or qualitatively, in the affected local area. The EIR indicates that the project would cause traffic volumes to increase along some stretches of Mary Avenue, on Almanor Avenue east of Mary Avenue, and on Maude Avenue under future traffic conditions in 2020 and, obviously, the project would bring new vehicular traffic onto the extended portion of Mary Avenue. It also reports that the project, while generally improving traffic delay at intersections, would cause delay during peak hour operations to worsen at certain intersections under future traffic conditions.²⁰ Carbon monoxide is identified in the draft EIR as a local pollutant found near the source, impliedly vehicular, and the FEIR discloses that "overall emissions are highest in idling and stop-and-go conditions." One of the EIR's thresholds of significance states that an air quality impact is considered significant if the project would "[e]xpose sensitive receptors to substantial pollutant

¹⁹ This stated threshold of significance is not expressly limited to sensitive receptors or area residents.

²⁰ A table in the EIR shows the project causing delay to worsen during AM and/or PM peak hours and the LOS to drop at various intersections under 2020 conditions. The peer reviewer told Witthaus that it was "hard to imagine that no CO emissions would occur" at "intersections where traffic increases up to 300%." At one intersection delay would increase by more than 300 percent and at another intersection would increase by almost 300 percent with the project under 2020 conditions.

concentrations." The EIR describes "sensitive receptors" and states that "[s]ensitive receptors near the project site include the residences located north of US 101 and east of Mathilda Avenue." Yet, the FEIR does not define "substantial pollutant concentrations" and does not disclose whether the adverse traffic changes resulting from the project alone would cause any adverse localized changes to the *existing* air quality that would meet articulated thresholds of significance.

Local changes to the existing environment resulting from the project were of utmost importance to the local area residents and should have been spelled out by the FEIR. Decision makers and members of the public are not required to ferret out information or make their own deductions regarding whether the project would significantly affect the existing environment. (See *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659; *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.)

Further, the EIR's discussion of cumulative traffic and related impacts seems to have been skewed by the use of a future "baseline," which already incorporated increased future traffic, build-out of the city's general plan and completion of certain anticipated roadway improvements. Although the EIR acknowledges that expansion of the capacity of the area's transportation network may have an indirect growth-inducing effect and "[t]he environmental effects of growth would generally include increased traffic, noise, air pollution, and water pollution," the EIR's cumulative impacts analysis does not discuss whether any of the project's incremental effects are cumulatively considerable when the project is considered together with other projects that cause related impacts.²¹ (See CEQA Guidelines, §§ 15130, 15355.)

²¹ We recognize, however, that "[n]o further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section

Finally, the comparative merits of the project and each alternative, including the "no project" alternative, cannot be accurately compared if the proposed project's significant effects have not been fully ascertained and disclosed in the first place. To achieve the purposes of CEQA, the discussion of alternatives must "focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project" "[b]ecause an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1)" (CEQA Guidelines, § 15126.6, subd. (b), see § 21002.1, subd. (a) [purpose of an EIR]; see also § 21060.5 ["environment" means existing physical conditions]; CEQA Guidelines, § 15360 [same].) While the city can be credited with expanding the number of alternatives, lay readers cannot ascertain from the FEIR whether a comparison of the alternatives would yield different results if the impacts of the alternatives on the existing environment were considered. (See CEQA Guidelines, § 15126.6.) Thus, the FEIR did not present the full picture.

We can only imagine that the city was so focused on the future regional transportation benefits of the project that it failed to adequately evaluate the traffic and related impacts on the existing environment. While the analyses using the projected traffic conditions in 2020 certainly add valuable information to the EIR, they are not a substitute for evaluating the project's traffic and related impacts on the existing conditions.

The omitted information and discussions are essential to a basic understanding whether the project itself would result in any significant environmental impact in terms of traffic volume, delay, congestion, and levels of service, ambient noise, and air quality as compared to the existing conditions. Without a straightforward assessment of the

15152(f) [tiering], in a certified EIR for that plan." (CEQA Guidelines, § 15130, subd. (d).) The FEIR does not state this to be the case.

project's full impact on existing conditions, the EIR process does not serve its core informational purpose.

"The purpose of an EIR is to give the public and government agencies the information needed to make informed decisions, thus protecting 'not only the environment but also informed self-government.'" ([*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,] 564 . . .)" (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162.) Further, "[b]esides informing the agency decision makers themselves, the EIR is intended 'to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions.' [Citations]" (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136.) Decision makers and ordinary citizens should not be left wondering whether the project itself would significantly impact the existing environment. (See *Woodward Park Homeowners Ass'n v. City of Fresno, supra*, 150 Cal.App.4th at p. 709.)

"The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237 . . . ; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491-493 . . . ; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 . . . ; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 . . . ; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021-1023 . . .)" (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.) We agree with the superior court's statement that the EIR, by using future traffic conditions as its "baseline," "did not adequately explain to an engaged public how the proposed project was expected to change the present conditions in which they currently lived."

The judgment granting a writ of mandate is affirmed. Appellant shall bear costs on appeal.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.

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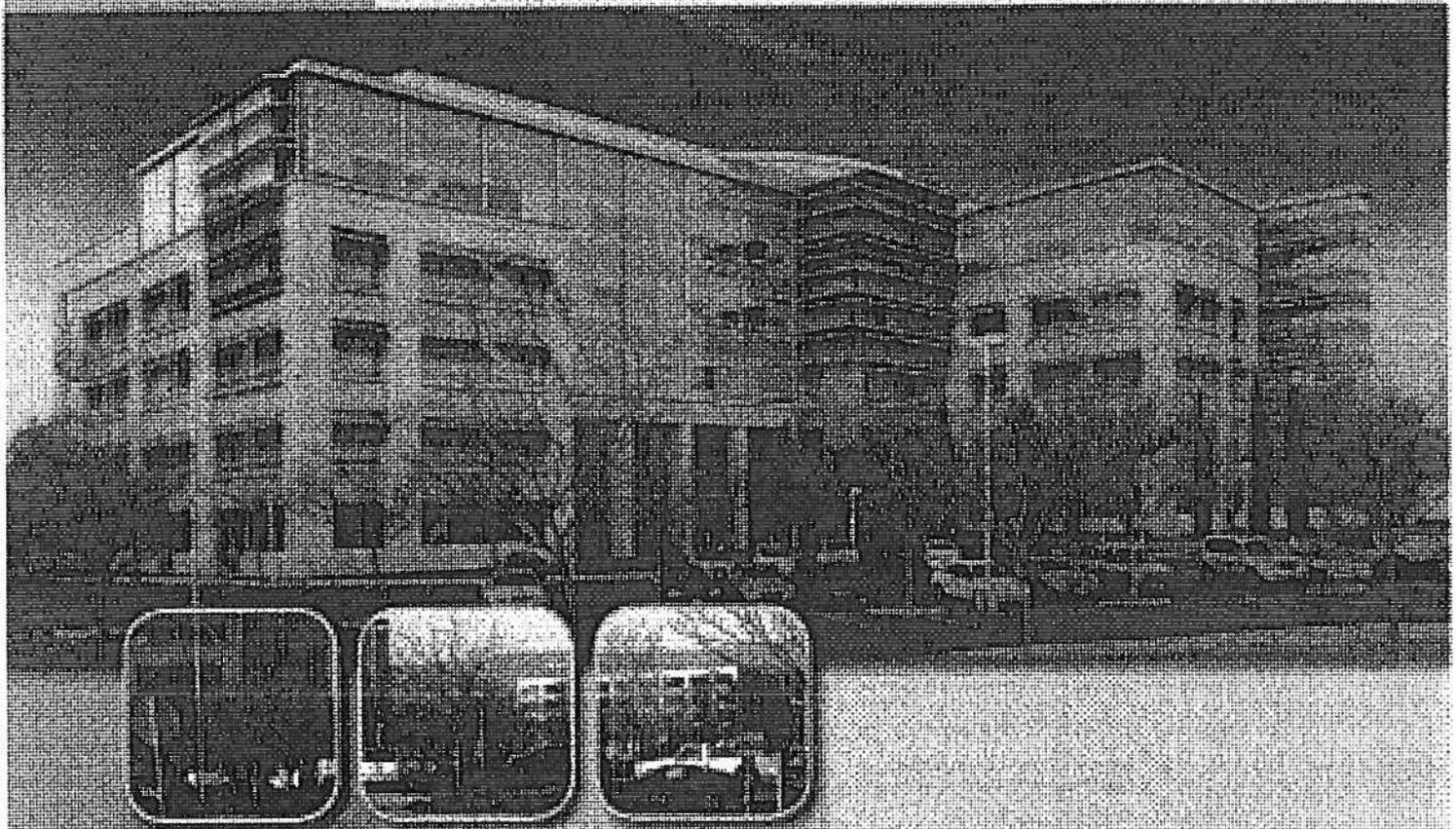
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Sunnyvale West Neighborhood Assn., et al. v. City of Sunnyvale City Council

H035135

Ariba and Moffett Towers Expansion Projects, Sunnyvale, CA Transportation Impact Analysis



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EXECUTIVE SUMMARY

This report presents the results of the transportation impact analysis (TIA) for the proposed expansions of the Ariba and Moffett Towers campuses located in the City of Sunnyvale, California. The two projects combined would result in a net new square footage of 325,000 square feet (s.f.) The projects are located within the Moffett Park Specific Plan (MPSP) area. The Ariba site is located at the northwest corner of the Moffett Park Drive/Innovation Way intersection and the Moffett Towers site is located in the northeast quadrant of the 11th Avenue/Enterprise Way intersection. Both project sites include construction of a new parking garage. The roadway system was evaluated under the No Project and Plus Project scenarios for Existing, Background, and Cumulative Conditions. Site access for all modes and parking are also addressed.

The impacts of the proposed expansions at the Moffett Towers and Ariba campuses are evaluated as one project since both sites have the same timing for occupancy. Additionally both sites have the same property owner and share floor area ratios (FAR). This presents a more conservative approach, since impacts are evaluated based on the combined traffic added to the roadway network versus looking at each site individually.

PROJECT TRAFFIC ESTIMATES

The amount of traffic anticipated to be added to the surrounding roadway system by the proposed projects were estimated based data published in Institute of Transportation Engineers' (ITE) *Trip Generation* 8th Edition (2008). Trip generation estimates for the Ariba campus were developed by incorporating the campus size both with and without the expansion into the trip generation equations for "General Office" (Land Use 710) to account for the economies of scale that would result. Similarly, trip estimates for the Moffett Towers expansion were developed by incorporating the building size both with and without the expansion into the trip generation equation for "Corporate Headquarters" land use.

Although the approved Moffett Towers Building D is not currently constructed, only the trips generated by the additional 125,000-s.f. of Building D building and the new 200,000-s.f. Ariba building were used to assess Project impacts. Traffic for the approved 207,956-s.f. Moffett Towers Building D was included under Background No Project and Cumulative No Project Conditions analysis.

Trip reductions of 15 to 30 percent are required as part of the Transportation Demand Management (TDM) program for the campuses; however, the VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips for projects near a light rail station that have an effective TDM program. A 9.5 percent reduction was applied to the project trip estimates to determine the number of net new trips generated by the project.

The proposed project is estimated to generate 2,064 net new daily trips, 339 net new AM peak-hour trips, and 334 net new PM peak-hour trips.

INTERSECTION IMPACTS AND MITIGATION MEASURES

Existing Plus Project Conditions

Measured against the City of Sunnyvale's, the City of Mountain View, and VTA's level of service standards, the project is not expected to have significant impacts at any of the study intersections under Existing plus Project conditions; therefore, no mitigation is required.

Background Plus Project Conditions

Based on the City of Sunnyvale's, the City of Mountain View's, and VTA's impact criteria the project is expected to have a significant impact at the following seven intersections:

- Int. 2. Enterprise Way/Building D Site Access (South) – private street
- Int. 3. Enterprise Way/11th Avenue – private street
- Int. 8. Enterprise Way/Manila Drive/Moffett Park Drive
- Int. 11. Mathilda Avenue/Moffett Park Drive
- Int. 12. Mathilda Avenue/SR 237 Westbound Ramps
- Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps
- Int. 21. Ellis Street/Manila Drive

The following mitigation measures are required to mitigate project impacts:

Int. 2. Enterprise Way/Building D Site Access (South)

The intersection is projected to operate at unacceptable levels and meet the MUTCD peak hour volume warrant during the PM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be less-than-significant based on City standards with the installation of a traffic signal

Alternatively, the project's impact at the Enterprise Way/Building D Site Access (South) can be mitigated to less-than-significant levels with the provision of a an approximately two-car refuge lane for the westbound left-turn movements. This mitigation would require some modifications to the existing raised median to accommodate the alternative mitigation measure.

Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Moffett Towers TDM program is required to reduce peak hour trips by 30 percent, based on the guidelines from the MPSP. With a 30 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be less-than-significant; however, the peak hour volume warrant would still be met.

Int. 3. Enterprise Way/11th Avenue

The Enterprise Way/11th Avenue intersection is projected to operate unacceptably and meet the MUTCD peak hour volume during the AM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be less-than-significant based on City standards with the installation of a traffic signal (the traffic signal is already built at this location and will simply need to be put in full operation).

Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Ariba Campus TDM program is required to reduce peak hour trips by 15 percent. With a 15 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be less-than-significant; however, the peak hour volume warrant would still be met.

Int. 8. Enterprise Way/Manila Drive/Moffett Park Drive

The proposed Mary Avenue Extension project would reduce traffic on 11th Avenue and Enterprise Way; thus reducing the impact at the Enterprise Way/Manila Drive/Moffett Park Drive. The Mary Avenue Extension project is programmed in the VTA's VTP 2035 list of constrained projects and is included in the City's TIF

program with the City's contribution funded through the payment of TIF fees by new development projects. Thus, payment of the City's TIF would mitigate the project impact to **less-than significant** levels.

As an alternative to the Mary Avenue Overcrossing, the eastbound through lane on Manila Drive could be converted to a shared through/left-turn lane, thus enabling two lanes of traffic to turn left onto Enterprise Way. This improvement would also require the signal phasing on Manila Drive-Moffett Park Drive to be converted from protected left-turn phasing to split phasing to accommodate the shared through/left-turn lane. With this improvement the intersection is projected to operate at acceptable levels during both peak hours and the impact would become less-than-significant.

Int. 11. Mathilda Avenue/Moffett Park Drive

As estimated in the *Mary Avenue Overcrossing Final Traffic Operations Report*, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the AM peak hour and 23 percent in the PM peak hour. Construction of the Mary Avenue overcrossing, along with reconfiguration of the SR 237/Mathilda Avenue ramp intersections, would reduce the impact to a less-than-significant level. Payment of the City's TIF would constitute the project's fair share contribution. These improvements consist of:

- Re-aligning Moffett Park, east of Mathilda Avenue, to connect to 5th Avenue via Bordeaux Avenue;
- Shifting the SR 237 Westbound Off-ramp 150 feet to the north to align with Moffett Park/Mathilda Avenue;
- Removing SR 237 Westbound On-ramp; and,
- Constructing a direct southbound right-turn on-ramp from Mathilda Avenue to US 101 north

These improvements are programmed in both the City's Transportation Strategic Program and the *VTP 2035* list of constrained projects.

Int. 12. Mathilda Avenue/SR 237 Westbound Ramps

The identified improvements for the Mathilda Avenue/Moffett Park Drive intersection would also mitigate the impacts identified for the Mathilda Avenue/SR 237 Westbound Ramp intersection, since they include the elimination of this intersection. Payment of the City's TIF would constitute the project's fair share contribution.

Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps

The identified improvements for the Mathilda Avenue/Moffett Park Drive intersection would also mitigate the impacts identified for the Mathilda Avenue/SR 237 Westbound Ramp intersection, since they include modifications to this intersection. Additionally, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the AM peak hour and 23 percent in the PM peak hour; the intersection would operate acceptably with these volume reductions. Payment of the City's TIF would constitute the project's fair share contribution.

Int. #21. Ellis Street/Manila Drive

The addition of a westbound left-turn lane would reduce the PM impact to a less-than-significant level and the project would operate at acceptable service levels during both peak periods. The project contributes approximately 14 percent of the total growth to the intersection.

Area and Method Traffic Impact Study Report
July 2011

Cumulative Plus Project Conditions

Based on the City of Sunnyvale's, the City of Mountain View's, and VTA's impact criteria the project is expected to have a significant impact at the seven impacted intersections identified under Background Conditions. The same mitigation measures identified under Background Conditions would mitigate the intersection impacts to less-than-significant levels.

FREEWAY SEGMENT IMPACTS AND MITIGATION MEASURES

Existing Plus Project Conditions

The proposed project will not have a significant impact on any of the study freeway segments, as the addition of project traffic will not degrade operations on any segment to unacceptable LOS F or exacerbate unacceptable LOS F operations by adding traffic equal to at least one percent of a freeway segment's capacity; therefore, no mitigation is required.

Background Plus Project Conditions

Measured against VTA's level of service standards and impact criteria, the project is not expected to have significant impacts at any of the study freeway segments under Background plus Project conditions; therefore, no mitigation is required.

Cumulative Plus Project Conditions

Similar to Background Conditions, the project is not expected to have significant impacts at any of the study freeway segments under Cumulative plus Project conditions; therefore, no mitigation is required.

TRANSIT SERVICE

The proposed project will generate demand for existing transit services in the area, which can be accommodated by the existing supply. Transit impacts are considered significant if the proposed project conflicts with existing or planned transit facilities or generates potential transit trips and does not provide adequate facilities for pedestrians and bicyclists to access transit routes and stops. Based on these criteria, the project would not have a potentially significant impact on transit service.

BICYCLE AND PEDESTRIAN FACILITIES

The proposed Project would generate bicycle demand on-site and on the adjacent roadways, which generally have adequate bicycle facilities. The project sites have bicycle access via the bicycle lanes on 11th Avenue and Enterprise Way; however, no bicycle lanes are provided on Moffett Park Drive, which provides access to 11th Avenue and Enterprise Way. While less than ideal, the roadway is wide enough for bicyclists to share the road with vehicles. However, the City has identified the construction of bike lanes on Moffett Park Drive as a future bicycle improvement. Due to the lack of available right-of-way between the light-rail tracks and the SR-237 westbound on-ramp, no bike lane was added between Innovation Way and Mathilda Avenue. Sharrows and signage will be used to alert vehicles to the potential presence of bicyclists in the Moffett Park Drive segment between Mathilda Avenue and Innovation and the City will continue to study the possibility of adding a bike lane in this segment. The project will pay its fair-share contribution to this improvement.

Sidewalks would be provided on Enterprise Way, 11th Avenue, and 5th Avenue along the project frontages. Pedestrian connections would be provided between the proposed buildings, parking lots, and parking garages. A pedestrian pathway would link the light rail station located on Manila Drive to the new building at the Ariba Campus and to the 11th Avenue/Enterprise Way sidewalks that continue to Building D at Moffett Towers. Sidewalks are also included in the City's TIF program.

Overall, because the project is an addition to recent construction, most of the existing infrastructure appropriately accommodates bicyclists and pedestrians and the project has a less-than-significant impact.

VEHICLE AND BICYCLE PARKING

The proposed parking supply in the Ariba and Moffett Towers' site will each provide sufficient parking to accommodate the new office developments, as well as, replace any parking that is lost due to construction of the project and construction of the Mary Avenue Extension.

Both the Ariba and Moffett Towers projects will provide Class I and Class II bicycle parking facilities. Due to the configuration of the Moffett Towers site, the bicycle parking cannot be located closer to the building than in the proposed parking garage. The Ariba project will provide its bicycle parking at the building entrance.

SITE ACCESS AND ON-SITE CIRCULATION

Ariba Campus Expansion

The following site-access and on-site circulation improvements are recommended to improve access to the Ariba Campus Site:

- The current northbound left-turn pocket on Innovation Way is approximately 75 feet long and thus should ideally be extended up to 50 feet to the extent feasible within the existing right-of-way
- To better facilitate vehicle circulation at this intersection, entrance approaches should be signed and stop controlled

MOFFETT TOWERS CAMPUS EXPANSION

The following site-access and on-site circulation improvements are recommended to improve access to the Moffett Towers Site:

- The project applicant should consider adding a parking management program. Such a program could either assign parking based on building (i.e. Buildings D, E, and H park in the existing garage and buildings F and G park in the proposed garage). Parking garage access can be re-assessed as the tenants begin to fill the buildings.
- To better facilitate vehicle circulation the garage exits onto the main drive aisles should be signed as stop controlled.

CONSTRUCTION IMPACTS

The Moffett Towers project will have minimal construction impacts due to traffic and use of parking lots for construction related activity. The Ariba site will need to coordinate with the surrounding properties to provide for employee parking during construction of the office building and garage.

Ariba and Moffett Towers Developments Traffic Impact Study
July 2011

1. INTRODUCTION

This report presents the results of the transportation impact analysis (TIA) for the proposed expansions of the Ariba and Moffett Towers developments located in the City of Sunnyvale, California. The projects are located within the Moffett Park Specific Plan (MPSP) area. The Ariba site is located at the northwest corner of the Moffett Park Drive/Innovation Way intersection and the Moffett Towers site is located in the northeast quadrant of the 11th Avenue/Enterprise Way intersection. Part of the project description includes the construction a new parking garage on each of the sites. The development sites are located in close proximity to the Moffett Park light rail transit (LRT) station and have Transportation Demand Management (TDM) programs that in combination reduce the number of vehicle trips generated. The site locations are shown on the map in Figure 1. Proposed site plans are included in Figures 2a and 2b.

The purpose of this analysis is to identify potentially significant adverse impacts of the proposed project on the surrounding transportation system and to recommend measures to mitigate significant impacts. The TIA was prepared following the guidelines of the City of Sunnyvale and Santa Clara Valley Transportation Authority (VTA), the congestion management agency for Santa Clara County.

The impacts of the proposed expansions at the Moffett Towers and Ariba campuses are evaluated as one project since both sites have the same timing for occupancy. Additionally both sites have the same property owner and share floor area ratios (FAR). This presents a more conservative approach, since impacts are evaluated based on the combined traffic added to the roadway network versus looking at each site individually.

PROJECT DESCRIPTION

The project consists of two applications to the City of Sunnyvale. One application is for a new 200,000-s.f. office building on the site commonly referred to as the Ariba Campus (Building 5). The other application is for an additional 125,000 s.f. for a previously approved office building at the Moffett Towers campus (Building D of Lot 3). The two projects would result in a net new square footage of 325,000 s.f.

DEFINITIONS

- Existing – Conditions of roadways and intersections as of April 2011, when data for the study area was collected. This includes the 10 percent of the Moffett Towers campus square footage that was occupied at the time study was done.
- Project – Traffic associated with the proposed 325,000 s.f. of new building square footage including: a 200,000 s.f. new building on the Ariba Campus (Building 5) and 125,000 additional square footage for on Lot 3 of the Moffett Towers site (Building D).
- Background – Existing conditions plus growth associated with "approved and not built" and "not occupied" development (includes the 90% of unoccupied or un-built portions of Moffett Towers, which includes the entitled and un-built original Building D), plus a growth factor until 2013.
- Cumulative – Existing conditions plus background growth plus all planned and pending projects, as well as a growth factor from 2013-2016.
- Constrained Projects – A planned project for which VTA anticipates full funding within the timeframe of the regional transportation plan ("Valley Transportation Plan 2035").

STUDY AREA

The roadway impacts of the proposed projects were evaluated for the following intersections and freeway segments:

Study Intersections

- | | |
|--|---|
| 1. Enterprise Way/Building D Site Access (North)** | 15. Mathilda Avenue/US 101 Northbound Ramps |
| 2. Enterprise Way/Building D Site Access (South)** | 16. Mathilda Avenue/US 101 Southbound Ramps |
| 3. Enterprise Way/11th Avenue** | 17. Mathilda Avenue/Almanor Avenue/Ahwanee Avenue |
| 4. E Street/11th Avenue** | 18. Mathilda Avenue/Maude Avenue (CMP intersection) |
| 5. D Street/Ariba Site Access/11th Avenue** | 19. Mathilda Avenue/Indio Way |
| 6. C Street/Ariba Site Access/11th Avenue** | 20. Mathilda Avenue/California Avenue |
| 7. Innovation Way/Ariba Site Access** | 21. Ellis Street/Manila Drive* |
| 8. Enterprise Way/Manila Drive/Moffett Park Drive | 22. Ellis Street/US 101 Northbound Ramps* |
| 9. US 101 Northbound On-Ramp/Moffett Park Drive | 23. Ellis Street/US 101 Southbound Ramps* |
| 10. Innovation Way/Moffett Park Drive | 24. Ellis Street/Middlefield Road |
| 11. Mathilda Avenue/Moffett Park Drive | 25. SR 237 Westbound Ramps/Middlefield Road |
| 12. Mathilda Avenue/SR 237 Westbound Ramps | 26. SR 237 Eastbound Ramps/Middlefield Road |
| 13. Mathilda Avenue/SR 237 Eastbound Ramps | 27. Mary Avenue/Maude Avenue |
| 14. Mathilda Avenue/Ross Drive | |

*City of Mountain View Intersection

** Private Street Intersection¹

The listed intersections were selected in consultation with the City of Sunnyvale and determined based on VTA's ten trip per lane guideline, which indicates that intersections should be included if the proposed project adds 10 or more peak hour vehicles per lanes to any intersection movement.

¹ Private street intersections providing direct access to the project sites were analyzed using the City of Sunnyvale's impact criteria, because VTA TIA guidelines require an analysis of site circulation and the City has an interest in assuring that private street systems function sufficiently to not impact operations on City streets.

Freeway Segments

US 101 (Northbound and Southbound):

- Between Moffett Boulevard and SR 237
- Between SR 237 and Mathilda Street
- Between Mathilda Street and Fair Oaks Avenue
- Between Fair Oaks Avenue and Lawrence Expressway
- Between Lawrence Expressway and Great America Parkway
- Between Great America Parkway and Montague Expressway

SR 237 (Eastbound and Westbound):

- Between Maude Avenue and US 101
- Between US 101 and Mathilda Avenue
- Between Mathilda Avenue and Fair Oaks Ave
- Between Fair Oaks Avenue and Lawrence Expressway
- Between Lawrence Expressway and Great America Parkway

Project impacts to pedestrian facilities, bicycle facilities, and transit service and facilities are also addressed.

ANALYSIS SCENARIOS

The operations of the key intersections and freeway segments were evaluated during the weekday morning (AM) and afternoon (PM) peak hours for the following six scenarios:

- Scenario 1:** *Existing Conditions* - Existing volumes obtained from counts.
- Scenario 2:** *Existing plus Project Conditions* - Scenario 1 volumes plus traffic generated by the proposed project.
- Scenario 3:** *Background No Project Conditions* - Existing volumes plus traffic from "approved but not yet built" and "not occupied" developments in the area plus ambient growth to the anticipated completion year of the project.
- Scenario 4:** *Background plus Project Conditions* - Scenario 3 volumes plus traffic generated by the proposed project.
- Scenario 5:** *Cumulative No Project Conditions* - Background No Project volumes (Scenario 3) including pending developments in the area plus ambient growth to the year 2016.
- Scenario 6:** *Cumulative plus Project Conditions* - Scenario 5 volumes plus traffic generated by the proposed project.

ANALYSIS METHODS

The operations of roadway facilities are described with the term *level of service*. Level of Service (LOS) is a qualitative description of traffic flow based on such factors as speed, travel time, delay, and freedom to maneuver. Six levels are defined from LOS A, as the best operating conditions, to LOS F, or the worst operating conditions. LOS E represents "at-capacity" operations. When traffic volumes exceed the intersection capacity, stop-and-go conditions result, and operations are designated as LOS F.

Signalized Intersections

The method described in Chapter 16 of the 2000 *Highway Capacity Manual* (HCM) (Special Report 209, Transportation Research Board) was used to prepare the level of service calculations for the study intersections. This level of service method, which is approved by the City of Sunnyvale and VTA, analyzes a

signalized intersection's operation based on average control delay per vehicle. Control delay includes the initial deceleration delay, queue move-up time, stopped delay, and final acceleration delay. The average control delay for signalized intersections is calculated using TRAFFIX analysis software and is correlated to a LOS designation as shown in Table 1.

TABLE 1 SIGNALIZED INTERSECTION LEVEL OF SERVICE DEFINITIONS USING AVERAGE CONTROL VEHICULAR DELAY		
Level of Service	Description	Average Control Delay Per Vehicle (Seconds)
A	Operations with very low delay occurring with favorable progression and/or short cycle lengths.	≤ 10.0
B+	Operations with low delay occurring with good progression and/or short cycle lengths.	10.1 to 12.0
B		12.1 to 18.0
B-		18.1 to 20.0
C+	Operations with average delays resulting from fair progression and/or longer cycle lengths. Individual cycle failures begin to appear.	20.1 to 23.0
C		23.1 to 32.0
C-		32.1 to 35.0
D+	Operations with longer delays due to a combination of unfavorable progression, long cycle lengths, and high V/C ratios. Many vehicles stop and individual cycle failures are noticeable.	35.1 to 39.0
D		39.1 to 51.0
D-		51.1 to 55.0
E+	Operations with high delay values indicating poor progression, long cycle lengths, and high V/C ratios. Individual cycle failures are frequent occurrences.	55.1 to 60.0
E		60.1 to 75.0
E-		75.1 to 80.0
F	Operations with delays unacceptable to most drivers occurring due to over-saturation, poor progression, or very long cycle lengths.	> 80.0

Source: *Traffic Level of Service Analysis Guidelines*, VTA Congestion Management Program, June 2003; *Highway Capacity Manual*, Transportation Research Board, 2000.

The City of Sunnyvale's minimum threshold for acceptable signalized intersection operations is LOS D, except for the Mathilda Avenue corridor, which is identified as regionally significant. The threshold for the Mathilda corridor is LOS E. Similarly, LOS D is the minimum threshold for acceptable signalized intersection operations for City of Mountain View intersections. The threshold of Santa Clara County CMP intersections is LOS E, which applies only to the intersection of Mathilda Avenue/Maude Avenue.

Unsignalized Intersections

The operations of the unsignalized intersections were evaluated using the method contained in Chapter 17 of the 2000 HCM. LOS ratings for stop-sign-controlled intersections are based on the average control delay expressed in seconds per vehicle. At two-way or side-street-controlled intersections, the average control delay is calculated for each stopped movement, not for the intersection as a whole. For approaches composed of a single lane, the control delay is computed as the average of all movements in that lane. Table 2 summarizes the relationship between delay and LOS for unsignalized intersections.

**TABLE 2
UNSIGNALIZED INTERSECTION LEVEL OF SERVICE DEFINITIONS
USING AVERAGE CONTROL VEHICULAR DELAY**

Level of Service	Description	Average Control Delay Per Vehicle (Seconds)
A	Little or no delay.	≤ 10.0
B	Short traffic delay.	10.1 to 15.0
C	Average traffic delays.	15.1 to 25.0
D	Long traffic delays.	25.1 to 35.0
E	Very long traffic delays.	35.1 to 50.0
F	Extreme traffic delays with intersection capacity exceeded.	> 50.0

Sources: *Traffic Level of Service Analysis Guidelines*, VTA Congestion Management Program, June 2003; *Highway Capacity Manual*, Transportation Research Board, 2000.

Freeway Segments

Freeway segments are evaluated using VTA's analysis procedure, which is based on the density of the traffic flow using methods described in the 2000 HCM. Density is expressed in passenger cars per mile per lane. The Congestion Management Program range of densities for freeway segment level of service is shown in Table 3. The LOS standard for the freeway segments is LOS E.

**TABLE 3
FREEWAY SEGMENT LEVEL OF SERVICE DEFINITIONS**

Level of Service	Density (passenger cars per mile per lane)
A	≤ 11
B	11.1 to 18.0
C	18.1 to 26.0
D	26.1 to 46.0
E	46.1 to 58.0
F	> 58.0

Sources: *Traffic Level of Service Analysis Guidelines*, VTA Congestion Management Program, June 2003; *Highway Capacity Manual*, Transportation Research Board, 2000.

MOFFETT PARK SPECIFIC PLAN (MPSP)

The Moffett Park Specific Plan (MPSP) was adopted by the City of Sunnyvale on April 27, 2004. The MPSP defines goals and objectives for future development, community and design guidelines, infrastructure improvements, and development standards for the Moffett Park area. The Moffett Park area is located in the northern most portion of the City of Sunnyvale and is generally bounded by the Moffett Federal Airfield in the west, the San Francisco Bay to the north, SR 237 to the south and Sunnyvale Baylands Park to the east. In regards to transportation, the MPSP includes guidelines for mandatory transportation demand management programs, parking requirements for both vehicles and bicycles, planned roadway improvements to accommodate vehicles, transit, bicyclists, and pedestrian with the proposed buildout of Moffett Park.

CITYWIDE DEFICIENCY PLAN AND TRANSPORTATION IMPACT FEE

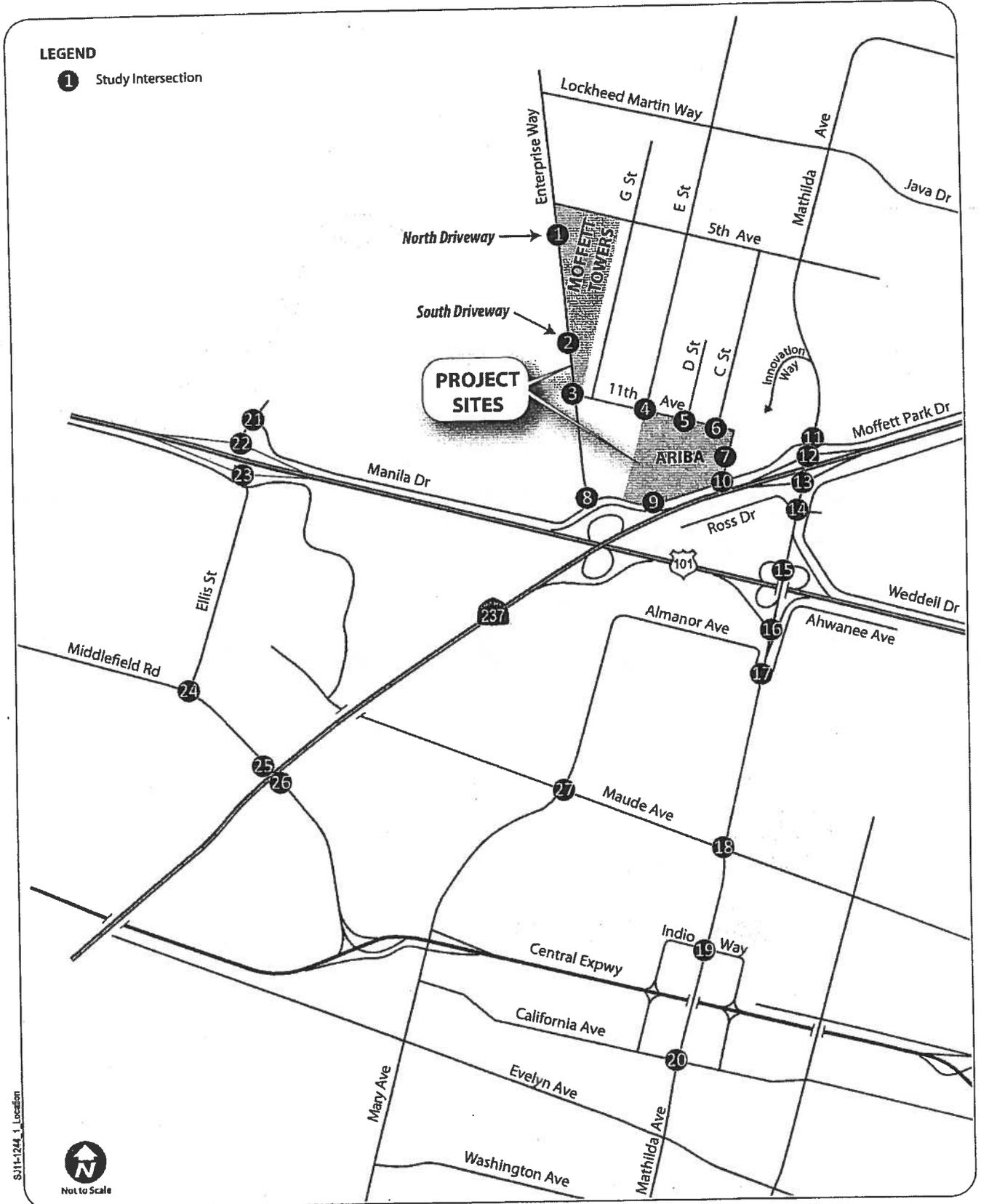
In compliance with VTA, the City of Sunnyvale maintains a *Citywide Deficiency Plan* (CDP, September 2005) to address existing and anticipated deficiencies in the level of service of intersections within the City. The objective of the CDP is to set forth a comprehensive citywide solution to LOS deficiencies at CMP facilities for which no localized mitigation is feasible. The CDP includes a list of transportation improvements to mitigate identified deficiencies. Improvements include intersection and roadway improvements, as well as, pedestrian, bicycle, and transit infrastructure improvements to facilitate multi-modal access throughout the City. Directly related to the proposed project is the Mary Avenue Extension project, which will extend Mary Avenue from its current terminus at Almanor Avenue north over SR 237 and US 101 connecting to 11th Avenue. The new roadway connection will change travel patterns on adjacent streets (particularly the parallel arterials) and will reduce congestion on key facilities such as Mathilda Avenue as compared to conditions without the extension.

The identified improvements will be funded through a combination of state and regional transportation funds and countywide taxes and over \$80 million will be funded through the City's two-tiered traffic impact fee (TIF), which identifies a separate fee structure for the Moffett Park Specific Plan area north of SR 237 and the remainder of the City south of SR 237.

REPORT ORGANIZATION

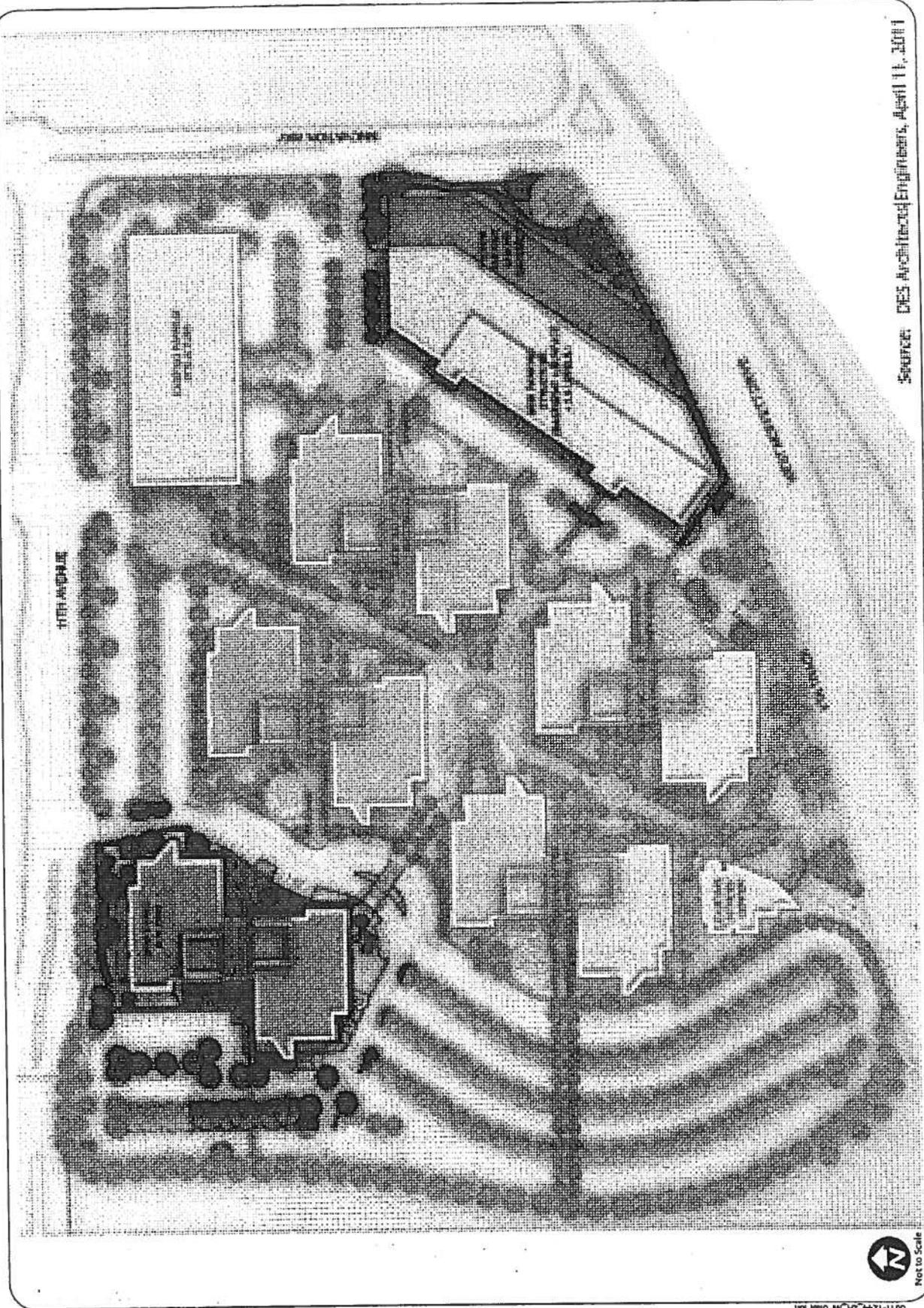
The remainder of this report is divided into five chapters. The existing transportation system serving the sites and the current operating conditions of the key intersections and freeway segments are described in Chapter 2. Chapter 3 describes Existing plus Project Conditions, including the method used to estimate the amount of traffic added to the surrounding roadways by the proposed projects and their impacts on the transportation system. Background Conditions are described in Chapter 4 and Cumulative Conditions are described in Chapter 5. A discussion of site access and on-site circulation is contained in Chapter 6. Chapter 7 discusses construction related impacts.

FIGURE 1
PROJECT LOCATION



SJ11-1244_1_Location

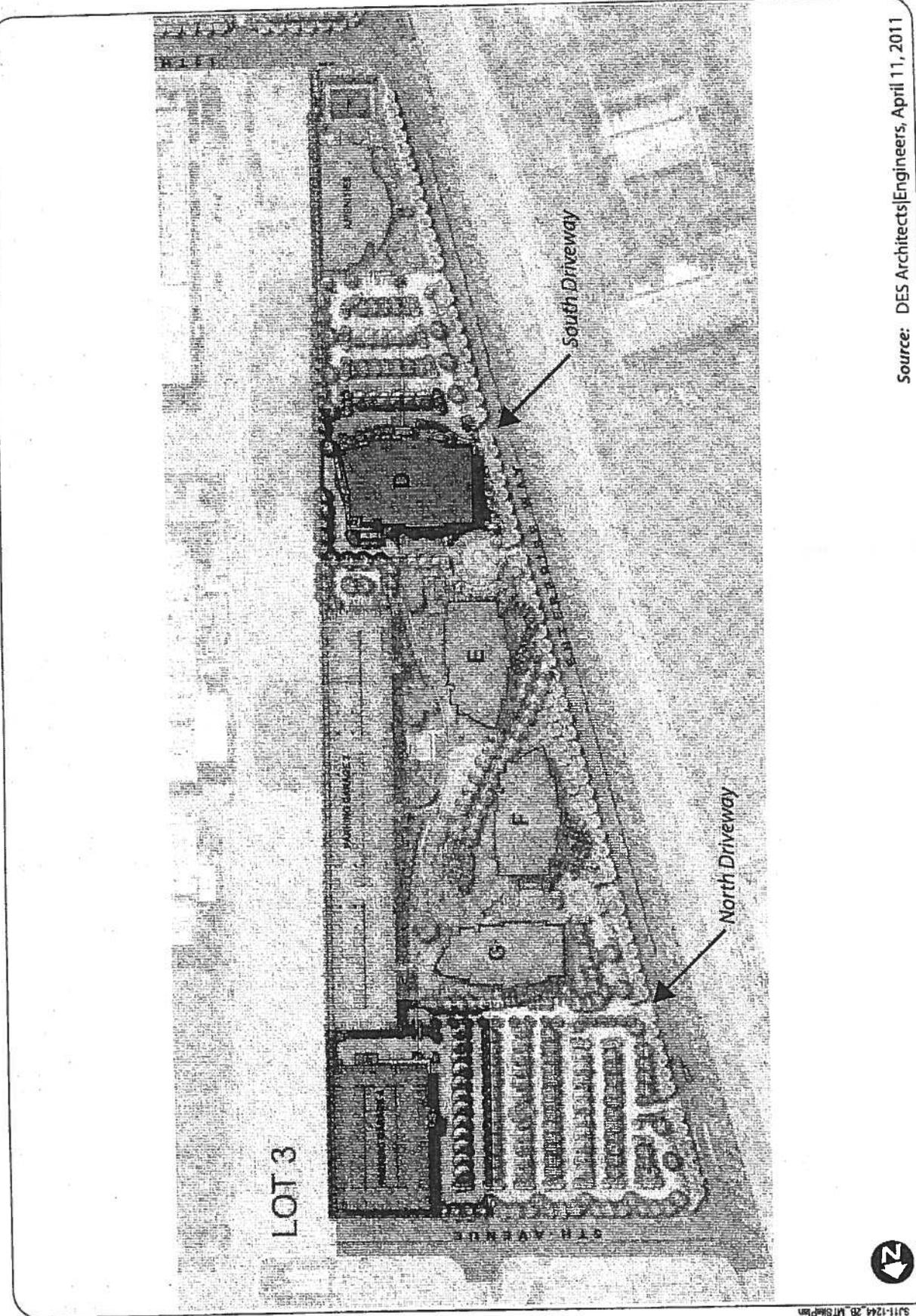
ARIBA CAMPUS EXPANSION SITE PLAN



SOURCE: DES ARCHITECTS/ENGINEERS, APRIL 11, 2011

8/11-12/14_2A_MP08a.rvt

MOFFETT TOWERS EXPANSION SITE PLAN



Source: DES Architects|Engineers, April 11, 2011



2. EXISTING CONDITIONS

This chapter describes the existing conditions of the roadway facilities, pedestrian and bicycle facilities, and transit service. It also presents existing traffic volumes and operations for the study intersections and freeway segments with the results of level of service calculations.

EXISTING ROADWAY NETWORK

State Route 237 (SR 237), US 101, and Central Expressway provide regional access to the project sites. The following streets provide local access to the project sites: Mathilda Avenue, Moffett Park Drive/Manila Drive, 11th Avenue, Innovation Way, Enterprise Way, Middlefield Road, Ellis Street, Mary Avenue, and Maude Avenue. Descriptions of these roadways are presented below. **Figure 1** shows the locations of these facilities in relation to the project sites.

SR 237 is located immediately south of the project sites and provides regional freeway access between the Cities of Mountain View and Milpitas. SR 237 is an east-west freeway with two mixed-flow lanes and one high occupancy vehicle (HOV) lane in each direction. HOV lanes, also known as diamond or carpool lanes, restrict use to vehicles with two or more persons (carpool, vanpool, and buses) or motorcycles during the morning (5:00 AM to 9:00 AM) and evening (3:00 PM to 7:00 PM) commute periods. Access from SR 237 is provided via its interchanges with Ellis Street (via US 101), Mathilda Avenue, Fair Oaks Avenue, and Lawrence Expressway. Near the project site SR 237 has an average daily traffic (ADT) volume of approximately 90,000 vehicles.

US 101 extends north through San Francisco and south through San Jose. Near the project sites, US 101 travels in an east-west direction with approximately 140,000 daily vehicles. The freeway has three mixed-flow lanes and one HOV lane in each direction. Similar to SR 237, interchanges at Ellis Street, Mathilda Avenue, Fair Oaks Avenue, and Lawrence Expressway provide local access to the project site.

Central Expressway is a divided four-lane east-west expressway between San Antonio Road in the City of Mountain View in the west and De La Cruz Boulevard in the City of Santa Clara to the east. To the west of San Antonio Road, Central Expressway continues to Menlo Park as Alma Road. Central Expressway provides local access to the site via interchanges at Mathilda Avenue, and Mary Avenue. Near the project site, Central Expressway carries about 21,000 daily vehicles.

Mathilda Avenue is a major six-lane north-south arterial that also provides regional access to SR 237 and US 101. North of SR 237, Mathilda Avenue connects to Caribbean Drive, which is the extension of Lawrence Expressway. To the south, Mathilda Avenue passes through central Sunnyvale and becomes Sunnyvale-Saratoga Road ultimately connecting to I-280 and SR 85. Mathilda Avenue is one of the City of Sunnyvale's designated truck routes for trucks over three tons in weight. Approximately 45,000 daily vehicles travel on Mathilda Avenue south of SR 237 on an average weekday.

Moffett Park Drive/Manila Drive is a two-lane east-west roadway that runs along the southern border of the Ariba Campus. Moffett Park Drive/Manila Drive provides direct regional access to the project site at the SR 237 interchange (except for the westbound off-ramp) and US 101 interchange and has an ADT of approximately 5,000 vehicles. Moffett Park Drive connects to Mathilda Avenue east of the project area and extends east as far as Caribbean Drive. Manila Drive extends west of the project site to Moffett Park Boulevard in Mountain View. No access is provided to Moffett Park Drive west of Mathilda Avenue from the SR 237 westbound off-ramp; vertical delineators currently prevent access to the northbound left-turn lanes.

11th Avenue is a four-lane, east-west roadway that extends from Enterprise Way to Innovation Way. 11th Avenue bisects the project area; Moffett Towers is located to the north and the Ariba Campus to the south. Direct access is provided to the Ariba Campus via two driveways from 11th Avenue.

Site and Airport Towers Highway Interchange Project
May 2011

Innovation Way is a four-lane, north-south roadway that extends from Moffett Park Drive to 11th Avenue. Innovation Way borders the Ariba Campus on the east side and is the main access point to the site's new parking garage.

Enterprise Way is a four-lane, north-south roadway that borders the Moffett Towers portion of the project on the west. Direct access to Moffett Towers is provided from Enterprise Way. In the south, Enterprise Way connects to Moffett Park/Manila Drive and provides regional access to US 101 and SR 237 from the site. There is an existing security gate located on Enterprise Way approximately 2,500 feet north of the 11th Avenue intersection (just south of 5th Avenue), which restricts access into the Lockheed Martin complex.

Middlefield Road is a four-lane, east-west roadway that connects Redwood City and Palo Alto to Central Expressway in Sunnyvale. Middlefield Road provides a partial interchange at SR 237, which is complimented by the Maude Avenue and SR 237 interchange just to the north. Middlefield Road provides local access to the project site via Ellis Street and Manila Drive.

Ellis Street is a four-lane, north-south roadway from Middlefield Road to Moffett Field Air Station. At its northern terminus there is a security station restricting access; all other vehicles must continue eastbound on Manila Drive in the direction of the project area. Ellis Street provides a full interchange with US 101.

Mary Avenue is a four-lane, north-south roadway that extends from Homestead Road in Cupertino to Almanor Avenue (just north of Maude Avenue). It has an ADT of approximately 12,000 vehicles near the project site. Mary Avenue currently provides access to Central Expressway. There are future plans to continue Mary Avenue to the north, passing over US 101, SR 237, and Moffett Park Drive before terminating at 11th Avenue. The Mary Avenue extension project is identified by the City as a fiscally constrained improvement project and the timeline for construction of the extension is uncertain at this time; therefore, the Mary Avenue extension project is not included as a future transportation improvement under the Background No Project and Background plus Project scenarios (Scenarios 3 and 4).

Maude Avenue is a four-lane, east-west roadway from SR 237 in the west to Wolfe Road in the east. It also has a partial interchange with SR 237, complementing the Middlefield Road interchange. Near the project site Maude Avenue has an ADT of approximately 15,000 vehicles on an average weekday.

PEDESTRIAN FACILITIES

Pedestrian facilities consist of sidewalks, crosswalks, and pedestrian signals at signalized intersections. In the vicinity of the project sites, sidewalks are provided on the east side of Enterprise Way between Moffett Park Drive and 5th Avenue, on both sides of 11th Avenue between Enterprise Way and Innovation Way, and on both sides of Innovation Way. There are no sidewalks on Moffett Park Drive/Manila Drive, though the City has identified sidewalks on Moffett Park/Manila Drive as a future pedestrian improvement. Most study intersections include crosswalks and pedestrian signals on all approaches.

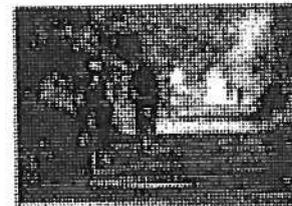
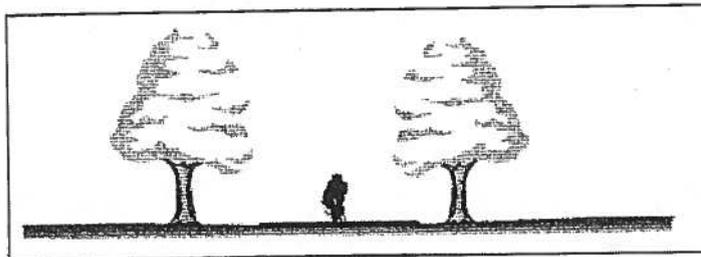
At the Mathilda Avenue/SR 237 interchange, north-south pedestrian movements are limited to the east side of Mathilda Avenue and east-west crossing of Mathilda Avenue is prohibited within the interchange area. Pedestrians crossing Mathilda (east-west) have to use the crosswalk on the north leg of the Mathilda Avenue/Moffett Park Drive intersection. Sidewalks continue on the east side of Mathilda Avenue from the SR 237 interchange to south of the US 101 interchange, at which point sidewalks continue on both sides of Mathilda Avenue. The City has identified providing sidewalks on both sides of Mathilda Avenue between Moffett Park Drive and US 101 as a future pedestrian improvement and are included in the TIF program.

Crosswalks and pedestrian signals are provided only in the east-west direction of the intersection of Enterprise Way/Manila Drive. A multi-use pedestrian/bicycle bridge crosses US 101 east of Mathilda Avenue providing a pedestrian/bicycle connection between Moffett Park to the north and the residential neighborhood to the south.

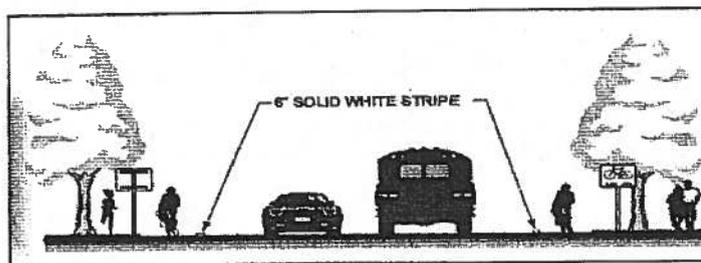
BICYCLE FACILITIES

Bikeway planning and design in California typically relies on guidelines and design standards established by California Department of Transportation (Caltrans) in the Highway Design Manual (Chapter 1000: Bikeway Planning and Design). Caltrans provides for three distinct types of bikeway facilities, as described below and shown on the accompanying figures.

- Class I Bikeway (Bike Path) provides a completely separate right-of-way and is designated for the exclusive use of bicycles and pedestrians with vehicle and pedestrian cross-flow minimized.



- Class II Bikeway (Bike Lane) provides a restricted right-of-way and is designated for the use of bicycles with a striped lane on a street or highway. Bicycle lanes are generally five (5) feet wide. Adjacent vehicle parking and vehicle/pedestrian cross-flow are permitted.



- Class III Bikeway (Bike Route) provides for a right-of-way designated by signs or pavement markings (sharrows) for shared use with pedestrians or motor vehicles. Sharrows are a type of pavement marking (bike and arrow stencil) placed to guide bicyclists to the best place to ride on the road, avoid car doors, and remind drivers to share the road with cyclists.

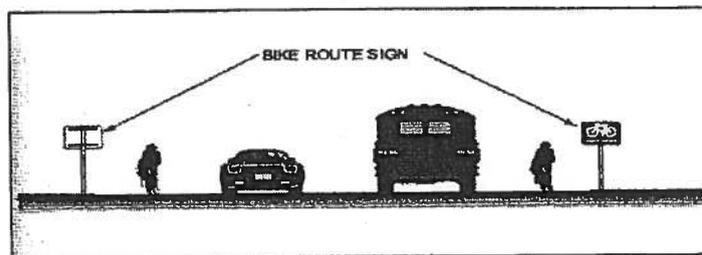


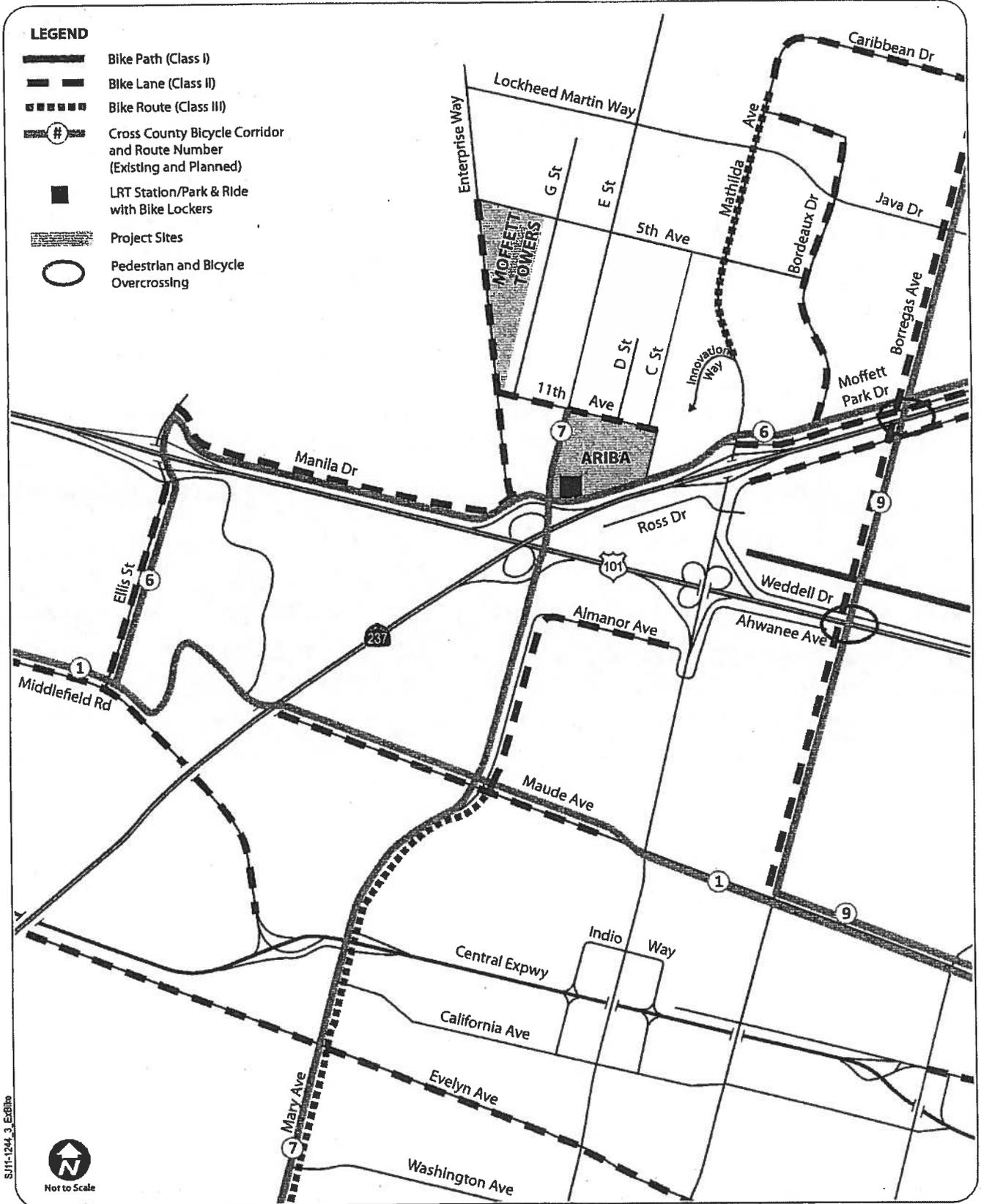
Figure 3 shows the location of the existing bicycle facilities in the vicinity of the project sites.

Near the project sites, there are bicycle lanes in both directions along 11th Avenue between Innovation Way and Enterprise Way and on Enterprise Way from Manila Avenue to 5th Avenue. Bicycle lanes are provided on Mathilda Avenue (north of Bordeaux Drive) and Moffett Park Drive (east of Bordeaux Drive). There are also bicycle lanes on Maude Avenue between SR 237 and Mary Avenue, on Ellis Street between Middlefield Road and the US 101 southbound ramps intersection, on Manila Drive between Ellis Street, and Enterprise Way, on Bordeaux Drive between Moffett Park Drive and Java Drive, on Borregas Avenue between Maude Avenue and Caribbean Drive, and on Middlefield Road west of Bernardo Avenue. A bicycle route is designated on Mathilda Avenue from Bordeaux Drive to Innovation Way and on Mary Avenue south of Maude Avenue. A discontinuous bicycle path extends from Gamer Drive to Weddell Drive along the north side of US 101 east of Mathilda Avenue.

Additionally, VTA has adopted the Santa Clara Countywide Bicycle Plan (CBP). The CBP guides the development of major bicycling facilities by identifying Cross County Bicycle Corridors and other projects of countywide or intercity significance. Several of these routes travel through the study area, including routes along Mary Avenue, Maude Avenue, Middlefield Road, Ellis Street, and Manila Drive/Moffett Park Drive.

Pedestrian and bicycle volumes were collected at all study intersection in March and April 2011. Pedestrian and bicycle volumes in the study network are shown in **Figure 4**. There is moderate bicycle use along Moffett Park Drive during the peak hours; most other bicycle movements have only a few users. Along Mathilda Avenue and on the frontage streets to the project (Enterprise Way, 11th Street, Moffett Park Drive), pedestrian volumes are low. It does appear that pedestrians only cross at marked crossings at most intersections. There is more pedestrian activity on the south end of Mathilda Avenue near Central Expressway. Ellis Street and Middlefield Road also exhibit low-to-moderate pedestrian activity.

FIGURE 3
EXISTING BICYCLE FACILITIES

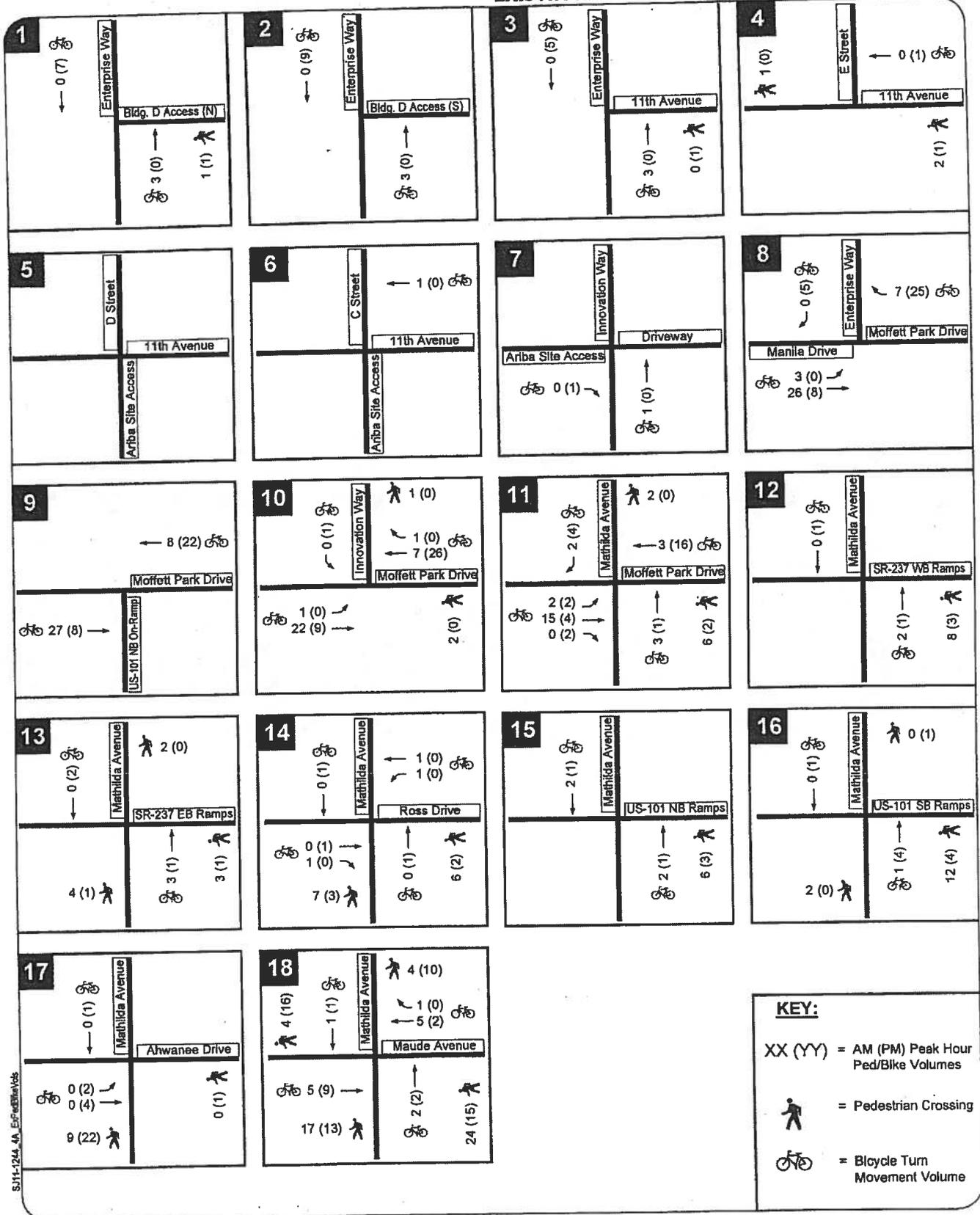


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FIGURE 4A

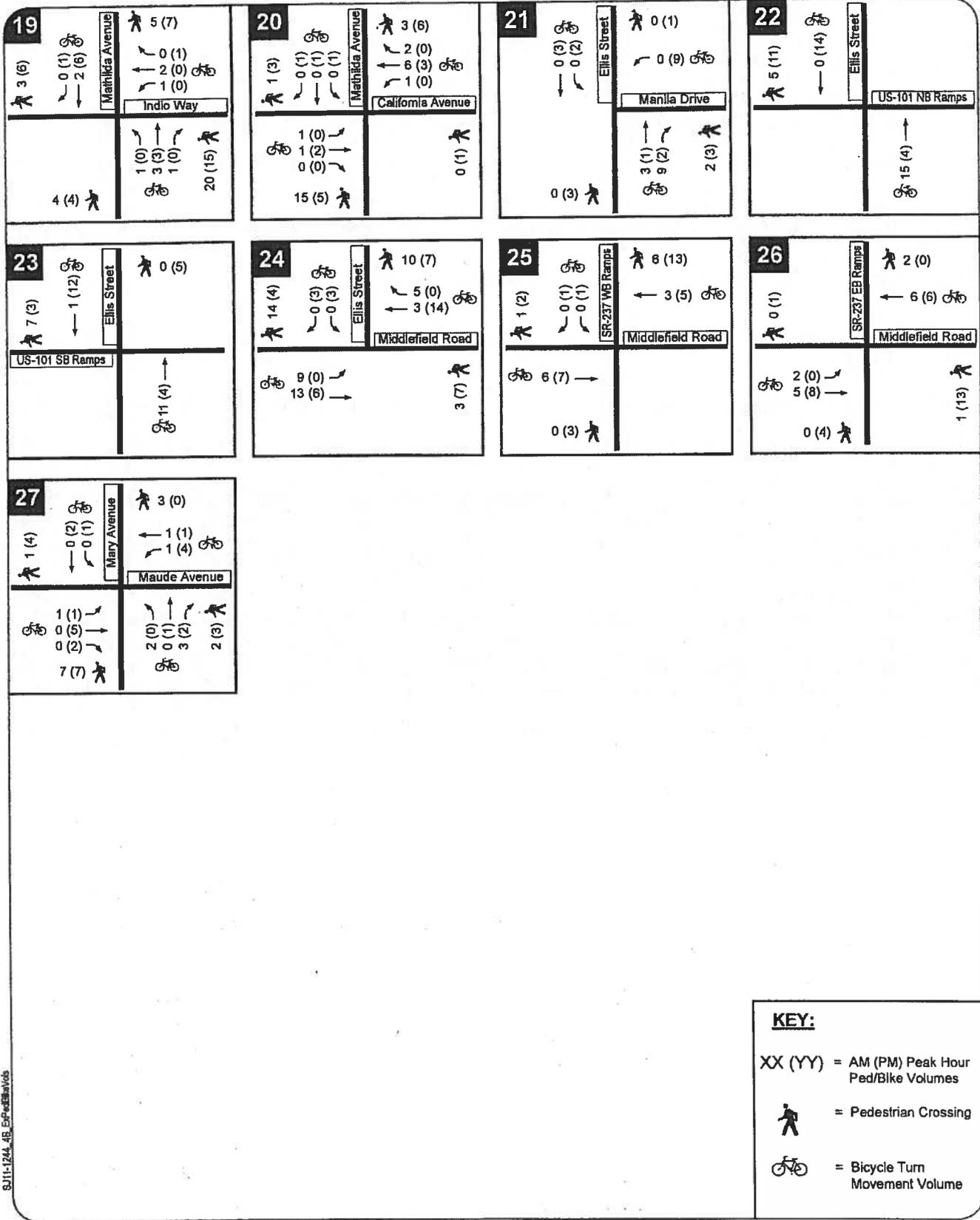
EXISTING PEDESTRIAN AND BICYCLE VOLUMES



S-11-1244_4A_EPR-081010

FIGURE 4B

EXISTING PEDESTRIAN AND BICYCLE VOLUMES



KEY:
 XX (YY) = AM (PM) Peak Hour Ped/Bike Volumes
 = Pedestrian Crossing
 = Bicycle Turn Movement Volume

SJI1-1244_4B_Exp-PedBikeVols

EXISTING TRANSIT SERVICE

The project sites are located near the Moffett Park light rail transit (LRT) station, which is on the Mountain View to Winchester Avenue light rail line (line 902) operated by the Santa Clara Valley Transportation Authority (VTA). VTA also operates bus service in the area. Shuttles to Caltrain and Altamont Commuter Express (ACE) stations also serve the Moffett Park and Arriba campuses. Figure 5 shows the existing transit service near the project site, which are described in detail below and summarized in Table 4. Included in the table are the origin and destination, the operating hours, the headways, and the average peak load factor. The average peak load factor is a measure of resource utilization. It compares the supply of seats on a bus versus the average peak number of on-board passengers aboard at any time during the peak period. For all-day service, the average peak load factor is based on the average peak load factor over the entire day.

**TABLE 4
EXISTING TRANSIT SERVICE**

Route	From	To	Weekdays			Weekends	
			Average Peak Load Factor ¹	Operating Hours	Peak Headway ² (minutes)	Operating Hours	Headway ² (minutes)
Bus Service (VTA)							
26	Eastridge Transit Center	Lockheed Martin Transit Center	0.49	5:19 a – 11:46 p	30	6:28 a – 10:53 p	30 – 60
54	De Anza College		0.33	6:04 a – 9:04 p	30	7:56 a – 7:54p	45 – 60
120	Fremont BART Station		0.49	6:14 a – 9:17 a 4:07 p – 7:06 p	4 SB Runs – AM 4 NB Runs – PM	No Service	
121	Gilroy Transit Center		0.52	4:31 a – 8:45 a 2:51 p – 7:30 p	30 – 60	No Service	
122	Santa Teresa LRT Station		0.38	5:53 a – 6:43 a 4:46 p – 5:43 p	1 NB Run – AM 1 SB Run – PM	No Service	
321	Great Mall/Main Transit Center		0.08	8:10 a – 8:45 a 5:45 p – 6:28 p	1 WB Run – AM 1 EB Run – PM	No Service	
328	South San Jose		0.24	6:00 a – 7:02 a 5:06 p – 6:09 p	1 NB Run – AM 1 SB Run – PM	No Service	
826 (ACE)	ACE Great America Station		N/A	6:14 a – 9:02 a 3:10 p – 5:37 p	3 WB Runs – AM 3 EB Runs – PM	No Service	
Mary/Moffett Area Caltrain Shuttle	Mountain View Caltrain Station	Alma Plaza	N/A	6:35 a – 10:23 a 3:00 p – 6:30 p	4 NB Runs – AM 4 SB Runs – PM	No Service	
Light Rail Service (VTA)							
902	Downtown Mountain View	Winchester	0.34	4:50 a – 12:34 a	15	6:07 a – 12:32 a	30
<p>Notes:</p> <p>1. Average peak load factor is the ratio of the average peak number of on-board passengers aboard during the peak period to supply of seats.</p> <p>2. Headways are defined as the time interval between two transit vehicles travelling in the same direction over the same route.</p> <p>Source: VTA, Caltrain, April 2011.</p>							

VTA LRT and Local Bus Routes

The VTA Mountain View to Winchester Avenue light rail (line 902) runs along Java Drive, Mathilda Avenue, Moffett Park Drive, and Manila Drive near the project sites. This line operates between 4:50 AM and 12:35 AM on 15- to 30-minute headways. On weekends, service is provided between 6:05 AM and 12:35 AM with 30-minute headways.

Bus Route 26 operates on Mathilda Avenue, Java Drive, and Fair Oaks Avenue. Route 26 provides service between the Eastridge Mall and Lockheed Martin/Moffett Park transit centers. Route 26 follows major arterials and travels through Sunnyvale, Cupertino, San Jose, and Campbell. During weekdays, Route 26 operates between 5:15 AM and 11:50 PM with 20 to 30-minute headways. On weekends, Route 26 operates between 6:25 AM and 11:00 PM with 30-minute headways. Bus stops for Route 26 are provided at Java Drive and the Lockheed Martin/Moffett Park Transit Center.

Similar to Bus Route 26, *Bus Route 54* operates on Mathilda Avenue, Java Drive, and Fair Oaks Avenue. Route 54 provides service between De Anza College and Sunnyvale/Fair Oaks Avenue. During weekdays, Route 54 serves the stops near the project site between 6:00 AM and 9:05 PM with 30-minute headways. On weekends, Route 54 operates between 7:55 AM and 7:55 PM with 45 to 60-minute headways. Bus stops for Route 54 are provided along Mathilda Avenue near Maude Avenue, Ahwanee Avenue, Ross Drive, and north of Moffett Park Drive at the Lockheed Martin/Moffett Park Transit Center.

Additionally, *Bus Route 32* operates on Central Expressway and Mathilda Avenue and could be used as a connection to Bus Route 54. Route 32 provides service between the San Antonio and Santa Clara transit centers. Route 32 follows major arterials and travels through Mountain View, Sunnyvale, and Santa Clara.

Express and Limited Stop Bus Routes

The VTA also runs several express bus routes and limited stop bus routes throughout the project area.

Bus Route 120 is an express bus route that operates on SR 237, Caribbean Drive, Java Drive, and Mathilda Avenue; it connects Fremont (Fremont BART Station) to the Lockheed Martin Transit Center. Four Route 120 runs occur during each weekday peak period (to the project area in the morning and from it in the afternoon). The buses arrive between 6:15 AM and 8:30 AM with 30 to 60-minute headways; the same buses leave between 4:05 PM and 6:15 PM with the same headways.

Bus Route 121 is an express bus route that operates on Lawrence Expressway, Caribbean Drive, Java Drive, and Mathilda Avenue; it connects Gilroy (Gilroy Transit Center) and Morgan Hill (Morgan Hill Caltrain Station) to the Lockheed Martin Transit Center. Six Route 121 runs occur during each weekday peak period (to the project area in the morning and from it in the afternoon). The buses arrive between 5:30 AM and 8:45 AM with 30 to 45-minute headways; the same buses leave between 2:50 PM and 6:10 PM with 30 to 60-minute headways.

Bus Route 122 is an express bus route that operates on US 101, Lawrence Expressway, Caribbean Drive, Java Drive, and Mathilda Avenue; it connects south San Jose (Santa Teresa LRT Station) to the Lockheed Martin Transit Center. One Route 122 run occurs during each weekday peak period (to the project area in the morning and from it in the afternoon). The bus arrives at 6:45 AM and leaves at 4:45 PM.

Bus Route 321 is a limited stop bus route that operates on the Lawrence Expressway, Caribbean Drive, Java Drive, and Mathilda Avenue; it connects Milpitas (Great Mall Transit Center) to the Lockheed Martin Transit Center. One Route 321 run occurs during each weekday peak period (away from the project area in the morning and to it in the afternoon). The bus arrives at 8:45 AM and leaves at 5:45 PM.

Bus Route 328 is a limited stop bus route that operates on the Lawrence Expressway, Caribbean Drive, Java Drive, and Mathilda Avenue; it connects south San Jose (near Almaden Expressway) to the Lockheed Martin

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Transit Center. One Route 321 run occurs during each weekday peak period (away from the project area in the morning and to it in the afternoon). The bus arrives at 7:00 AM and leaves at 5:00 PM.

Additionally, *Bus Route 104* passes the project site on US 101 and SR 237; it connects Palo Alto, Mountain View, Milpitas, and San Jose.

Caltrain and ACE Shuttles

Caltrain provides intercity passenger rail service between San Francisco and San Jose. Four *Mary/Moffett Area Caltrain Shuttle* runs connect the Mountain View Caltrain Station with office buildings in the Mary Avenue and Moffett Park areas. During weekday AM and PM commute periods, the Caltrain shuttle operates every 50 to 60 minutes on Mathilda Avenue with a stop near Ahwanee Avenue; there is another stop on Hamlin Court off Ross Drive. The Mountain View station is a designated express train station for Caltrain. Bus service between the Sunnyvale Caltrain Station and the Moffett Park area is provided by VTA Route 54. Additional private shuttles to the Moffett Park area from the Sunnyvale Caltrain Station are operated by local employers. These services are generally limited to the specific employer(s).

The *Altamont Commuter Express* provides passenger rail service between Stockton and San Jose. The *Altamont Commuter Express Red Line Shuttle (Route 826)* provides free shuttle service between buildings in the Moffett Park and the ACE Great America Station in Santa Clara. This shuttle operates on Mathilda Avenue north of the study area. Shuttle stops are provided at the Lockheed Martin/Moffett Park Transit Center. Three shuttle runs operate during each commute period with 60-minute headways.

Local Shuttles

There are a number of local shuttles specific to Moffett Park Area that provide service within Moffett Park and to surrounding neighborhoods and major transit facilities. The Moffett Park Business & Transportation Association provides information on the shuttle programs to the tenant in Moffett Park.

EXISTING TRANSPORTATION DEMAND MANAGEMENT PROGRAMS

The MPSP requires all new projects in the Moffett Park area of Sunnyvale to have transportation demand management (TDM) programs that reduce daily trips by a minimum of 20 percent and peak hour vehicles trips by at least 30 percent. Based on the MPSP, TDM programs need to provide detailed descriptions of the employed TDM strategies and should address penalties for non-compliance. TDM programs include an annual review of employee commuting patterns and need to be submitted to City staff for review.

Both the existing Moffett Towers and Ariba sites have active TDM programs that have been approved by the City and the new buildings will fully participate in their respective programs. The Ariba site was approved before adoption of the MPSP with a TDM reduction goal of only 15 percent for both daily and peak hour trips. The following is a partial list of example measures in the TDM programs aimed at reducing both single-occupant vehicle trips and parking demand:

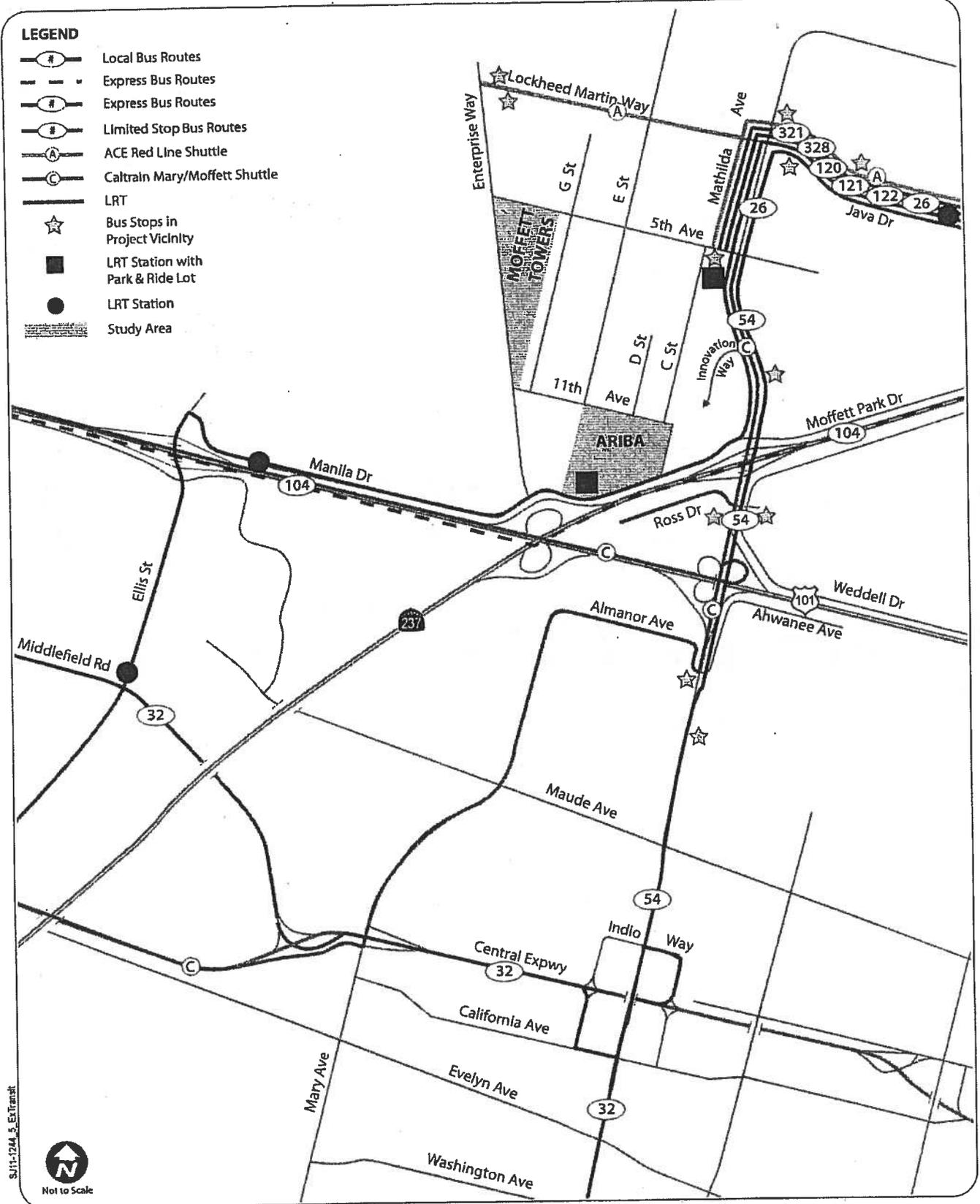
- Bicycle parking including lockers, racks, and cages.
- Showers, changing rooms, and clothing lockers.
- Subsidized transit tickets for all feasible transit modes.
- Preferential carpool and vanpool parking.
- On-site commuter assistance center offering one-stop shopping for transit and commute alternative information.
- High-speed internet connections in employee homes to facilitate telecommuting.
- Video conferencing facilities.
- Compressed work week program.

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July 2011

- On-site amenities that encourage workers to leave cars at home.
- Bicycle and pedestrian "cash" payments.
- Participation in a guaranteed ride home program.
- Vanpool implementation support.
- Parking "cash out" program where employees are offered a cash incentive not to drive their car to the site.
- Participation in the Moffett Park Business and Transportation Association.
- Participation in the Mary/Moffett and ACE shuttle

FIGURE 5

EXISTING TRANSIT FACILITIES



EXISTING INTERSECTION VOLUMES AND LANE CONFIGURATIONS

The existing operations of the study intersections were evaluated for the highest one-hour volume during the weekday morning (7:00 AM to 9:00 AM) and evening (4:00 PM to 6:00 PM) peak periods. AM and PM peak-hour intersection turning movement counts were conducted in March and April 2011. Copies of new traffic counts are included in Appendix A. Figure 6 presents the existing AM and PM peak-hour turning movement volumes, lane configurations, and traffic control devices at the study intersections.

EXISTING INTERSECTION LEVELS OF SERVICE

Existing intersection lane configurations, signal timings, and peak-hour turning movement volumes were used to calculate the levels of service for the key intersections during each peak hour. The results of the LOS analysis using the TRAFFIX software program for Existing Conditions are presented in Table 5. Appendix B contains the corresponding calculation sheets.

The results of the LOS calculations indicate that all study intersections operate at acceptable service levels (LOS D or better for City intersections and LOS E or better for regionally significant and CMP intersections) during the AM and PM peak periods.

	Intersection	Peak Hour ¹	Intersection Control	Delay ²	LOS ³
1	Enterprise Way/Building D Site Access (North)	AM PM	Side-Street Stop	10.8 11.1	B B
2	Enterprise Way/Building D Site Access (South)	AM PM	Side-Street Stop	0.0 10.0	A A
3	Enterprise Way/11 th Avenue	AM PM	All-Way Stop	8.9 8.8	A A
4	E Street/11 th Avenue	AM PM	All-Way Stop	7.3 7.3	A A
5	D Street/Ariba Site Access/11 th Avenue	AM PM	All-Way Stop	7.6 7.5	A A
6	C Street/Ariba Site Access/11 th Avenue	AM PM	All-Way Stop	7.5 7.9	A A
7	Innovation Way/Ariba Site Access	AM PM	Side-Street Stop	8.8 11.3	A B
8	Enterprise Way/Manila Drive/Moffett Park Drive	AM PM	Signal	12.4 10.9	B B+
9	US 101 Northbound On-Ramp/Moffett Park Drive	AM PM	Signal	1.3 7.5	A A
10	Innovation Way/Moffett Park Drive	AM PM	Signal	6.1 12.2	A B
11	Mathilda Avenue/Moffett Park Drive**	AM PM	Signal	16.4 21.5	B C+
12	Mathilda Avenue/SR 237 Westbound Ramps**	AM PM	Signal	18.6 17.2	B- B

**TABLE 5
EXISTING INTERSECTION LEVELS OF SERVICE**

	Intersection	Peak Hour ¹	Intersection Control	Delay ²	LOS ³
13	Mathilda Avenue/SR 237 Eastbound Ramps**	AM PM	Signal	18.5 13.0	B- B
14	Mathilda Avenue/Ross Drive**	AM PM	Signal	15.6 12.0	B B
15	Mathilda Avenue/US 101 Northbound Ramps**	AM PM	Uncontrolled	N/A N/A	N/A N/A
16	Mathilda Avenue/US 101 Southbound Ramps**	AM PM	Uncontrolled	N/A N/A	N/A N/A
17	Mathilda Avenue/Almanor Avenue/Ahwanee Avenue**	AM PM	Signal	22.1 20.5	C+ C+
18	Mathilda Avenue/Maude Avenue*	AM PM	Signal	42.9 28.0	D C
19	Mathilda Avenue/Indio Way**	AM PM	Signal	17.0 14.6	B B
20	Mathilda Avenue/California Avenue**	AM PM	Signal	17.8 18.2	B B-
21	Ellis Street/Manila Drive***	AM PM	All-Way Stop	8.1 9.8	A A
22	Ellis Street/US 101 Northbound Ramps***	AM PM	Signal	16.4 22.2	B C+
23	Ellis Street/US 101 Southbound Ramps***	AM PM	Signal	17.5 12.9	B B
24	Ellis Street/Middlefield Road***	AM PM	Signal	14.1 21.6	B C+
25	SR 237 Westbound Ramps/Middlefield Road***	AM PM	Signal	18.7 18.8	B- B-
26	SR 237 Eastbound Ramps/Middlefield Road***	AM PM	Signal	19.9 15.9	B- B
27	Mary Avenue/Maude Avenue	AM PM	Signal	26.5 23.6	C C

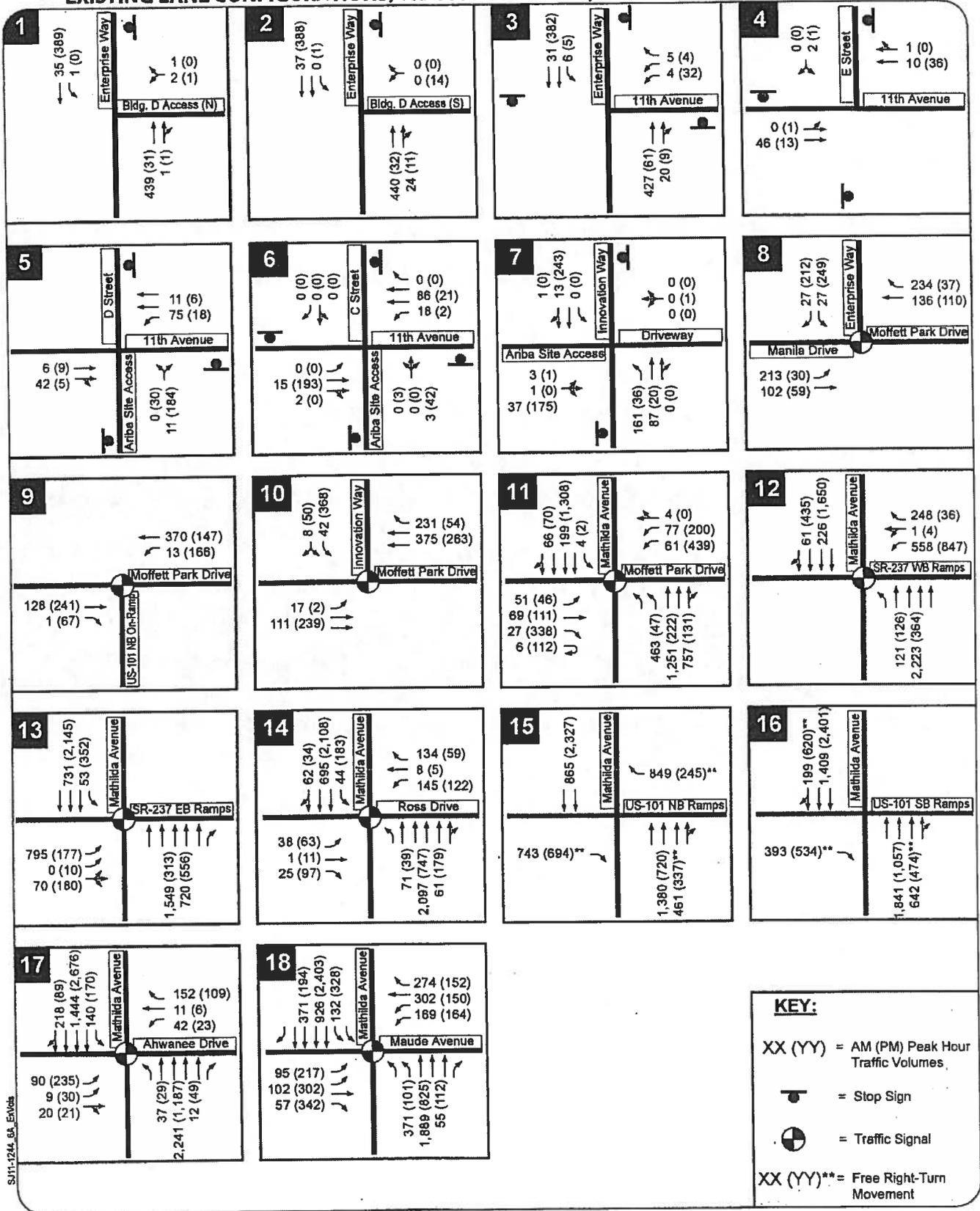
Notes:

- 1 AM = morning peak hour, PM = afternoon peak hour.
 - 2 Whole intersection weighted average control delay expressed in seconds per vehicle for signalized and all-way stop controlled intersections. Signalized intersections include adjusted saturation flow rates to reflect Santa Clara County Conditions per VTA guidelines. Total control delay for the worst movement is presented for side-street stop-controlled intersections
 - 3 LOS = Level of Service. LOS calculations conducted using the TRAFFIX level of service analysis software package, which applies the methodology described in the 2000 HCM.
- * CMP intersection with LOS E threshold.
 ** Regionally significant intersection with LOS E threshold.
 *** City of Mountain View intersection.

Source: Fehr & Peers, April 2011.

FIGURE 6A

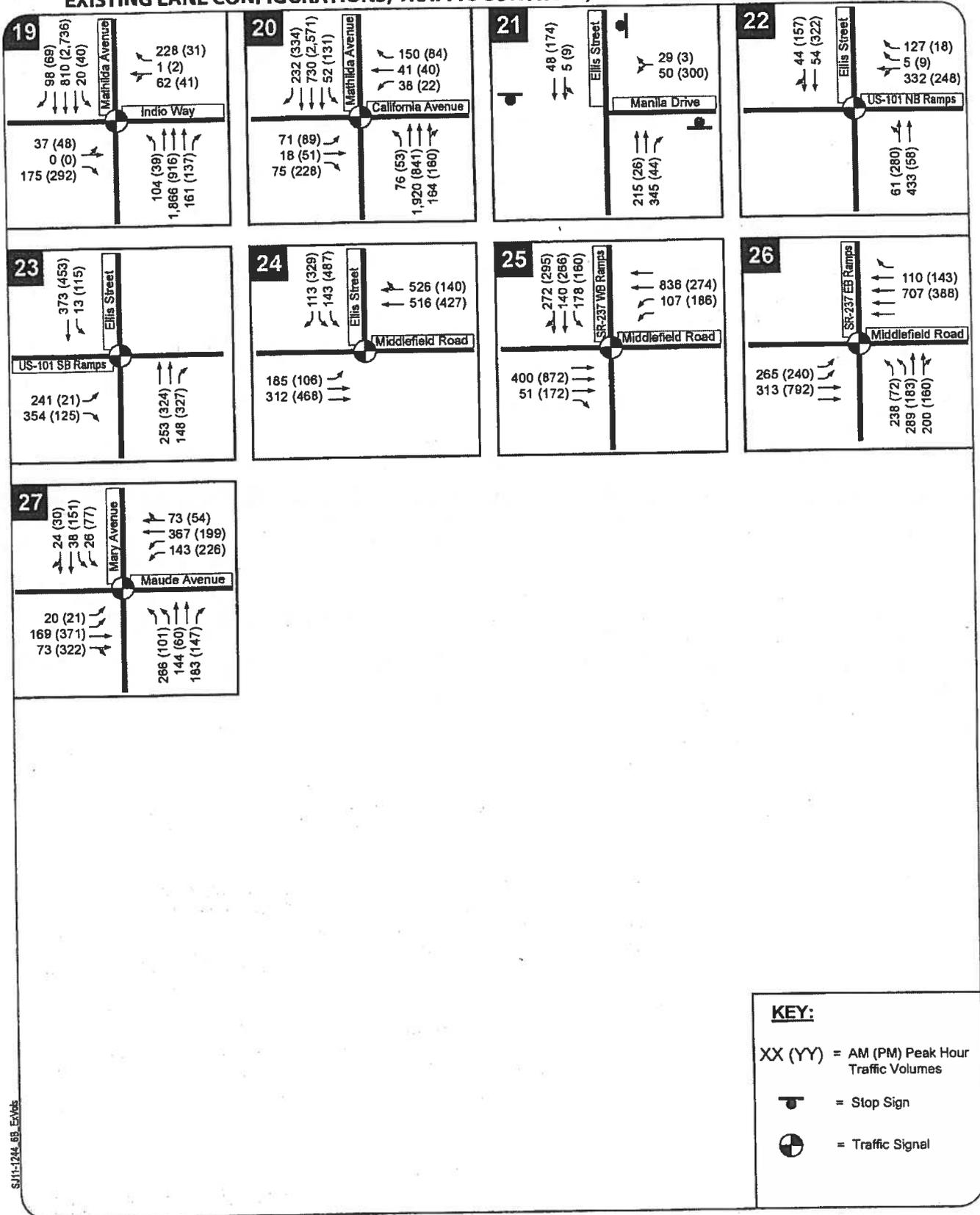
EXISTING LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



SJ11-124-0A-Exhib

FIGURE 6B

EXISTING LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



9-11-124-08-Exhib

Qualitative Evaluation of Synchro/SimTraffic Analysis for Mathilda Avenue Corridor

The study intersections on the Mathilda Avenue corridor between Moffett Park Drive and Almanor Avenue are closely spaced and the corridor experiences operational issues beyond simple intersection LOS primarily due to vehicle weaving. The TRAFFIX analysis software program does not accurately capture the operations of the Mathilda Avenue corridor since it does not evaluate the interactions of closely spaced and coordinated intersections. To supplement the TRAFFIX analysis results, the results and findings from earlier studies that used the Synchro and SimTraffic software programs to evaluate the Mathilda Avenue corridor are discussed (MPSP, Moffett Towers TIA, VTA State Route 237 Corridor Study, and the Citywide Deficiency Plan).

Based on the Synchro analysis presented in the MPSP EIR², the Mathilda Avenue Corridor between Moffett Park Drive and Ross Drive operates at acceptable service levels during the morning peak period. The Mathilda Avenue/Moffett Park Drive intersection operates at unacceptable LOS during the PM peak hour, with the remaining intersections operating at acceptable service levels. Based on the Synchro analysis the overall coordinated signal system for the Mathilda Avenue corridor operates at LOS B during both peak periods.

The MPSP EIR also analyzed the Mathilda Avenue corridor using SimTraffic analysis software to evaluate the effectiveness of signal coordination and queuing impacts. The results showed that during the AM peak hour the northbound approach at the Mathilda Avenue/Ross Drive intersection and during the PM peak hour the westbound approach and southbound through movement at the Mathilda Avenue/Moffett Park Drive intersection experience some additional queuing beyond the provided storage lengths; though queues did not extend more than three car lengths (about 75 feet) beyond available storage capacities.

The intersection turning movement volumes from the MPSP EIR were compared to the 2011 counts collected for this report. On average the 2011 AM peak hour volumes are about nine percent lower and the 2011 PM peak hour volumes are about two percent higher than the volumes collected for the MPSP. Overall, this demonstrates that the Synchro and SimTraffic results from the MPSP EIR are applicable to the results for this report. Additionally, the section below on field observation highlights some of the queuing and weaving issues for the Mathilda Avenue corridor.

FIELD OBSERVATIONS

Field observations of the study intersections were conducted during the morning and evening peak hours in March and April 2011. In most cases, the intersections were observed to operate at the calculated levels of service for each peak hour. However, in some locations there were differences between the observed and calculated operations. During both AM and PM peak commute periods operations at the intersections of Mathilda Avenue/Moffett Park Drive, Mathilda Avenue/SR 237 westbound ramps, and Mathilda Avenue/SR 237 eastbound ramps experienced high traffic volumes that caused long queues and congestion.

Mathilda Avenue, from Moffett Park Drive to Ross Drive – There are four closely spaced, signalized intersections within a distance of 750 feet in this section of Mathilda Avenue. These intersections carry traffic using three major regional roadways: SR 237, US 101, and Mathilda Avenue. The combination of heavy traffic volumes and close intersection spacing make lane changes difficult. The weaving maneuvers for each intersection are described below. In addition, several through lanes on Mathilda Avenue ultimately end in turn lanes at downstream intersections (this condition is commonly referred to as a trap lane). A diagram of the roadway geometry for this corridor is presented on Figure 7. As a result of the existing roadway configuration, a large number of weaving maneuvers occur and vehicles spill back to adjacent intersections resulting in travel delays. The TRAFFIX level of service program cannot fully account for these complex maneuvers; therefore, other factors and analysis methods were considered when interpreting the LOS results, as described above.

² Moffett Park Specific Plan Environmental Impact Report, RBF Consulting, 2002.

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Mathilda Avenue/Moffett Park Drive – In the AM peak hour, at the Mathilda Avenue/Moffett Park Drive intersection, the heaviest movements were the northbound through and left-turn movements. Due to the short storage length (90 feet) between Moffett Park Drive and the westbound SR 237 ramps, northbound traffic frequently spill backed into the Mathilda Avenue/SR 237 westbound ramps intersection.

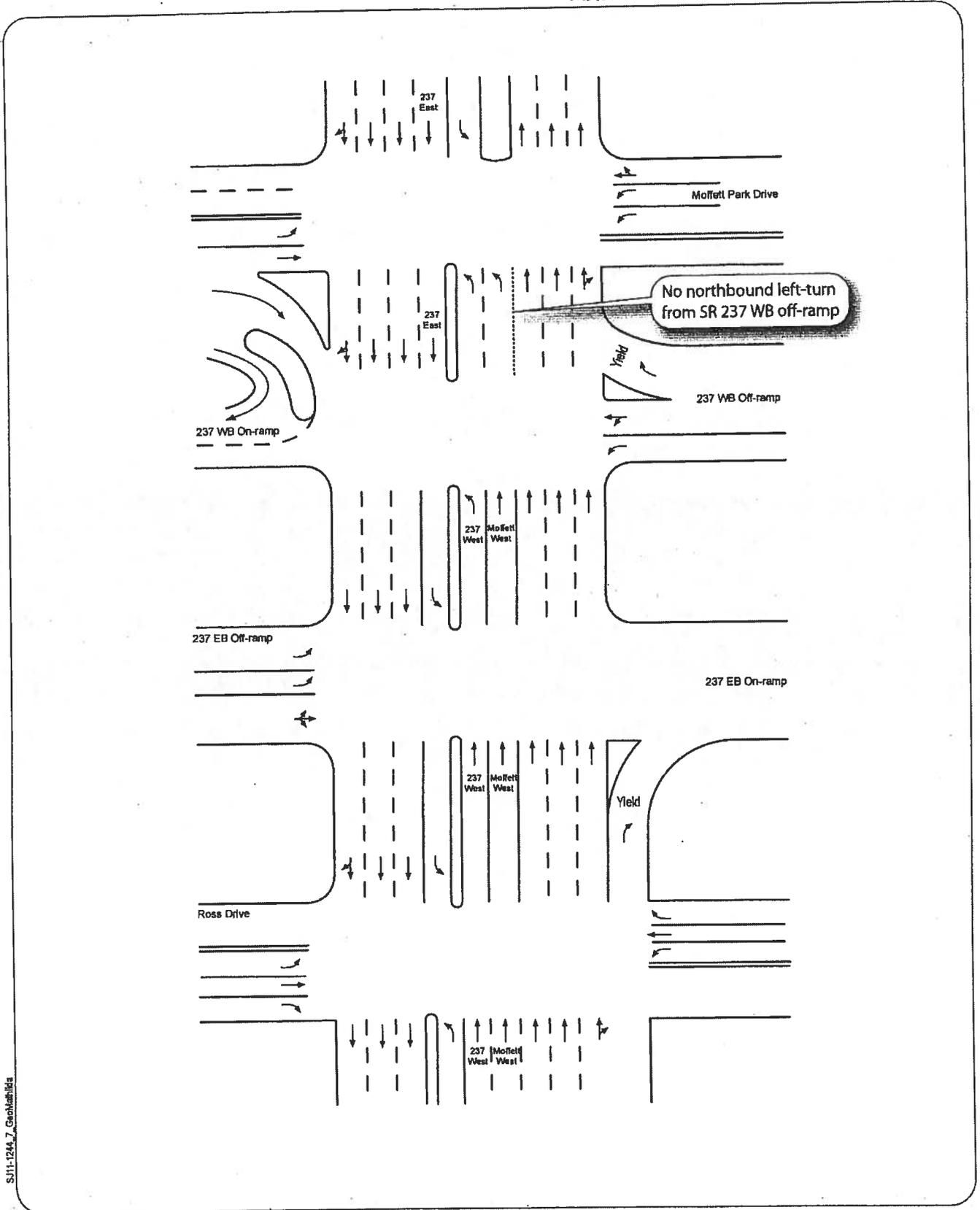
During the PM peak commute period, southbound Mathilda through traffic does not efficiently utilize the available green time due to queue spill back from the downstream intersection at Mathilda Avenue/SR 237 Eastbound ramp intersection. This frequently led southbound through traffic to block the intersection, which in turn hinders westbound traffic from making left-turns. It was observed that the westbound left-turn movement had a large queue and only about half of the queue was able to clear during each green phase (cycle). This standing queue resulted in two to three cars per cycle that entered the intersection under the red at the end of each phase serving westbound Moffett Park Drive.

Mathilda Avenue/SR 237 Westbound Ramps – Westbound SR 237 off-ramp traffic cannot access westbound Moffett Park Drive; vertical delineators prohibit the right-turn movement into those lanes. Vehicles would have to cross three lanes of through traffic Mathilda Avenue to access the northbound left-turn lane. These maneuvers would have to be accomplished in less than 100 feet.

Mathilda Avenue/SR 237 Eastbound Ramps – During the AM peak period, traffic was heavy at the intersection of Mathilda Avenue/SR 237 Eastbound ramps; however, there was little congestion and no illegal movements observed. During the PM peak period, the southbound through and left-turn lanes have limited storage capacity, which causes vehicles to spill back into the upstream intersection at Moffett Park Drive.

Mathilda Avenue/Ross Drive - During the AM peak period, traffic is heaviest in the northbound direction (through movements). Specifically, lane utilization is the heaviest in the outer through lane, with vehicles lining up to access the SR 237 eastbound on-ramp at the next intersection. Queues occasionally backed up near the northbound off-ramp, but cleared within two minutes. The queues did affect freeway or ramp operations. In the PM peak hour, no major queues or delays were observed. Southbound traffic is held at the signal for the SR 237 eastbound off-ramp and approaches the Mathilda Avenue/Ross Drive intersection in smaller platoons (groups), which minimizes potential delay and queuing problems.

FIGURE 7
MATHILDA AVENUE ROADWAY DIAGRAM



S11-1244_7_CrossMathilda

EXISTING FREEWAY SEGMENT LEVELS OF SERVICE

According to VTA's *Transportation Impact Analysis Guidelines* (VTA, 2009) a freeway segment analysis should be included if the project meets one of the following requirements:

1. The proposed development project is expected to add traffic equal to at least one percent of a freeway segment's capacity.
2. The proposed development project is adjacent to one of the freeway segment's access or egress points
3. Based on engineering judgment, Lead Agency staff determines that the freeway segment should be included in the analysis.

For mixed-flow lanes, freeway segment capacities are defined as 2,200 vehicles per hour per lane (vphpl) for four-lane freeway segments and 2,300 vphpl for six-lane freeway segments. HOV lane capacities are defined between 1,800 to 1,900 vphpl.

Table 6 contains the existing freeway segment levels of service for the mixed-flow and HOV lanes based on the segment densities reported in the VTA's *2010 CMP Monitoring and Conformance Report*, which is the most recent report available as of July 2011.

Freeway Segment	Direction	Peak Hour ¹	Lanes		Density ²		LOS ³	
			Mixed	HOV	Mixed	HOV	Mixed	HOV
US 101, Montague Expressway to Great America Parkway	NB	AM	3	1	40	29	D	D
		PM	3	1	60	21	F	C
	SB	AM	3	1	24	20	C	C
		PM	3	1	106	66	F	F
US 101, Great America Parkway to Lawrence Expressway	NB	AM	3	1	30	21	D	C
		PM	3	1	47	12	E	B
	SB	AM	3	1	30	12	D	B
		PM	3	1	83	65	F	F
US 101, Lawrence Expressway to Fair Oaks Avenue	NB	AM	3	1	44	17	D	B
		PM	3	1	34	18	D	B
	SB	AM	3	1	32	20	D	C
		PM	3	1	46	26	D	C
US 101, Fair Oaks Avenue to Mathilda Avenue	NB	AM	3	1	40	24	D	C
		PM	3	1	29	16	D	B
	SB	AM	3	1	31	20	D	C
		PM	3	1	34	15	D	B
US 101, Mathilda Avenue to SR 237	NB	AM	3	1	54	54	E	E
		PM	3	1	21	14	C	B
	SB	AM	3	1	23	31	C	D
		PM	3	1	27	28	D	D
US 101, SR 237 to Moffett Boulevard	NB	AM	3	1	95	88	F	F
		PM	3	1	55	18	E	B
	SB	AM	3	1	52	30	E	D
		PM	3	1	39	20	D	C

3. EXISTING PLUS PROJECT CONDITIONS

The impacts of the proposed projects are discussed in this chapter. The projects are considered together to ensure that their impacts are not "piece-mealed." First, the method used to estimate the amount of traffic generated by the project is described. Then, the results of the level of service calculations for Existing plus Project Conditions are presented (Project Conditions are defined as Existing Conditions plus traffic generated by the proposed project). A comparison of Intersection operations under Existing plus Project Conditions and Existing Conditions is presented and the impacts of the project on the study intersections are discussed. Project impacts on freeways are also addressed.

EXISTING PROJECT TRAFFIC ESTIMATES

The amount of traffic added to the roadway system by proposed development is estimated using a three-step process: (1) trip generation, (2) trip distribution, and (3) trip assignment. The first step estimates the amount of traffic added to the roadway network. The second step estimates the direction of travel to and from the project site. The new trips are assigned to specific street segments and intersection turning movements during the third step. The results of the process for the proposed projects are described in the following sections.

Trip Generation

The amount of traffic anticipated to be added to the surrounding roadway system by the proposed project was estimated based data published in Institute of Transportation Engineers' (ITE) *Trip Generation* 8th Edition (2008). The results are presented in Table 7.

The proposed project will expand the Ariba campus from 651,562 s.f. of building area to 851,562 s.f. by constructing a new 200,000-square foot building in the northwest corner of the site. The trip generation estimates for this expansion were developed by incorporating the campus size both with and without the expansion into the trip generation equations for "General Office" (Land Use 710) to account for the economies of scale that would result. The Moffett Towers campus is proposing a new 332,956-square foot building (Building D) in the southern portion of its campus. A 207,956-square foot Building D in this location has been approved and was evaluated as part of a 1.7 million-square foot campus in the Moffett Towers TIA, completed in 2006. The previous analysis estimated trips based on "Corporate Headquarters Building" (Land Use 714) and for consistency purposes the same land use assumptions were used.

Although the approved Moffett Towers Building D is not currently constructed, the trips generated by the proposed addition of 125,000-s.f. (of the total 332,956-s.f. building) plus the new 200,000-s.f. Ariba building were used to assess Project impacts. Traffic for the approved 207,956-s.f. Moffett Towers Building D will be included under Background and Cumulative Conditions analyses.

As discussed under Existing Conditions, the MPSP requires all new projects in the Moffett Park area of Sunnyvale to have transportation demand management (TDM) programs that reduce daily and peak hour vehicles trips. Both the existing Moffett Towers and Ariba sites have active TDM programs and the two project sites will fully participate in their respective TDM programs. Based on the guidelines from the MPSP, the Moffett Towers TDM program is required to reduce daily trips by 20 percent and peak hour trips by 30 percent. The Ariba site was approved before adoption of the MPSP with a TDM reduction goal of only 15 percent for both daily and peak hour trips. However, VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips for projects near a light rail station that have an effective TDM program. Therefore, the more conservative 9.5 reduction was applied. As shown in Table 7, the proposed project is estimated to generate 2,064 net new daily trips, 339 net new AM peak-hour trips (306 inbound trips and 33 outbound trips), and 334 net new PM peak-hour trips (47 inbound trips and 287 outbound trips).

**TABLE 7
TRIP GENERATION – ARIBA CAMPUS AND MOFFETT TOWERS EXPANSIONS**

Land Use	ITE Code	Units ¹	Daily		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate ²	In	Out	Total	Rate ²	In	Out	Total
Existing Anba Campus ³	710	651,562 ksf	8.67	5,648	1.29	739	101	840	1.24	138	671	809
9.5% TDM Program Reduction ⁴				536		70	10	80		13	64	77
Existing Arriba Vehicle Trips (A)				5,112		669	91	760		125	807	732
Arriba Campus with Expansion ³	710	851,562 ksf	8.15	6,942	1.22	916	125	1,041	1.21	176	857	1,033
9.5% TDM Program Reduction ⁴				660		87	12	99		17	81	98
Total Future Arriba Vehicle Trips (B)				6,282		829	113	942		169	776	935
Total Future Arriba Vehicle Trips (C = B - A)				1,170		160	22	182		44	169	203
Moffett Towers Building D (Previously Approved) ⁵	714	207,956 ksf	7.92	1,648	1.48	286	22	308	1.37	29	256	285
9.5% TDM Program Reduction ⁴				104		27	2	29		3	24	27
Previously Approved Moffett Towers Building D Net Vehicle Trips (D)				1,544		259	20	279		26	232	258
Proposed Moffett Towers Building D ⁵	714	332,956 ksf	7.81	2,602	1.45	448	34	482	1.29	43	387	430
9.5% TDM Program Reduction ⁴				164		43	3	46		4	37	41
New Moffett Towers Building D Vehicle Trips (E)				2,438		405	37	442		47	350	399
New Moffett Towers Building D Vehicle Trips (F = E - D)				894		146	11	157		13	118	131
Project Net New Project Trips (C + F)				2,064		308	33	339		47	287	334
Arriba and Moffett Towers Building D Expansions Only												

Notes:

- ksf = 1,000 square feet
- Rate per ksf
- Following ITE trip generation equations used (ITE Code 710 - General Office Building, 8th Edition):
AM: $L_n(T) = 0.80 L_n(X) + 1.55$; Enter = 88%; Exit = 12%
PM: $T = 1.12 * (X) + 78.61$; Enter = 17%; Exit = 83%
Where X = 1,000 square feet of floor area, T = number of vehicle trips, L_n = natural log
- Based on allowable TDM and employment near light rail reductions per VTA guidelines.
- Following ITE trip generation equations used (ITE Code 714 - Corporate Headquarters Building, 7th Edition):
Daily: $L_n(T) = 0.97 L_n(X) + 2.23$
AM: $L_n(T) = 0.95 L_n(X) + 0.66$ Enter = 93%; Exit = 7%
PM: $L_n(T) = 0.87 L_n(X) + 1.01$; Enter = 10%; Exit = 90%
Where X = 1,000 square feet of floor area, T = number of vehicle trips, L_n = natural log

Sources: Trip Generation Manual (8th Edition), ITE, 2008; Transportation Impact Analysis Guidelines, VTA Congestion Management Program, March 2004.

Trip Distribution and Assignment

Since the proposed project is located in the same area as the Moffett Towers project, the trip distribution patterns from the 2006 Moffett Towers TIA were used to develop trip distribution patterns for this report. The 2006 analysis used the City of Sunnyvale travel demand forecasting model to develop the directions of approach and departure. Trip origins and destinations were obtained for parcels in the Moffett Park area. The trip distribution pattern is shown on **Figure 8**.

The project trips were assigned to the roadway network based on the trip distribution pattern discussed above. **Figure 9** shows the AM and PM peak-hour project trips assigned to each turning movement at the study intersections. The trip assignment was added to the existing volumes to establish volumes under Existing plus Project Conditions, as shown on **Figure 10**.

EXISTING PLUS PROJECT INTERSECTION LEVELS OF SERVICE

Intersection levels of service were calculated with the new traffic added by the proposed project to evaluate the operating conditions of the intersections and identify potential impacts to the roadway system. The results of the intersection level of service calculations for Existing plus Project Conditions are presented in **Table 8**. **Appendix B** contains the corresponding calculation sheets. The results for Existing Conditions are included for comparison purposes, along with the projected increases in critical delay and critical volume-to-capacity (V/C) ratios. Critical delay represents the delay associated with the critical movements of the intersection, or the movements that require the most "green time" and have the greatest effect on overall intersection operations. The changes in critical delay and critical V/C ratio between Existing and Existing plus Project Conditions are used to identify significant impacts.

The results of the LOS calculations indicate that all study intersections operate at acceptable service levels (LOS D or better for City intersections and LOS E or better for regionally significant and CMP intersections) during the AM and PM peak periods.

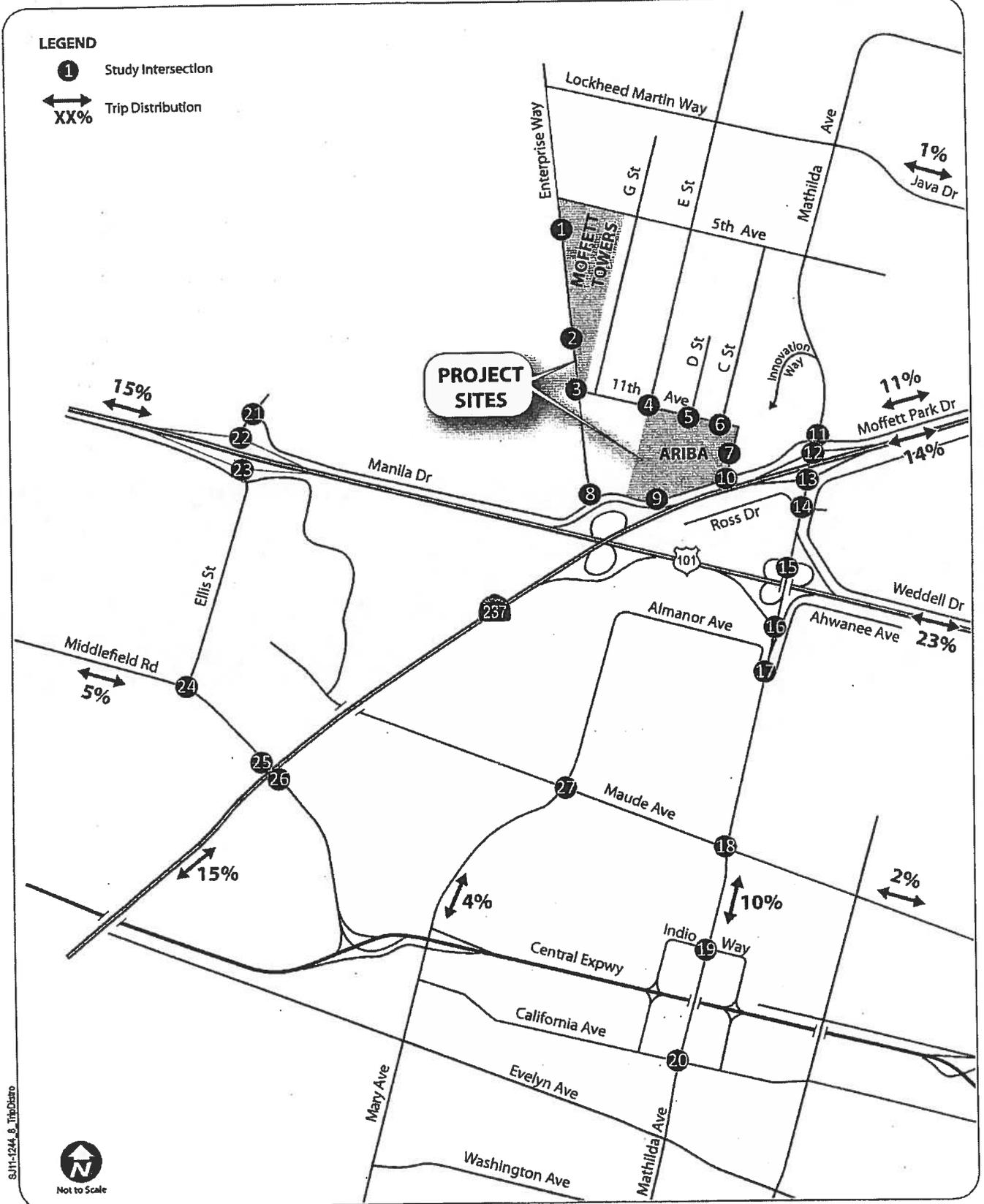
Peak-Hour Signal Warrant Analysis

The California *Manual of Uniform Traffic Control Devices* (MUTCD) contains a number of guidelines, called warrants, to determine whether the installation of a traffic signal at a particular location is appropriate. The peak-hour signal warrant, one of eight warrants, was evaluated for the unsignalized intersections of Enterprise Way/Building D Site Access (North), Enterprise Way/Building D Site Access (South), Enterprise Way/11th Avenue, E Street/11th Avenue, D Street-Ariba Site Access Driveway/11th Avenue, C Street-Ariba Site Access Driveway/11th Avenue, Ariba Site Access Driveway/Innovation Way, and Ellis Street/Manila Drive under both Existing and Existing plus Project Conditions. The results indicate that a traffic signal is not warranted at these locations based on the peak-hour warrant. **Appendix E** contains the peak-hour signal warrants. As shown in **Table 8**, all unsignalized intersections are operating at acceptable levels of service.

The peak-hour signal warrant analysis should not serve as the only basis for deciding whether and when to install a traffic signal. To reach such a decision, the full set of warrants should be investigated based on a thorough study of traffic and roadway conditions by an experienced engineer. The decision to install a signal should not be based solely upon the warrants, since the installation of signals can lead to certain types of collisions. The responsible state or local agency should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to prioritize and program intersections for signalization. On private roads (Enterprise Way), the project sponsor is responsible for the monitoring of actual traffic conditions.

FIGURE 8

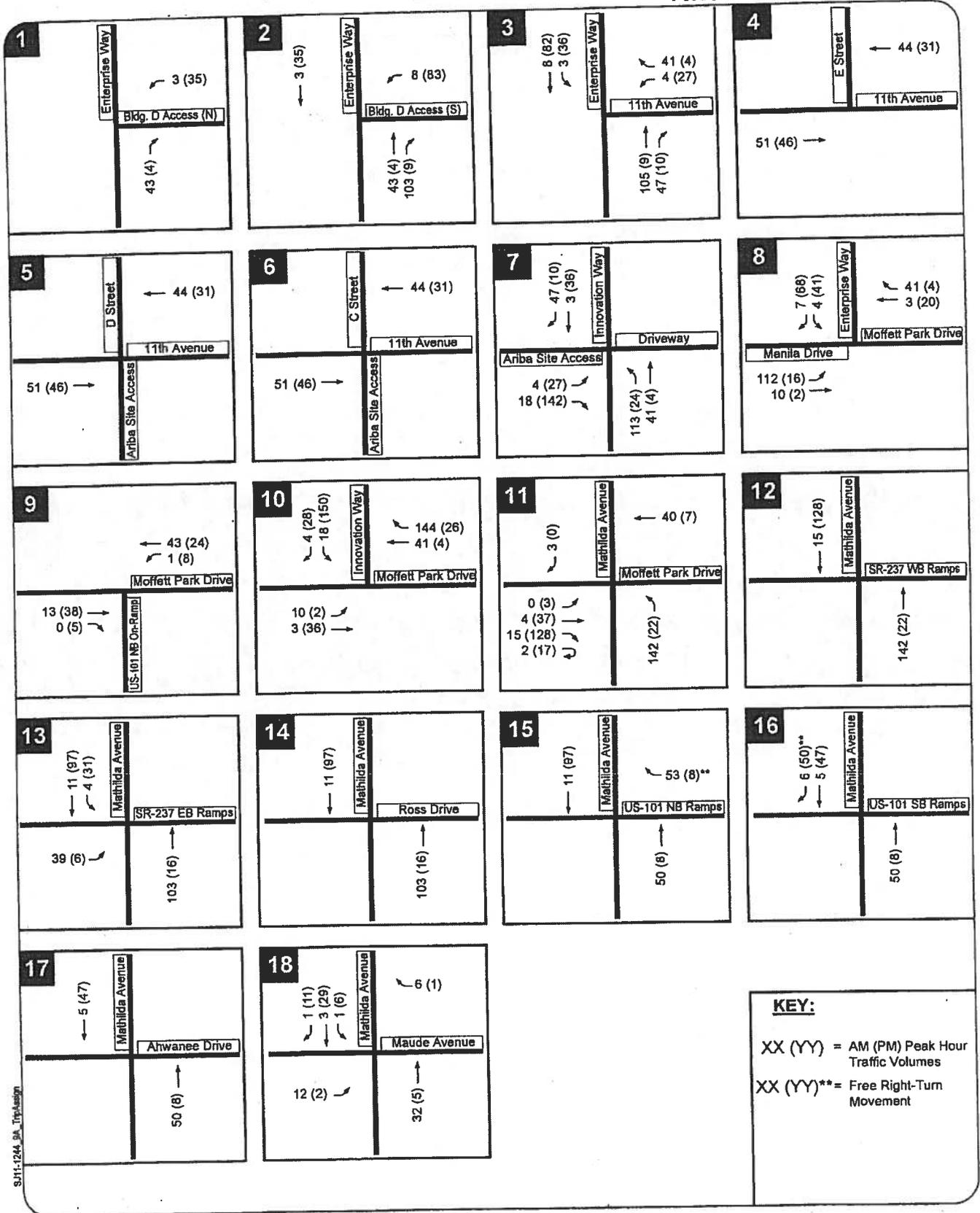
PROJECT TRIP DISTRIBUTION



SJ11-1244_8_TripDistro

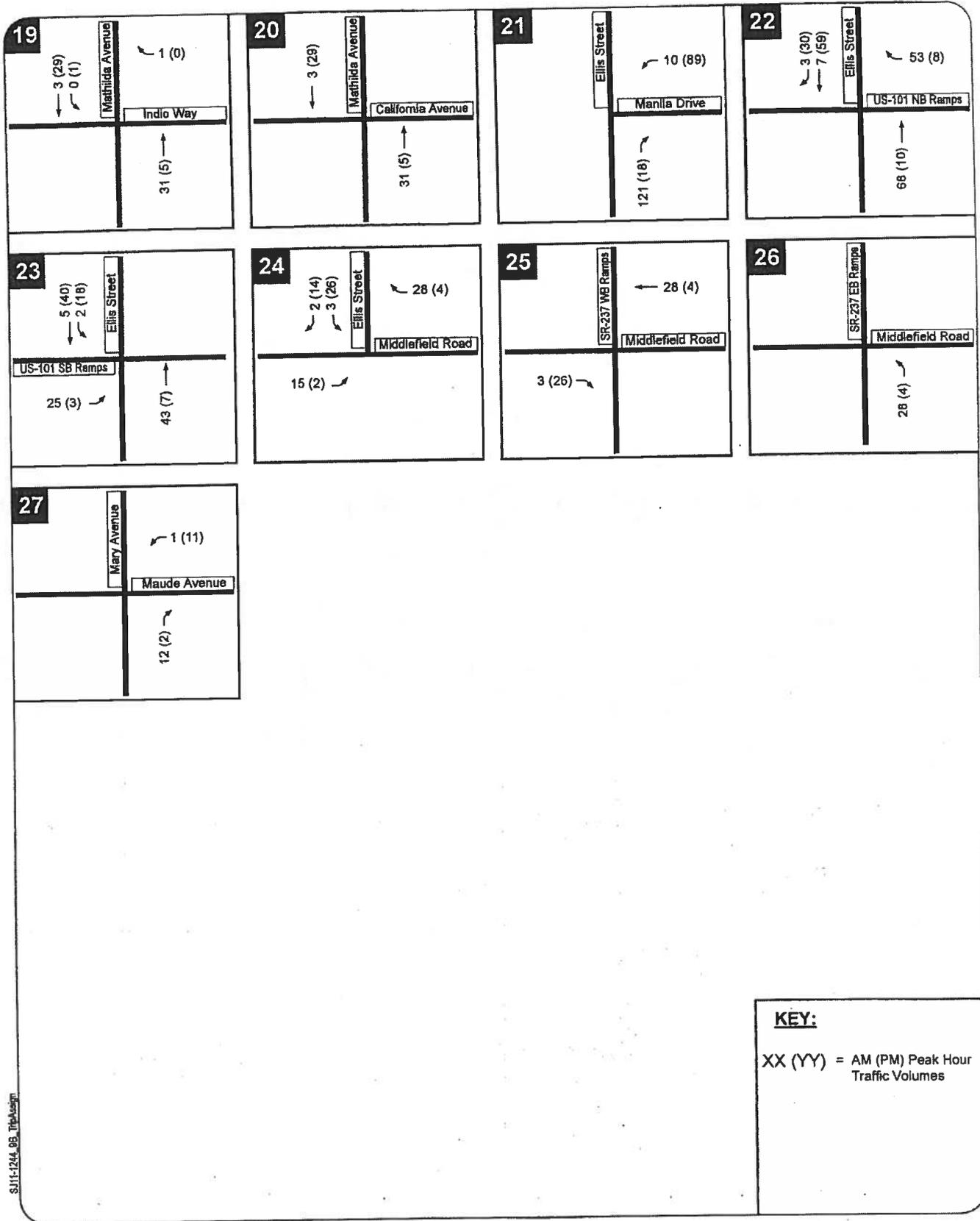
FIGURE 9A

PROJECT TRIP ASSIGNMENT



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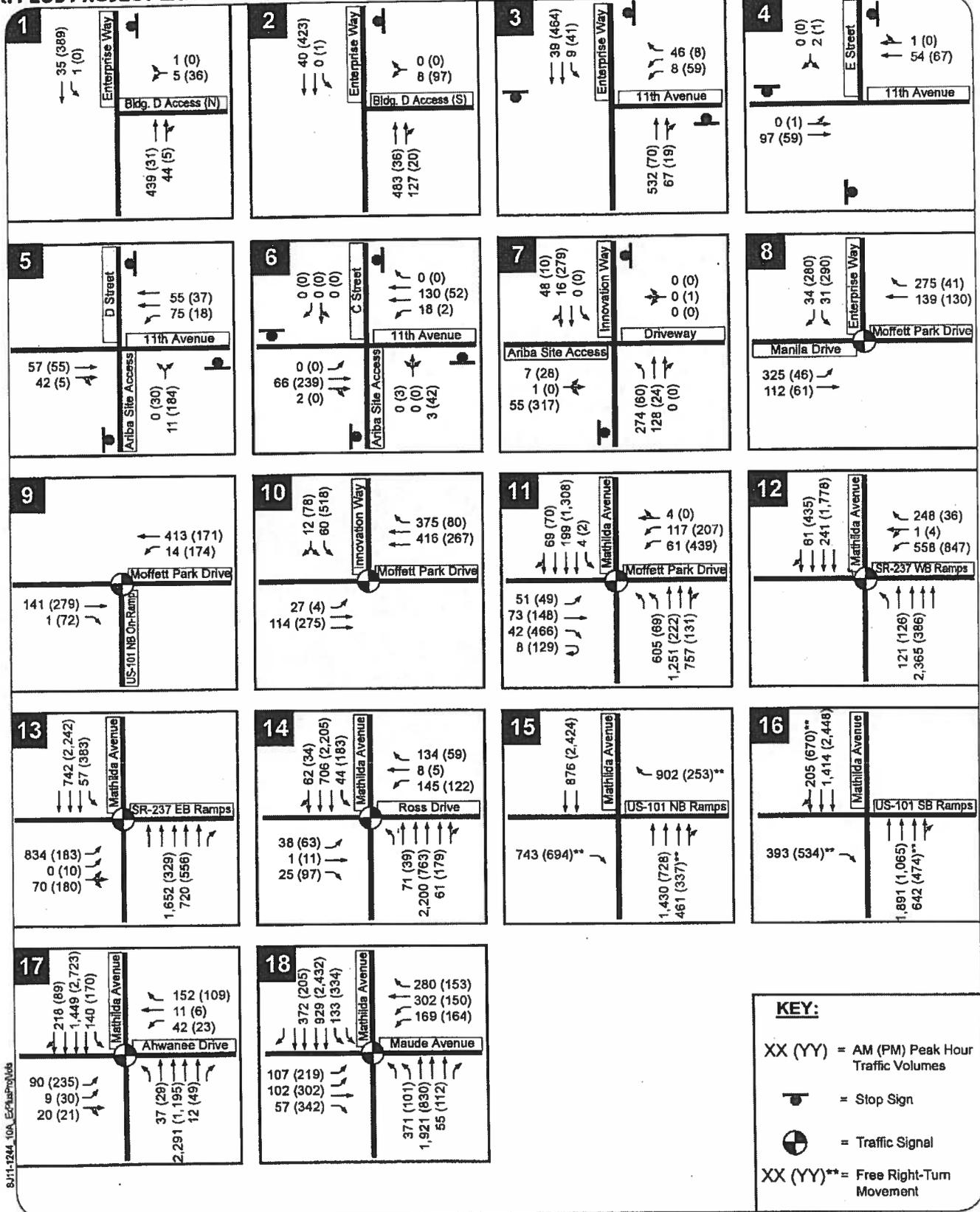
FIGURE 9B
PROJECT TRIP ASSIGNMENT



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FIGURE 10A

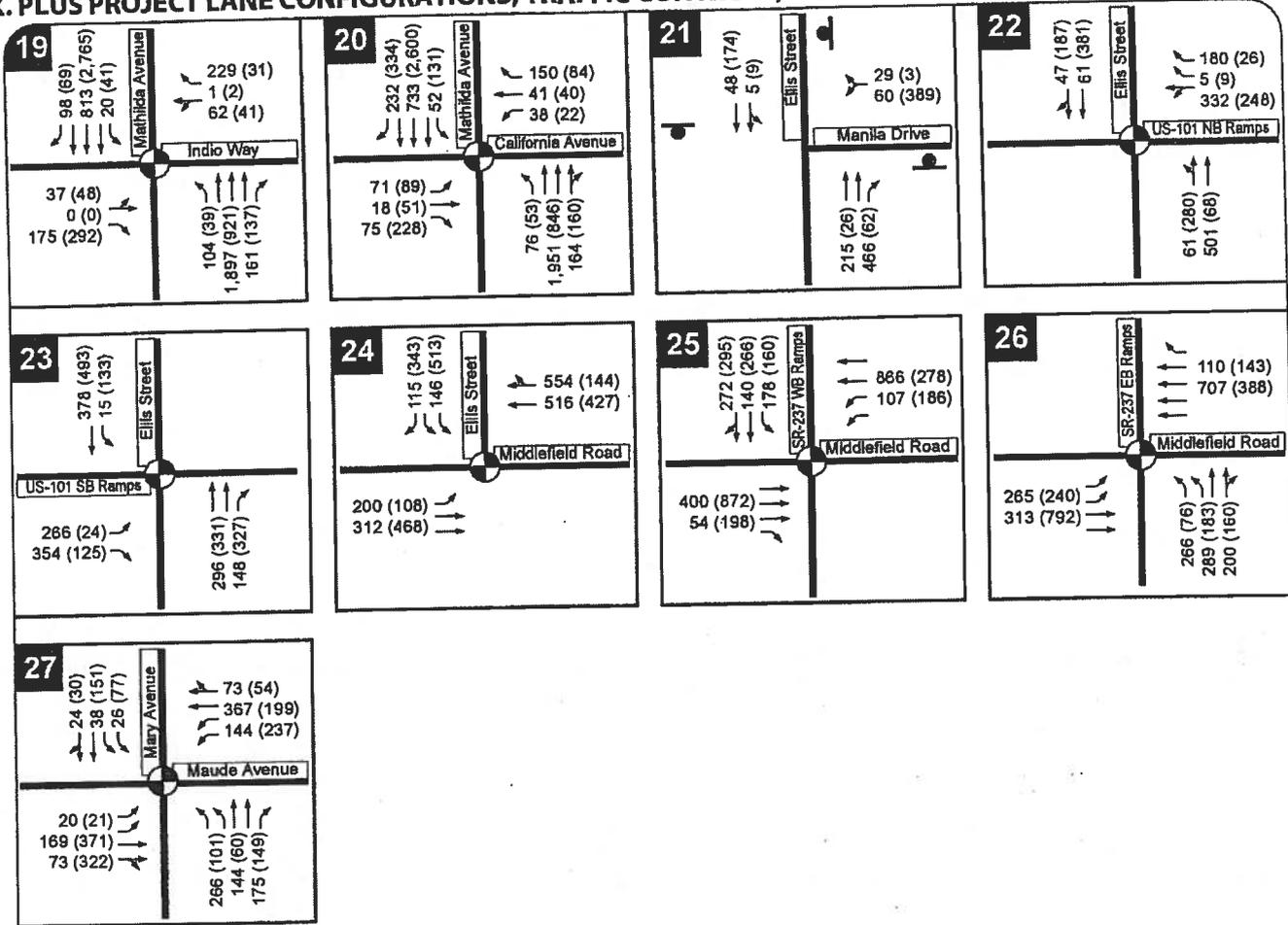
EX. PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



8-11-1244-10A-EX-Plus-101b

FIGURE 10B

EX. PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



KEY:

XX (YY) = AM (PM) Peak Hour Traffic Volumes

= Stop Sign

= Traffic Signal

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**TABLE 8
EXISTING AND EXISTING PLUS PROJECT INTERSECTION LEVELS OF SERVICE**

Intersection	Peak Hour ¹	Inter-section Control	Existing Conditions		Existing plus Project Conditions				
			Delay ²	LOS ³	Delay ²	LOS ³	Δ in Crit. VIC ⁴	Δ in Crit. Delay ⁵	Signal Warrant Met? ⁶
1 Enterprise Way/Building D Site Access (North)	AM	Side-Street Stop	10.8	B	11.4	B	N/A	+0.6	No
	PM		11.1	B	11.5	B	N/A	+0.4	No
2 Enterprise Way/Building D Site Access (South)	AM	Side-Street Stop	0.0	A	13.0	B	N/A	+13.0	No
	PM		10.0	A	10.8	B	N/A	+0.8	No
3 Enterprise Way/11 th Avenue	AM	All-Way Stop	8.9	A	9.9	A	+0.105	+1.2	No
	PM		8.8	A	9.5	A	+0.066	+0.8	No
4 E Street/11 th Avenue	AM	All-Way Stop	7.3	A	7.5	A	+0.032	+0.2	No
	PM		7.3	A	7.4	A	+0.019	+0.2	No
5 D Street/Ariba Site Access/11 th Avenue	AM	All-Way Stop	7.6	A	7.6	A	+0.001	+0.2	No
	PM		7.5	A	7.8	A	+0.014	+0.3	No
6 C Street/Ariba Site Access/11 th Avenue	AM	All-Way Stop	7.5	A	7.8	A	+0.030	+0.3	No
	PM		7.9	A	8.2	A	+0.033	+0.3	No
7 Innovation Way/Ariba Site Access	AM	Side-Street Stop	8.8	A	9.7	A	N/A	+0.3	No
	PM		11.3	B	12.3	B	N/A	+1.0	No
8 Enterprise Way/Manila Drive/Moffett Park Drive	AM	Signal	12.4	B	13.2	B	+0.079	+3.3	N/A
	PM		10.9	B+	11.3	B+	+0.050	+0.4	N/A
9 US 101 Northbound On-Ramp/Moffett Park Drive	AM	Signal	1.3	A	1.3	A	+0.008	+0.0	N/A
	PM		7.5	A	7.3	A	+0.028	+1.0	N/A
10 Innovation Way/Moffett Park Drive	AM	Signal	6.1	A	6.2	A	+0.026	+0.3	N/A
	PM		12.2	B	12.1	B	+0.091	+2.9	N/A
11 Mathilda Avenue/Moffett Park Drive**	AM	Signal	16.4	B	17.6	B	+0.025	+5.8	N/A
	PM		21.5	C+	23.5	C	+0.249	+4.4	N/A
12 Mathilda Avenue/SR 237 Westbound Ramps**	AM	Signal	18.6	B-	18.3	B-	+0.020	+1.2	N/A
	PM		17.2	B	17.3	B	+0.022	+1.1	N/A
13 Mathilda Avenue/SR 237 Eastbound Ramps**	AM	Signal	18.5	B-	18.9	B-	+0.012	+0.9	N/A
	PM		13.0	B	13.4	B	+0.022	+1.7	N/A
14 Mathilda Avenue/Ross Drive**	AM	Signal	15.6	B	15.2	B	+0.012	+0.7	N/A
	PM		12.0	B	12.2	B	+0.020	+0.4	N/A
15 Mathilda Avenue/US 101 Northbound Ramps**	AM	Uncontrolled	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	PM		N/A	N/A	N/A	N/A	N/A	N/A	N/A
16 Mathilda Avenue/US 101 Southbound Ramps**	AM	Uncontrolled	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	PM		N/A	N/A	N/A	N/A	N/A	N/A	N/A
17 Mathilda Avenue/Almanor Avenue/Ahwanee Avenue**	AM	Signal	22.1	C+	22.0	C+	+0.007	+0.5	N/A
	PM		20.5	C+	20.4	C+	+0.007	+0.6	N/A
18 Mathilda Avenue/Maude Avenue*	AM	Signal	42.9	D	43.2	D	+0.010	+1.0	N/A
	PM		28.0	C	27.9	C	+0.005	+0.3	N/A
19 Mathilda Avenue/Indio Way**	AM	Signal	17.0	B	17.0	B	+0.007	+0.3	N/A

**TABLE 8
EXISTING AND EXISTING PLUS PROJECT INTERSECTION LEVELS OF SERVICE**

Intersection	Peak Hour ¹	Inter-section Control	Existing Conditions		Existing plus Project Conditions				
			Delay ²	LOS ³	Delay ²	LOS ³	Δ in Crit. VIC ⁴	Δ in Crit. Delay ⁵	Signal Warrant Met? ⁶
	PM		14.6	B	14.6	B	+0.006	+0.5	
20 Mathilda Avenue/California Avenue**	AM	Signal	17.8	B	17.7	B	+0.006	+0.5	N/A
	PM		18.2	B-	18.2	B-	+0.006	+0.8	
21 Ellis Street/Manila Drive***	AM	All-Way Stop	8.1	A	8.1	A	+0.001	+0.1	No
	PM		9.8	A	11.1	B	+0.117	+1.7	
22 Ellis Street/US 101 Northbound Ramps***	AM	Signal	16.4	B	16.3	B	+0.025	+1.2	N/A
	PM		22.2	C+	22.1	C+	+0.028	+1.2	
23 Ellis Street/US 101 Southbound Ramps***	AM	Signal	17.5	B	18.1	B-	-0.006	+1.2	N/A
	PM		12.9	B	13.1	B	+0.013	+0.7	
24 Ellis Street/Middlefield Road***	AM	Signal	14.1	B	14.5	B	+0.029	+0.6	N/A
	PM		21.6	C+	21.7	C+	+0.011	+0.5	
25 SR 237 Westbound Ramps/Middlefield Road***	AM	Signal	18.7	B-	15.7	B	+0.141	+8.6	N/A
	PM		18.8	B-	18.9	B-	+0.000	+0.0	
26 SR 237 Eastbound Ramps/Middlefield Road***	AM	Signal	19.9	B-	19.9	B-	+0.000	+0.0	N/A
	PM		15.9	B	15.9	B	+0.000	+0.0	
27 Mary Avenue/Maude Avenue	AM	Signal	26.5	C	26.6	C	+0.000	+0.0	N/A
	PM		23.6	C	23.7	C	+0.006	+0.3	

Notes:

- 1 AM = morning peak hour, PM = afternoon peak hour.
- 2 Whole Intersection weighted average control delay expressed in seconds per vehicle for signalized and all-way stop controlled intersections. Signalized intersections include adjusted saturation flow rates to reflect Santa Clara County Conditions per VTA guidelines. Total control delay for the worst movement is presented for side-street stop-controlled intersections
- 3 LOS = Level of Service. LOS calculations conducted using the TRAFFIX level of service analysis software package, which applies the methodology described in the 2000 HCM.
- 4 Change in the critical volume-to-capacity ratio (VIC) between Existing and Project Conditions.
- 5 Change in critical movement delay between Existing and Project Conditions.
- 6 Signal warrant based CA MUTCD Warrant 3, Peak Hour (Urban Area)
- * CMP intersection with LOS E threshold.
- ** Regionally significant Intersection with LOS E threshold.
- *** City of Mountain View intersection.

Source: Fehr & Peers, June 2011.

Some of the study intersections show a reduction in average delay with the addition of project traffic, which is counter-intuitive. The average delay values in the table are weighted averages. Weighted average delays will be reduced when traffic is added to a movement with a low delay, such as the through movements in the non-

peak direction on Mathilda Avenue.³ Conversely, relatively small volume increases to movements with high delays can substantially increase the weighted average delay.

INTERSECTION IMPACT CRITERIA

Santa Clara County Valley Transportation Authority (VTA)

The LOS standard for CMP intersections is LOS E. Traffic impacts at CMP intersections would occur when the addition of traffic associated with implementation of a Project causes:

1. Intersection operations to deteriorate from an acceptable level (LOS E or better) under the Existing Conditions to an unacceptable level (LOS F); or
2. Exacerbation of unacceptable operations by increasing the average critical delay by more than 4 seconds and increasing the critical volume-to-capacity (V/C) ratio by 0.01 or more at an intersection operating at LOS F.
3. The V/C ratio increases by 0.01 or more at an intersection with unacceptable operations (LOS F) when the change in critical delay is negative (i.e., decreases). This can occur if the critical movements change.

The Mathilda Avenue/Maude Avenue is the only CMP intersection analyzed for this report.

City of Sunnyvale and City of Mountain View

Both the City of Sunnyvale and Mountain View apply the same intersection impact criteria for intersections, which is based on VTA's criteria.

Signalized Intersections

The LOS standard for City of Sunnyvale and Mountain View intersections is LOS D except for City of Sunnyvale intersections that are designated regionally significant and have a LOS E standard. For the purpose of this report regionally significant facilities include intersections along Mathilda Avenue and freeway ramp junctions for SR 237 and US 101. Traffic impacts at City of Sunnyvale and Mountain View intersections would occur when the addition of traffic associated with implementation of the Project causes:

1. Intersection (except those on designated regionally significant roads) operations to deteriorate from an acceptable level (LOS D or better) under the Existing Conditions to an unacceptable level (LOS E or LOS F); or,
2. Operations for regionally significant designated intersections to deteriorate from an acceptable level (LOS E or better) under the Existing Conditions to an unacceptable level (LOS F); or,
3. Exacerbation of unacceptable operations by increasing the average critical delay by more than 4 seconds and increasing the critical volume-to-capacity (V/C) ratio by 0.01 or more at an intersection operating at LOS E or F (LOS F for regionally significant roads).

³ For example, if you have one movement with 10 vehicles with a delay of 100 seconds and another movement with 400 vehicles and 10 seconds of delay, the weighted average delay is calculated as $(100 \text{ seconds} \times 10 \text{ vehicles} + 10 \text{ seconds} \times 400 \text{ vehicles}) / 410 \text{ vehicles} = 12.2 \text{ seconds per vehicle}$. Now if you add 100 vehicles to the movement with 10 seconds of delay, the weighted average is calculated as $(100 \text{ seconds} \times 10 \text{ vehicles} + 10 \text{ seconds} \times 500 \text{ vehicles}) / 510 \text{ vehicles} = 11.8 \text{ seconds per vehicle}$. The weighted average delay improves, even though more vehicles are added.

Unsignalized Intersections

Levels of service analysis at unsignalized intersections are generally used to determine the need for modification in type of intersection control (i.e. all-way stop or signalization). As part of this evaluation traffic volumes, delay, and traffic signal warrants are evaluated to determine if the existing intersection control is appropriate.

The Cities of Sunnyvale and Mountain View do not have an officially adopted significance criteria for unsignalized intersections. Based on previous studies in the Cities of Sunnyvale and Mountain View, significant impacts are defined to occur when the addition of project traffic causes the average intersection delay for all-way stop-controlled intersection or the worst movement/approach for side-street stop-controlled intersections to degrade to LOS F and the intersection satisfies any traffic signal warrant from the MUTCD.

EXISTING PLUS PROJECT INTERSECTION IMPACTS AND MITIGATION MEASURES

Measured against the City of Sunnyvale's, the City of Mountain View, and VTA's level of service standards and the resulting significance criteria, the project is not expected to have significant impacts at any of the study intersections under Existing plus Project conditions; therefore, no mitigation is required.

EXISTING PLUS PROJECT FREEWAY SEGMENT LEVELS OF SERVICE

Freeway segments of US 101 and SR 237 were analyzed during the AM and PM peak hours to calculate the amount of project traffic projected to be added to these freeway segments. To be conservative, no project trips were assigned to HOV lanes.

Table 9 presents the estimated number of trips added to the freeway segments under Existing Plus Project Conditions and the estimated densities and service levels.

Freeway Segment	Direction	Peak Hour ¹	Capacity (vphpl) ²	Existing Conditions		Existing Plus Project Conditions			
				Density ³	LOS ⁴	Trips ⁵	Density	LOS	% Impact ⁶
US 101, Montague Expressway to Great America Parkway	NB	AM	6,900	40	D	41	40	D	0.6%
		PM		44	D	7	44	D	0.1%
	SB	AM	6,900	24	C	5	24	C	0.1%
		PM		87	F	35	88	F	0.5%
US 101, Great America Parkway to Lawrence Expressway	NB	AM	6,900	47	E	61	47	E	0.9%
		PM		44	E	9	44	E	0.1%
	SB	AM	6,900	35	D	7	35	D	0.1%
		PM		88	F	57	89	F	0.8%
US 101, Lawrence Expwy. to N. Fair Oaks Ave.	NB	AM	6,900	55	E	71	56	E	1.0%
		PM		34	D	10	34	D	0.1%
	SB	AM	6,900	22	C	7	22	C	0.1%
		PM		40	D	65	40	D	0.9%
US 101, N. Fair Oaks Ave. to Mathilda Ave.	NB	AM	6,900	66	F	65	67	F	0.9%
		PM		30	D	9	30	D	0.1%
	SB	AM	6,900	30	D	7	30	D	0.1%
		PM		30	D	61	30	D	0.9%

**TABLE 9
EXISTING PLUS PROJECT FREEWAY SEGMENT LEVELS OF SERVICE**

Freeway Segment	Direction	Peak Hour ¹	Capacity (vphpl) ²	Existing Conditions		Existing Plus Project Conditions			
				Density ³	LOS ⁴	Trips ⁵	Density	LOS	% Impact ⁶
US 101, Mathilda Ave. to SR 237	NB	AM	6,900	59	F	12	59	F	0.2%
		PM		21	C	1	21	C	0.0%
	SB	AM	6,900	25	C	1	25	C	0.0%
		PM		28	D	10	28	D	0.1%
US 101, SR 237 to Moffett Blvd	NB	AM	6,900	77	F	55	78	F	0.8%
		PM		69	F	43	70	F	0.6%
	SB	AM	6,900	36	D	46	36	D	0.7%
		PM		36	D	22	36	D	0.3%
SR 237, Maude Ave. to US 101	EB	AM	4,400	42	D	18	42	D	0.4%
		PM		21	B	3	21	B	0.1%
	WB	AM	4,400	32	D	2	32	D	0.1%
		PM		68	F	17	68	F	0.4%
SR 237, US 101 to Mathilda Ave.	EB	AM	4,400	38	D	40	38	D	0.9%
		PM		51	E	14	51	E	0.3%
	WB	AM	4,400	43	E	43	43	E	1.0%
		PM		39	D	23	39	D	0.5%
SR 237, Mathilda Ave. to N. Fair Oaks Ave.	EB	AM	4,600	44	D	4	44	D	0.1%
		PM		67	F	39	68	F	0.9%
	WB	AM	6,900	96	F	41	97	F	0.6%
		PM		33	D	6	33	D	0.1%
SR 237, N. Fair Oaks Ave. to Lawrence Expwy.	EB	AM	4,600	41	D	4	41	D	0.1%
		PM		102	F	39	103	F	0.9%
	WB	AM	4,600	54	E	41	55	E	0.9%
		PM		35	D	6	35	D	0.1%
SR 237, Lawrence Expressway to Great America Parkway	EB	AM	4,600	36	D	5	36	D	0.1%
		PM		96	F	43	97	F	0.9%
	WB	AM	4,600	33	D	46	33	D	1.0%
		PM		41	D	7	41	D	0.2%

Notes:

Bold font indicates unacceptable operations based on VTA's LOS E Standard.

1 AM = morning peak hour, PM = afternoon peak hour.

2 vphpl = vehicles per hour per lane

3 Measured in passenger cars per mile per lane.

4 LOS = level of service.

5 Project trips added to individual freeway segments

6 Percent impact on mixed flow lanes determined by dividing the number of project trips by the freeway segment's capacity.

Source: 2010 Monitoring and Conformance Report, VTA, May 2011.

FREEWAY IMPACT CRITERIA

The LOS standard for CMP freeway segments is LOS E. Traffic impacts on CMP freeway segments occur when the addition of project traffic causes:

1. Freeway segment operations to deteriorate from an acceptable level (LOS E or better) under the Existing Conditions to an unacceptable level (LOS F); or
2. An increase in traffic of more than one percent of the capacity of the segments that operate at LOS F under Existing Conditions.

EXISTING FREEWAY IMPACTS AND MITIGATION MEASURES

The proposed project would not add trips greater than one percent of the freeway segment capacity to any freeway segments already operating at LOS F; therefore, the project has a **less-than-significant** impact at the identified study freeway segments and no mitigation measures are required.

4. BACKGROUND CONDITIONS

This chapter presents the results of the level of service calculations under Background Conditions with and without the project. Background No Project Conditions are defined as conditions prior to completion of the proposed development in 2013, which is the projected completion date for the proposed project. Traffic volumes for Background No Project Conditions comprise existing volumes multiplied by a growth factor per the City of Sunnyvale's most recent traffic model update, plus traffic generated by approved "approved but not yet built" and "not occupied" developments in the area. Approved and not occupied projects account for local growth, while the growth factor accounts for regional growth. Background plus Project Conditions are defined as Background No Project Conditions plus traffic generated by the proposed project.

BACKGROUND NO PROJECT TRAFFIC VOLUMES

Background Traffic Growth

Growth factors for local roads, collectors, and arterial roadways were developed based on the City of Sunnyvale's travel demand forecasting model. The City of Sunnyvale uses the rates in Table 10 to estimate annual regional traffic growth based on the roadway classification.

Roadway Classification	AM Peak-Hour	PM Peak-Hour
Arterial	2.00%	1.75%
Collector	2.28%	2.34%
Local	0.50%	0.50%

Source: City of Sunnyvale, 2011.

Using year 2011 as the base year for existing conditions, two-year growth factors (to year 2013) were applied to all movements at the 27 study intersections.

Approved and Not Occupied Projects

Vehicle trips from "approved but not yet built" and "not occupied" developments projects in the study area were added. Staff from the City of Sunnyvale provided a list of "approved but not yet built" and "not occupied" developments projects. Projects in the Cities of Mountain View, Santa Clara, and Cupertino were also considered. Trip generation estimates from approved and not occupied projects that would add traffic to the study intersections were obtained from their respective traffic reports or estimated based on trip generation rates published in the Institute of Transportation Engineers *Trip Generation* (8th Edition). The trips for each of the background projects were then assigned to the roadway network based on the relative locations of complementary land uses, as well as existing and estimated future travel patterns.

Appendix C contains a list of approved and not occupied projects from each City and their trip generation estimates. Though almost 1,900,000 s.f. of the existing Moffett Towers campus have already been constructed, less than 10 percent is currently occupied. Trips from the 1,700,000 s.f. of unoccupied Moffett Towers campus office uses were added to the roadway network based on the information presented in the 2006 Moffett Towers TIA. Additionally, more than 205,000 s.f. of Building D have already been approved. Trips generated by this portion of the project were assigned as part of the background growth.

Other major background projects included in the list are: redevelopment of Town Center Mall (284 dwelling units, 16 screen theater, 275,000 s.f. of office, 1 million s.f. of retail); additional office space at the Lockheed

Martin site; buildout of Network Appliances (1 million s.f. of R&D); completion of R&D buildings at 111 Java Drive (387,000 s.f.); and, 120,000 s.f. of medical office for Palo Alto Medical Foundation.

The trips for each of the background projects were added to the existing volumes, which were multiplied by the annual growth rates discussed above to represent Background Conditions, as shown on Figure 11.

BACKGROUND IMPROVEMENTS

Given that the projected completion year of the project is 2013, no approved and funded transportation network improvements were assumed to be constructed prior to project completion. Therefore, the existing roadway network was used for the background analysis.

BACKGROUND PLUS PROJECT TRAFFIC VOLUMES

Trips from the 125,000-s.f. expansion of Building D at Moffett Park and the 200,000 s.f. Ariba Campus expansion (Table 7) were added to the Background traffic projections to develop traffic volumes for Background plus Project Conditions. The resulting volumes are shown on Figure 12.

BACKGROUND INTERSECTION LEVELS OF SERVICE

Table 11 presents the level of service calculations for the study intersections under Background No Project and Background plus Project Conditions. Appendix B contains the corresponding calculation sheets.

Signalized Intersections

Under Background plus Project Conditions the following four signalized intersections are projected to operate at unacceptable service levels during the identified peak hours.

- Int. 8. Enterprise Way/Manila Drive-Moffett Park Drive: the addition of project traffic exacerbates unacceptable LOS E+ operation and degrades operation to LOS F during the AM peak hour
- Int. 11. Mathilda Avenue/Moffett Park Drive: the addition of project traffic exacerbates unacceptable LOS F operations during the AM and PM peak hours
- Int. 12. Mathilda Avenue/SR 237 Westbound Ramps: the addition of project traffic exacerbates unacceptable LOS F operations during the PM peak hour
- Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps: the addition of project traffic degrades intersection operation from acceptable LOS E- to unacceptable LOS F during the PM peak hour

Unsignalized Intersections

Under Background plus Project Conditions, three unsignalized intersections are projected to operate at unacceptable service level during the identified peak hours.

- Int. 2. Enterprise Way/Building D Site Access (South): during the PM peak hour the addition of project traffic degrades intersection operation from acceptable LOS D to unacceptable LOS E
- Int. 3. Enterprise Way/11th Avenue: during the AM peak hour the addition of project traffic degrades intersection operation from acceptable LOS C to unacceptable LOS E
- Int. 21. Ellis Street/Manila Drive: during the PM peak hour the addition of project traffic exacerbates unacceptable LOS F operations

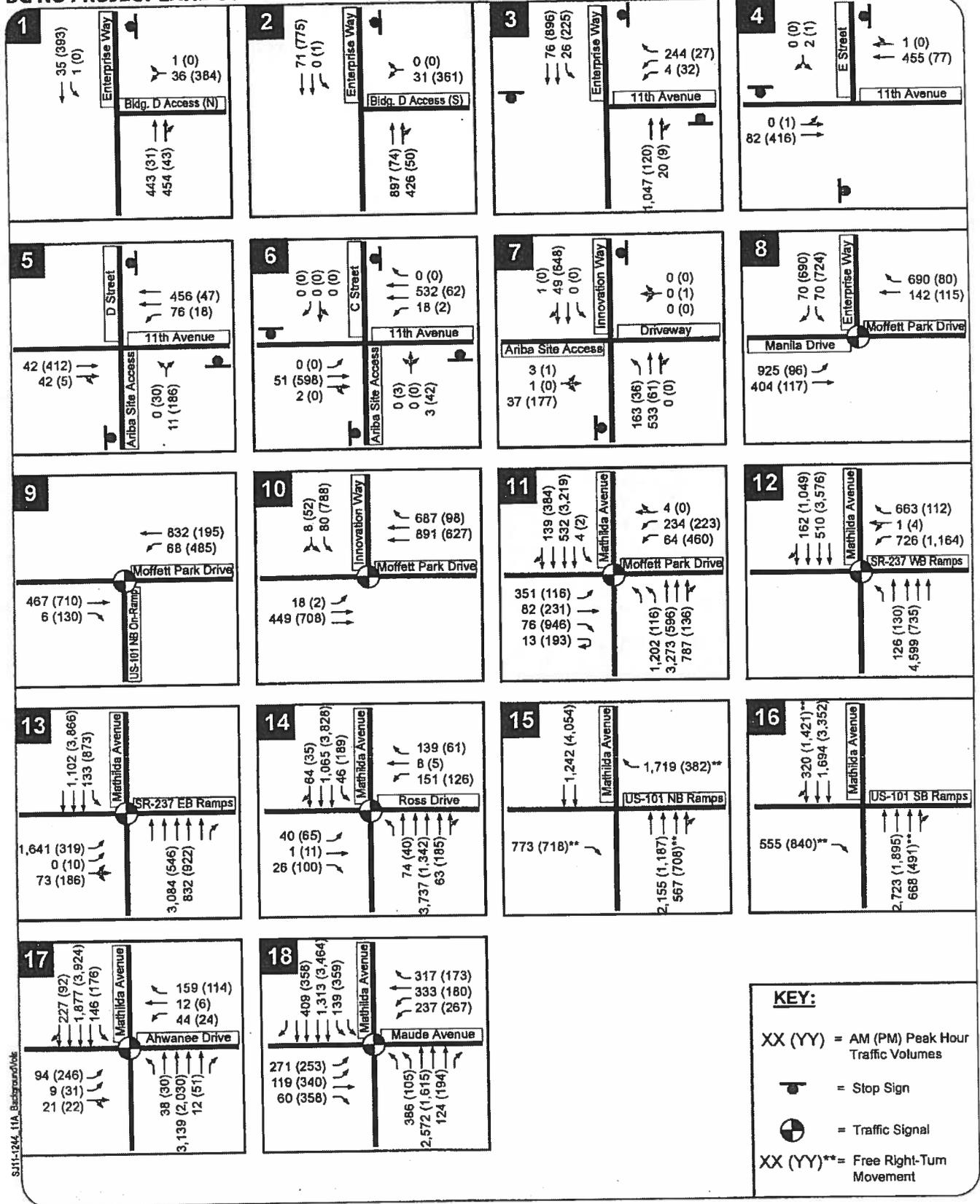
Enterprise Way/Building D Site Access (South), Enterprise Way/11th Avenue, and Ellis Street/Manila Drive intersections
July 2011

The remaining unsignalized intersections are projected to operate at acceptable LOS. The Enterprise Way/Building D Site Access (South), Enterprise Way/11th Avenue, and Ellis Street/Manila Drive intersections satisfy the peak-hour signal warrant during at least one peak hour. Appendix E contains the peak-hour signal warrants.

Again, the peak-hour signal warrant analysis should not serve as the only basis for deciding whether and when to install a traffic signal. The responsible state or local agency should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to prioritize and program intersections for signalization. On private roads (Enterprise Way), the project sponsor is responsible for the monitoring of actual traffic conditions.

FIGURE 11A

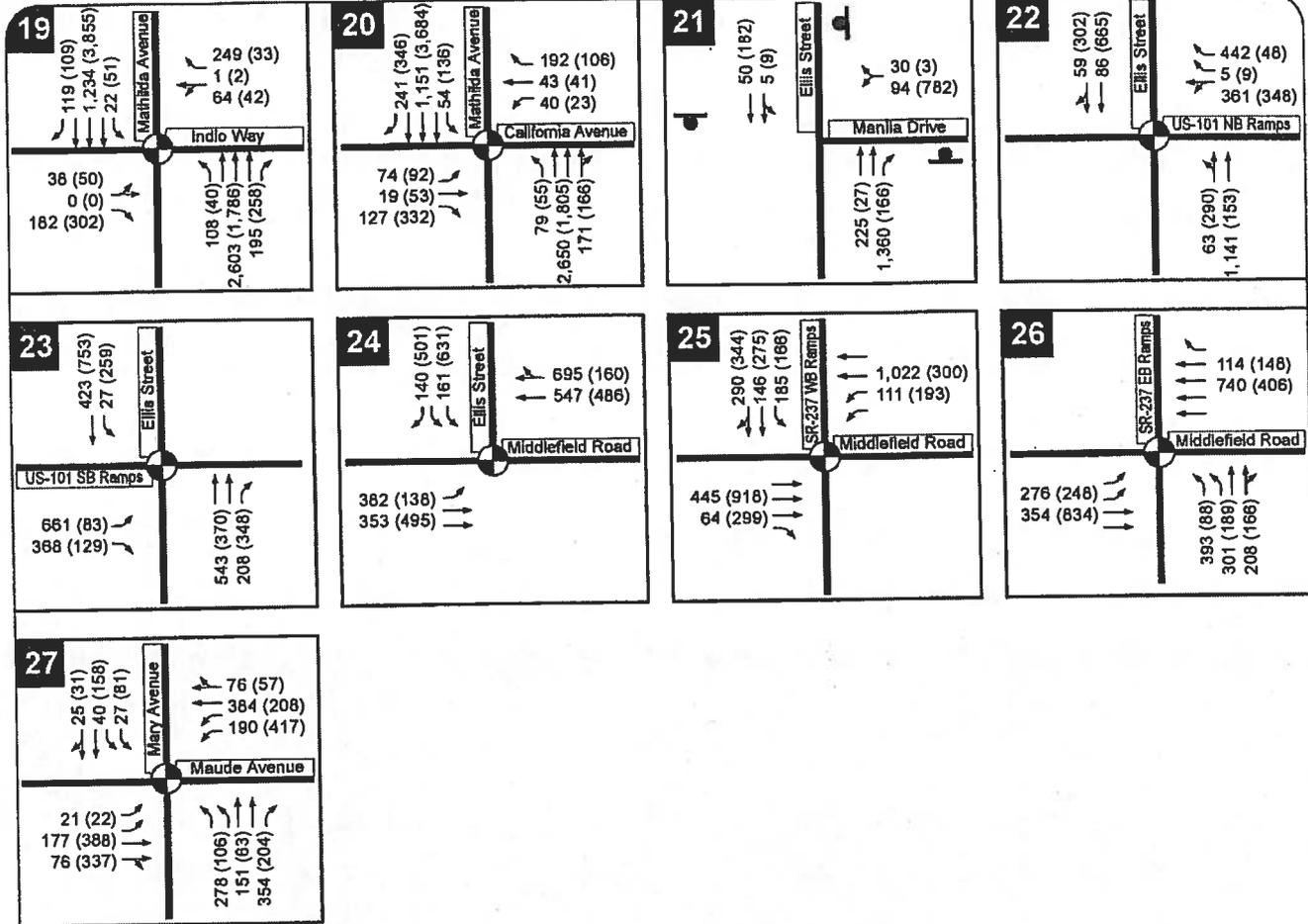
BG NO PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



S211-224, 11A Background/Job

FIGURE 11B

BG NO PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES

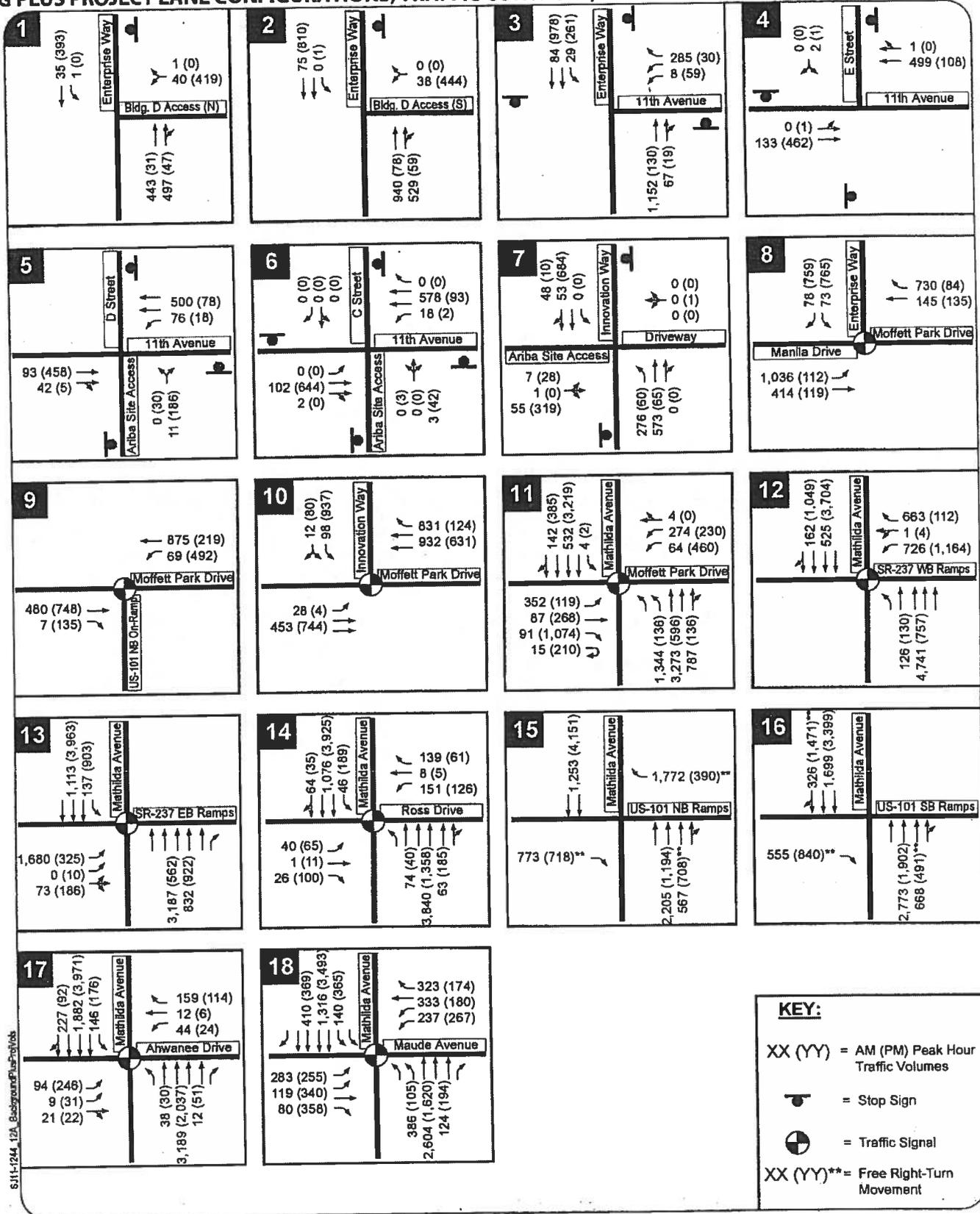


KEY:
 XX (YY) = AM (PM) Peak Hour Traffic Volumes
 = Stop Sign
 = Traffic Signal

SJ11-124_11B_Background/ids

FIGURE 12A

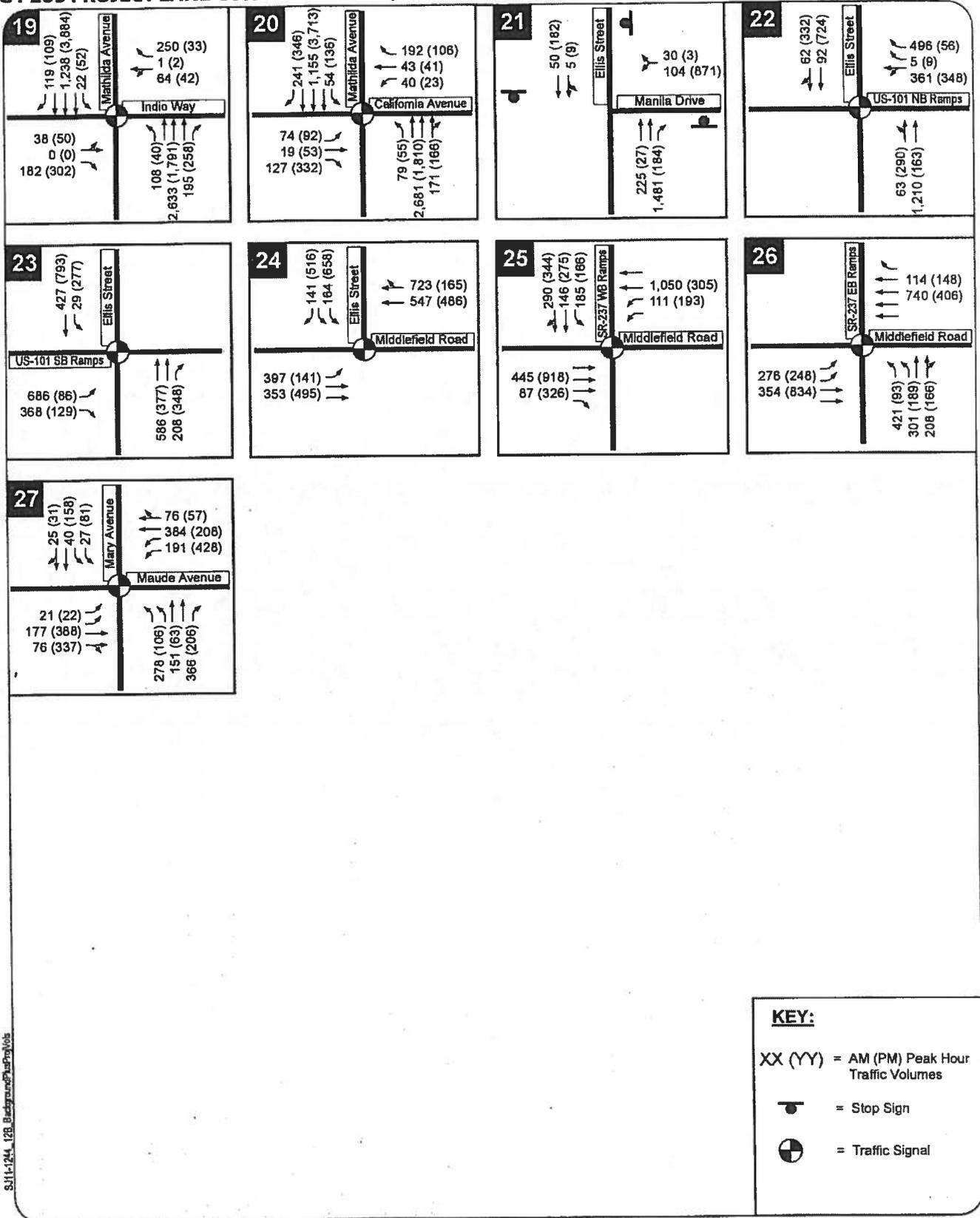
BG PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



S-11-1244_12A_BasigrundPlan_PDF_01/18

FIGURE 12B

BG PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR TRAFFIC VOLUMES



KEY:
 XX (YY) = AM (PM) Peak Hour Traffic Volumes
 = Stop Sign
 = Traffic Signal

S:\11-1244_128_Background\Fig101b

Area and Method of Construction, Transportation Project Schedule
July 2011

**TABLE 11
BACKGROUND INTERSECTION LEVELS OF SERVICE**

	Intersection	Peak Hour ¹	Inter-section Control	Background Conditions		Background plus Project Conditions				
				Delay ²	LOS ³	Delay ²	LOS ³	Δ In Crit. V/C ⁴	Δ In Crit. Delay ⁵	Signal Warrant Met? ⁶
1	Enterprise Way/Building D Site Access (North)	AM PM	Side-Street Stop	14.7 23.0	B C	15.1 26.5	B D	N/A N/A	+0.4 +3.5	No No
2	Enterprise Way/Building D Site Access (South)	AM PM	Side-Street Stop	26.8 27.0	D D	32.2 48.3	D E	N/A N/A	+5.4 +21.3	No Yes
3	Enterprise Way/11 th Avenue	AM PM	All-Way Stop	23.0 14.0	C B	39.1 16.6	E C	+0.145 +0.081	+21.0 +4.2	Yes No
4	E Street/11 th Avenue	AM PM	All-Way Stop	8.9 8.7	A A	9.2 8.9	A A	+0.031 +0.031	+0.3 +0.3	No No
5	D Street/Ariba Site Access/11 th Avenue	AM PM	All-Way Stop	8.8 9.5	A A	9.1 9.8	A A	+0.031 +0.029	+0.4 +0.5	No No
6	C Street/Ariba Site Access/11 th Avenue	AM PM	All-Way Stop	9.5 10.3	A B	10.0 10.8	B B	+0.039 +0.038	+0.6 +0.6	No No
7	Innovation Way/Ariba Site Access	AM PM	Side-Street Stop	9.3 16.4	A C	10.7 20.2	B C	N/A N/A	+1.4 +7.9	No No
8	Enterprise Way/Manila Drive/Moffett Park Drive	AM PM	Signal	56.8 13.3	E+ B	86.0 14.9	F B	+0.101 +0.051	+50.4 +2.1	N/A
9	US 101 Northbound On-Ramp/Moffett Park Drive	AM PM	Signal	3.4 13.5	A B	3.4 13.9	A B	+0.025 +0.027	+0.2 +1.4	N/A
10	Innovation Way/Moffett Park Drive	AM PM	Signal	6.2 14.1	A B	6.8 14.9	A B	+0.260 +0.072	+1.2 +2.7	N/A
11	Mathilda Avenue/Moffett Park Drive**	AM PM	Signal	119.0 219.3	F F	126.8 259.7	F F	+0.026 +0.102	+12.9 +63.0	N/A
12	Mathilda Avenue/SR 237 Westbound Ramps**	AM PM	Signal	57.2 123.5	E+ F	63.4 133.1	E F	+0.020 +0.022	+7.8 +11.3	N/A
13	Mathilda Avenue/SR 237 Eastbound Ramps**	AM PM	Signal	33.9 76.8	C- E-	35.1 81.6	D+ F	+0.011 +0.022	+3.5 +10.9	N/A
14	Mathilda Avenue/Ross Drive**	AM PM	Signal	12.2 60.0	B E	12.2 68.4	B E	+0.012 +0.020	+0.8 +12.5	N/A
15	Mathilda Avenue/US 101 Northbound Ramps**	AM PM	Uncontrolled	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A
16	Mathilda Avenue/US 101 Southbound Ramps**	AM PM	Uncontrolled	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A N/A	N/A
17	Mathilda Avenue/Almanor Avenue/Ahwanee Avenue**	AM PM	Signal	20.5 20.7	C+ C+	20.5 20.8	C+ C+	+0.007 +0.007	+0.8 +1.4	N/A
18	Mathilda Avenue/Maude Avenue*	AM PM	Signal	48.7 30.2	D C	49.1 30.3	D C	+0.010 +0.005	+1.6 +0.7	N/A
19	Mathilda Avenue/Indio Way**	AM	Signal	16.0	B	16.0	B	+0.006	+0.4	N/A

**TABLE 11
BACKGROUND INTERSECTION LEVELS OF SERVICE**

Intersection	Peak Hour ¹	Inter-section Control	Background Conditions		Background plus Project Conditions				
			Delay ²	LOS ³	Delay ²	LOS ³	Δ In Crit. V/C ⁴	Δ in Crit. Delay ⁵	Signal Warrant Met? ⁶
	PM		17.3	B	17.6	B	+0.005	+1.1	
20 Mathilda Avenue/California Avenue**	AM	Signal	18.2	B-	18.2	B-	+0.006	+1.1	N/A
	PM		33.5	C-	34.5	C-	+0.006	+1.8	
21 Ellis Street/Manila Drive***	AM	All-Way Stop	8.3	A	8.4	A	+0.014	+0.1	Yes
	PM		51.3	F	83.3	F	+0.117	+38.8	Yes
22 Ellis Street/US 101 Northbound Ramps***	AM	Signal	18.6	B-	19.1	B-	+0.025	+2.0	N/A
	PM		24.5	C	24.8	B	+0.027	+1.9	
23 Ellis Street/US 101 Southbound Ramps***	AM	Signal	20.5	C+	20.9	C+	+0.031	+1.1	N/A
	PM		13.6	B	13.7	B	+0.026	+1.1	
24 Ellis Street/Middlefield Road***	AM	Signal	20.7	C+	22.0	C+	+0.029	+3.5	N/A
	PM		23.3	C	23.5	C	+0.013	+0.5	
25 SR 237 Westbound Ramps/Middlefield Road***	AM	Signal	15.6	B	15.5	B	+0.008	+0.4	N/A
	PM		19.2	B-	18.9	B-	+0.017	+1.4	
26 SR 237 Eastbound Ramps/Middlefield Road***	AM	Signal	19.8	B-	19.9	B-	+0.000	+0.2	N/A
	PM		15.9	B	16.0	B	+0.000	+0.0	
27 Mary Avenue/Maude Avenue	AM	Signal	27.5	C	27.5	C	+0.008	+0.5	N/A
	PM		26.1	C	26.2	C	+0.005	+0.2	

Notes:

- 1 AM = morning peak hour, PM = afternoon peak hour.
- 2 Whole intersection weighted average control delay expressed in seconds per vehicle for signalized intersections using methodology described in the 2000 HCM, with adjusted saturation flow rates to reflect Santa Clara County Conditions.
- 3 LOS = level of service. LOS calculations conducted using the TRAFFIX level of service analysis software package.
- 4 Change in the critical volume-to-capacity ratio (V/C) between Background and Background plus Project Conditions.
- 5 Change in critical movement delay between Background and Background plus Project Conditions.
- 6 Signal warrant based CA MUTCD Warrant 3, Peak Hour (Urban Area)
- * CMP Intersection with LOS E threshold.
- ** Regionally significant intersection with LOS E threshold.
- *** City of Mountain View intersection.

Source: Fehr and Peers, 2011.

Some of the study intersections show a reduction in average delay with the addition of project traffic, which is counter-intuitive. The average delay values in the table are weighted averages. Weighted average delays will be reduced when traffic is added to a movement with a low delay, such as the through movements in the non-peak direction on Mathilda Avenue.⁴ Conversely, relatively small volume increases to movements with high delays can substantially increase the weighted average delay.

⁴ For example, if you have one movement with 10 vehicles with a delay of 100 seconds and another movement with 400 vehicles and 10 seconds of delay, the weighted average delay is calculated as (100 seconds X 10 vehicles + 10 seconds X 400 vehicles) / 410 vehicles = 12.2 seconds per vehicle. Now if you add 100 vehicles to the movement with 10 seconds of delay, the weighted average delay is calculated as

Qualitative Evaluation of Synchro/SimTraffic Analysis for Mathilda Avenue Corridor

The MPSP EIR presents future year analysis for the Mathilda Avenue corridor under 2020 General Plan Conditions. Though that scenario presents a further horizon year than the 2013 analysis presented in this report, the information from that analysis was used to qualitatively assess operations in the Mathilda Avenue corridor. Based on the Synchro analysis, the individual intersections in the study corridor would operate at LOS D or better, with the exception of the Mathilda Avenue/Moffett Park Drive intersection. This is similar to the TRAFFIX service levels presented in Table 11, though the analysis for this report also indicates that the Mathilda Avenue/SR 237 Westbound Ramps would operate unacceptably. Based on the MPSP corridor analysis, the overall signal system corridor was estimated to operate at LOS D and C during the AM and PM peak hour, respectively. It should be noted that the 2020 General Plan analysis presented in the MPSP includes major roadway improvements (such as the Mary Avenue extension) that were not included in this report.

The 2006 Moffett Towers TIA also evaluated the Mathilda Avenue corridor using Synchro analysis software. The Project scenario presented in the 2006 report is comparable to the Background plus Project scenario used for this report. According to the Synchro LOS calculations that were performed as part of the 2006 Moffett Towers TIA, the following intersections are projected to operate at a lower (worse) LOS rating than the calculated TRAFFIX LOS under Background No Project Conditions:

- Mathilda Avenue/Maude Avenue (LOS F vs. LOS C, PM peak)
- Mathilda Avenue/Indio Way (LOS E vs. LOS B, PM peak)

The different level of service rating can be attributed to the input parameters for the two software programs. The Synchro software program utilizes the actual signal timing parameters, whereas the TRAFFIX software program calculates and optimizes the signal timings based on the volumes and lane geometry.

BACKGROUND INTERSECTION IMPACTS AND MITIGATION MEASURES

This section of the report evaluates the intersection LOS results presented in Table 11 against the City of Sunnyvale's, City of Mountain View's, and VTA's criteria for significant impacts and presents mitigation measures for identified impacts.

Int. 2. Enterprise Way/Building D Site Access (South)

Under Background plus Project Conditions the Enterprise Way/Building D Site Access (South) intersection is projected to operate at LOS E and meet the MUTCD peak hour volume warrant during the PM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be **less-than-significant** based on City standards with the installation of a traffic signal.

Alternatively, the project's impact at the Enterprise Way/Building D Site Access (South) can be mitigated to **less-than-significant** levels with the provision of a fifty-foot refuge lane for the westbound left-turn movements. This mitigation would require some modifications to the existing raised median. With this alternative mitigation the intersection would operate at LOS C and D during the AM and PM peak hours, respectively.

Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Moffett Towers TDM program is required to reduce peak hour trips by 30 percent, based on the guidelines

(100 seconds X 10 vehicles + 10 seconds X 500 vehicles)/510 vehicles = 11.8 seconds per vehicle. The weighted average delay improves, even though more vehicles are added.

from the MPSP. With a 30 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be **less-than-significant**; however, the peak hour volume warrant would still be met.

Int. 3. Enterprise Way/11th Avenue

Under Background plus Project Conditions the Enterprise Way/11th Avenue intersection is projected to operate at LOS E and meet the MUTCD peak hour volume during the AM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be **less-than-significant** based on City standards with the installation of a traffic signal (the traffic signal is already installed at this location and will simply need to be put in full operation).

Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Ariba Campus TDM program is required to reduce peak hour trips by 15 percent. With a 15 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be **less-than-significant**; however, the peak hour volume warrant would still be met.

Int. 8. Enterprise Way/Manila Drive-Moffett Park Drive

At the Enterprise Way/Manila Drive-Moffett Park Drive intersection, the addition of project traffic is estimated to deteriorate operations from unacceptable LOS E+ to LOS F during the AM peak hour. Therefore the project is considered to have a **significant impact**.

The 2006 Moffett Towers TIA also identified a significant impact at this intersection. The 2006 report recommended that the project contribute a fair share of funds to the proposed extension of Mary Avenue to 11th Avenue over US 101 and SR 237. As estimated in the *Mary Avenue Overcrossing Final Traffic Operations Report*, this improvement would decrease volume at the Enterprise Way/Manila Drive-Moffett Park Drive intersection by nearly 25 percent; such a decrease in traffic volume would improve operations at the intersection to LOS C during the AM peak hour. Traffic would shift onto the new Mary Avenue overcrossing, affecting Mary Avenue north of Maude Avenue. The Mary Avenue Extension project is programmed in the VTA's *Valley Transportation Plan 2035* list of constrained projects and is included in the City's TIF program (discussed in Existing Conditions chapter). Thus, construction of the Mary Avenue extension would mitigate the project impact to a **less-than-significant** level and payment of the City's TIF would constitute the project's fair share contribution.

As an alternative to the Mary Avenue Overcrossing, the eastbound through lane on Manila Drive could be converted to a shared through/left-turn lane, thus enabling two lanes of traffic to turn left onto Enterprise Way. This improvement would also require the signal phasing on Manila Drive-Moffett Park Drive to be converted from protected left-turn phasing to split phasing to accommodate the shared through/left-turn lane. With this improvement the intersection is projected to operate at LOS C- during the AM peak hour and LOS B- during the PM peak hour and the impact would become **less-than-significant**.

Int. 11. Mathilda Avenue/Moffett Park Drive

The intersection of Mathilda Avenue/Moffett Park Drive is projected to operate deficiently under Background No Project Conditions. Under Background plus Project conditions, unacceptable AM and PM peak hour operations would be exacerbated with the addition of project traffic. Since the critical delay increases by more than four seconds and the critical V/C ratio increases by more than 0.01 between the Background No Project and Background plus Project Scenarios, the project is considered to have a **significant impact** at the Mathilda Avenue/Moffett Park Drive intersection based on the City's impact criteria.

As estimated in the *Mary Avenue Overcrossing Final Traffic Operations Report*, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the

AM peak hour and 23 percent in the PM peak hour. Construction of the Mary Avenue overcrossing, along with reconfiguration of the SR 237/Mathilda Avenue ramp intersections, would reduce the impact to a **less-than-significant level**. Payment of the City's TIF would constitute the project's fair share contribution. These improvements consist of:

- Re-aligning Moffett Park, east of Mathilda Avenue, to connect to 5th Avenue via Bordeaux Avenue;
- Shifting the SR 237 Westbound Off-ramp 150 feet to the north to align with Moffett Park/Mathilda Avenue;
- Removal of SR 237 Westbound On-ramp; and,
- Construction of a direct southbound right-turn on-ramp from Mathilda Avenue to US 101 north

These improvements are programmed in both the City's TIF and the VTA's *VTP 2035* list of constrained projects.

Int. 12. Mathilda Avenue/SR 237 Westbound Ramps

The addition of project traffic will exacerbate unacceptable LOS F operations at the intersection of Mathilda Avenue/SR 237 Westbound Ramps in the PM peak hour under Background plus Project Conditions. The critical delay is projected to increase by more than four seconds and the critical V/C ratio is projected to increase by more than 0.01 between the Background No Project and Background plus Project Scenarios; therefore the project is considered to have a **significant impact** based on the City's impact criteria.

The identified improvements for the Mathilda Avenue/Moffett Park Drive intersection would also mitigate the impacts identified for the Mathilda Avenue/SR 237 Westbound Ramp intersection, since they include the elimination of this intersection. Payment of the City's TIF would constitute the project's fair share contribution.

Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps

The addition of project traffic degrade operations from acceptable LOS E- to unacceptable LOS F during the PM peak hour at the intersection of Mathilda Avenue/SR 237 Eastbound Ramps in the PM peak hour under Background plus Project Conditions; therefore the project is considered to have a **significant impact** based on the City's impact criteria. The cycle length at this signal would likely be adjusted with the Mathilda Avenue/SR 237 Westbound Ramps project mentioned above; if the cycle length is changed from 65 seconds to between 70 and 120 seconds, the intersection will operate at LOS E and the impact will be reduced to a **less-than-significant level**. Additionally, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the AM peak hour and 23 percent in the PM peak hour; the intersection would operate acceptably with these volume reductions. Traffic would shift onto the new Mary Avenue overcrossing, affecting Mary Avenue north of Maude Avenue. Payment of the City's TIF would constitute the project's fair share contribution.

Int. 21. Ellis Street/Manila Drive

Under Background plus Project Conditions, the addition of project traffic is projected to exacerbate unacceptable PM peak hour operations and increase the critical delay by more than four seconds and the critical V/C ratio by more than 0.01; thus based on the City of Mountain View's threshold for significant impacts the project is considered to have a **significant impact**.

The addition of a westbound left-turn lane would reduce the PM impact to a **less-than-significant level**. With this improvement the intersection is projected to operate at LOS A during the AM peak hour and LOS C during the PM peak hour. Of the total growth at the intersection from the existing condition, roughly 13% is generated by the Project in the AM peak hour and 15% is generated by the Project in the PM peak hour.

San Joaquin Hills Freeway Expansion Transportation Impact Analysis
July 2011

BACKGROUND PLUS PROJECT FREEWAY SEGMENT LEVELS OF SERVICE

Freeway segments of US 101 and SR 237 were analyzed during the AM and PM peak hours to calculate the amount of project traffic projected to be added to these freeway segments. Capacities of 2,300 vehicles per hour per lane (vphpl) for freeway segments with three or more lanes and capacities of 2,200 vphpl for freeway segments with two lanes were used in the freeway analysis. To be conservative, no project trips were assigned to HOV lanes.

As discussed under Existing Conditions, VTA requires analysis of freeway segments when the proposed development project is expected to add traffic equal to at least one percent of a freeway segment's capacity. Since the number of trips added under Existing plus Project Conditions is the same as under Background plus Project Conditions, the results in Table 9 are also applicable to this scenario. Therefore, the addition of project trips under Background plus Project Conditions will not degrade operations from acceptable to unacceptable service levels as shown in Table 9.

BACKGROUND PLUS PROJECT FREEWAY IMPACTS

The proposed project would not add trips greater than one percent of the freeway segment capacity to any freeway segments already operating at LOS F; therefore, the project has a **less-than-significant** impact at the identified study freeway segments and no mitigation measures are required.

5. CUMULATIVE CONDITIONS

This chapter presents the results of the level of service calculations under Cumulative Conditions with and without the project. Traffic volumes for Cumulative No Project Conditions comprise existing volumes multiplied by a growth factor per the City of Sunnyvale's most recent traffic model update, plus traffic generated by all foreseen development projects that would affect the transportation system in the study area, including "approved but not yet built" and "not occupied," as well as pending development projects. Approved, not occupied, and pending projects account for local growth, while the growth factor accounts for regional growth. Cumulative plus Project Conditions are defined as Cumulative No Project Conditions plus traffic generated by the proposed project.

CUMULATIVE NO PROJECT TRAFFIC VOLUMES

Cumulative Traffic Growth

Growth factors for local roads, collectors, and arterial roadways that were developed based on the City of Sunnyvale's travel demand forecasting model as summarized in **Table 10** in **Chapter 4** under Background Conditions were also used to estimate regional growth for Cumulative Conditions. The growth rates were applied to existing year 2011 volumes for a five-year time horizon to estimate regional traffic growth to the year 2016.

Approved, Not Occupied and Pending Projects

Vehicle trips from "approved but not yet built" and "not occupied" developments projects and from pending development projects in the study area were added. Projects in the Cities of Sunnyvale, Mountain View, Santa Clara, and Cupertino were included. Trip generation estimates were obtained from their respective traffic reports or estimated based on trip generation rates published in the Institute of Transportation Engineers *Trip Generation* (8th Edition). The trips for each of the projects were then assigned to the roadway network based on the relative locations of complementary land uses, as well as, existing and estimated future travel patterns. **Appendix C** contains a list of approved and not occupied projects from each City and their trip generation estimates.

The trips for each of the approved, not occupied, and pending development projects were added to the existing volumes, which were multiplied by the annual growth rates discussed above to represent Cumulative No Project Conditions, as shown on **Figure 13**.

CUMULATIVE IMPROVEMENTS

There are no approved and funded transportation network improvements that were assumed to be constructed prior to cumulative horizon year of 2016. Therefore, the existing roadway network was used for the cumulative analysis.

CUMULATIVE PLUS PROJECT TRAFFIC VOLUMES

Trips from the 125,000-s.f. expansion of Building D at Moffett Park and the 200,000 s.f. Ariba Campus expansion (**Figure 9**) were added to the Cumulative No Project volumes on **Figure 13**. The results are shown on **Figure 14**.

CUMULATIVE INTERSECTION LEVELS OF SERVICE

Table 12 presents the level of service calculations for the study intersections under Cumulative No Project and Cumulative plus Project Conditions. **Appendix B** contains the corresponding calculation sheets.

Signalized Intersections

Under Cumulative plus Project Conditions the following four signalized intersections are projected to operate at unacceptable service levels during the identified peak hours.

- Int. 8. Enterprise Way/Manila Drive-Moffett Park Drive: the addition of project traffic exacerbates unacceptable LOS E operation and degrades operation to LOS F during the AM peak hour
- Int. 11. Mathilda Avenue/Moffett Park Drive: the addition of project traffic exacerbates unacceptable LOS F operations during the AM and PM peak hours
- Int. 12. Mathilda Avenue/SR 237 Westbound Ramps: the addition of project traffic exacerbates unacceptable LOS F operations during the PM peak hour
- Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps: the addition of project traffic exacerbates unacceptable LOS F operations during the PM peak hour

These are the same four signalized intersections that were projected to operate at unacceptable service levels under Background Plus Project Conditions.

Unsignalized Intersections

Under Cumulative plus Project Conditions, three unsignalized intersections are projected to operate at unacceptable service level during the identified peak hours.

- Int. 2. Enterprise Way/Building D Site Access (South): during the PM peak hour the addition of project traffic degrades intersection operation from acceptable LOS D to unacceptable LOS E
- Int. 3. Enterprise Way/11th Avenue: during the AM peak hour the addition of project traffic degrades intersection operation from acceptable LOS C to unacceptable LOS E
- Int. 21. Ellis Street/Manila Drive: during the PM peak hour the addition of project traffic exacerbates unacceptable LOS F operations

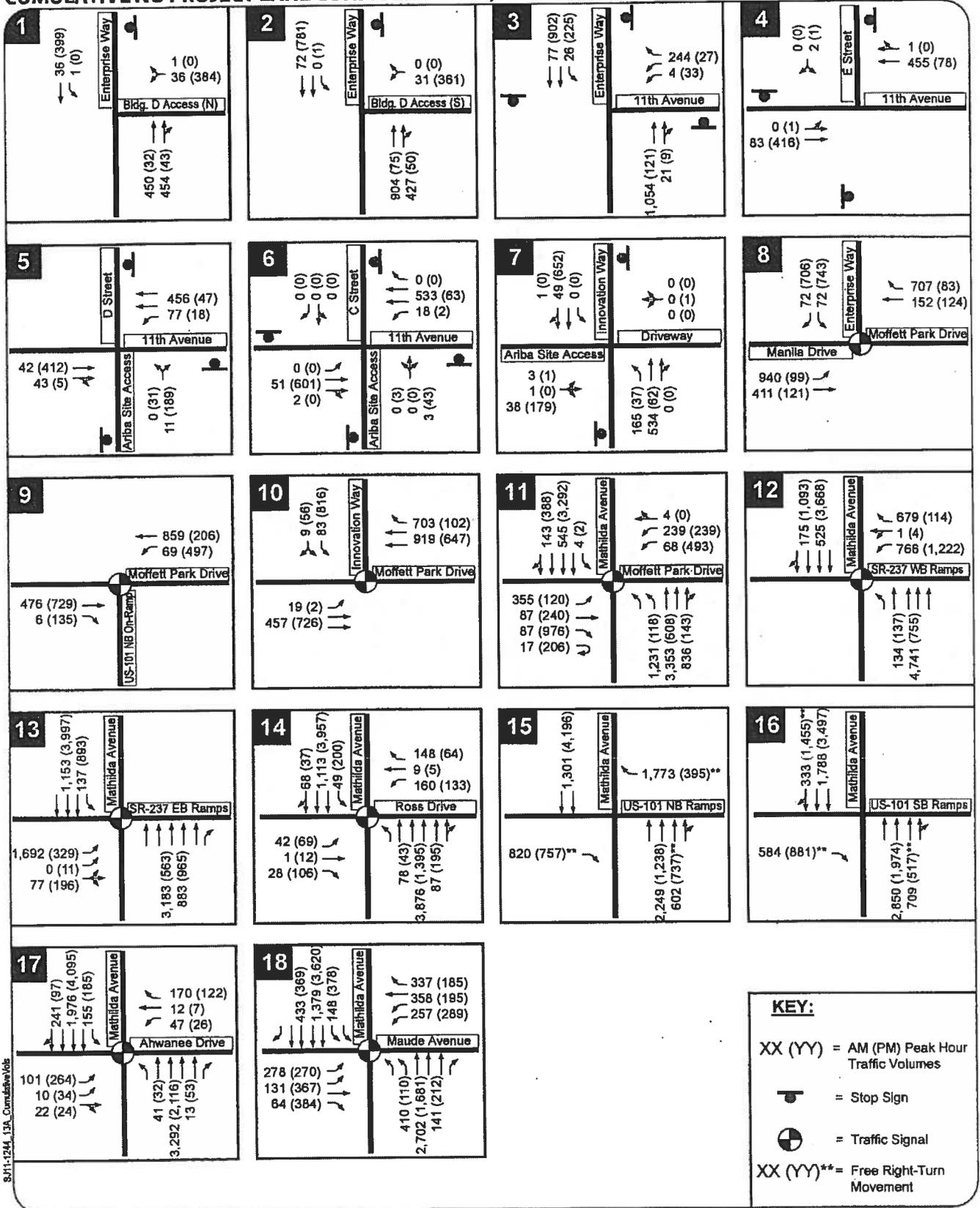
These are the same three unsignalized intersections that were projected to operate at unacceptable service levels under Background Plus Project Conditions.

The remaining unsignalized intersections are projected to operate at acceptable LOS. The Enterprise Way/Building D Site Access (South), Enterprise Way/11th Avenue, and Ellis Street/Manila Drive intersections satisfy the peak-hour signal warrant during at least one peak hour. Appendix E contains the peak-hour signal warrants.

Again, the peak-hour signal warrant analysis should not serve as the only basis for deciding whether and when to install a traffic signal. The responsible state or local agency should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to prioritize and program intersections for signalization. On private roads (Enterprise Way), the project sponsor is responsible for the monitoring of actual traffic conditions.

FIGURE 13A

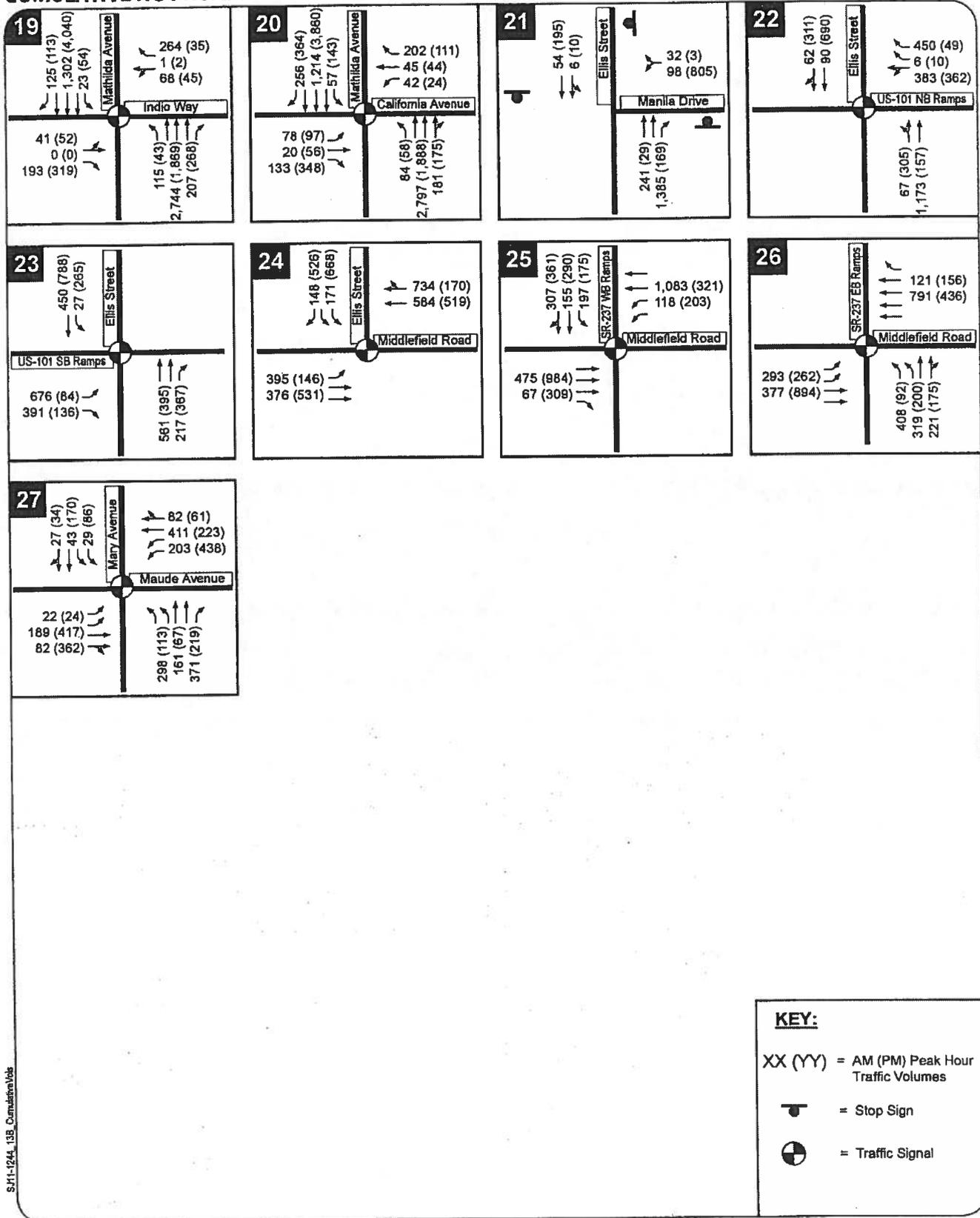
CUMULATIVE NO PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR VOLUMES



S/11-124, 13A_CumulativeVols

FIGURE 13B

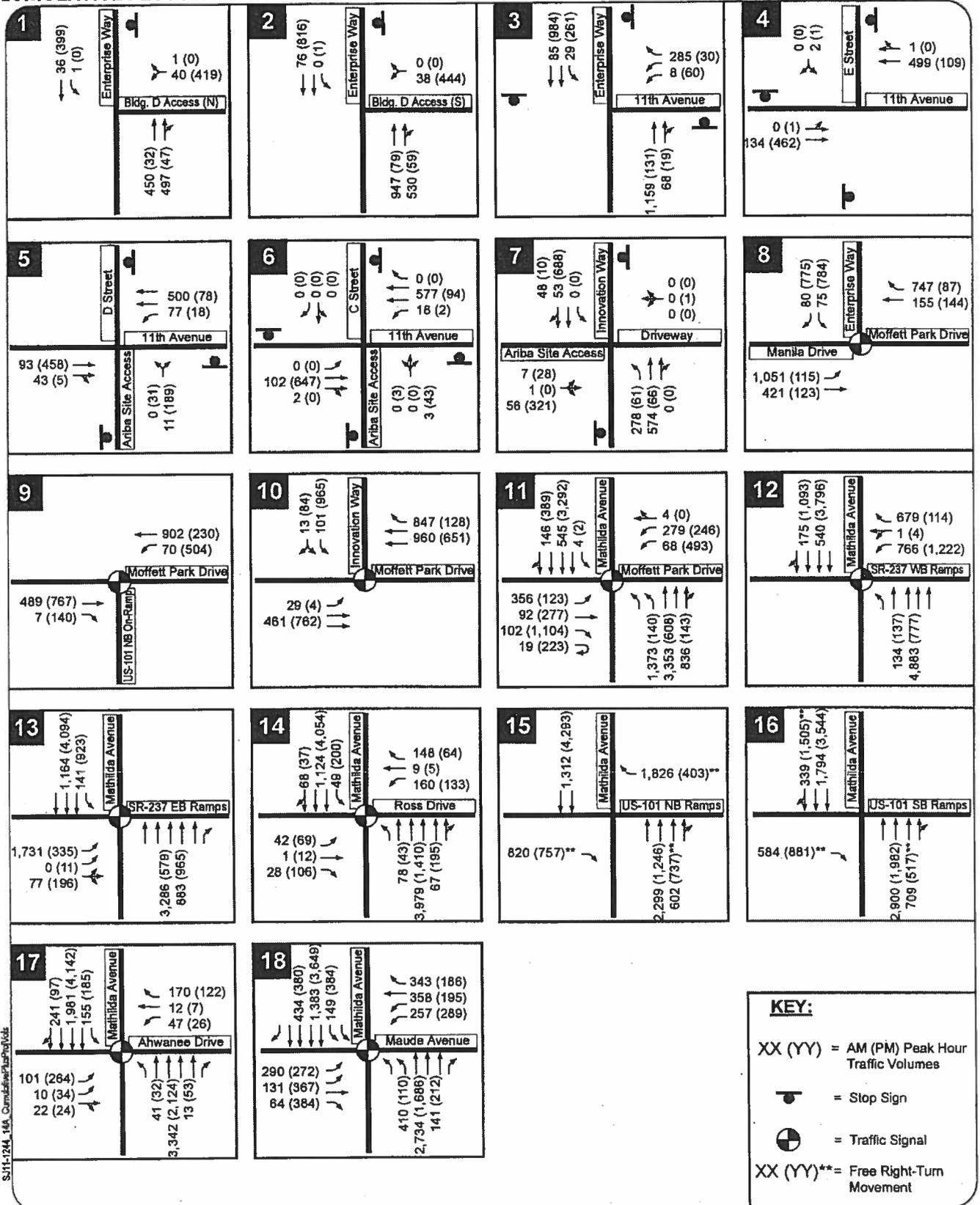
CUMULATIVE NO PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR VOLUMES



S:\11-1244_13B_CumulativeVols

FIGURE 14A

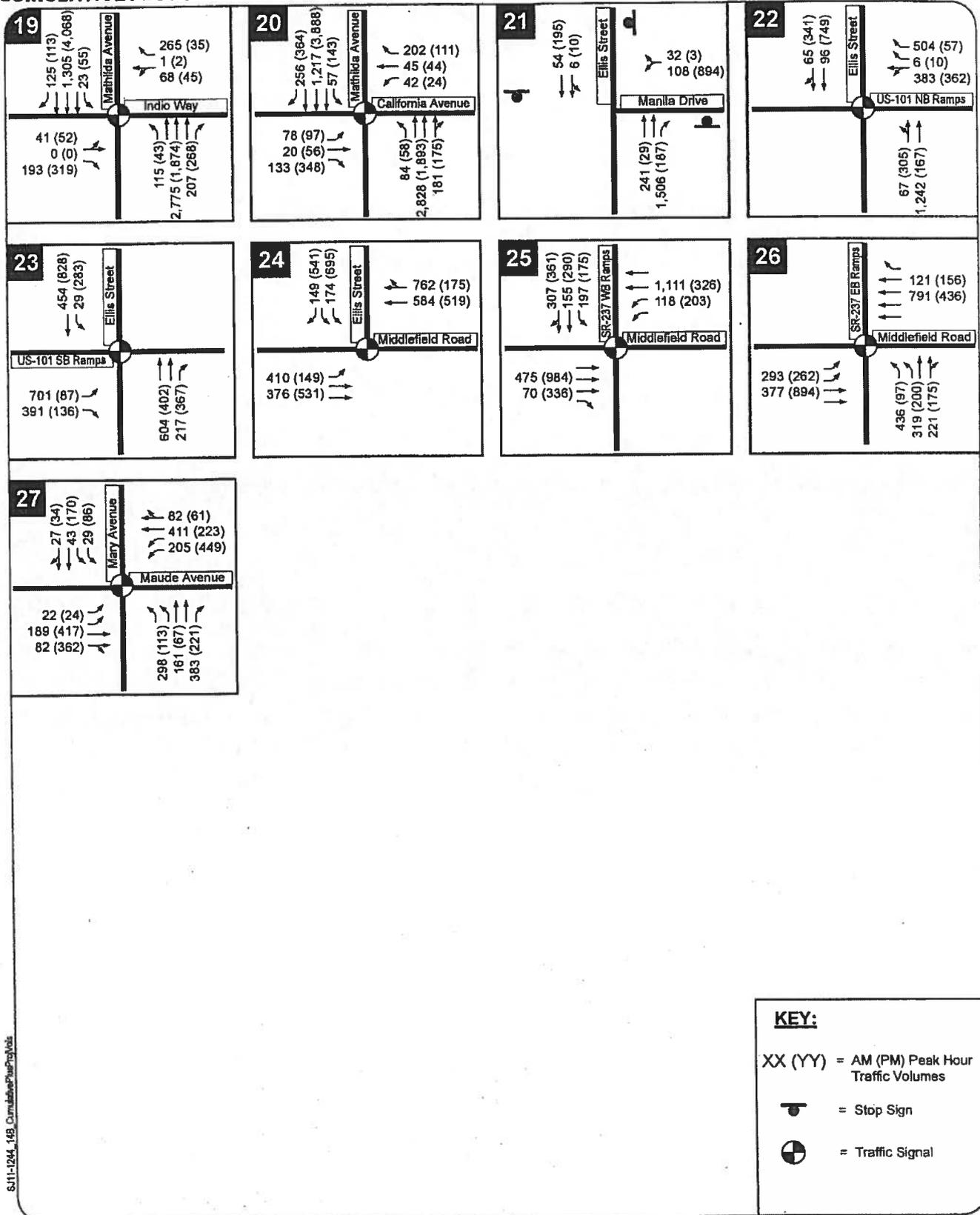
CUMULATIVE PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR VOLUMES



S11-124, 1A, Cumulative Plus Grid

FIGURE 14B

CUMULATIVE PLUS PROJECT LANE CONFIGURATIONS, TRAFFIC CONTROLS, AND PEAK HOUR VOLUMES



S111-124_14B_CumulativePlusProjVol.s

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**TABLE 12
CUMULATIVE INTERSECTION LEVELS OF SERVICE**

	Intersection	Peak Hour ¹	Inter-section Control	Cumulative Conditions		Cumulative plus Project Conditions				
				Delay ²	LOS ³	Delay ²	LOS ³	Δ in Crit. V/C ⁴	Δ in Crit. Delay ⁵	Signal Warrant Met? ⁶
1	Enterprise Way/Building D Site Access (North)	AM	Side-Street Stop	14.8	B	15.3	B	N/A	+0.5	No
		PM		23.5	C	27.2	D	N/A	+3.7	No
2	Enterprise Way/Building D Site Access (South)	AM	Side-Street Stop	27.1	D	32.7	D	N/A	+5.6	No
		PM		27.3	D	49.3	E	N/A	+22.0	Yes
3	Enterprise Way/11 th Avenue	AM	All-Way Stop	23.5	C	40.2	E	+0.144	+21.7	Yes
		PM		14.1	B	16.8	C	+0.081	+2.7	No
4	E Street/11 th Avenue	AM	All-Way Stop	8.9	A	9.2	A	+0.031	+0.3	No
		PM		8.7	A	8.9	A	+0.031	+0.3	No
5	D Street/Ariba Site Access/11 th Avenue	AM	All-Way Stop	8.8	A	9.1	A	+0.031	+0.4	No
		PM		9.5	A	9.8	A	+0.036	+0.5	No
6	C Street/Ariba Site Access/11 th Avenue	AM	All-Way Stop	9.5	A	10.0	B	+0.039	+0.6	No
		PM		10.3	B	10.9	B	+0.039	+0.7	No
7	Innovation Way/Ariba Site Access	AM	Side-Street Stop	9.3	A	10.7	B	N/A	+1.4	No
		PM		16.5	C	20.4	C	N/A	+3.9	No
8	Enterprise Way/Manila Drive/Moffett Park Drive	AM	Signal	62.2	E	92.2	F	+0.102	+51.6	N/A
		PM		13.7	B	15.5	B	+0.051	+2.3	N/A
9	US 101 Northbound On-Ramp/Moffett Park Drive	AM	Signal	3.4	A	3.4	A	+0.025	+0.2	N/A
		PM		13.9	B	14.5	B	+0.027	+1.6	N/A
10	Innovation Way/Moffett Park Drive	AM	Signal	6.3	A	6.9	A	+0.261	+1.3	N/A
		PM		14.3	B	15.2	B	+0.071	+2.8	N/A
11	Mathilda Avenue/Moffett Park Drive**	AM	Signal	129.3	F	137.1	F	+0.025	+12.9	N/A
		PM		234.3	F	274.4	F	+0.101	+63.0	N/A
12	Mathilda Avenue/SR 237 Westbound Ramps**	AM	Signal	66.6	E	73.1	E	+0.020	+8.2	N/A
		PM		139.8	F	149.4	F	+0.022	+11.4	N/A
13	Mathilda Avenue/SR 237 Eastbound Ramps**	AM	Signal	37.8	D+	39.3	D	+0.011	+4.1	N/A
		PM		86.7	F	92.8	F	+0.021	+11.0	N/A
14	Mathilda Avenue/Ross Drive**	AM	Signal	12.6	B	12.5	B	+0.012	+0.8	N/A
		PM		70.8	E	79.3	E-	+0.020	+12.6	N/A
15	Mathilda Avenue/US 101 Northbound Ramps**	AM	Uncontrolled	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		PM		N/A	N/A	N/A	N/A	N/A	N/A	N/A
16	Mathilda Avenue/US 101 Southbound Ramps**	AM	Uncontrolled	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		PM		N/A	N/A	N/A	N/A	N/A	N/A	N/A
17	Mathilda Avenue/Almanor Avenue/Ahwanee Avenue**	AM	Signal	21.4	C+	21.3	C+	+0.007	+0.9	N/A
		PM		22.2	C+	22.4	C+	+0.007	+1.7	N/A
18	Mathilda Avenue/Maude Avenue*	AM	Signal	50.7	D	51.2	D-	+0.010	+1.9	N/A
		PM		32.1	C-	32.2	C-	+0.005	+0.9	N/A
19	Mathilda Avenue/Indio Way**	AM	Signal	16.7	B	16.7	B	+0.006	+0.5	N/A

**TABLE 12
CUMULATIVE INTERSECTION LEVELS OF SERVICE**

Intersection	Peak Hour ¹	Inter-section Control	Cumulative Conditions		Cumulative plus Project Conditions				Signal Warrant Met? ⁶
			Delay ²	LOS ³	Delay ²	LOS ³	Δ in Crit. V/C ⁴	Δ in Crit. Delay ⁵	
	PM		21.2	C+	21.8	C+	+0.006	+1.2	
20 Mathilda Avenue/California Avenue**	AM PM	Signal	19.0 43.8	B- D	19.1 45.2	B- D	+0.006 +0.005	+1.3 +2.5	N/A
21 Ellis Street/Manila Drive***	AM PM	All-Way Stop	8.4 60.4	A F	8.5 95.1	A F	+0.014 +0.118	+0.1 +42.3	Yes Yes
22 Ellis Street/US 101 Northbound Ramps***	AM PM	Signal	19.5 25.4	B- C	20.1 25.8	C+ B	+0.024 +0.028	+2.5 +2.1	N/A
23 Ellis Street/US 101 Southbound Ramps***	AM PM	Signal	21.1 13.8	C+ B	21.5 13.9	C+ B	+0.031 +0.028	+1.2 +1.2	N/A
24 Ellis Street/Middlefield Road***	AM PM	Signal	22.2 23.9	C+ C	23.9 24.1	C C	+0.029 +0.012	+4.7 +0.6	N/A
25 SR 237 Westbound Ramps/Middlefield Road***	AM PM	Signal	15.8 19.5	B B-	15.7 19.2	B B-	+0.009 +0.017	+0.3 +1.1	N/A
26 SR 237 Eastbound Ramps/Middlefield Road***	AM PM	Signal	20.0 14.8	B- B	20.0 14.8	C+ B	+0.000 +0.000	+0.2 +0.1	N/A
27 Mary Avenue/Maude Avenue	AM PM	Signal	27.6 26.6	C C	27.7 26.7	C C	+0.008 +0.005	+0.5 +0.3	N/A

Notes:

- 1 AM = morning peak hour, PM = afternoon peak hour.
- 2 Whole intersection weighted average control delay expressed in seconds per vehicle for signalized intersections using methodology described in the 2000 HCM, with adjusted saturation flow rates to reflect Santa Clara County Conditions.
- 3 LOS = level of service. LOS calculations conducted using the TRAFFIX level of service analysis software package.
- 4 Change in the critical volume-to-capacity ratio (V/C) between Background and Background plus Project Conditions.
- 5 Change in critical movement delay between Background and Background plus Project Conditions.
- 6 Signal warrant based CA MUTCD Warrant 3, Peak Hour (Urban Area)

* CMP intersection with LOS E threshold.
 ** Regionally significant intersection with LOS E threshold.
 *** City of Mountain View Intersection.

Source: Fehr and Peers, 2011.

Qualitative Evaluation of Synchro/SimTraffic Analysis for Mathilda Avenue Corridor

The MPSP EIR presents future year analysis for the Mathilda Avenue corridor under 2020 General Plan Conditions. Though this scenario presents a further horizon year than the 2016 analysis presented in this report, the information from that analysis was used to qualitatively assess operations in the Mathilda Avenue corridor. Based on the Synchro analysis, the individual intersections in the study corridor would operate at LOS D or better, with the exception of the Mathilda Avenue/Moffett Park Drive intersection. This is similar to the TRAFFIX service levels presented in Table 12, though the analysis for this report also indicates that the Mathilda Avenue/SR 237 Westbound Ramps would operate unacceptably. Based on the MPSP corridor analysis, the overall signal system corridor was estimated to operate at LOS D and C during the AM and PM

peak hour, respectively. It should be noted that the 2020 General Plan analysis presented in the MPSP includes major roadway improvements (such as the Mary Avenue extension) that were not included in this report.

The 2006 Moffett Towers TIA also evaluated the Mathilda Avenue corridor using Synchro analysis software. The Project scenario presented in the 2006 report is comparable to the Cumulative plus Project scenario used for this report. According to the Synchro LOS calculations that were performed as part of the 2006 Moffett Towers TIA, the following intersections are projected to operate at a lower (worse) LOS rating than the calculated TRAFFIX LOS under Cumulative No Project Conditions:

- Mathilda Avenue/Maude Avenue (LOS F vs. LOS C-, PM peak)
- Mathilda Avenue/Indio Way (LOS E vs. LOS C+, PM peak)

The different level of service rating can be attributed to the input parameters for the two software programs. The Synchro software program utilizes the actual signal timing parameters, whereas the TRAFFIX software program calculates and optimizes the signal timings based on the volumes and lane geometry.

CUMULATIVE INTERSECTION IMPACTS AND MITIGATION MEASURES

This section of the report evaluates the intersection LOS results presented in Table 12 against the City of Sunnyvale's, City of Mountain View's, and VTA's criteria for significant impacts and presents mitigation measures for identified impacts.

Int. 2. Enterprise Way/Building D Site Access (South)

Under Cumulative plus Project Conditions the Enterprise Way/Building D Site Access (South) intersection is projected to operate at LOS E and meet the MUTCD peak hour volume warrant during the PM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be **less-than-significant** based on City standards with the installation of a traffic signal.

Alternatively, the project's impact at the Enterprise Way/Building D Site Access (South) can be mitigated to **less-than-significant** levels with the provision of a fifty-foot refuge lane for the westbound left-turn movements. This mitigation would require some modifications to the existing raised median to accommodate the alternative mitigation measure. With this alternative mitigation the intersection would operate at LOS C and D during the AM and PM peak hours, respectively.

Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Moffett Towers TDM program is required to reduce peak hour trips by 30 percent, based on the guidelines from the MPSP. With a 30 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be **less-than-significant**; however, the peak hour volume warrant would still be met.

Int. 3. Enterprise Way/11th Avenue

Under Cumulative plus Project Conditions the Enterprise Way/11th Avenue intersection is projected to operate at LOS E and meet the MUTCD peak hour volume during the AM peak hour. Because Enterprise Way is a private roadway, the project applicant should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to determine the need for signalization. The project's impact will be **less-than-significant** based on City standards with the installation of a traffic signal (the traffic signal is already built at this location and will simply need to be put in full operation).

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Additionally, although VTA guidelines only allow for a maximum 9.5 percent reduction on vehicle trips, the Ariba Campus TDM program is required to reduce peak hour trips by 15 percent. With a 15 percent reduction in vehicle trips, the intersection would operate at LOS D, causing the impact at this intersection to be **less-than-significant**; however, the peak hour volume warrant would still be met.

Int. 8. Enterprise Way/Manila Drive-Moffett Park Drive

The Intersection of Enterprise Way/Manila Drive-Moffett Park Drive is projected to operate deficiently under Cumulative No Project Conditions. Under Cumulative plus Project conditions, unacceptable AM and PM peak hour operations would be exacerbated with the addition of project traffic. Since the critical delay increases by more than four seconds and the critical V/C ratio increases by more than 0.01 between the Cumulative No Project and Cumulative plus Project Scenarios, the project is considered to have a **significant** impact at the Enterprise Way/Manila Drive-Moffett Park Drive intersection based on the City's impact criteria.

The 2006 Moffett Towers TIA also identified a significant impact at this intersection. The 2006 report recommended that the project contribute a fair share of funds to the proposed extension of Mary Avenue to 11th Avenue over US 101 and SR 237. As estimated in the *Mary Avenue Overcrossing Final Traffic Operations Report*, this improvement would decrease volume at the Enterprise Way/Manila Drive-Moffett Park Drive intersection by nearly 25 percent; such a decrease in traffic volume would improve operations at the intersection to LOS C during the AM peak hour. The Mary Avenue Extension project is programmed in the VTA's VTP 2035 list of constrained projects and is included in the City's TIF program (discussed in Existing Conditions chapter). Thus, construction of the Mary Avenue extension would mitigate the project impact to a **less-than significant** level and payment of the City's TIF would represent the project's fair share contribution.

As an alternative to the Mary Avenue Overcrossing, the eastbound through lane on Manila Drive could be converted to a shared through/left-turn lane, thus enabling two lanes of traffic to turn left onto Enterprise Way. This improvement would also require the signal phasing on Manila Drive-Moffett Park Drive to be converted from protected left-turn phasing to split phasing to accommodate the shared through/left-turn lane. With this improvement the intersection is projected to operate at LOS D+ during the AM peak hour and LOS C+ during the PM peak hour and the impact would become **less-than-significant**.

Int. 11. Mathilda Avenue/Moffett Park Drive

The intersection of Mathilda Avenue/Moffett Park Drive is projected to operate deficiently under Cumulative No Project Conditions. Under Cumulative plus Project conditions, unacceptable AM and PM peak hour operations would be exacerbated with the addition of project traffic. Since the critical delay increases by more than four seconds and the critical V/C ratio increases by more than 0.01 between the Cumulative No Project and Cumulative plus Project Scenarios, the project is considered to have a **significant** impact at the Mathilda Avenue/Moffett Park Drive intersection based on the City's impact criteria.

As estimated in the *Mary Avenue Overcrossing Final Traffic Operations Report*, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the AM peak hour and 23 percent in the PM peak hour. Traffic would shift onto the new Mary Avenue overcrossing, affecting Mary Avenue north of Maude Avenue. Construction of the Mary Avenue overcrossing, along with reconfiguration of the SR 237/Mathilda Avenue ramp intersections, would reduce the impact to a **less-than-significant** level. Payment of the City's TIF would constitute the project's fair share contribution. These improvements consist of:

- Re-aligning Moffett Park, east of Mathilda Avenue, to connect to 5th Avenue via Bordeaux Avenue;
- Shifting the SR 237 Westbound Off-ramp 150 feet to the north to align with Moffett Park/Mathilda Avenue;
- Removal of SR 237 Westbound On-ramp; and,

- Construction of a direct southbound right-turn on-ramp from Mathilda Avenue to US 101 north

These improvements are programmed in both the City's TIF and the VTA's VTP 2035 list of constrained projects.

Int. 12. Mathilda Avenue/SR 237 Westbound Ramps

The addition of project traffic will exacerbate unacceptable LOS F operations at the intersection of Mathilda Avenue/SR 237 Westbound Ramps in the PM peak hour under Cumulative plus Project Conditions. The critical delay is projected to increase by more than four seconds and the critical V/C ratio is projected to increase by more than 0.01 between the Cumulative No Project and Cumulative plus Project Scenarios; therefore the project is considered to have a **significant** impact based on the City's impact criteria.

The identified improvements for the Mathilda Avenue/Moffett Park Drive intersection would also mitigate the impacts identified for the Mathilda Avenue/SR 237 Westbound Ramp intersection, since they include elimination of this intersection. Payment of the City's TIF would constitute the project's fair share contribution.

Int. 13. Mathilda Avenue/SR 237 Eastbound Ramps

Under Cumulative plus Project Conditions, the addition of project traffic at the intersection of Mathilda Avenue/SR 237 Eastbound Ramps is projected to exacerbate unacceptable PM peak hour operations and increase the critical delay by more than four seconds and the critical V/C ratio by more than 0.01; thus based on the City of Mountain View's threshold for significant impacts the project is considered to have a **significant** impact.

The cycle length at this signal would likely be adjusted with the Mathilda Avenue/SR 237 Westbound Ramps project mentioned above; if the cycle length is changed from 65 seconds to between 80 and 120 seconds, the intersection will operate at LOS E and the impact will be reduced to a **less-than-significant** level. Additionally, the Mary Avenue overcrossing would shift nearly 13 percent of the northbound Mathilda Avenue traffic to Mary Avenue in the AM peak hour and 23 percent in the PM peak hour; the intersection would operate acceptably with these volume reductions. Traffic would shift onto the new Mary Avenue overcrossing, affecting Mary Avenue north of Maude Avenue. Payment of the City's TIF would constitute the project's fair share contribution.

Int. 21. Ells Street/Manila Drive

Under Cumulative plus Project Conditions, the addition of project traffic is projected to exacerbate unacceptable PM peak hour operations and increase the critical delay by more than four seconds and the critical V/C ratio by more than 0.01; thus based on the City of Mountain View's threshold for significant impacts the project is considered to have a **significant** impact.

The addition of a westbound left-turn lane would reduce the PM impact to a **less-than-significant** level. With this improvement the intersection is projected to operate at LOS A during the AM peak hour and LOS C during the PM peak hour. Of the total growth at the intersection from the existing condition, roughly 11% is generated by the Project in the AM peak hour and 15% is generated by the Project in the PM peak hour.

CUMULATIVE FREEWAY IMPACTS

As discussed under Existing Conditions, VTA requires analysis of freeway segments when the proposed development project is expected to add traffic equal to at least one percent of a freeway segment's capacity. Since the number of trips added under Existing plus Project Conditions is the same as under Background plus Project Conditions, the results in Table 9 are also applicable to this scenario. Therefore, the addition of project trips under Background plus Project Conditions will not degrade operations from acceptable to unacceptable service levels as shown in Table 9.

6. SITE ACCESS AND ON-SITE CIRCULATION

Figures 2a and 2b show the proposed site plans for the Ariba and Moffett Towers projects indicating the location of the project driveways and the internal circulation system that supports auto, pedestrian, and bicycle traffic. Future site access to/from each project site and the internal circulation within each project site are discussed below. Figures 15a and 15b show recommendations for the Ariba and Moffett Towers site plans based on site access and circulation for vehicles, pedestrians, bicyclists, and transit users.

DES Architects & Engineers provided Fehr & Peers with drafts of the site plans on March 16, 2011. Fehr & Peers communicated directly with DES regarding some site modifications, including circulation within the new parking garage and pedestrian access from the surrounding roadway network. These comments were addressed and the site plans shown in this report are current as of April 11, 2011. The City of Sunnyvale will require a detail review of the final site plans once they are available.

ACCESS AND CIRCULATION REVIEW

Ariba Campus Expansion

The internal circulation of the proposed garage was reviewed for dead-end aisles and parking spaces that would be difficult to maneuver in and out of. There is one dead-end aisle on the ground level of the proposed garage, though sufficient turnaround space has been provided to facilitate vehicular circulation.

The new parking garage will be primarily constructed on an existing surface parking lot, though the garage would also eliminate a pedestrian walkway that currently meanders from the south-east corner of the project site at the Moffett Park Drive/Innovation Way intersection to the existing Building 3. There is limited pedestrian activity on Moffett Park Drive and Innovation Way (no cross walks are provided at that intersection and no sidewalks existing on Moffett Park Drive east of Innovation way and on the east side of Innovation Way) and the removal of the pedestrian walkway is not considered significant, since it does not result in added walk time or inconvenience for pedestrians. Pedestrian access to the Moffett Park light rail station is not impacted by the removal of the walkway. A more direct pedestrian access is provided closer to the station and closer to the center of the project site.

Driveway Queue Storage Analysis

Since the new parking garage will be constructed off the site's entrance/exit with Innovation Way, most of the project traffic will now access the site from the Innovation Way entrance. Based on the LOS results presented in Tables 8 and 11, the site access driveway is projected to operate at LOS C or better under Existing plus Project, Background plus Project Conditions, and Cumulative plus Project Conditions; thus the number of driveways is sufficient to accommodate the amount of project traffic. Queues of vehicles turning left into and out of the site at the Innovation Way driveway were evaluated to determine if sufficient storage lengths are provided. The storage capacity was analyzed under Cumulative plus project conditions, since overall intersection volumes are higher in this scenario and it presents the most conservative approach.

To estimate the maximum queue the approaching and conflicting traffic volumes were used in addition to the peak hour factor, speed limit, and distance to the closest traffic signal. The purpose of the analysis was to estimate maximum inbound driveway queuing. Three methods were considered:

1. The HCM 2000 Method described in Chapter 17 of the *Highway Capacity Manual*,
2. The Uniform Arrival Method, and

3. The Queue Length Estimation Method as described in a November 2001 *ITE Journal* article⁵.

The HCM Method and Uniform Arrival Method both estimate a maximum queue of one vehicle for each movement for both the AM and PM peak hours. These queue length methods typically underestimate unsignalized queue lengths. Therefore, the Queue Length Estimation Method, which is based on field data and accounts for platooning caused by adjacent signals, was used to estimate maximum queue length for the project driveway.

Based on the assumptions listed above, the northbound left-turn from Innovation Way into the project site will serve an estimated maximum queue of five vehicles during the AM peak hour and four vehicles during the PM peak hour. Appendix F includes the queue length calculation sheets. Assuming a length of 25 feet to accommodate each vehicle, the northbound left-turn storage lane should be 125 feet long. The current northbound left-turn pocket on Innovation Way is approximately 75 feet long and thus should ideally be extended by an additional 50 feet to accommodate anticipated project traffic. However, there are some right-of-way constraints with the existing light-rail tracks just south of the Innovation Way entrance. Therefore, the northbound left-turn pocket on Innovation Way should be extended up to 50 feet to the extent feasible within the right-of-way.

The estimated queue for the exit driveway onto Innovation Way is six vehicles, thus requiring a storage capacity of 150 feet. The proposed driveway throat depth at the Innovation Way driveway is approximately 200 feet and thus the site has sufficient storage capacity to accommodate project traffic.

Signing and Striping

As proposed the garage entrance off the Innovation Way driveway will be slightly offset from the opposing entrance to the existing surface parking lot and parking structure. To better facilitate vehicle circulation at this intersection, entrance approaches should be signed and stop controlled.

Mary Avenue Extension

The proposed site plan for the Ariba campus does not show the future Mary Avenue extension connection to 11th Avenue; though the project applicant has allowed for future right-of-way for the Mary Avenue Extension project within the current layout of the project site as shown in Figure 16.

Moffett Towers Campus Expansion

The proposed new garage for the Moffett Towers project will be constructed at the very northern border of the campus, while Building D will actually be constructed towards the southern border of the site. Based on the current layout of the entire campus, most employees for Building D will likely use the existing parking garage that is closer to the building, while Buildings G and F are closer to the proposed garage. To ensure that both the existing and proposed garages are evenly and efficiently utilized, the project applicant should consider adding a parking management program. Such a program could either assign parking based on building (i.e. Buildings D, E, and H park in the existing garage and buildings F and G park in the proposed garage. Parking garage access can be re-assessed as the tenants begin to fill the buildings.

The entire Moffett Towers campus between 11th Avenue and 5th Avenue has six driveways on Enterprise Way. Full access driveways are provided toward the southern and northern borders of the site, with the northern driveway providing full access to the proposed parking garage. All other driveways are restricted to right-n/right-out movements only by a raised median on Enterprise Way.

⁵ "Estimation of Maximum Queue Lengths at Unsignalized Intersections", Gard, John, *ITE Journal*, November 2001.

The internal circulation of the proposed garage was reviewed for dead-end aisles and parking spaces that would be difficult to maneuver. There are no dead-end aisles in the proposed garage or any parking spaces that would be difficult to maneuver.

Garage Access

The northern full access driveway provides not only access to the proposed garage, but also to an existing surface parking lot and the existing garage. To distribute vehicles and facilitate vehicle flow in and out of the northern end of the project site, ideally a secondary access would be provided from the proposed garage to 5th Avenue; however this is a private roadway with restricted access and this is not a feasible improvement.

Based on the LOS results presented in Tables 8 and 11, the northern full access site access driveway is projected to operate at LOS D or better under Existing plus Project, Background plus Project Conditions, and Cumulative plus Project Conditions. The southern full access driveway is projected to operate at LOS E under Background plus Project Conditions and Cumulative plus Project Conditions.

The number of left-turns out of the driveway conflicting with vehicles that have already exited the northern driveway and are continuing south causes the driveway to operate unacceptably. The number of driveways is sufficient to accommodate project traffic, though the southern driveway may have to be signal-controlled at some point in the future. The project sponsor should undertake regular monitoring of actual traffic conditions and accident data and timely re-evaluation of the full set of warrants in order to prioritize and program intersections for signalization.

Driveway Queue Storage Analysis

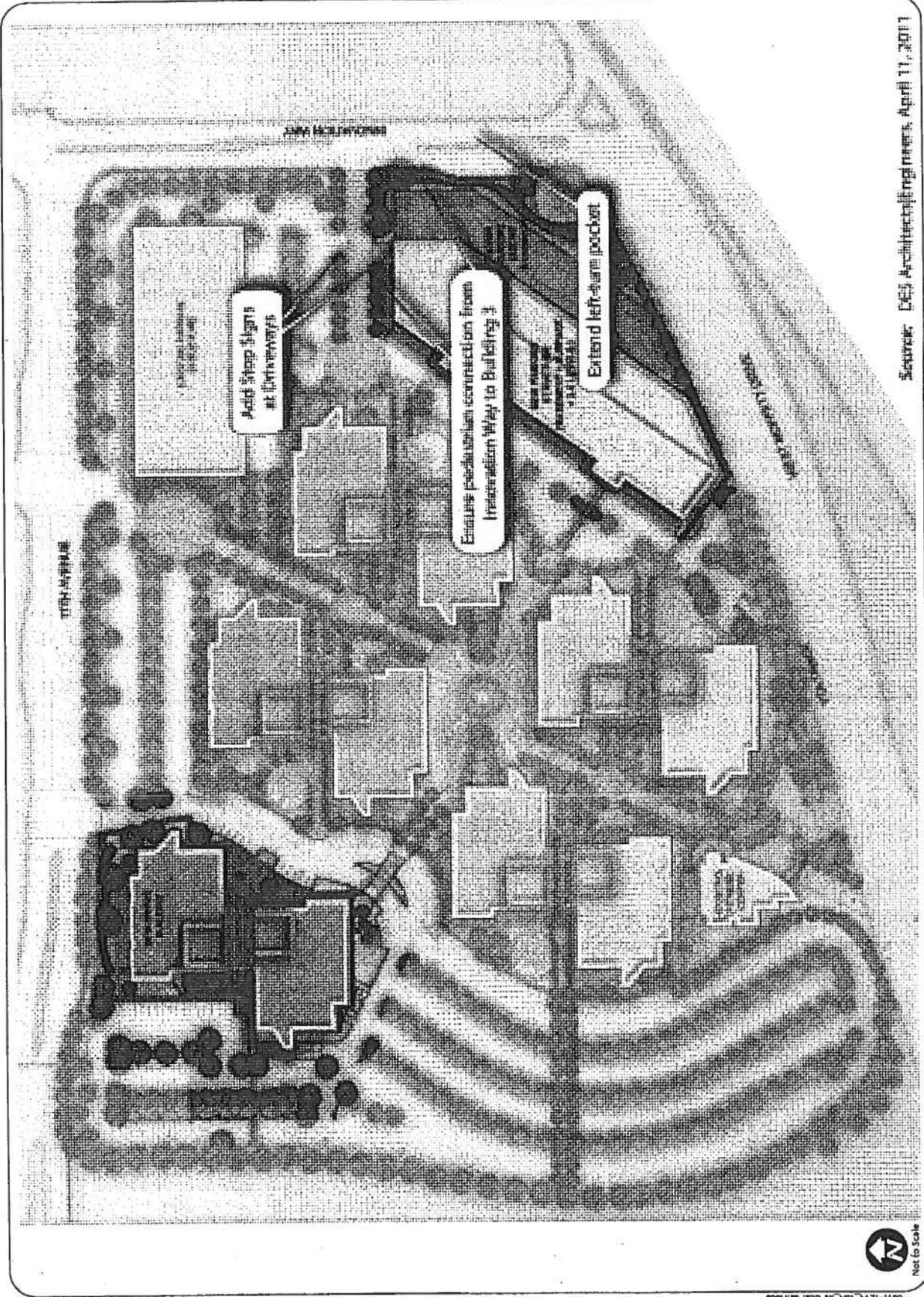
Queues were evaluated at the Enterprise Way full access driveways to determine if sufficient storage lengths are provided for vehicles exiting the site. Due to the restricted access at the 5th Avenue/Enterprise Way intersection only minimal left-turn vehicles will access the site from Enterprise Way and the queue analysis is limited to evaluating on-site queues. The storage capacity was analyzed under Cumulative plus Project conditions, since overall intersection volumes are higher in this scenario and it presents the most conservative approach.

The estimated queues for the exit driveways onto Enterprise Way are 8 vehicles for the north driveway and 10 vehicles for the south driveway, requiring a storage capacity of 200 feet and 250 feet, respectively. The proposed driveway throat depth is 350 feet at the northern driveway and 250 feet at the southern driveway; thus the site has sufficient storage capacity to accommodate project traffic.

Signing and Striping

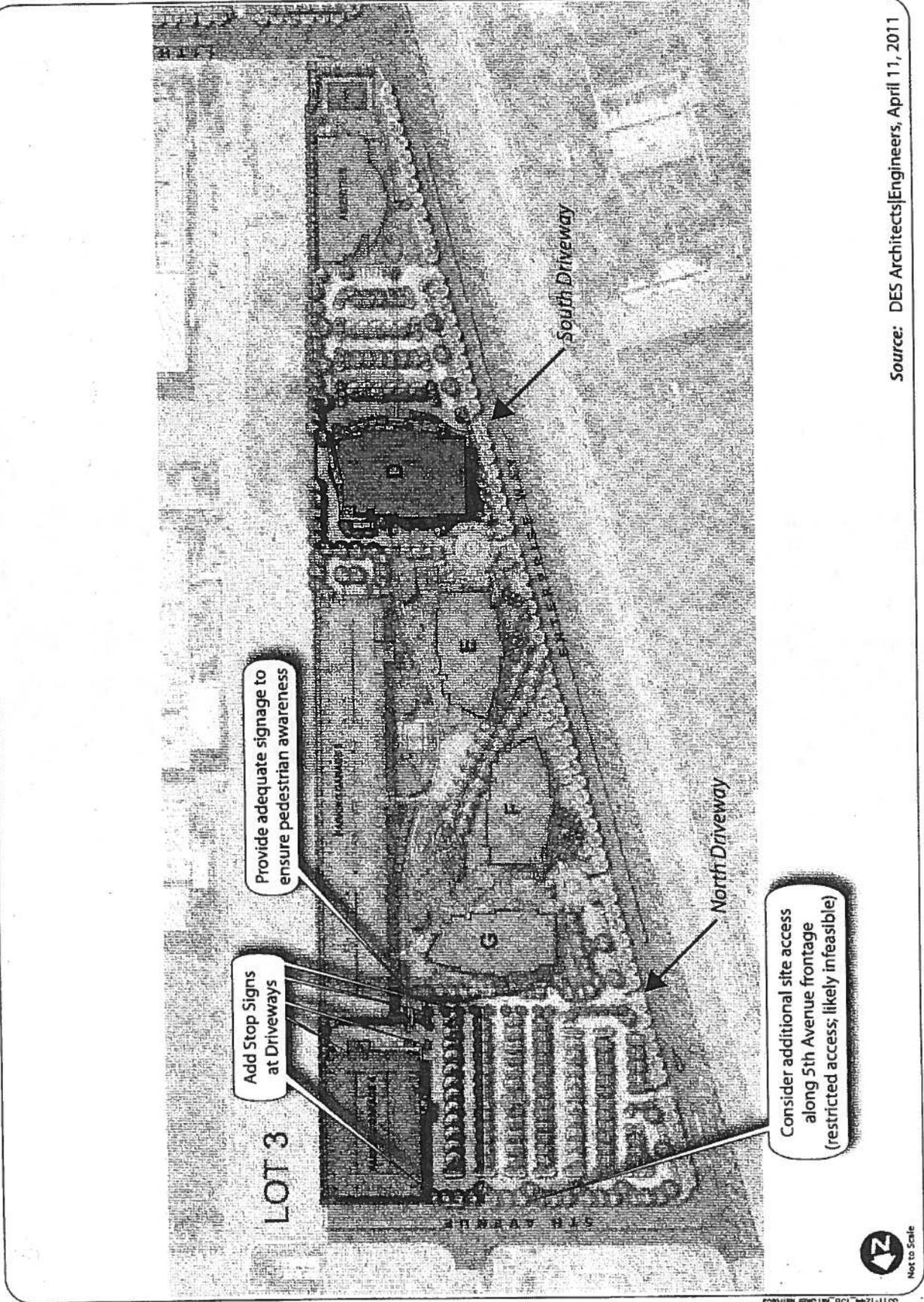
As proposed the garage will have two entries/exits onto the drive aisles that provide access to northern full access driveway. To better facilitate vehicle circulation the garage exits onto the main drive aisles should be signed as stop controlled, as shown in Figure 15b. Stop signs should also be placed at the westbound approach of the southern garage access driveway, as well as at the south end of each driveway aisle that connects to the main access driveway leading to Enterprise Way.

ARIBA CAMPUS EXPANSION SITE PLAN RECOMMENDATIONS



Source: EGS Architectural Engineers, April 11, 2011

MOFFETT TOWERS EXPANSION SITE PLAN RECOMMENDATIONS



Source: DES Architects|Engineers, April 11, 2011

PEDESTRIAN AND BICYCLE ACCESS AND CIRCULATION

This section of the report addresses both off-site and on-site pedestrian access and circulation for the Ariba and Moffett Towers projects.

Off-Site Pedestrian Evaluation

Sidewalks would be provided on Enterprise Way, 11th Avenue, and 5th Avenue along the project frontages. Pedestrian connections would be provided between the proposed buildings, parking lots, and parking garages. A pedestrian pathway would link the light rail station located on Manila Drive to the new building at the Ariba Campus and to the 11th Avenue/Enterprise Way sidewalks that continue to Building D at Moffett Towers. The proposed pedestrian path between the Ariba Campus buildings and the light rail station would cross through the parking lot with a diagonal alignment. While this alignment would create greater exposure for pedestrians to traffic circulating in the parking areas and around the site, there is a clearly marked crosswalk at the southeast corner of the building that will aid pedestrian travel through the site. Sidewalks are also included in the City's TIF program.

Ariba On-Site Pedestrian Evaluation

The new parking garage on the Ariba campus removes a pedestrian connection from the northeast corner of the Innovation Way/Moffett Park Drive intersection. While the direct connection is removed, pedestrians will still have access around the garage and the increase in potential for pedestrian-vehicle conflicts is minimal. Additionally, if the Mary Avenue Extension is completed and it connects to 11th Avenue, the project applicant has allowed for future right-of-way on-site. Pedestrian and bicycle access would only be helped by the Mary Avenue Extension.

Pedestrian access between the garage and the Ariba office buildings will be provided via three pedestrian walkways. Two of these walkways will be provided at existing pedestrian paths and one new pedestrian access will be constructed as part of the proposed project. On-site pedestrian access is considered adequate.

Moffett Towers On-Site Pedestrian Evaluation

Pedestrian access between the proposed new garage and the Moffett Towers office buildings will be provided via one direct pedestrian path. This path crosses both the end of the ramp of the new garage, as well, as the north driveway for the existing garage. To minimize conflicts between pedestrians and vehicles, the pedestrian walkways should be adequately signed and include other treatments to highlight the presence of pedestrians. With such improvements, pedestrian access within the site is considered adequate.

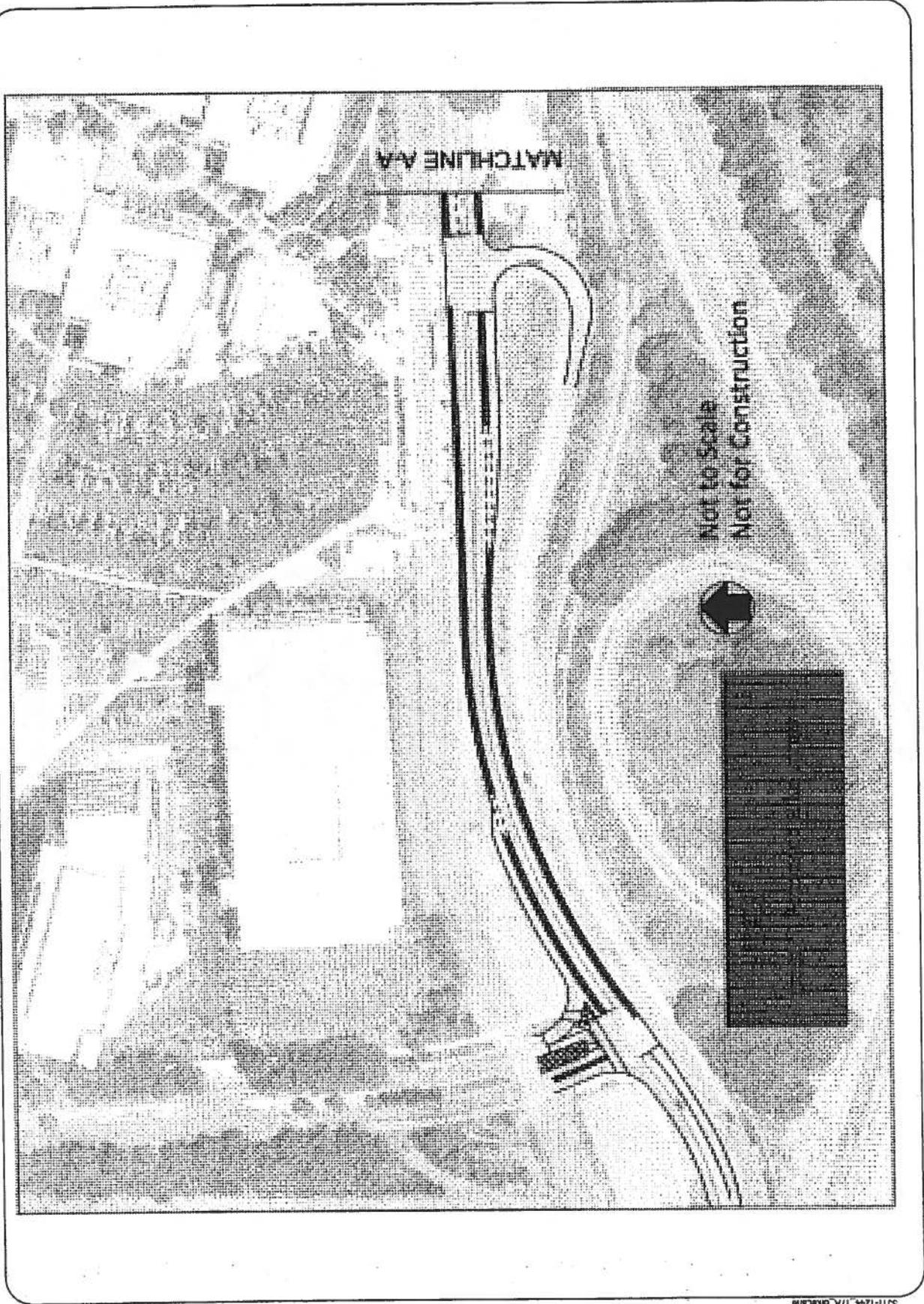
Bicycle Access Evaluation

The project sites have bicycle access via the bicycle lanes on 11th Avenue and Enterprise Way; however, no bicycle lanes are provided on Moffett Park Drive east of Enterprise Way, which provides access to 11th Avenue and Enterprise Way. While less than ideal, the roadway is wide enough for bicyclists to share the road with vehicles, but re-striping the road to accommodate bike lanes could be considered if safety becomes an issue. The City has identified the construction of bike lanes on Moffett Park Drive as a future bicycle improvement; a conceptual design, shown in Figure 17, and cost estimate, detailed in Appendix G, have been developed as part of this study. Due to the lack of available right-of-way between the light-rail tracks and the SR-237 westbound on-ramp, no bike lane was added between Innovation Way and Mathilda Avenue. Sharrows and signage will be used to alert vehicles to the potential presence of bicyclists in the Moffett Park Drive segment between Mathilda Avenue and Innovation and the City will continue to study the possibility of adding a bike lane in this segment. The cost estimate for the bicycle lane between Enterprise Way and Mathilda Avenue is approximately 105,000 dollars, which includes pavement rehabilitation, and the project will pay its fair-share contribution to this improvement.

Allen and Martin Foster Engineers Transportation Project Review
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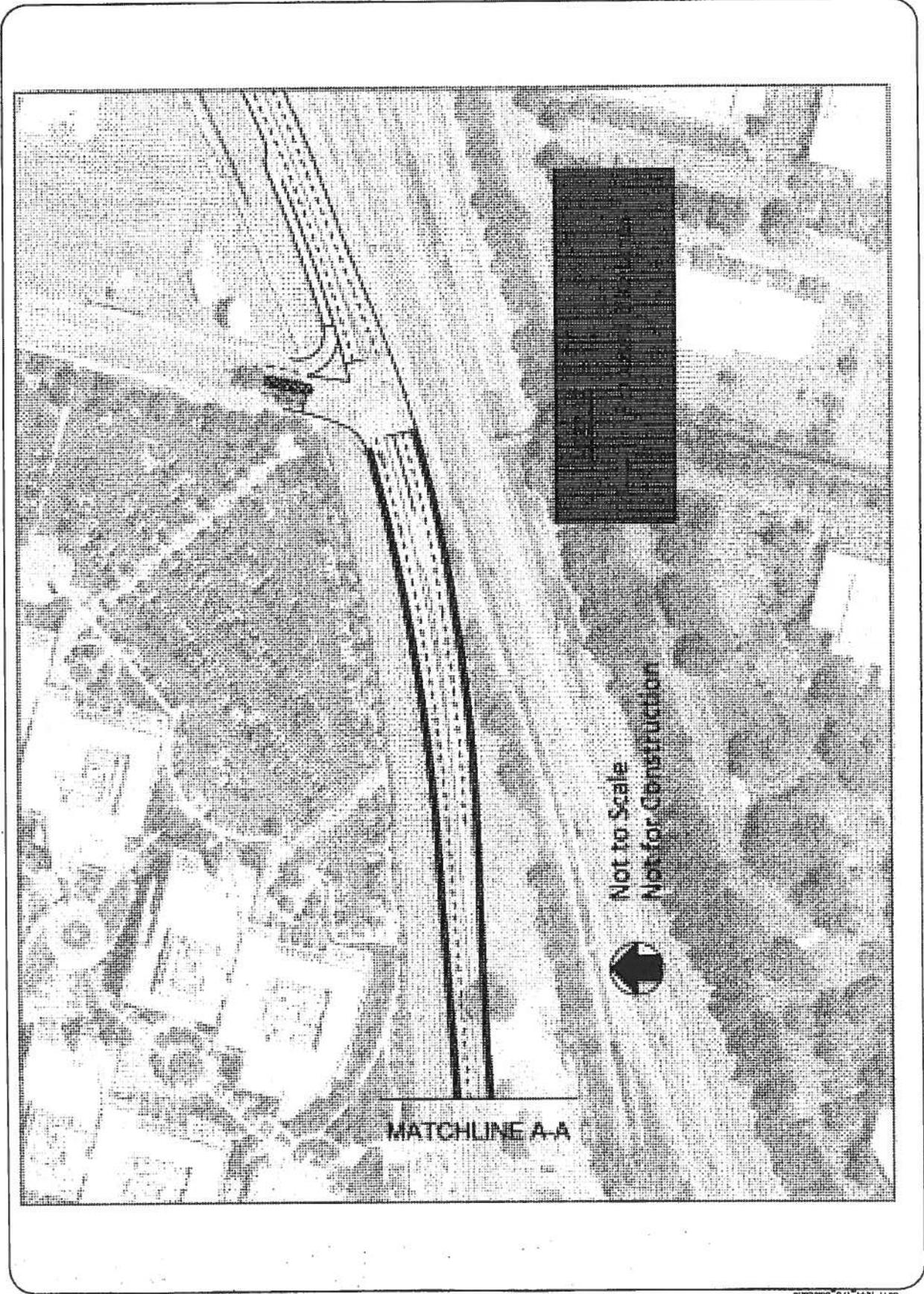
Overall, because the project is an expansion to recent construction, most of the existing infrastructure appropriately accommodates bicyclists and pedestrians.

MOFFETT PARK DRIVE BICYCLE LANES CONCEPTUAL DESIGN



5/11-12/14 17A Bkellm

MOFFETT PARK DRIVE BICYCLE LANES CONCEPTUAL DESIGN



TRANSIT ACCESS

Transit impacts are considered significant if the proposed project conflicts with existing or planned transit facilities or generates potential transit trips and does not provide adequate facilities for pedestrians and bicyclists to access transit routes and stops. Based on these criteria, the project would not have a potentially significant impact on transit service.

The existing load factors (average number of riders per trip) for Light rail Line 902 and Routes 26, 54, 120, 121, 122, 321, and 328 were provided by VTA. Light rail trains have seated capacities of 65 per car and buses have seated capacities of 38. The load factor for Line 902 at the Moffett Park Station is 0.34 (22 people). For Routes 26 and 54, the load factors are 0.49 (19 people) and 0.33 (13 people), respectively. The express routes have load factors between 0.38 (14 people) and 0.52 (20 people).

The transit service within the immediate project area operates well below capacity, and additional trips generated by the proposed project could be accommodated by existing light-rail and bus service. Existing service on light rail and Route 54 is adequate even if the full 30% TDM reduction were shifted to just these public transit lines and not to carpools, bicyclists, pedestrians, and other transit lines. The area also has a well-used shuttle system (see *Existing Conditions* and **Figure 5**) that would be able to accommodate additional riders.

The Lockheed Martin Transit Center, where most of the available transit service is focused, would not be readily accessible to pedestrians and bicyclists generated by the proposed project because the facility is located approximately one mile from the project sites. Pedestrians and bicyclists would need to take 11th Avenue to Innovation Way to Mathilda Avenue to 5th Avenue to reach the transit center because 5th Avenue has restricted access. While Route 54 operates along Mathilda Avenue and runs closer to the project site than the transit center, it can be accessed only via the same circuitous path.

PARKING ASSESSMENT

The MPSP provides off-street parking and bicycle requirements for the Moffett Park area.

Vehicle Parking

The MPSP requires general office and corporate headquarters land uses with the MPSP area to provide a minimum off-street parking supply at a rate of one space per 300 s.f. of gross floor area; or 3.3 spaces per 1,000 s.f. and a maximum of one space per 250 s.f. of gross floor area (4 spaces per 1000 s.f.). Based on the City of Sunnyvale's Municipal Code (section 19.46.050) up to 50 percent of the spaces can be designed for compact cars. **Table 13** summarizes the proposed parking supply and parking requirements for the Ariba and Moffett Towers expansion projects.

Ariba and Moffett Towers Project in Transportation Project Area
 July 2011

**TABLE 13
 VEHICLE PARKING REQUIREMENTS**

Project Site	Project Size	Parking Requirement			Proposed Parking Supply	Meet Parking Requirement?
		New Development ¹	Parking to be Removed ²	Total Required ³		
Ariba Addition	200,000	667	563	1,230	1,233	Yes
Moffett Towers – Building D Addition	125,000	417	250	667	667	Yes

Notes:
 1 MPSP requires minimum parking supply ratio of 1 space per 300 s.f. of gross floor area.
 2 Construction of building addition and parking garage will remove parking from existing surface parking lots
 3 Total Parking Required = New Development + Parking to be Removed.
 Source: Fehr & Peers, April 2011.

Based on the requirements of the MPSP and to account for existing spaces to be displaced, the project would be required to provide an additional 1,230 parking spaces at the Ariba campus and an additional 667 at the Moffett Towers campus. The Ariba site proposes to provide an additional 1,233 parking spaces and thus exceeds the parking requirement by 3 parking spaces. Similarly, the Moffett Towers project will provide an additional 667 parking spaces and exactly meets the required parking supply. As outlined in Table 13, the total new parking proposed based on the current site plans for the Ariba and Moffett Towers campuses is sufficient The City's parking requirements.

Bicycle Parking

The MPSP requires office uses to provide one bicycle parking facility per 6,000 s.f. of gross floor area. Of that requirement 75 percent needs to be Class I parking facilities and 25 percent Class II facilities. Class I facilities protect the entire bicycle from theft, vandalism, and inclement weather and are appropriate for long-term storage. Examples include bike lockers, rooms with key access, guarded parking areas, and valet/check-in parking. Class II parking facilities include bicycle racks to which the frame and at least one wheel can be secured with a user-provided lock. The MPSP bicycle requirements are the same as recommended by the VTA in their TIA Guidelines.

The project will need to supply 34 additional bicycle spaces on the Ariba campus and 21 additional bicycle spaces for Building D a the Moffett Towers campus. Of these, 75 percent (26 and 16 spaces, respectively) will be Class I bicycle lockers and remaining 25 percent (8 and 5 spaces, respectively) will be Class II bicycle facilities. With the provision of these bicycle parking facilities the project will meet City and MPSP guidelines.

As shown on the Ariba site plan in Figure 2a, the project proposes to provide both Class I and Class II bicycle parking facilities at one of the entrances to the office building. This will allow for increased natural surveillance and provide convenient access for bicycle riders to the new Ariba office building.

As proposed, the Building D of the Moffett Tower project will provide both Class I and Class II bicycle parking in the ground floor level of the parking garage. The proposed garage is at the other end of the Moffett Towers campus from Building D, the bicycle parking may not be conveniently accessible by bicyclists. It is recommended that based that the project be conditioned to provide, safe convenient, accessible bicycle parking for Building D, consistent with the VTA Bicycle Technical Guidelines and in close proximity to building entrances.

7. CONSTRUCTION IMPACTS

Construction for both the Ariba and Moffett Towers expansion projects are anticipated to occur approximately during the same time and are expected to occur over a one-year period. This section of the report addresses construction-related impacts of the proposed projects, specifically as they relate to expected traffic and parking impacts. General recommendations on construction-related mitigations, such as limiting times when trucks would be permitted to travel to/from the sites and restricting routes to prevent impacting neighboring communities, are provided.

TRAFFIC OPERATIONS

Mathilda Avenue is the City designated truck route that provides the most direct access to the project sites. In general truck access to the site should be limited to Mathilda Avenue, Moffett Park Drive, Enterprise Way, 11th Avenue, and Innovation Way, since these provide the most direct access.

As shown in Table 8 all of the study intersections near the project site operate at LOS C or better under Existing plus Project Conditions, and the amount of traffic added by the project is greater than the amount of construction traffic. Therefore, the addition of construction traffic would not be significant regarding intersection operations. However, as discussed under Existing Conditions the intersections of the Mathilda Avenue corridor between Moffett Park Drive and Almanor Avenue are closely spaced and the corridor experiences operational issues beyond simple intersection LOS primarily due to vehicle weaving; therefore truck access to the site should be restricted during peak commute times (7 AM to 9 AM and 4 PM to 6 PM) to limit potential impacts to the operations of Mathilda Avenue.

PARKING IMPACTS

Parking impacts related to construction of the new office buildings and garages are evaluated in terms of parking space restrictions associated with the construction activities, storing construction materials and equipment on site, and parking for construction workers.

Ariba Campus

Construction of the Ariba project will eliminate over 560 surface parking spaces at the office building and garage construction sites. From current observations, the existing parking lot is not fully occupied. However, the loss of 560 spaces will reduce the number of spaces for tenants at the Ariba site and results in an impact. The project applicant should work with the adjacent Moffett Towers site (or other site) to determine if employees could park there temporarily during construction. The Moffett Towers site has both surface parking and a garage that have excess capacity to accommodate parking from the Ariba site during construction. There are direct pedestrian walkways between the Moffett Towers and Ariba site that would facilitate the parking usage at the Moffett Towers site.

Moffett Towers Campus

Construction of the Moffett Towers project will eliminate 250 surface parking spaces at the garage site. Most of the Moffett Towers campus is currently vacant and parking at the site is minimal; thus there is excess capacity to accommodate construction staging and parking and there will not be any significant impacts during construction.

From: eircomments
To: sobayeleonor@aol.com
Date: 6/22/2012 5:02 PM
Subject: Re: One Bay Area EIR

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> <sobayeleonor@aol.com> 6/15/2012 11:03 AM >>>
Dear Friends:

I attach a pdf copy of a paper by Ronald Milam discussing the inadequacy of using Level of Service as the sole, or even the major, impact of traffic on an area (residential or commercial or otherwise). Please consider his comments to be my comments and not restrict your measure of traffic impact to Level of Service.

And you will of course discuss the impact of the Complete Streets Act in these matters.

Eleanor Hansen

Transportation Impact Analysis Gets a Failing Grade When It Comes to Climate Change and Smart Growth

Ronald Milam, AICP
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Fehr & Peers
2990 Lava Ridge Court, Suite 200
Roseville, CA 95661
r.milam@fehrandpeers.com

ABSTRACT

Transportation impact analysis performed to comply with environmental impact laws (i.e., the California Environmental Quality Act or the National Environmental Policy Act) often focuses on only one perspective about potential impacts. That perspective reflects how automobile drivers view the world because of general traffic engineering practices and how traffic operations are measured using level of service (LOS). With many communities more concerned about climate change, creating livable communities, and wanting to emphasize the use of transit, walking, and bicycling, the traditional traffic engineering approach to traffic operations analysis is not effective. Worse, it can result in smart growth projects being denied due to neighborhood opposition associated with worsening LOS and not understanding the other tradeoff benefits of infill and higher density development.

Instead of relying on vehicle LOS as the primary performance measure in transportation impact studies, agencies need to consider the tradeoffs between LOS and other important community values and other modes. This paper will present a new paradigm for transportation planning and impact analysis that reflects the inherent tradeoffs associated with vehicle travel, urban development form, and the treatment of other modes. The new paradigm will reflect a fundamental change in our current thresholds based analysis approach and it will demonstrate new analysis methodologies that focus on the following:

- improving person-capacity of our transportation system
- accurately describing transportation tradeoffs with other community values such as climate change, air pollution, or the ability to walk and bike
- demonstrating the effects of built environment changes on reducing vehicle travel

Case studies will be used to demonstrate these state of the art analysis methodologies.

INTRODUCTION

The concept of Level of Service (LOS) has been used by traffic and transportation engineers for over 50 years to describe operating conditions for automobile travel on existing or planned roadway facilities. Because it is primarily an automobile-oriented measure, many cities are struggling with how to weigh the trade-offs between providing efficient automobile travel and other community values. Some of the key values that can conflict with efficient automobile travel are listed below.

- Creating pleasant walking and bicycle environments
- Developing well utilized public transportation systems
- Reducing vehicle travel to minimize air pollution and green house gas emissions

This paper includes background on the existing definition and use of LOS and provides two case studies of innovative methods to evaluate transportation system changes that capture impacts for all users while also considering key tradeoffs between desired vehicle LOS and other community values such as those listed above.

Before discussing the case studies, some background on LOS is needed. LOS is defined in the Highway Capacity Manual (Transportation Research Board, 2000) as follows:

Level of service (LOS) is a quality measure describing operational conditions within a traffic stream, generally in terms of such service measures as speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.

Despite the above definition as a broad, qualitative measure of transportation conditions, LOS is, by far, most commonly determined by a quantitative measure, average delay per vehicle at intersections, usually for the weekday AM and PM peak hours. Delay is generally defined as the difference between the actual travel time a vehicle experiences and the time it would experience if there were no other vehicles or traffic control devices at the intersection.

The Highway Capacity Manual (HCM) specifies a methodology for estimation of average vehicular delay at intersections based on a combination of theoretical and empirical data. This methodology calls for use of a Peak Hour Factor, which extracts the peak 15-minute traffic volume from the hourly volume. This represents the 99th percentile traffic volume on a typical weekday. Typical transportation operations analyses are conducted based on the HCM methodology, and are thus, based on the 99th percentile, peak 15-minute, traffic volume on a weekday.

As defined by the Highway Capacity Manual, LOS is divided into six categories, ranging from LOS A to LOS F, just like a report card. LOS A represents free-flow travel, LOS B through D represent increasing density but primarily stable conditions, LOS E represents conditions at or near the capacity of the facility in question, and LOS F represents over-capacity, forced flow conditions. The unfortunate consequence of a grading system similar to school report cards is that members of the public, planners, decision-makers, and traffic engineers alike, often consciously or unconsciously, relate the two. In other words, there is a tendency to equate LOS D at an intersection with receiving a poor grade on a report card. While achieving a grade of A on a report card is the primary objective in school, achieving LOS A at an urban signalized intersection, for example, would likely be undesirable as public policy. At a minimum, it would be a questionable use of public funding especially viewing LOS through a strict economist's perspective. Considering that roadways are public infrastructure in most communities, an economist would likely consider LOS E as desirable under design year conditions. Achieving LOS E in the design year would indicate that the public infrastructure was operating at



or near its design capacity while achieving LOS A or B (i.e., accommodating the 99th percentile traffic volume with little or no delays) would be a poor investment of scarce public funding.

Table 1, below, shows the LOS ranges defined by the HCM for signalized intersections. The identification of various LOS regimes was developed somewhat arbitrarily, as a way to assess driver perception of operating conditions. However, it is important to remember that driver perception varies from person to person, and is not divided into six discrete categories, but is more like a continuum. In other words, acceptable delays to one person may be unacceptable to another, and in terms of traffic operations, there is not a substantial quality of service difference between 19.9 seconds of delay per vehicle and 21.1 seconds of delay per vehicle, despite the fact that the two delay values represent two different LOS thresholds.

TABLE 1 SIGNALIZED INTERSECTION LOS CRITERIA		
LOS	Average Control Delay (seconds/vehicle)	Description
A	≤ 10.0	Operations with very slight delay, with no approach phase fully utilized.
B	10.1 – 20.0	Operations with slight delay, with occasional full utilization of approach phase
C	20.1 - 35.0	Operations with moderate delay. Individual cycle failures begin to appear.
D	35.1 – 55.0	Operations with heavier, but frequently tolerable delay. Many vehicles stop and individual cycle failures are noticeable.
E	55.1 - 80.0	Operations with high delay, and frequent cycle failures. Long queues form upstream of intersection.
F	> 80.0	Operation with very high delays and congestion. Volumes vary widely depending on downstream queue conditions.

Source: *Highway Capacity Manual*, Transportation Research Board, 2000.

Because “acceptable” amounts of delay and congestion can vary depending on a number of factors, the determination of what is acceptable and what is unacceptable is

left up to local jurisdictions. Many rural communities with low traffic volumes desire to maintain LOS C or better operations, while many suburban areas define LOS D or better as acceptable conditions based on recommended thresholds contained in professional guidelines such as *A Policy On Geometric Design of Highways and Streets*, American Association of State Highway and Transportation Officials (AASHTO), 2004. On the other hand, many urban areas are beginning to describe traffic conditions in terms of number of hours at LOS F, because achieving LOS C or D during peak periods is not feasible especially considering past and present funding levels for new roadway construction.

CONSEQUENCES OF CURRENT PRACTICE

The current practice for use of LOS has three major consequences.

1. LOS ignores potential effects on non-automobile modes.

Current practice based on the HCM does not provide a methodology to measure the intersection LOS for all users. In fact, the HCM procedures for measuring transit, bicycle, and pedestrian LOS rely on performance measures that are unique to the mode. For example, pedestrian LOS is based on pedestrian space (square feet/person). This particular measure has no relation to the delay caused at crossing intersections by pedestrians. Further, basing automobile LOS only on vehicle delay means that a vehicle with one occupant receives just as much influence as a vehicle with 50 occupants, such as a bus (although a bus will be recognized for being the equivalent of approximately two passenger cars due to its physical size). Therefore, an improvement that benefits 50 single-occupant vehicles would be shown to be 50 times more effective in reducing average vehicular delay than one that benefits a single bus with 50 occupants by the same amount.

2. LOS thresholds are established without recognizing the influence on air pollutants and green house gases.

The exclusive use of delay-based LOS does not provide any information about the potential effect on air pollutant emissions or green house gas generation, which are now a major focus of impact analysis. This problem is exacerbated by the fact that many public agencies have established LOS thresholds without recognizing the important role speed plays in generating emissions. Green house gases and air pollutants are emitted from vehicles at different rates depending on the traveling speeds of the vehicles. Since a LOS threshold will influence roadway design and therefore the prevailing travel speeds of automobiles, it will also influence the amount of green house gases and air pollutants that are generated. The LOS threshold that generates the least amount of green house gases or air pollution may not be the same as that desired to minimize delay.

3. LOS thresholds are used to determine the size of roadways which influences land use form.

Despite the embedded bias, automobile LOS is frequently used as the primary impact and design threshold for transportation facilities. Many jurisdictional LOS policies require that transportation facilities be designed to achieve a specific automobile LOS often without recognizing how the size of roadways influences land use form. Multi-lane roadways create physical barriers between land uses and result in large intersections that are not conducive to a quality walking and bicycling environment because they create longer distances between land uses and result in lower density development (refer to exhibit below).



Maintaining LOS C versus LOS E

This exhibit illustrates the consequences to pedestrian crossing distances and general infrastructure investments of widening an intersection to improve vehicle traffic operations from LOS E to C.

Another important land use form effect is related to the location of new land use development. Infill development is often accompanied by significant traffic mitigation because existing roadways are heavily utilized. Any additional trips are likely to trigger LOS impacts and the need for mitigation, which is often expensive due to constrained right-of-way. Suburban or rural development sites are more attractive because developers can avoid potential LOS-related impacts and the associated mitigation costs or the cost of mitigation is significantly less than an infill site. This incentive system encourages sprawl, reduces land use density, makes effective transit more difficult to provide, and reduces the attractiveness of walking and bicycling between destinations. An ironic side effect of attempts to avoid traffic congestion and delays through LOS policies is that infill development is often discouraged and people are forced to make longer trips, spending more time in their automobiles.

TRANSPARENCY AND COMMUNICATION

This paper is not meant to advocate elimination of the use of automobile LOS. Rather, it is meant to illustrate its limitations and the consequences of the current reliance upon automobile LOS as the primary measure of evaluation for transportation impacts and to highlight the lack of transparency among trade-off effects. Because transportation operations and impacts are typically boiled down to a simple letter grade, the consequences and trade-offs of various options are not adequately conveyed to decision-makers and the public.

For example, the social or environmental costs or impacts of roadway improvements are not often factored into decisions. Widening a roadway to maintain “acceptable” traffic flow may involve removing homes, trees, or open space in some cases; things on which a community may place a higher value than travel time. However, formal mechanisms don’t generally exist in local policies or procedures to weigh these factors against each other, so the LOS threshold usually takes precedence. While most Comprehensive Plans and General Plans include statements supporting a certain automobile LOS, they also often support potentially competing values, such as reducing green house gases, maintaining bicycle and pedestrian-friendly environments, encouraging use of transit, maintaining open space, etc. The use of LOS should acknowledge the tradeoffs associated with other important community values when evaluating the transportation system.

One obstacle to effectively communicating the trade-offs between LOS and other criteria is that it has traditionally been difficult to communicate LOS to decision-makers and to the public. Most often, transportation studies provide tables with numbers representing average vehicular delay with an associated LOS letter grade for individual intersections. When making decisions, elected officials often rely on relative differences in LOS, but have a hard time conceptualizing



how bad different levels of congestion actually are. For example, it is clear that LOS B is better than LOS D, but how bad is LOS D?

The good news is that the transportation planning industry has begun to develop tools that not only analyze transportation operations from a technical side, but also produce visual output (see example to the right) that enables both the public and decision-makers to visualize how things work. As microsimulation becomes more and more useful as a tool to answer increasingly complex technical questions, it also becomes easier to inform the public and decision-makers. For instance, it is much easier to explain how things will operate using video from microsimulation output than to tell someone that the average delay per vehicle is 28.3 seconds.

The new tools in the transportation industry can effectively convey the meaning of various LOS analyses and assess the transportation system as a whole. Better communication of LOS, in addition to recognition of the limitations and biases inherent in auto LOS as a performance measure will provide a more open and transparent discussion whereby planners, decision-makers, and the public can make better informed decisions regarding both development and infrastructure investment.

CASE STUDIES

The remainder of this paper is dedicated to describing two innovative approaches to use of LOS based on the transportation system user or customer focus, rather than a vehicle focus while also addressing tradeoffs with other community values.

San Francisco, California

Despite its famous and picturesque bridges, there are very few freeways within the City of San Francisco. The major north-south freeway along the US west coast, US Route 101, extends between Los Angeles, California, and Seattle, Washington. However, in the southern portion of San Francisco, the freeway portion of Route 101 becomes Interstate 80, and turns toward the east. Route 101 continues north through the City, along surface streets, until it reaches the Golden Gate Bridge and becomes a freeway facility again, traveling north through Marin County. Within San Francisco,

the majority of Route 101 travels along Van Ness Avenue, a six-lane major arterial street that carries approximately 50,000 vehicles per day (2005 *Traffic Volumes on the California State Highway System*, California Department of Transportation, 2005).

In addition to high traffic volumes, Van Ness Avenue serves a high volume of transit. As part of a major long-term strategy to provide higher-capacity, enhanced transit service throughout the City, San Francisco has elected to pursue implementation of a Bus Rapid Transit (BRT) route along Van Ness Avenue (see exhibit to the right),



which would remove either the center or curb lane of traffic in favor of dedicated right of way for buses. One potential alternative configuration is shown in the photo simulation to the right that was developed by the *San Francisco County Transportation Authority*.

Given the high levels of traffic on the street, removing a lane of traffic in each direction obviously has the potential to increase vehicular delays along the street. However, by providing more efficient service to transit vehicles, which carry many more people than cars, the overall person-delay may not be as drastically affected as the vehicle-delay. Using micro-simulation, we can model multiple modes in the same network, and capture the interaction between them.

Alternative	Person Delay (sec per person at avg intersection)	BRT Rider Delay (sec per person at avg intersection)	Vehicle Delay (sec per vehicle at avg intersection)
1, No Project 	20.8	20.9	19.3
2, Curb BRT Lanes 	19.1	10.6	19.3
3, Center-Side w/ two medians 	19.7	10.2	20.9

This provides the opportunity to assess impacts to different modes separately and to the transportation system as a whole. At the time this paper was written, the Van Ness Avenue BRT project was still in the technical analysis phases, but some performance measure results were available. Instead of focusing on vehicle LOS, the study compared person and vehicle delay as shown in the above sample results table.

Although the technical analysis was not yet final at the time this paper was written, the intent of the analysis was to evaluate performance of the transportation system from the perspective of multiple customers or users, as opposed to the more traditional vehicle-delay. As a result, while vehicle delays did increase for some alternatives, the overall person delay decreased and more people would be moved by public transit, which has the benefit of producing less air pollutants and green house gases on a per passenger basis.

Davis, California

The City of Davis, California, is a small, but rapidly growing suburban town of approximately 60,000 residents in California's Central Valley, approximately 20 miles west of Sacramento (US Census, 2000). Davis is also home to one of ten campuses of the University of California (UC Davis), enrolling approximately 30,000 students (www.ucdavis.edu). Because of its relatively high student population, its favorable weather, and relatively flat topography, there is a great deal of bicycle and pedestrian activity throughout the town.

A transportation impact analysis conducted by the author's consulting firm for a new campus building recommended improvements at one nearby intersection. However, because of the high pedestrian and bicycle use of this intersection, UC Davis planners wanted intersection improvements that would improve pedestrian and bicycle accessibility while minimizing conflicts with vehicles. To that end, the impact analysis identified five alternatives for analysis with the intent of selecting a preferred set of improvements that would meet all the project's objectives.

The five alternatives analyzed are listed below.

- Alternative 1: Provide all pedestrian/bicycle signal phase
- Alternative 2: Provide exclusive phase only for southbound (SB) and westbound (WB) cyclists who travel on a Class I bicycle path. Cyclists traveling on other approaches would travel with vehicles using the regular vehicle signal phase.
- Alternative 3: Traditional design (no exclusive bicycle and pedestrian phases)
- Alternative 4: Provide five-second “head-start” phase for SB and WB cyclists traveling on Class I bicycle path.
- Alternative 5: Provide grade-separated bicycle crossing connecting SB and WB Class I bicycle paths

For this study, the VISSIM micro-simulation software was used to develop a model of the study intersection and all the modes that use the intersection.¹ VISSIM was selected for this study because of its ability to isolate and model multiple modes. This is not the only software package available for this type of analysis, but understanding the project objectives early was essential in selecting a tool that was capable of demonstrating the effect of intersection changes on all the travel modes. This software also has the ability to estimate air pollutant emissions as a standard output.

The VISSIM model was constructed by drawing the roadway network using the aerial photographs as a background. The number of lanes, configuration of turn pockets, and location of lane additions and drops were confirmed by field observations. Additional detail was incorporated into the VISSIM network (posted speed limits, grades, etc.) to better reflect observed field conditions. Traffic signal operation (i.e., cycle lengths, phasing, and timing plans) for intersections were specified. Driver behavior parameters (i.e., yielding right-of-way at intersections, saturation flow rates, and driver aggressiveness) were calibrated based on field observations. The distribution of vehicle types was also calibrated to local conditions so that the percentage of trucks and high-occupancy vehicles (HOVs) match the traffic counts.

¹ VISSIM is a microscopic simulation model and a component of the PTV vision® suite offered by PTV America, Inc. located in Corvallis, Oregon.

Since micro-simulation models like VISSIM rely on the random arrival of vehicles, multiple runs are needed to provide a reasonable level of statistical accuracy and validity. Therefore, the results of ten separate runs (each using a different random seed number) were averaged to determine the final results.

Using the VISSIM model, the average delay was calculated for each mode and averaged for each alternative based on existing traffic, bicycle, and pedestrian counts. The overall results are shown in Table 2.

Option	Travel Mode (1)				Overall
	Vehicles	Buses	Pedestrians	Bicycles	
	Average Delay – LOS	Average Delay – LOS	Average Delay	Average Delay	Average Delay
1 - Bike/Pedestrian Phase	44.2 – D	47.1 – D	46.6	42.8	44.2
2 - Bike/Pedestrian Phase for Path Only	45.0 – D	47.7 – D	46.7	48.3	45.3
3 - Traditional Design (Current Configuration)	30.0 – C	29.6 – C	42.7	47.5	31.4
4 – Head Start Phase for Bike Path	40.5 – D	32.5 – C	24.4	34.7	39.6
5 – Grade Separated Crossing	28.7 – C	29.8 – C	64.2	15.1	28.1
Notes: (1) The <i>Highway Capacity Manual</i> does not assign an LOS for pedestrians and bicyclists based on average delays. Delays were reported for comparison purposes only. (2) The increase in pedestrian delay is associated with a reduction in pedestrians that are now using the grade separated crossing resulting in a higher average delay per pedestrian for remaining crossings on other approaches.					

The operational analysis indicated that providing the grade separated crossing in Alternative 5 would result in the lowest average delay for all modes of travel, while maintaining a traditional design would provide the second-lowest amount of delay (see Appendix A for technical calculations for these two alternatives). Alternative 5 also resulted in a vehicle LOS of C, which is better than the minimum LOS D threshold required by UC Davis. Providing an exclusive bicycle phase for the bicycle paths only

would result in the highest overall delay, averaged for all modes. An illustration of Alternative 5 is shown below alongside the delay and LOS results.

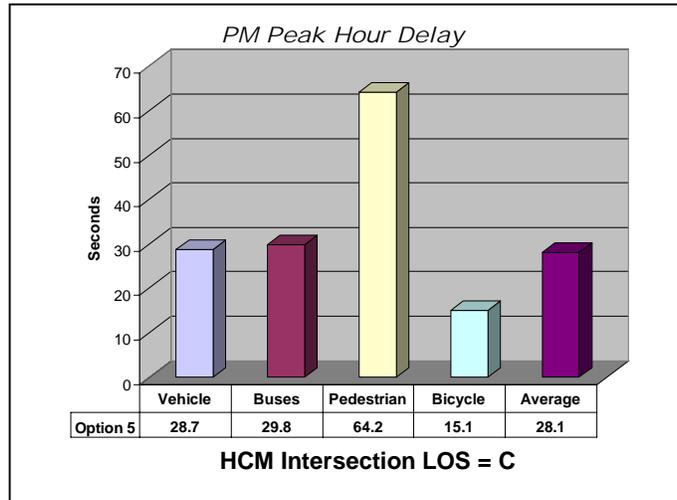


Illustration of Alternative 5 (bicycle/pedestrian bridge) and analysis by mode

Alternative 5 was particularly effective in this case because the new grade separation provided a shorter distance connection between student housing on the west side of La Rue Road, which runs north-south in the photo simulation above) and the campus on the east side. The grade-separation could also be located to avoid existing trees and utilities. In addition to the delay effects, it was noted that investments in bicycle and pedestrian facilities can also lead to greater use of these modes in the future, which can help reduce vehicle travel and its associated impacts on air pollution and green house gas emissions.

This information, along with other factors, such as impacts to air pollution, cost and right of way availability, were used by UC Davis to select a preferred alternative with a full understanding of the trade-offs for each mode associated with each alternative. In addition, the visual animation produced by the simulation software was extremely helpful in illustrating the alternatives and the operations of various modes to decision-makers and members of the public.

The additional delay information and visual simulations did not come without additional time, effort, and cost compared to conventional analysis as documented in the following list.

- Traffic count costs were approximately 50 percent higher because bicycles and pedestrians had to be counted.
- Ridership data had to be collected from the transit operator (not a normal input for an intersection analysis).
- Simulation model set up and operation took approximately 100 percent more person hours compared to conventional analysis using programs such as the Highway Capacity Software (HCS) or similar program.

This increase in cost was offset by analysis results that provided a higher level of confidence in the potential outcomes and a more complete picture of all project effects.

CONCLUSION

The strict use of automobile LOS as a design threshold and a transportation impact criterion contains a number of hidden biases that passively encourage urban sprawl, increase dependence on the automobile, and create physical environments that are not conducive to walking and bicycling. Many cities that have adopted policies in support of a successful transit system and a pleasant walking and bicycling environment find it difficult to implement projects consistent with these policies because of their impacts to auto LOS. To better understand the relationship between community values and desired traffic operations, the following new approaches, tools, and performance measures are needed to represent the perspective of multiple transportation system users.

- Tradeoff Approach - At a minimum, the approach to transportation planning or impact studies should clearly acknowledge the trade offs between a community's desired vehicle LOS and other important community values.

- Use Simulation Tools - Simulation tools are now available that can isolate the effects (i.e., delays) to all transportation system users whether they travel by vehicle, walk, or take transit. The animation capabilities of these tools are particularly effectively at communicating these effects to non-technical audiences.
- Focus on Moving People – The focus of transportation analysis should be on moving people and not solely on moving vehicles. A vehicle LOS ignores some users and can bias a transportation analysis because of what it doesn't tell us about how transportation system changes will affect other users. Using simulation tools, performance can be measured in terms of number of persons moved or delayed.

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www.ucdavis.edu

[Glenda s. Kitchel]

[July 3, 2012]

Ashley Nguyen, EIR Project Manager
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101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

[My name is Glenda Kitchel]

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

- 1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided

mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.
rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

³ http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

⁴ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

Glenda S.Kitchel

cc: District 1 supervisor John M. Gioia, District 2 supervisor Candise Anderson, District 3 Supervisor Mary Nejedly Piepho, District 4 Supervisor Karen Mitchoff, District 5 Supervisor Federal D. Grover
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July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall

"The Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the "preferred alternative" contemplated by Plan Bay Area.

The "preferred alternative" will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court's regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government's regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court's opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that "the Fifth Amendment is violated when land-use regulation "denies an owner economically viable use of his land." 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, "the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay

Area. This is the essence of "unbridled, uncompensated qualification under the police power." Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

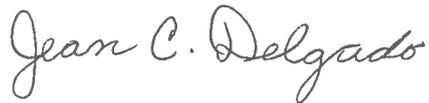
At a minimum:

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A handwritten signature in cursive script that reads "Jean C. Delgado".

Jean C Delgado

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Brian Sussman, KSFO
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July 6, 2012

Ashley Nguyen, EIR Project Manager
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Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

I have been a resident of Alameda County for my entire life. I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. Their elitist attitude has driven me to get involved.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%-142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for

population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

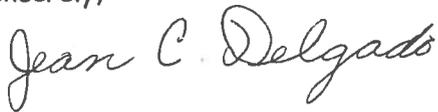
(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally

important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



Jean C Delgado

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

Jean C Delgado
7575 Crow Canyon Rd
Castro Valley, CA 94552

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

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Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and

balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "[t]he Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's "preferred alternative" will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

(1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1] Careful and thorough consideration of this hypothesis regarding the impact of the "preferred alternative" is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

(2) The EIR must quantitatively and explicitly identify the subsidies required to develop the "stack and pack" mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the "preferred alternative" zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond

any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

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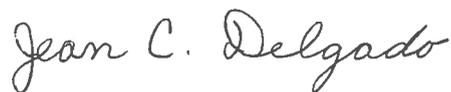
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(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in "transit villages" which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the "transit villages" will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan

will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

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Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: jennifer_lee_62@yahoo.com

BC:

Date: Tuesday - July 10, 2012 9:54 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Jennifer Bright 07/06/12 10:09 AM >>>

Dear Ms. Nguyen,

I am from Livermore, on the eastern edge of Alameda County. I have been following One Bay Area Plan very closely and was able to attend the meeting held in Dublin, CA. I was appalled at the way the meeting was handled the the way the public was treated. I walked away the feeling the whole meeting was just to go thru the motions and not truly wanting any public input, unless it fit there agenda. The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants who prepared the draft EIR.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.

* THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

- * The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4% growth rate since 2000.
 - * THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.
 - * The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.
 - * The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.
 - * Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.
 - * The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.
 - * California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.
 - * Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.
- II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.
- * Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.
 - * THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.
 - * For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.
 - * THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.
 - * In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.
 - * THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.
 - * THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).
 - * THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.
 - * THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the entire draft EIR.
 - * THE PROCESS ignores "real-world" experience under "smart growth" policies.
 - * Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.
 - * Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

- * Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

- * In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

- * Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

- * A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of “boutique cities” affordable only to the elite.

- * Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

- * MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

- * THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. The draft EIR is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

- * The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

- * The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.

- * At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.

- * MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- * The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

- * The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.

- * While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

- * The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

- * Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

- * THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the

limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Thank you
Jennifer Bright

Jennifer L Bright
919 Central Ave
Livermore, CA 94551

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area itself

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Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Mayor John Marchand
Vice Mayor Doug Horner
Councilmember Stewart Gary
Councilmember Laureen Turner
Councilmember Bob Woerner

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Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall

certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "The Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the "preferred alternative" contemplated by Plan Bay Area.

The "preferred alternative" will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court's regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government's regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court's opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that "the Fifth Amendment is violated when land-use regulation "denies an owner economically viable use of his land." 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, "the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or

disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of "unbridled, uncompensated qualification under the police power." Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

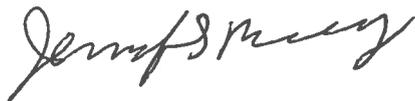
At a minimum:

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,



Jennifer L Bright

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Mayor John Marchand
Vice Mayor Doug Horner
Councilmember Stewart Gary
Councilmember Laureen Turner
Councilmember Bob Woerner

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

Jennifer L Bright
919 Central Ave
Livermore, CA 94551

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

I have been a resident of Alameda County for my entire life. I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. Their elitist attitude has driven me to get involved.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%-142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for

population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally

important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



Jennifer L Bright

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Mayor John Marchand
Vice Mayor Doug Horner
Councilmember Stewart Gary
Councilmember Laureen Turner
Councilmember Bob Woerner

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

From: eircomments
To: Jesse Foster
Date: 7/11/2012 5:14 PM
Subject: Re: EIR comments

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> Jesse Foster <sav22hp@hotmail.com> 7/10/2012 10:30 PM >>>

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607

Email: eircomments@mtc.ca.gov**SUBJECT** LINE: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

I reside in Marin County. I am opposed to the One Bay Area plan. It is completely unacceptable to me and my way of life. I am not willing to give up the freedoms I have enjoyed for the past 70 plus years. I do not want my children and grandchildren to be subjected to losing their freedoms.

Summary Statement

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.

THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences. II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.

For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

THE PROCESS ignores "real-world" experience under "smart growth" policies.

Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.

Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems. III.

The processes for preparation and review of the THE PROCESS were inadequate and biased.

MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.

At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.

MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.^{IV} THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, "affordable housing" subsidies, and other essential public services.

While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Joanne V. Brem
2316 Fairbanks Drive
Santa Rosa, CA 95403-2315

[date] *July 9, 2012*

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My name is Joanne Brem. I live in Santa Rosa, CA. I have attended several local ABAG meetings. I also attend North Bay Patriot's meetings. They keep us well informed with current information and guest speakers on this topic. I have had concerns about this project moving forward without the necessary evaluations and analyses sufficiently researched. I have concerns about the general public not being sufficiently informed so that we may make intelligent decisions on whether this project will benefit us or make life more difficult for us. Please address the inadequacies and incompleteness of Plan Bay Area's environmental and economic impact reviews.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."^[1] There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[2]

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."^[3]

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."^[4] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



Joanne V. Brem

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Notes

[1] <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

[2] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR.

http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html.

California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions. This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpscs.scaq.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

[3] http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

[4] <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

Johanna coble
1696 Palou Ave
San Francisco, CA 94124

7/10/12

Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

Joseph P. Bort MetroCenter

101 Eighth Street

Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating “the secondary or indirect environmental consequences of economic and social changes” resulting from Plan Bay Area itself

Dear Ms. Nguyen,

My name is Johanna Coble and I oppose your plan, because according to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area’s “preferred alternative” suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents’ liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its “preferred alternative.” However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area’s EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area’s EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1] Careful and thorough consideration of this hypothesis regarding the impact of the “preferred alternative” is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).
- (2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

(3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.[2] Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

(4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.[3]

(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,


Johanna Coble

cc: Mayor Edwin Lee

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From: eircomments
To: johanniel23@ymail.com
Date: 7/11/2012 5:14 PM
Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> Annie Belle <johanniel23@gmail.com> 7/10/2012 8:47 PM >>>
To Whom it May Concern,

I am a citizen of the Bay Area. My name is Johanna Coble & I live in San Francisco.

I do not agree with your agenda. I don't think you are listening to us.

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

I. The forecasts of population and economic growth are fatally flawed.

- THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.
- The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.
- THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.
- The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.
- The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.
- Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.
- The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.
- California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.
- Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

- Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.
- THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.
- For example, both the authors of Plan Bay Area and the authors of THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.
- THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.
- In Portland, restrictions on growth and development have resulted in a

flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

- THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

- THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

- THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

- THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

- THE PROCESS ignores "real-world" experience under "smart growth" policies.

- Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

- Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

- Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

- In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

- Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

- A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.

- Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

- MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

- THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

- The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

- The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.
- At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.
- MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.
- The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.
- While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.
- The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.
- Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.
- THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.
- THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Thank you for your time in this matter.

Sincerely,
Johanna

July 11, 2012

To
Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607
Email: eircomments@mtc.ca.gov
Fax: 510.817.5848

Subject: Arterial Operations Funding in the proposed Plan Bay Area EIR Scenarios

Dear Ms. Ashley,

I serve on the Board of Directors of ITS California and provide consulting services to various cities and counties in the Bay Area. Through my interaction with various cities' staff, I can vouch for the fact that many cities have been benefited through the funds provided through the arterial operations funding. The benefit-cost evaluations have proved that the arterial signal coordination programs provide significant and much higher benefits-to-cost ratio when compared to any other improvements. In order to expand the benefits of arterial signal coordination, there is a growing need to improve and upgrade the existing traffic signal infrastructure. A better traffic signal infrastructure does not only benefit motorists, but also significantly improves transit, bicycle, and pedestrian safety and mobility. An efficient signal system ensures travel time savings for all modes of transportation and reduces green house emissions.

I understand that the Plan Bay Area EIR Scenarios #3 and #5 would cut funding to the arterial signal coordination and operations and would not focus on roadway network improvements. It is important to note that without an updated signal system, the transit operation will be adversely impacted. Therefore, reducing funding for the arterial system as part of EIR Scenario #3 is counterproductive. Through the recent studies conducted in the Bay Area, signal coordination has shown to provide the following benefits to transit operations:

- Travel time savings for transit: 7 percent or almost 48,000 hours
- Transit vehicle increase in average speed: 9 percent

These are significant benefits and should be supported as part of Scenario #3, which focuses on transit priority.

Similarly Scenario #5 focuses on the Environment and signal coordination provides the highest environmental benefit when compared to any other programs. Based on recent studies in the

bay area, signal coordination has shown to provide the following benefits in reducing green house emissions:

- Reduction in reactive organic gases (ROG) emissions: 88.81 tons
- Reduction in oxides of nitrogen (NOx) emissions: 94.19 tons
- Reduction in particulate matter (PM 10) emissions: 9.97 tons
- Total emissions reductions from autos: 712.39 tons.

Based on these considerations, I strongly urge that the Commission reconsider cutting arterial operations funding, which has actually shown to support the goals of Plan Bay Area.

Best Regards,



Joy Bhattacharya, PE, PTOE

ITS-CA Board Member

Director, TJKM Transportation Consultant

PS: This letter expresses my personal opinion and I am not representing ITS-CA and TJKM Transportation Consultants in this letter

Re: Plan Bay Area forecasting methodology

From: eircomments

To: paxton3x@att.net

BC:

Date: Tuesday - July 10, 2012 9:45 AM

Subject: Re: Plan Bay Area forecasting methodology

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
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>>> Ken Paxton 07/04/12 5:44 PM >>>

Ken Paxton

1731 Maryland St

Redwood City, Ca 94061

7/4/12

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My name is Ken Paxton and I am a concerned citizen of Redwood City.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the

environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum

dated January 26, 2012 its continued bafflement that “ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years.”[1] There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area’s forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area’s forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area’s environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.[2]

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000’s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000’s with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG’s own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG’s “unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.”[3]

In fact, the City of Palo Alto is calling for “independent analysis of the demographic and employment projections by ABAG.”[4] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area’s forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG’s top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG’s allocated numbers and a county’s, city’s, or town’s own informed estimates, then those variances will likely indicate flaws in ABAG’s estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,
Ken Paxton

cc: Alicia C. Aguirre
Jeffrey Gee
Ian Bain
Rosanne Foust
Jeff Ira
Barbara Pierce
John D. Seybert
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal
Foundation

Dave Pine
Carole Groom
Don Horsley
Rose Jacobs Gibson
Adrienne J. Tissier

[1]<http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

[2]The University of California’s interpretation of the CEQA guidelines finds that “a range of forecasts” is necessary to provide “an adequate level of detail . . . for guiding the analysis” in the EIR.

http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html.

California’s High Speed Rail Authority’s Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. “To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables.”

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf

[3]http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

[4]<http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

From: eircomments
To: Ken Traverso
Date: 7/11/2012 5:13 PM
Subject: Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> "Ken Traverso" <ktraverso@natus.com> 7/10/2012 7:11 PM >>>
July 10, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My family of four and I live in Mill Valley and are life-long Bay Area residents.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%-142.46% of the average national population growth rate of 11.94% over those four decades-but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades-much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.[1] <http://www.bayarealiberty.com/libertyblog/?p=332#_ftn1> The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

Kenneth M. Traverso

Mill Valley, CA resident

Cc:

Brian Sussman, KSFO

Melanie Morgan, KSFO

Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] <http://www.bayarealiberty.com/libertyblog/?p=332#_ftnref1> The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions-then compared that with the growth assumptions by local jurisdictions. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf. This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

This entry was posted on Thursday, July 5th, 2012 at 5:01 am and is filed under Letter 1: Objection to OBA Inaccurate Forecasts <<http://www.bayarealiberty.com/libertyblog/?cat=33>>. You can follow any responses to this entry through the RSS 2.0 <<http://www.bayarealiberty.com/libertyblog/?feed=rss2&p=332>> feed. Both comments and pings are currently closed.

Re: One Bay Area Plan Comments

From: eircomments

To: K. M.

BC:

Date: Monday - July 2, 2012 6:47 PM

Subject: Re: One Bay Area Plan Comments

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> "K. M." <kmerr01@yahoo.com> 7/2/2012 4:49 PM >>>

Ashley Nguyen, EIR Project Manager -- or to any person reading this:

In general, I'd like to make the following comments:

The forecasts underlying the One Bay Area planning process are woefully below par. They fail to measure up to scientific norms and are, actually, just guesses that far exceed the forecasts of local governments and are not supported by any logical methodology.

I attended the One Bay Area public meetings that were held in my city, Santa Rosa. In these meetings, the facilitators were unable or unwilling to properly substantiate the figures in the forecast. Upon direct questioning about how these figures had been established the MTC director (I believe) admitted that they were just guesses and could not provide any real reason anyone should have any confidence in those numbers.

Furthermore, the EIR, while making many "recommendations" about higher density housing, etc. does not address how such large-scale, massive changes should be funded. This is a huge factor, and since the EIR does not even consider it, the EIR should be rejected.

Review of the EIR so far has been biased and limited. At the public meetings the

facilitators clearly had their own agenda and their own conclusions to which they wanted to lead the public. The public, however, was not buying it. Still, One Bay Area has continued to try to pawn off a plan that tries to force cities and counties to accept its idea of the future. This is highly improper. Cities and counties, NOT ABAG, is where the legitimate authority lies to determine planning for each community. The voters elect representatives to city councils and county boards of supervisors. ABAG is a regional agency with NO directly elected officials, and it therefore should have no right whatsoever to try to dictate planning policy to local governments and communities.

We are a free society. We have the right to move about as we choose. It is not for ABAG or any similar agency to try to tell us, in microscopic detail, where we may live or how we may live. This EIR is way out of bounds.

This EIR must be rejected.

Now, I'd like to append a more detailed objection, prepared by others by fully agreed with by me:

I. The forecasts of population and economic growth are fatally flawed.

- * The EIR is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

- * The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

- * The EIR does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

- * The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

- * The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

- * Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

- * The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

- * California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

- * Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. The EIR does not assess this concern, which will in turn have

major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

- * Throughout the EIR the bias of the authors is evident, equating intended consequences with likely results.

- * The EIR does not address alternative – and more likely – consequences of various elements of the plan.

- * For example, both the authors of Plan Bay Area and the authors of the draft EIR assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

- * The EIR ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where “smart growth” plans have been implemented.

- * In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

- * The EIR ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

- * The EIR does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

- * The EIR accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

- * The EIR provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the entire draft EIR.

- * The draft EIR ignores “real-world” experience under “smart growth” policies.

- * Actual experience with “smart growth” and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

- * Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

- * Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

- * In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

- * Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

- * A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of “boutique cities” affordable only to the elite.

- * Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to

near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the draft EIR were inadequate and biased.

- * MTC and ABAG must disclose the process by which the consultants who prepared the draft EIR were selected.

- * The draft EIR consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. The draft EIR is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

- * The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

- * The review process made it abundantly clear that the authors of the EIR and the advocates of Plan Bay Area did not have an independent relationship with the result that the draft EIR is not an objective analysis of likely environmental impacts.

- * At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.

- * MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either the draft EIR or Plan Bay Area were not solicited to participate.

IV. The draft EIR does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- * The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

- * The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.

- * While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

- * The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

- * Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. The draft EIR must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

- * The EIR does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement

the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* The EIR totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

Very truly yours,
Kirstin Merrihew
Santa Rosa, CA

Larry & Debbie White

4453 Graywhaler Ln.
Rohnert Park, CA 94928

3 July 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort Metro Center
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My wife and I are very concerned about the grave deficiencies of the One Bay Area plan. As any tax payer living in the bay area we have a vested interest in the One Bay Area processes and how they are implemented.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."^[1] There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[2]

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."^[3]

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."^[4] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

Larry & Debbie White

cc: Sonoma County Supervisors
Rohnert Park City Council
Paul Gullixson, editor Press Democrat
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: stanley5@lml.gov

dawn.argula@acgov.org; nate.miley@acgov.org; scott.haggerty@acgov.org; wilma.chan@acgov.org;

CC: richard.valle@acv.org; BWoerner@ci.livermore.ca.us; jdhorner@ci.livermore.ca.us;

leturner@ci.livermore.ca.us; mayormarchand@ci.livermore.ca.us; swgary@ci.livermore.ca.us

BC:

Date: Tuesday - July 10, 2012 10:02 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission

101 8th Street

Oakland, CA 94607

(510) 817-5700

>>> "Stanley, Richard" 07/06/12 10:55 AM >>>

Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

101 Eighth Street, Oakland, CA 94607

Phone: 510.817.5700, Fax: 510.817.5848

Email: eircomments@mtc.ca.gov

Dear Ms. Nguyen,

07/06/2012

Our family lives and works in the Bay Area, specifically Livermore, Alameda County. Our family has been in business here since 1859 and our family is strongly opposed to this Plan! We have attended several One Bay Area Plan meetings and been highly disappointed in the process. It appears that the Plan and decisions were made without adequate public input or current studies. The input accepted seems biased and favoring certain contributors and shareholders. That is wrong!

Summary Statement

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

The major inadequacies of THE PROCESS fall into the following categories:

I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a

reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.

II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.

III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants who prepared the draft EIR.

IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

I. The forecasts of population and economic growth are fatally flawed.

* THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

* The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

* THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

* The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

* The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

* Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

* The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

* California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

* Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

* Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

* THE PROCESS does not address alternative - and more likely - consequences of various elements of the plan.

* For example, both the authors of Plan Bay Area and the authors of THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

* THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland,

OR, where "smart growth" plans have been implement.

- * In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.
- * THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.
- * THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).
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- * Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.
- * Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.
- * Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.
- * In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.
- * Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.
- * A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.
- * Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

- * MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.
- * THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. The draft EIR is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.
- * The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.
- * The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.
- * At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.
- * MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative

comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- * The plan does not fully state the costs of the various elements of Plan Bay Area - the Plan includes \$277 billion for the public transportation element alone.
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- * While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.
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- * THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.
- * THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government

Sincerely,

Leland and Mary Stanley
4400 N Livermore Avenue
Livermore CA 94551

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607
Phone: 510.817.5700, Fax: 510.817.5848

Email: eircomments@mtc.ca.gov

Dear Ms. Nguyen,

07/06/2012

Our family lives and works in the Bay Area, specifically Livermore. Our family has been in business here since 1859 and we are strongly opposed to this Plan!

Summary Statement

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

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- ii. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- iii. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants who prepared the draft EIR.
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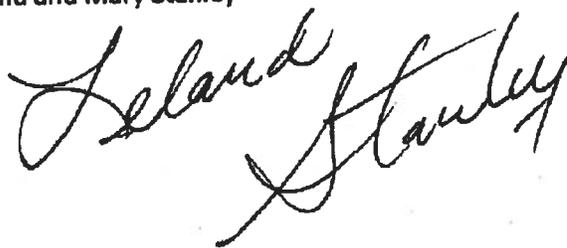
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- THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government

Leland and Mary Stanley

A handwritten signature in cursive script that reads "Leland Stanley". The signature is written in dark ink and is positioned below the typed name.

Ms. Leslie Tozzini
114 Myrtle Street
Redwood City, Ca 94062

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

My name is Leslie Tozzini. I was born in San Mateo and have lived in the bay area all of my adult life. I have seen many changes occur in the bay area. The changes that are being presented by ABAG & MTC do not seem to be well thought out and do not include the input from the majority of the people that will be affected. I attended several visioning sessions as well as a couple of ABAG/MTC meetings. It was my experience at all of the meetings that the outcome and the plan were already developed and that the meetings were to give the illusion to the public that we had some input.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."^[1] There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[2]

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."^[3]

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."^[4] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

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For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and

stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

A handwritten signature in black ink that reads "Leslie Tozzini". The signature is written in a cursive, flowing style.

Leslie Tozzini

cc: District 1 Supervisor Dave Pine
District 2 Supervisor Carole Groom
District 3 Supervisor Don Horsley
District 4 Supervisor Rose Jacobs Gibson
District 5 Supervisor Adrienne J. Tissier
Mayor Alicia C. Aguirre
Vice Mayor Jeffrey Gee
Council member Ian Bain
Council member Rosanne Foust
Council member Jeff Ira
Council member Barbara Pierce
Council member John D. Seybert
Daily Post Editor
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

[1]<http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

[2]The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR.

http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts.

"To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

[3]http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

[4]<http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

Lorraine Humes
3070 13th St
San Pablo, CA 94806

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

I am tired of our elected officials making decisions based on feelings not facts. Two examples of this are one, San Pablo City Council passed an anti-Arizona resolution condemning Arizona's immigration law because they wanted to show solidarity with neighboring cities who condemned the law for racial profiling. They knowingly ignored the fact that the law stated police officers would be penalized if they racially profiled drivers when stopping them for traffic violations before even considering questioning their legal status. Secondly, Richmond, completely ignoring the effect on small businesses in their city, voted to place a ballot measure in the November election taxing soda to end childhood obesity. It seems that they didn't research the topic or they would have found several studies like the one in the article in *Obesity Research*, 1999, that concluded, "Total daily energy intake from the sum of calories from chips, candy, soda, baked goods, and ice cream was significantly higher in the non-obese than in the obese group." I have read the letter material below. Consequently, I urge you to first research the material submitted to you, in this letter, before you make your assessment of the environmental impact of Plan Bay Area.

A lead agency must not approve a "plan[]" without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. Sierra Club v. State Bd. of Forestry, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App. 3d 813.) " The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the

statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a) (emphasis added). "The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). A "no project" alternative also must be evaluated, and "the 'no project' analysis should discuss the existing conditions at the time the notice of preparation is published." CEQA Guidelines § 15126.6(e)(1), (2). "The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration's Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the "no project" alternative. This data must also inform the Plan Bay Area EIR's consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area's "preferred alternative."

Plan Bay Area's enabling legislation states that AB 32 "requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020." SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32's mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been met. The fantastical assumptions underlying the "preferred alternative" and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport

¹ eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

² John Hanger, "Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again," ("After the first quarter, the USA's 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA's latest Monthly Energy Review."), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990 and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to at or about 1990 levels in the first quarter of 2012. Since California's population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000's versus 9.71% nationwide, and 13.82% in the 1990's versus 13.15% nationwide), California's emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area's population grew at only 95.95% of the national rate in the 1990's (12.62%) and then plummeted to 55.72% of the nation's population growth rate in the 2000's (5.41%), the Bay Area's greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area's greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area's "preferred alternative" and its coercive and untested elements purporting to address the statutory mandates of SB 375.⁴

Sincerely,



Lorraine M. Humes

cc:

John M. Gioia, District 1, Contra Costa County Supervisor
Cecilia Valdez, San Pablo Mayor
Leonard R. McNeil, San Pablo Vice Mayor
Genoveva Garcia Calloway, San Pablo Councilwoman
Paul V. Morris, San Pablo Councilman
Kathy Chao-Rothberg, San Pablo Councilwoman
Dan Hatfield, Editorial Page Editor, Contra Costa Times Newspaper
Mark Levin, Landmark Legal Foundation

³ "Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit," November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020).

http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf

⁴ Of course, the "preferred alternative" was developed as a sub-plan of United Nations Agenda 21, which has entirely different and much more sinister goals than reducing greenhouse gas emissions--but the statutory authority for SB 375 flows solely out of AB 32's mandate to reduce California greenhouse gas emissions to 1990 levels by 2020.

From: eircomments
To: kettz@aol.com
CC: info@mtc.ca.gov
Date: 6/26/2012 2:57 PM
Subject: Re: Plan Bay Area Draft Environmental Impact Report

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

You may find the results of the Adapting to Rising Tides Study in the right hand yellow box (about half way down) on this page: <http://www.mtc.ca.gov/planning/climate/>

Please send all future comments on the Plan Bay Area EIR to eircomments@mtc.ca.gov

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

egriffin@mtc.ca.gov

[Ashley Nguyen, EIR Project Manager](#)
[Metropolitan Transportation Commission](#)
[101 8th Street](#)
[Oakland, CA 94607](#)
[\(510\) 817-5809](#)

>>> Margaret Kettunen Zegart <kettz@aol.com> 6/18/2012 3:26 PM >>>

Unable to attend meetings until September because of a broken hip, I should like agenda and staff material e-mailed to me or sent to my home that indicate issues to which I may respond.

My primary concern is that a map revision that was sent in MTC mailings last August indicated the shoreline area of Southern Marin on Richardson Bay to have sites changed from Priority housing to sites that correctly are designated for environmental rehabilitation. All Marin County housing planning make these sites for affordable housing that under SB 375 shall not have California Environmental Quality Act (CEQA) review.

On A flood plane, surely by 2050 these shall be parcels under water. The parcels on A flood plane surely shall be inundated by 2050 and are poor sites for affordable housing. Yet these are the housing priority sites for affordable housing with density up to 35 units per acre. The Shoreline Highway congestion is stand still on weekends and circulation data can be obtained from the GGNRA as this is the primary route for West Morin

recreation areas and villages, homes and national and regional visitor destinations.

The Highway 101 intersection at Shoreline Highway presently - and mechanism for a trust fund to remedy / discussion of levee and pumping stations to be built /

maintained. Stalled traffic exacerbates health problem issues and adverse air quality, yet this is not considered as a congestion constraint in current planning. Vulnerable affordable home density up to 35 units per acre have no developer bond plans for future mitigation if these sites are continued to be indicated for urban density on shoreline - in semi rural residential communities of Marin County.

Could you have available (and send me information) regarding the Adaptation to Rising Tide (ART) East Bay considerations / study results?

Climate Change storm surges and sea rise flooding are considered scientific givens, yet do not seem to be recognized beyond a single map MTC presented as a BCDC, SPUR.MTC revision from housing priority to environmental presentation. Could you bring that to all meeting sites?

Thank you,

Margaret Kettunen Zegart

kettz@aol.com

118 Highland Lane

Mill Valley, CA 94941

-----Original Message-----

From: MTC Public Information <info@mtc.ca.gov>

To: kettz <kettz@aol.com>

Sent: Tue, Jun 12, 2012 11:25 pm

Subject: Plan Bay Area Draft Environmental Impact Report

Having trouble viewing this email? Click here (

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Get Involved in the
Environmental Planning Process

Notice of Preparation of a Draft Environmental Impact Report for Plan Bay Area

Attend a meeting and tell us what we should consider in the analysis:

Wednesday, June 20, 2012
6:00 p.m. to 8:00 p.m.
Joseph P. Bort MetroCenter
MTC Auditorium
101 Eighth Street
Oakland, CA

Thursday, June 21, 2012
10:00 a.m. to Noon
Dr. Martin Luther King, Jr. Library
Room 255/257
150 East San Fernando Street
San Jose, CA

Tuesday, June 26, 2012
10:00 a.m. to Noon
San Francisco Planning + Urban Research (SPUR)
Public Assembly Hall - 2nd Floor
654 Mission Street
San Francisco, CA

Wednesday, June 27, 2012

1:30 p.m. to 3:30 p.m.
Embassy Suites Hotel
Novato/Larkspur Room
101 McInnis Parkway
San Rafael, CA

Plan Bay Area: Environmental Impact Report

The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) are about to begin work on a Draft Environmental Impact Report (EIR) for Plan Bay Area, the region's long-range land-use and transportation plan. Plan Bay Area aims to accommodate future growth and meet state requirements to reduce greenhouse gas emissions by focusing new housing and jobs around transit to improve mobility and accessibility in the region. The environmental impacts of these land use changes and transportation investments will be analyzed in the EIR. Please attend one of the four public meetings to comment on the scope and content of the environmental information that will be evaluated in the Plan Bay Area EIR.

Topics:

What environmental issues should be analyzed?

Are there alternatives that should be evaluated?

What mitigation measures would help avoid or minimize any negative impacts?

How can local jurisdictions and other agencies use this EIR?

Comments may be submitted in writing by July 11, 2012, to the attention of:

Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

101 Eighth Street, Oakland, CA 94607

Email:

eircomments@mtc.ca.gov

Fax: 510.817.5848

To learn more, please visit www.OneBayArea.org. (http://r20.rs6.net/tn.jsp?e=001ZQiBOIJ-NKXiv6ZNVRUqSzRxHFh5O_bWDAWJ7cQlv_GxQmdoJWrazjIxJIQ_64IVT-bz7CHrKb5_AU5dHTmIr7-Yo6jS27sDsk0JDffu_fe8ykwjl2X1SHQ==)

If you need a sign language interpreter, if English is your second language and you need translation services, or if you require any other type of assistance, please contact us by calling 510.817.5757 or 510.817.5769 for TDD/TTY. We require at least three days' notice.

Si necesita un intérprete del lenguaje de señas, si el inglés es su segundo idioma y necesita un intérprete, o si necesita cualquier otra ayuda por favor comuníquese con nosotros al número 510.817.5757 o al 510.817.5769 para TDD/TTY. Requerimos tres días de anticipación para proveer asistencia razonable.

如果您需要手語翻譯員，或如果英語是您的第二語言，您需要翻譯服務，或者您需要任何其他類型的協助，請致電510-817-5757或致電TDD/TTY電話510-817-5769。我們要求獲得至少三天提前通知才能提供合理的配合安排。

MTC Public Information

Association of Bay Area Governments and the Metropolitan Transportation
Commission
101 Eighth Street, Oakland, CA 94607
Phone: 510.817.5700
Fax: 510.817.5848
Email: info@onebayarea.org

Forward email (<http://ui.constantcontact.com/sa/fwtf.jsp?llr=hshzwidab&m=1103025184327&ea=kettz%40aol.com&a=1110219242446>)

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<http://visitor.constantcontact.com/do?p=un&mse=001cWKZW7QY-wrWcwYIxsrfTVLZxWX1JqG9&t=001nRw679FEZZmKQDkXuN3ESA%3D%3D&lang=001FCSs65SMrsI%3D&llr=hshzwidab>)

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<http://ui.constantcontact.com/roving/CCPrivacyPolicy.jsp>).

Metropolitan Transportation Commission | MTC/BATA Public Information | MetroCenter | 101 Eighth Street | Oakland | CA | 94607

Margie Liberty
151 O'Neil Circle
Hercules, CA 94547

July 8, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating “the secondary or indirect environmental consequences of economic and social changes” resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I am a citizen of Hercules and have been in business in the Pinole/Hercules area all of my adult life. I've raised my children in this area and some of them still live here. I am very concerned about the plans you have for the area that I love very much.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area’s “preferred alternative” suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents’ liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its “preferred alternative.” However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area’s EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area’s EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates.¹

¹ Even a cursory review of historic data suggests that the assumptions undergirding the “preferred alternative” are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area’s decline in population growth from

maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious--the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.³

- (5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



Margie Liberty

Cc Supervisor John Goia
Supervisor Candace Anderson
Supervisor Federal Glover
Supervisor Mary Piepho
Supervisor Karen Mitchoff
Councilman Bernard Boulanger

Mayor Dan Romero
Vice Mayor John Delgado
Council Member Gerard Boulanger
Council Member Myrna de Vera
Council Member William Wilkins
Bert Robinson, Managing Editor, West Contra Costa Times
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

]

[editor(s) of your local newspaper(s)]
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

¹ Further, it's facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete

Margie Liberty
151 O'Neil Circle
Hercules, CA 94547

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: These plans are incomplete and being implemented by a shadow government that is in direct conflict with accepted American standards that includes citizen input.

Dear Ms. Nguyen,

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided

mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

³ [http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations - Response Letters Received - July-September 2007.PDF](http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF)

⁴ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

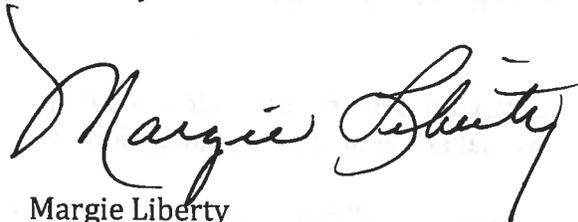
this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

A handwritten signature in cursive script that reads "Margie Liberty". The signature is written in dark ink and is positioned above the printed name.

Margie Liberty

cc: Supervisor John Goia
Supervisor Candace Anderson
Supervisor Federal Glover
Supervisor Mary Piepho

Supervisor Karen Mitchoff
Mayor Dan Romero
Vice Mayor John Delgado
Council Member Gerard Boulanger
Council Member Myrna de Vera
Council Member William Wilkins
Bert Robinson, Managing Editor, West Contra Costa Times
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Margie Liberty
151 O'Neil Circle
Hercules, CA 94547

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I have been a citizen of the Pinole/Hercules area since 1954. Although, I am very concerned about the plans you for our area, I have not been able to attend any of your meetings due to age. I have been keeping up with them, though, and am horrified at the changes you contemplate with only minimal citizen input.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and

more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated “preferred alternative”:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and

regulations imposed by all levels of government.

At a minimum:

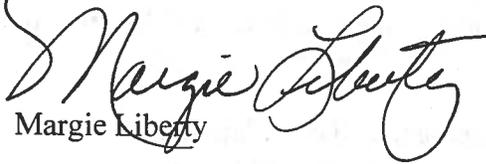
...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,



Margie Liberty

cc: Supervisor John Goia
Supervisor Candace Anderson
Supervisor Federal Glover
Supervisor Mary Piepho
Supervisor Karen Mitchoff
Councilman Bernard Boulanger
Mayor Dan Romero
Vice Mayor John Delgado
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Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Mary Jordan
902 21st. St.
Paso Robles, CA 93446

July 3, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

Let me introduce myself. My name is Mary Jordan and I am very concerned about the One Bay Area plan and the way the process is being handled as my son and his family live in Cloverdale. This, eventually, will affect all of us in California. Please note my concerns as follows:

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

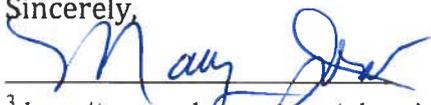
In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



³ [http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations - Response Letters Received - July-September 2007.PDF](http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF)

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Mary Jordan

cc: Mayor Robert Cox
Vice Mayor Joseph Palla
Councilmember Carol Russell
Councilmember Michael Maacks
Councilmember Augustine "Gus" Wolter
Editor Cloverdale Reveille
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Mary Jordan
902 21st. St.
Paso Robles, CA 93446

7-6-12

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

My name is Mary Jordan and, again, I am contacting you regarding probable litigation liability resulting from Plan Bay Area. I am concerned as my son and his family live in Sonoma County and this will directly affect them. Eventually, it affects us all.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

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Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

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The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and

more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

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Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated “preferred alternative”:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and

regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

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E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,



Mary Jordan

cc: Mayor Robert Cox
Vice Mayor Joseph Palla
Councilmember Carol Russell
Councilmember Michael Maacks
Councilmember Augustine "Gus" Wolter
Roberta Lyons/City Desk Editor
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland CA 94607
email: eircomments@mtc.ca.gov
Fax: 510 817 5848

Re: Scoping Comments on the ABAG/MTC One Bay Area Plan

Dear Ms. Nguyen:

Thank you for the opportunity to provide Scoping Comments on ABAG/MTC's One Bay Plan as required under CEQA. The citizens of the City of Vallejo are extremely concerned that the current concentration of poverty in Vallejo is undermining the ability of our community to survive. As you may know, the City of Vallejo recently emerged from bankruptcy and our economics are still very shaky. The One Bay Plan appears to exacerbate the conditions that caused our bankruptcy. The promise of Federal funds is impossible to resist for local governments such as ours. Wealthy communities economically stable through market oriented strategies are able to opt out of Federal funding tied to subsidizing housing targets if they feel the presence of disadvantaged populations would undermine their prosperity. The tension between agricultural/tourist based economies of the North Bay and what politicians perceive as a dangerous urban horde in one of the region's largest cities is manifest in the makeup of the ABAG/MTC Planning and Administrative Committees.

The City of Vallejo holds a unique place in the history of the San Francisco Bay Region. The first designated Capitol, it was gift to the new state of California offered by General Mariano G. Vallejo in 1852 during the first Constitutional Convention in San Jose. Unlike other early American cities that grew up at random around harbors, rivers or crossroads, General Vallejo, the Mexican Director of Colonization for the North Bay, envisioned a grand city in 1843 at "the true center of the State, the true center of commerce and the true center of transportation". A Master Plan for the new city included a grid of wide roads "reminiscent of the grand boulevards of Europe" was developed. Lots affordable for waves of new immigrants were platted and sold primarily to Catholic people fleeing English repression in Ireland. The Master Plan included the State Capitol, an orphanage, a hospital, a home for the poor and botanical gardens. For over 100 years, the City of Vallejo was the regional job center (Mare Island) and a prosperous regional commercial core boasting a City of Paris and other upscale establishments. Workers commuted from suburban communities like Napa on a commuter rail system extending into the Sonoma Valley and east into agricultural Solano County.

After the massive workforce buildup during World War II, the suburban shift moved many low income families into new, but affordable, single family homes in the suburbs. The City of Vallejo responded though Redevelopment that demolished 24 blocks of low income, owner occupied housing in the downtown and transplanted those populations into a ring of subsidized rental housing encircling what was left of a once thriving commercial core. A grand hotel was converted to a senior housing Project recently destroyed by an avoidable fire that killed 4 seniors. Owner occupied, working class homes in the adjacent neighborhoods have been slowly transitioning to rentals as "investors" grab foreclosed homes on the steps of City Hall to add to gosection8.com. Extremely generous HUD subsidies and tax write-offs make subsidized housing the most attractive investment opportunity for the wealthy in this economy. Coupled with a weak government that sees Federal money as the only possible source of operating income, the City of Vallejo staff is completely dependent on Federal handouts for survival. The City of Vallejo's demotion to an urban containment zone for poverty and social problems is no accident. As outlined in Connie Rice's recent book, "Power Concedes Nothing", the creation of Urban Containment Zones is deliberate policy supported by Federal, State and local governmental laws, programs and actions.

- A. **OBA Assumptions:** The assumptions underlying this Plan are faulty and incongruent with the Sustainable Principles derived from Agenda 21. Agenda 21 is based on the 1988 UN Brundtland Report which addressed the environmental consequences of the dominant growth paradigm and the attendant inequity as richer nations undermine the ability of

poorer nations to fend for themselves. The ecological footprint of the poor is miniscule compared to the ecological footprint of the rich and privileged. Consequently, the growth paradigm can only be addressed in the context of rich/poor since the rich require more resources. As developing and under developed nations struggle to attain levels of prosperity similar to those in the US, the Earth is not big enough accommodate equity without modifying the lifestyles of the privileged. Agenda 21 requires a paradigm shift to protect the Earth's finite resources and make sure this and future generations can thrive. The One Bay Area Plan corrupts those principles in several ways.

- i) **OBA assumes a 30% population growth over the life of the Plan.** That level of growth is unsustainable. The region's supply of fresh water is inadequate. Agenda 21 is based on the understanding that the limits of growth discussed in Adam Smith's "Wealth of Nations" (1776), which underpins modern capitalism, have been reached. From this point forward, physical growth can only be considered like a cancer that will kill us off if we don't stop it. So the basic assumption of 30% population growth underpinning SB 375 appears to be cynical hucksterism designed to fool the public into believing that ever continuing growth will cover the State of California's expanding uncovered public employee pension costs and entitlements rather than face the reality of pension reform and living within our means.
- ii) **The term "affordable" is misused throughout this document and should be changed to "subsidized".** In HUD parlance, the only housing that can be considered affordable must be subsidized. In fact, much of the market rate housing in Vallejo is available to low income families without any subsidies. Current HUD programs tend to displace low income, owner occupants from working class neighborhoods in favor of extremely low income subsidized renters. So HUD's programs are adversely affecting low income, working class populations. The ABAG/MTC Plan will exacerbate this problem.
- iii) **Growth projections by income strata should be clarified.** From census data, it appears that the middle class is shrinking and the lower income groups are growing as formerly working and middle class families slip downward. If the projected growth assumed by this planning effort is in the extremely low, very low and low demographic levels, then that should be made clear.
- iv) **SB 375 appears to violate CEQA.** Project level environmental clearance cannot be legally tiered from a Program level Environmental Impact Report.
- v) **The OBA Plan inverts the land use/transportation relationship skewing the outcomes favoring transportation rather than land use.** We often hear the justification for subsidized housing being concentrated in downtowns is because of the proximity to mass transit. While rail, ferries and air travel is dependent on locationally fixed infrastructure, most mass transit systems are bus based. Bus routes can easily be adjusted to serve subsidized housing Projects sited based on the proximity to decent schools, parks, stores carrying healthy food in safe, walkable neighborhoods. In Vallejo, this would free downtown sites from being tied up for 50 years with land uses that remove them from the tax rolls, overburden public safety and keep sites proximate to fixed ferry infrastructure from being utilized for their highest and best uses. Currently, Downtown Vallejo has a ring of subsidized Projects encircling the downtown like a Boa Constrictor squeezing the life out of the commercial core. Until that overconcentration of poverty is remediated, transit oriented development cannot succeed.
- vi) **The OBA Plan focuses only on one segment of household trips...the journey to work...ignoring the other 80% of household trips.** Household trips vary by income level. Middle income and better households' average around 10 trips per day in private vehicles. Very poor households are more dependent on mass transit when shops and schools are not within safe walking distance. In Vallejo, middle income households often drive their kids to better schools in other communities...some as far away as Oakland...because Vallejo schools are dangerous and substandard. Also, Vallejo grocery stores and shops cater to lower income shoppers. Consequently, most middle income shopping trips are out of town. In addition, the underclass Vallejo demographic makes purse snatching and theft a constant threat pushing shoppers to more affluent

communities like Walnut Creek. In order to keep cars off the road, the OBA plan should focus on factors that increase safety and vitality. As constituted, the OBA Plan appears to establish certain identified communities such as Vallejo where "communities of concern" are concentrated under governmental sanction and policy.

- vii) **OBA makes faulty assumptions about the movement of people, goods and services.** The OBA Plan appears to be based on existing transportation modes and infrastructure like roadways and mass transit. Trends indicate that fewer people will be tied to distant jobs. More people will work from home or spend the week living in a motel returning to a home away from the OBA planning area. More people will be unemployed or retire early. More hybrids will be on the road and casual carpools increase. Automobile emissions tied to global warming are likely to decline without SB 375.
 - viii) **The Bay Region movement of people, goods and services flows at the whim of Mother Nature and can be halted in a few seconds.** The Region's geomorphology is highly volatile. Earthquake faults crisscross the region and many critical roadways, bridge approaches, rail lines and ferry embarcaderos sit on poorly consolidated bay mud subject to liquefaction. The Loma Prieta Earthquake shut the Bay Bridge down for months. In addition, many communities where the underclass is concentrated back up to critical transportation spines. These areas are time bombs where violence can quickly spill out and sever movement. BART recently was shut down by an arson fire at the West Oakland Station and recent shootings closed several freeways. Assuming continued smooth flows is delusional. Developing a regional plan that creates independent communities so that they can be flexible, redundant and self-sufficient when transportation systems fail is the only sustainable approach.
2. **The required public participation program is flawed.** The City of Vallejo is prey to more powerful political interests which have long used the City as a dumping ground for social problems. More prosperous communities including San Francisco, Marin, Solano and Napa Counties send their Section 8 Housing Choice clients, parolees and drug rehab clients to Vallejo because the City of Vallejo's Housing Authority has replaced Mare Island as an economic engine with Federal government poverty program monies. North Bay regional political interests are determined to maintain the status quo. Both Mark Luce (Napa) and Jim Spering (Solano) are hostile to changing Vallejo's regional role and, hence, opportunities for public comment during the Scoping period have been controlled to limit Vallejoan's participation.
3. **Alternatives to the plan:**
- i) **Continued Economic Downturn.** As distinct from the No Project Alternative, a true "no population growth" Alternative should be considered the most likely scenario. Much of the Bay Region has been impacted by the foreclosure crisis with vacant and deteriorating housing impacting entire neighborhoods and decreasing the tax base needed for the impacted communities to thrive. As families adjust to the "new normal", many new suburban homes will be too big and unaffordable. Families will begin to double up thus reducing the need for new housing starts. Home businesses will be more prevalent thus reducing the need for commercial space and reduced family income will make recreational shopping less attractive thus reducing the need for commercial spaces. The "new normal" will make massive amounts of the built environment obsolete.
 - ii) **A network of strong, independent and interdependent cities alternative.** Rather than the Roman Imperial City scenario selected as the Preferred Alternative, each city around the Bay should develop its own specific and independent identity with an economically diverse demographic, a jobs base tailored to the local workforce, transportation connections and environmental opportunities, and shops all favoring the most sustainable modes of transportation ...walking and bicycling. Since the Bay Region is subject to seismic events, flooding, landsliding, fires and sea level rise, it is imperative that we all become self-sufficient and capable of helping our neighbors in case of a disaster. During the 1906 Earthquake, Vallejo sent flotillas of boats to evacuate San Franciscans and set up refugee camps to house them. It is likely Vallejo will be called upon again to fulfill that role.

- i) **The City of Vallejo should be redesignated.** It is a City, once a regional center, not a Suburban Hub like Walnut Creek.
- ii) **The Vallejo PDA should be reconfigured.** The Highway 29 corridor/ Sonoma Boulevard has a number of opportunity sites north and south of the Vallejo PDA which should be included. Also, there are opportunity sites east of Highway 80 and around Lake Dalwigk near the bus transfer station which are prime transit oriented development sites.
- iii) **Take the Historic Vallejo Railroad into consideration.** Vallejo has several underutilized rail lines including one parallel to Sonoma Boulevard through the Vallejo PDA extending to a former ferry hub at the mouth of the Napa River. This railroad line was the first in the State built in 1866 by a private developer, Sam Brannan, to take wealthy San Franciscans to his resort in Calistoga. The tracks also extend East through Jamison Canyon to Sacramento. A spur runs down the edge of Mare Island to the center of the designated Historic Core. The Napa Valley is a prime tourist attraction and traffic is often a nightmare, the Vallejo rail line is an opportunity to relieve Napa Valley traffic congestion. In the past, Napa Valley interests have blocked trains running into Vallejo for unknown reasons.
- iv) **Listed and Eligible Historic Districts should be excluded from the PDA.** It is unclear why the Vallejo PDA is configured as it is. It now includes several stable neighborhoods on or eligible for the National Register of Historic Places. These neighborhoods are protected by the National Historic Preservation Act of 1966, codified in 36 CFR 800, which requires that the cumulative adverse effects of all Federal HUD Programs be addressed. As lead agency, ABAG would be responsible for completing the required Section 106 analysis. Since it appears that the OBA plan would circumvent the need for CEQA review for subsidized housing in historic districts, adjusting the PDA to exclude these neighborhoods is necessary to remove any confusion and incentives to "investors".

4. Mitigation Measures:

- i) **Performance Targets:** Currently, Vallejo is heavily impacted by concentrations of poverty and social problems especially in the downtown where it undermines efforts to restore economic prosperity. The underclass, drug addicted and social misfits overburden police, fire, schools and social services while impairing quality of life values needed to grow a middle class tax base. The OBA Plan should establish overall Performance Targets for housing. Rather than a target of 20% for each Federal Grant, the sum total housing in each census tract should not exceed 15% subsidized including the sum total of all Section 8 Housing Choice Vouchers, Project Based Vouchers, group homes, halfway houses and drug rehab facilities. The percentage of subsidized housing in the Downtown not benefiting from proximity to the ferry is over 50%.
- ii) **Transfer of excess subsidized housing units:** In census tracts where the percentage of subsidized housing exceeds 20% and new, market rate housing cannot be constructed due to zoning or FAR limitations that is sufficient to achieve the 15% performance target, subsidized housing units should be removed and reconstructed in census tracts currently underserved with subsidized housing. Bus transit routes should be adjusted accordingly.
- iii) **Regional Housing Choice Voucher Inventory:** Currently, HUD has no idea where the Choice Vouchers are used. Since Choice Vouchers are designed to move around, concentrations of poverty are difficult to quantify. HUD should develop an inventory of where each Housing Choice Voucher is used in order to correctly calculate the 20% performance targets. In addition, HUD should adjust the value of the Choice Vouchers to reflect the rental rates in receiving communities rather than maintain the rental values of the sending communities which are often much higher thus skewing the market upward and displacing non-subsidized low income families.

- iv) **Impact Fees:** Communities sending Housing Choice vouchers, parolees or Drug Rehab patients to other communities should pay an impact fee to the receiving jurisdiction to pay for the added burden of public safety and social service costs.

5. What environmental issues should be analyzed?

- i) **Sea Level rise:** The City of Vallejo is at the confluence of the Napa River with the Bay. The San Francisco Estuary Institute has mapped the historic geomorphology of the Bay and the Napa Valley. The Vallejo end of the Napa Valley was once tidal flats, salt marsh and freshwater wetlands completely surrounding the hills that the historic old city occupied. Given that the predictions for sea level rise at 1 meter, much of the historic low lands will be inundated. This area of inundation covers much of the PDA. In addition, the City of Vallejo staff has provided inaccurate data on the 100 year flood plain to FEMA. One of these areas is proposed for extensive residential development. The OBA Plan should address these inaccuracies.
- ii) **Historic Resources:** The City of Vallejo has one National Historic Landmark District equal in importance to the Presidio of San Francisco, three National Register Districts, a California State Historic District, several districts adjudged eligible for inclusion on the National Register and several individually listed National Register resources. Cumulative Adverse Effects will need to be addressed by the lead agency as required in Section 106 of the National Historic Preservation Act codified in 36 CFR 800.
- iii) **Disadvantaged populations and Communities of Concern:** Current demographic data suggest that the City of Vallejo is well beyond the concentration of poverty deemed sustainable by the Brookings Institute. Lack of jobs, unsafe schools; increasing crime; reduced police and public safety staffing; deteriorated and abandoned housing stock; squatters; open prostitution; lack of healthy food and services all create conditions which impair the ability of disadvantaged populations to thrive. Children growing up in these neighborhoods repeat the dominant societal pattern rather than moving up and out of poverty. Adding more subsidized housing would exacerbate this problem. The Brookings Institute has recommended that the primary strategy for restoring prosperity in older industrial cities is to grow the middle class in order to rebuild the economic base so that Vallejo can stand on its own without Federal subsidies. This strategy is counter to HUD's policies of tying every Federal penny to more subsidized housing. Much of Vallejo's population adjudged poor by Federal and State standards are either retired or members of the creative class with variable incomes. These low income demographic groups are doing just fine without subsidized housing. The OBA plan fails to distinguish between various populations considered Disadvantaged. Some of these populations are incompatible. The safety of elderly and disabled populations living in Urban Concentration Zones is affected by feral underclass youth who patrol neighbors looking for criminal opportunities as primary sources of income. Cash for Gold outlets bear testimony to frequent burglaries; understaffed police can do nothing to combat criminal elements. The City of Vallejo is now the recipient of underclass families from Oakland and Richmond as well as parolees from the entire region. It is clear from the nightly news that criminal gangs running drugs and guns have established bases in Vallejo's low income neighborhoods. Fostering stable owner occupied neighborhoods is critical. The residents of the City of Vallejo accomplished housing all segments of society before HUD and the City, as a whole, may be damaged by its membership in ABAG.

6. How can local jurisdictions and other agencies use this EIR?

- i) **Local:** In order to offset the "Big Brother" effects of the ABAG/MTC, the City of Vallejo should ensure its sovereignty by quickly developing a new General Plan. SB 375 states:

"Local elected officials serving on city councils and county boards of supervisors are responsible for developing and adopting the local general plan. Neither the sustainable communities' strategy nor the alternative planning strategy developed under SB 375 will supersede the general plan or other planning policies or authorities of a city or county. Nor must a local agency's planning policies be consistent with either strategy."

- ii) **Other Bay Region Counties:** Newer suburban communities' affluence comes at the expense of older communities such as Vallejo. Highway and mass transit systems, paid for by Federal and State taxes, primarily benefit suburban developers by shifting the tax base and drawing stable middle class homeowners by better schools, lower crime, lower taxes, better roads and a better overall quality of life. The City of Vallejo is unable to compete with the new suburban developments along the Highway 80 corridor into Solano County. Their prosperity comes at the City of Vallejo's expense. The Solano County Board of Supervisors is weighted toward suburban and agricultural interests. Politicians are well aware of the problems brought by concentrations of poverty so shifting that burden to older industrial cities, like Vallejo weakened by the demise of the Federal Naval Shipyard, is economically desirable. Thus, the citizens of Vallejo were blindsided by a draft Solano County General Plan that called for all of the required subsidized housing to be located on unincorporated pockets of the County within the City Limits of Vallejo. Similarly, ABAG/MTC's One Bay Area Plan comes as a bit of a surprise because no public meetings have been held to explain what regional politicians have decided for us. The City of Vallejo staff, desperate for money, will go along with anything that promises Federal funding, no matter how damaging to the quality of life of the larger community. Some methodology is necessary for having jurisdictions shifting poverty and social problems to Vallejo to pay their fair share for the costs without laundering that money through the Federal government.
- iii) **Other:** Like vultures circling a dying creature, State and local politicians have been lining up to transfer the City of Vallejo's assets to private developers. The City's thriving ferry system was shifted in Sacramento to an Alameda developer through a slight of hand called WETA. State Lands along the Vallejo waterfront were shifted legislatively to another developer. Mare Island was conveyed to a housing developer with no experience dealing with historic industrial buildings but with political ties to the highest levels of government. The City of Vallejo has emerged from bankruptcy; but the city's budget is very shaky. It is unclear what other assets might be at risk if the City of Vallejo fails to thrive.

In sum, the City of Vallejo has, since its founding in 1852, been heavily influenced by Federal policies and programs. When Mare Island was established as the first US Naval Shipyard on the West Coast, the conditions of the sale required the shipyard to be operated by civilian labor to be housed only on the East (City) side of the Napa River. This Agreement with the Federal government set the stage for market rate private development of working class housing. Workers walked down the hill to ferry shuttles that brought them to their jobs. The Saint Vincent's Hill Historic District is significant to the Nation because of the layers of housing typologies represent world events as the shipyard workforce grew. It also reflects varying income levels and family makeup. Extended families built homes, cottages, basement apartments as family makeup changed and grew. Schools and shops were within easy walking distance. Many families never had cars and lived their entire lives traveling on foot. Kitchen gardens provided locally grown food. In essence, the residents of Saint Vincent's Hill lived in accordance with the sustainable principles touted today.

During World War II, the mother of HUD, Catherine Bauer Wurster, headed a blue ribbon team to build 5,000 units of subsidized shipyard workforce housing (no longer extant) and Vallejo became addicted to HUD subsidies. Today, Vallejo is a poster child for the damage caused by over reliance on Federal government entitlement programs. HUD subsidies and Programs have created concentrations of poverty which place a heavy burden on public safety, erode the property tax base and cause capital flight. The Federally recognized historic districts have been converted to over 80% rentals rather than predominantly owner occupied as per the historic pattern. Rather than continue to try to tweak the formula in an attempt to get it right this time, it is time to rethink HUD subsidies. 100 years ago, the market did an effective job of providing decent housing for workers at every income level. The Saint Vincent's Hill neighborhood would be a good model to study the effects of Federal policies over the last 160 years in order to see what really works and what doesn't.

Sincerely Yours,

Mildred Goossen, 108 Mountain Ave. Vallejo CA 94590

Re: Comments on Inadequacy and Incompleteness of EIR

From: eircomments

To: mimi.steel@att.net

BC:

Date: Tuesday - July 10, 2012 9:50 AM

Subject: Re: Comments on Inadequacy and Incompleteness of EIR

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> Mimi Steel 07/05/12 7:34 AM >>>

Summary Statement

The draft EIR is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the draft EIR.

The major inadequacies of the draft EIR fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. The EIR is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants who prepared the draft EIR.
- IV. The EIR does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

I. The forecasts of population and economic growth are fatally flawed.

* The EIR is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

* The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

* The EIR does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

* The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

* The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

* Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

* The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

* California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

* Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. The EIR does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

* Throughout the EIR the bias of the authors is evident, equating intended consequences with likely results.

* The EIR does not address alternative – and more likely – consequences of various elements of the plan.

* For example, both the authors of Plan Bay Area and the authors of the draft EIR assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

* The EIR ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

* In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

* The EIR ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

* The EIR does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

* The EIR accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

* The EIR provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the entire draft EIR.

* The draft EIR ignores "real-world" experience under "smart growth" policies.

* Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

* Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

* Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

* In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

* Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

* A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.

* Actual experience has shown that public policies that coerce residents to live in high-density, “stack-and-pack” dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the draft EIR were inadequate and biased.

* MTC and ABAG must disclose the process by which the consultants who prepared the draft EIR were selected.

* The draft EIR consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. The draft EIR is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

* The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

* The review process made it abundantly clear that the authors of the EIR and the advocates of Plan Bay Area did not have an independent relationship with the result that the draft EIR is not an objective analysis of likely environmental impacts.

* At one hearing, a consultant bluntly stated that “negative comments” would not be permitted at public hearings and that the consultants alone would decide which comments are “relevant” and will be included in the final report.

* MTC and ABAG made a concerted effort throughout the review process to determine which “stakeholders” would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either the draft EIR or Plan Bay Area were not solicited to participate.

IV. The draft EIR does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

* The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

* The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, “affordable housing” subsidies, and other essential public services.

* While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

* The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

* Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. The draft EIR must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

* The EIR does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

* The EIR totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

July 5, 2012

Mimi Steel
20640 Summercrest Dr
Castro Valley, CA 94552

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating “the secondary or indirect environmental consequences of economic and social changes” resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I am a taxpayer with a full time position in the high tech industry in Silicon Valley. I am extremely concerned about our environment but history has shown that it is the wealthy Western countries, especially the United States with its respect for private property rights that is a much better steward of the environment than the countries with top down center planning (You have only to look at China and Russia, the two worst polluters in the industrialized world, to validate my comments) . So I was truly appalled to learn that all environmental requirements are waived for builders that build to your specifications in designated areas. How does that help the environment if that is truly what this plan is about. It smacks of hypocrisy to me. I have attended many of your meetings and I have spent a lot of time learning about One Bay Area. It is obvious that you are not interested in public opinion that disagrees with the Plan. It is in this context that I make the following written comments regarding the EIR for One Bay Area.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient

document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area’s “preferred alternative” suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents’ liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its “preferred alternative.” However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area’s EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

(1) Plan Bay Area’s EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1] Careful and thorough consideration of this hypothesis regarding the impact of the “preferred alternative” is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

(2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

(3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.[2] Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either

to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

(4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.^[3]

(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



Mimi Steel

cc: Alameda County Supervisors

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

[1] Even a cursory review of historic data suggests that the assumptions undergirding the “preferred alternative” are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area’s decline in population growth from 155.61% of the national growth rate during the 1960s-1980’s (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990’s (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000’s (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the “preferred

alternative-lite” zoning standards which were first introduced in parts of the Bay Area in the 1990’s and became more widespread in the 2000’s. This likely relationship between population and job growth rate declines and “preferred alternative-like” zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

[2] It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous “stack and pack” developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

[3] Further, it’s facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete.

July 5, 2012

Mimi Steel
20640 Summercrest Dr
Castro Valley, CA 94552

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I am a taxpayer with a full time position in the high tech industry in Silicon Valley. I am extremely concerned with the blatant disregard for property rights that your organization and the entire California State Senate have exhibited through the passage and implementation of SB735 which combines land use, transportation, and housing. There is no way you can comply with these requirements without significant "takings" of private property. Instituting Urban Growth Boundaries, employing Ballot Box Planning techniques, and putting countless acres of productive land off limits as "open space" (along with your buddies at Greenbelt Alliance and the Sierra Club) have helped serve to make housing unaffordable in the Bay Area. Until recently, most property owners have been unaware of the stealth subversion of their property rights and have not challenged this gross violation of Article 5 of the US Constitution. That is no longer the case. We will be working with affected property owners to alert them to the danger that One Bay Area poses and assist them in legal challenges to the usurpation of their private property. It is in this context that I make the following written comments regarding the EIR for One Bay Area.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in

compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A handwritten signature in black ink, appearing to read "Mimi Steel", with a long horizontal flourish extending to the right.

Mimi Steel

cc: Alameda County Supervisors

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

July 5, 2012

Mimi Steel
20640 Summercrest Dr
Castro Valley, CA 94552

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

I am a taxpayer with a full time position in the high tech industry in Silicon Valley. While I have been working hard for over 30 years to pay for the redistribution of wealth state that California has become, your organization has been working overtime to transfer even more wealth through your top down planning efforts currently known as One Bay Area. I have spent a significant amount of personal time studying what you are trying to do in the name of Smart Growth, Sustainable Development, and Sustainable Cities Strategies. I have had to take vacation days from work to attend your meetings which are conveniently (for you) held during the business day so that your audience is primarily advocates (the takers) who are colluding with you to squander the money from the hard working citizens, forcing a mass exodus of productive people from the State. It is in this context that I make the following comments regarding the EIR for One Bay Area.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%–142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

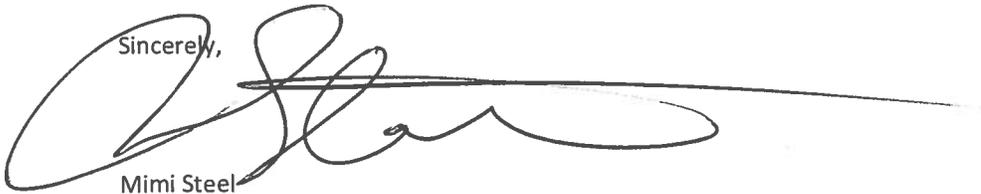
In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Mimi Steel', with a long horizontal flourish extending to the right.

Mimi Steel

cc: I will be copying Alameda County Supervisors on this letter

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

[1] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR.

http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions.

rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf . This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

Pamela George

July 7, 2012

Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

Joseph P. Bort MetroCenter

101 Eighth Street

Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

I am a concerned citizen.

A lead agency must not approve a "plan[]" without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App. 3d 813.) "The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not

provide the decision-makers, and the public, with the information about the project that is required by CEQA.' [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a) (emphasis added). "The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). A "no project" alternative also must be evaluated,

and “the ‘no project’ analysis should discuss the existing conditions at the time the notice of preparation is published.” CEQA Guidelines § 15126.6(e)(1), (2). “The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration’s Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the “no project” alternative. This data must also inform the Plan Bay Area EIR’s consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area’s “preferred alternative.”

Plan Bay Area’s enabling legislation states that AB 32 “requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020.” SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32’s mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been met. The fantastical assumptions underlying the “preferred alternative” and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990 and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to

at or about 1990 levels in the first quarter of 2012. Since California's population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000's versus 9.71% nationwide, and 13.82% in the 1990's versus 13.15% nationwide), California's

1

eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

2

John Hanger, "Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again," ("After the first quarter, the USA's 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA's latest Monthly Energy Review."), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

3

"Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit," November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020). http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf

emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area's population grew at only 95.95% of the national rate

in the 1990's (12.62%) and then plummeted to 55.72% of the nation's population growth rate in the 2000's (5.41%), the Bay Area's greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area's greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area's "preferred alternative" and its coercive and untested elements purporting to address the statutory mandates of SB 375.4

Sincerely,



Pamela George

Cc: <http://www.contracosta.ca.gov/>

(925) 335-1900

District 1 Supervisor John M. Gioia

Contra Costa County

651 Pine St., Room 107

Martinez, CA 94553

District 2 Supervisor Candace Anderson

Contra Costa County

651 Pine St., Room 107

Martinez, CA 94553

District 3 Supervisor Mary Nejedly Piepho

Contra Costa County

651 Pine St., Room 107

Martinez, CA 94553

District 4 Supervisor Karen Mitchoff

Contra Costa County

651 Pine St., Room 107

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District 5 Supervisor Federal D. Glover

Contra Costa County

651 Pine St., Room 107

Martinez, CA 94553

Councilmember Erick Stonebarger

City of Brentwood

150 City Park Way

Brentwood, CA 94513

Councilmember Robert A. Brockman

City of Brentwood

150 City Park Way

Brentwood, CA 94513

Councilmember Joel R. Bryant

City of Brentwood

150 City Park Way

Brentwood, CA 94513

Mayor Gayle Laughlin

<http://www.ci.richmond.ca.us/>

510-620-6581

13851 San Pablo Ave

San Pablo. Ca 94805

Brian Sussman, KSFO

Melanie Morgan, KSFO

Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

Of course, the “preferred alternative” was developed as a sub-plan of United Nations Agenda 21, which has entirely different and much more sinister goals than reducing greenhouse gas emissions—but the statutory authority for SB 375 flows solely out of AB 32’s mandate to reduce California greenhouse gas emissions to 1990 levels by 2020.

From: eircomments
To: Patricia Wagner
Date: 7/11/2012 5:14 PM
Subject: Re: EIR comments

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> Patricia Wagner <pawse4@hotmail.com> 7/10/2012 10:18 PM >>>

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607
Email: eircomments@mtc.ca.gov

SUBJECT LINE: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

I am Trudy McNab. I reside in Novato, California in Marin County. I am unhappy with the overall process. It seems to be going very fast. The public's questions are not being addressed. Marin County does not need to allow the United Nations Agenda 21 to destroy our way of life. I want my children to be able to enjoy the safety of a nice backyard to play in. I should not be penalized to do this.

Summary Statement

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6 month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.
- IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

- I. The forecasts of population and economic growth are fatally flawed.

THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual

5.4 percent growth rate since 2000.

THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

THE PROCESS does not address alternative – and more likely – consequences of various elements of the plan.

For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).

THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.

THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.

THE PROCESS ignores "real-world" experience under "smart growth" policies.

Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.

Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.

Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.

In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.

Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.

A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.

Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.

THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.

The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.

The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.

At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.

MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

The plan does not fully state the costs of the various elements of Plan Bay Area – the Plan includes \$277 billion for the public transportation element alone.

The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, "affordable housing" subsidies, and other essential public services.

While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.

The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.

Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.

THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.

THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.

Phaedra Glidden
1363 Holly Park Way
Santa Rosa, CA 95403

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on Plan Bay Area's inadequate and incomplete process; and on the "preferred alternative's" undisclosed linkages to and provenance in United Nations Agenda 21

Dear Ms. Nguyen,

I am a citizen/taxpayer who currently resides in Northern Santa Rosa with my husband and young son. I have been involved with the One Bay Area planning sessions for several months now and I have been closely following this issue. I am writing to you now to voice my opposition to this plan, as well as the process conducted to reach the consensus needed to move forward.

According to the California Supreme Court,

The Legislature has made clear that an EIR is "an informational document" and that "[the] purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; Guidelines, §15003, subs. (b)-(e).)

Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal.3d 376, 392 (1988).

"The EIR process protects not only the environment but also informed self-government." Id. In order to do so, the courts will "scrupulously enforce all legislatively mandated CEQA requirements." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990). The CEQA Guidelines require an EIR to provide sufficient information for meaningful evaluation of the comparative merits of the proposed project and each alternative. § 15126.6(d).

Courts have been alert to a particularly grave threat to the principles of self-governance protected by CEQA—that being where the EIR is a sham and the

entire public “decision making” process by the relevant government board is simply a “rubber-stamp[ing of] a predetermined result.” Redevelopment Agency v. Norm’s Slauson, 173 Cal. App. 3d 1121, 1127 (1985). There is no more egregious example of such a sham process moving inexorably toward a predetermined result than that playing out with Plan Bay Area:

(1) Plan Bay Area has prevented—rather than solicited—the public input required by both California laws and regulations and the procedural and substantive due process guarantees of the United States Constitution.

Since ABAG and MTC already decided upon and pre-committed to the “preferred alternative” prior to the beginning of the “decision-making” process,¹ public input has not only not been desired, but has been actively suppressed. Just a few examples of too many to mention here should suffice to illustrate this point:

(a) The “visioning” sessions in the fall of 2011 and winter of 2012 were carefully crafted with the assistance of trained consultants to give the “illusion” of public participation and input, but were in fact designed to manipulate attendees into “agreeing” to the already pre-determined decision (e.g., the “preferred alternative”).²

(b) Plan Bay Area’s “visioning” sessions appear to have been stacked with attendees who were either ABAG or MTC staffers, staffers of closely aligned local agencies, or staffers of non-governmental organizations (NGOs) who are proponents of the “preferred alternative” and are closely aligned professionally and financially with ABAG and MTC. This collaborative effort to script and stack the meetings with “citizens” favorable to the “preferred alternative” appears to have taken place through the active collusion of the aforementioned parties.

(c) Notwithstanding the carefully scripted nature of the “visioning” sessions, and the stacked attendees, citizen attendees who were not ABAG and MTC staffers or aligned NGO staffers were overwhelmingly in opposition to the plan and to the process by which it has been promulgated—anecdotal reports indicate up to 80-90% of those attending.³

¹ And, as noted below, the “preferred alternative” is a sub-plan of the United Nations Agenda 21, rather than a plan developed for the Bay Area by Bay Area public officials and citizens.

² “Exposing the Delphi Technique in Public Meetings,”
<http://www.youtube.com/watch?v=-zpA1althjo&feature=related>

³ Compare this video of the January 9, 2012 Santa Rosa “visioning” session: “Near Riot at Delphi Meeting--Part 1”
<http://www.youtube.com/watch?v=vA4GKUUXkhA>, with ABAG’s report on the same session:

(d) Despite the overwhelming public opposition to the Plan at the “visioning” sessions, the Plan proponents have included no mention of that public opposition in their documents reporting on these sessions to the ABAG and MTC boards and to the people of the Bay Area.⁴

(e) The scoping hearings for the EIR itself were likewise designed to preclude any substantive input from the public, even though soliciting public input was their statutory and regulatory purpose. Of the five hearings held in various locations in the Bay Area between Thursday, June 21, 2012, and Wednesday, June 27, 2012, only one of those was held after business hours. Holding these “public” hearings during business hours made it particularly easy for ABAG and MTC-aligned NGO and local planning staffers to attend as they were paid to do so and came as proponents of the “preferred alternative”, and made it particularly difficult for the general public to attend.⁵ The only plausible explanation for this hearing schedule is that it was designed for precisely this outcome.

Comments made by ABAG Senior Grant Administrator and Urban Planner Ms. Joanna Bullock at the June 22, 2012 EIR scoping hearing in San Jose illustrate precisely the attitude of the Plan’s proponents towards the public opposition to the plan. Ms. Bullock said that, in her opinion, the Bay Area public overwhelmingly supports the Plan, citing as her evidence for that astonishing conclusion that only a small number of Bay Area residents attended the “visioning” sessions to offer opposition. Thus, according to this senior ABAG staffer, every one of the seven million Bay Area residents who didn’t attend the “visioning” sessions can be imputed to be informed proponents of the broad, sweeping, and irreversible changes Plan Bay Area will entail in every Bay Area resident’s way of life. This without any credible evidence that any meaningful percentage of Bay Area residents have been presented with a fair and objective depiction of the “preferred alternative’s” features and implications, let alone having formed an opinion in favor of or opposed to the plan. And, further, this senior ABAG staffer dismissed entirely the only available objective evidence regarding public response to the plan—which is that the overwhelming majority of citizens who were not aligned with ABAG and MTC who attended the “visioning” sessions strenuously objected to the Plan and the process by which it is being promulgated.

http://www.onebayarea.org/pdf/winter_2012_summary/Sonoma/Sonoma_County-Santa_Rosa_1-9-12.pdf

⁴ See footnote 3, above.

⁵ Even at the hearing held in San Jose on Friday, June 22, 2012, attended primarily by ABAG and MTC-aligned NGOs and local planning agencies, numerous attendees remarked on the difficulties presented to the general public by the scheduling of four of the five scoping hearings during business hours.

(2) The schedule for the EIR itself demonstrates that public input is not desired, and will not be considered:

The EIR process is dramatically foreshortened and truncated, and does not allow for any meaningful consideration of whatever public input is received. For example, the EIR Project Team has solicited public comment on the scope of the EIR, asking that all public comments be proffered by Wednesday, July 11, 2012. However, the schedule being followed by the EIR Project Team requires them to “present final alternatives for review by Joint MTC Planning/ABAG Administrative Committees and recommendation to Commission and ABAG Executive Board” on Friday, July 13, 2012, only two days after the public input is received! This schedule facially and obviously allows no time for the EIR Team to review, let alone consider, let alone modify the scope of the EIR in response to the public comments.⁶

In fact, the EIR Project Manager herself disclosed at the scoping hearing in San Jose, June 22, 2012, that the EIR Team was aware that the schedule allows inadequate time for a complete EIR—indicating that the EIR Team was not happy about this, and adding that the schedule had been imposed on the EIR Team and they had no say in the matter.

(3) Only the “preferred alternative” is being considered.⁷

While there are grave problems with the data and assumptions underlying the “preferred alternative,” there are even greater problems with the EIR process itself. There are no meaningful alternatives being considered other than the “preferred alternative.” Alternative 1—do nothing--will be mischaracterized and marginalized, and will not be meaningfully considered. Alternatives 3, 4, and 5 are simply straw men, not even plausible and would not be proffered by any serious proponent amongst the planning community⁸—and according to the EIR Project Team at the San Jose scoping hearing on

⁶ This deeply troubling indication of the lack of any meaningful public input into the planning process was likewise commented on by several attendees at the June 22, 2012 scoping hearing in San Jose.

⁷ To emphasize the sham that is this “rubber-stamp[ing of] a predetermined result.” Redevelopment Agency v. Norm’s Slauson, 173 Cal. App. 3d 1121, 1127 (1985), Plan Bay Area’s published schedule concludes with “Commission and ABAG Executive Board Certify Final EIR and Adopt Final Plan” in April of 2013. Since only one alternative is being “considered” and that alternative was selected before the “decision-making” process began, why leave any doubt about the eventual result and when it will be formally “adopted”?

⁸ As an example of just how farcical alternatives 3, 4, and 5 are, alternative 4’s distinguishing characteristic is that it “eliminate[s] inter-regional commut[ing].” That is, no one who lives outside of the nine Bay Area counties would be allowed to commute for

June 22, 2012, Alternatives 3, 4, and 5 will not be given any serious analysis or consideration.

What is missing from the alternatives considered by Plan Bay Area is any input from individual cities, let alone individual landowners, which would enable one or more of the alternatives considered to be compliant and consistent with the mandates of the American Planning Association in their Policy Guide on Takings ratified April 11, 1995:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

(emphasis added).

(4) Plan Bay Area's "preferred alternative" has not been formulated and will not in fact be approved by a democratically accountable government body. Neither has it been formulated by Bay Area officials or citizens.

(a) There are grave and unresolved problems with having two unelected, unaccountable regional government entities allocating close to \$300 billion in tax monies, and in their making sweeping planning mandates that will impose coercive, restrictive zoning standards that will irreversibly change the lives of every Bay Area resident. At the very minimum, (i) One Bay Area's planning process must be slowed down by a minimum of six to twelve months to solicit a range of citizen input, (ii) One Bay Area's planning team must contract with independent, objective and unaligned organizations to do the data gathering and

work into the Bay Area. Leaving aside the right to travel the Supreme Court has found in the Constitution—and of course, constitutional objections do not seem to have impeded the One Bay Area planners in any way—how will they implement this practically? Are they suggesting militarized checkpoints on the highways at every county line?

analysis required to come up with an analytically-sound range of forecasts and to develop a set of plausible, credible plan alternatives that will be responsive to the American Planning Association's "do no harm" mandates noted above, and (iii) the resulting plan must be put up to a vote by all the citizens in the Bay Area before any plan goes into effect.

(b) At least as troubling, Plan Bay Area's "preferred alternative" has not been developed as a result of the unique conditions in the Bay Area, nor has it been developed by governmental staffers in the Bay Area, let alone by Bay Area citizens themselves. It is a sub-plan of the United Nations' Agenda 21 blueprint for global governance that is being implemented at the local level, and its salient features have been developed by United Nations entities such as the International Council for Local Environmental Initiatives (ICLEI) and their locally-aligned operatives and NGOs.⁹

It is beyond the purview of this comment on the scope of the EIR to discuss in any detail the implications of local government officials and staffers acting as agents of a foreign power in performing their institutional functions as public servants working for the people of the Bay Area. However, it is mandatory that the EIR in particular and the One Bay Area planning process overall discuss the provenance of the "preferred alternative" and make explicit its linkages, alignments, and source as a sub-plan of United Nations Agenda 21. As part of this deliberative and fact-finding exercise, the EIR Project Team and Plan Bay Area must hold immediate public hearings¹⁰ where, at minimum, two local residents who are nationally-respected experts on United Nations Agenda 21, Mr. Michael Shaw of Freedom Advocates (freedomadvocates.org) and Ms. Rosa Koire of Democrats Against UN Agenda 21 (democratsagainstagenda21.com) are

⁹ United Nations Agenda 21 and its associated NGO's like ICLEI are themselves controlled and funded by a cartel of international banking elites who seek a global authoritarian super state. No less an authority than Georgetown Professor Carroll Quigley, who had access to the cartel's internal documents, described their agenda in his classic work Tragedy and Hope:

The powers of financial capitalism had [a] far-reaching aim, nothing less than to create a world system of financial control in private hands able to dominate the political system of each country and the economy of the world as a whole. This system was to be controlled in a feudalist fashion by the central banks of the world acting in concert, by secret agreements arrived at in frequent private meetings and conferences. The apex of the system was to be the Bank for International Settlements in Basel, Switzerland, a private bank owned and controlled by the world's central banks which were themselves private corporations. P.324

¹⁰ These cannot be private meetings—these must be public hearings, adequately noticed to the public, and covered by the press.

asked to testify at length. Both Mr. Shaw and Ms. Koire are life long environmentalists and Bay Area community leaders, as well as nationally known for their research and insights into Agenda 21.

Plan Bay Area's EIR cannot be certified without performing this analysis into the "preferred alternative's" linkages and alignment to and its provenance as a sub-plan of the United Nations Agenda 21. Attached to this letter are two sets of quotes, one from the Freedom Advocates site, and the other from the Democrats Against UN Agenda 21 site, which provide a brief introduction into Agenda 21, and an illustration of the wealth of valuable information available at each site.

Sincerely,



Phaedra Glidden

cc: [all of your county supervisors]-So. Co.
[all of your town or city council members] Santa Rosa
[editor(s) of your local newspaper(s)]-P.D.,
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Attachment A: on Freedom Advocates:

Michael Shaw, president of Freedom Advocates board, is a tax attorney and CPA, as well as self-employed small businessman and long time ecologist and conservationist in Santa Cruz County. He first became aware of Agenda 21 working on a county environmental task force, and recognized its chilling and authoritarian implications and plan. His bio:

<http://www.freedomadvocates.org/images/pdf/Michael%20Shaw%20bio%202009.pdf>

Telling, relevant quote from the Freedom Advocates site:

[http://www.freedomadvocates.org/frequently_asked_questions /](http://www.freedomadvocates.org/frequently_asked_questions/)

“Participating in a U.N. advocated planning process would very likely bring out many... who would actively work to defeat any elected official... undertaking Local Agenda 21/Sustainable Development. So we call our process something else such as ‘comprehensive planning’, ‘growth management’ or ‘smart growth’.”

– J. Gary Lawrence, 1998 UNEP Conference U.K.

Attachment B: from the Democrats Against UN Agenda 21 site:

<http://www.postsustainabilityinstitute.org/board-of-directors.html>

Rosa Koire

Rosa Koire is a forensic commercial real estate appraiser specializing in eminent domain valuation. Her twenty-eight year career as an expert witness on land use has culminated in exposing the impacts of Sustainable Development on private property rights and individual liberty.

<http://www.democratsagainstunagenda21.com/>

“UN Agenda 21/Sustainable Development is implemented worldwide to inventory and control all land, all water, all minerals, all plants, all animals, all construction, all means of production, all information, and all human beings in the world. . . . Is that just a coincidence? That every town and county and state and nation in the world would be changing their land use/planning codes and government policies to align themselves with...what? . . . The specific plan is called United Nations Agenda 21 Sustainable Development, which has its basis in Communitarianism. By now, most Americans have heard of sustainable development but are largely unaware of Agenda 21.

In a nutshell, the plan calls for governments to take control of all land use and not leave any of the decision making in the hands of private property owners. . . . Individual rights in general are to give way to the needs of communities as determined by the governing body. Moreover, people should be rounded up off the land and packed into human settlements, or islands of human habitation, close to employment centers and transportation. Another program, called the Wildlands Project spells out how most of the land is to be set aside for non-humans.

...

No matter where you live, I'll bet that there have been hundreds of condos built in the center of your town recently. Over the last ten years there has been a 'planning revolution' across the US. Your commercial, industrial, and multi-residential land was rezoned to 'mixed use.' Nearly everything that got approvals for development was designed the same way: ground floor retail with two stories of residential above. Mixed use. Very hard to finance for construction, and very hard to manage since it has to have a high density of people in order to justify the retail. A lot of it is empty and most of the ground floor retail is empty too. High bankruptcy rate.

So what? Most of your towns provided funding and/or infrastructure development for these private projects. They used Redevelopment Agency funds. Your money. Specifically, your property taxes. Notice how there's very little money in your General Funds now, and most of that is going to pay Police and Fire? Your street lights are off,

your parks are shaggy, your roads are pot-holed, your hospitals are closing. The money that should be used for these things is diverted into the Redevelopment Agency. It's the only agency in government that can float a bond without a vote of the people. And they did that, and now you're paying off those bonds for the next 45 years with your property taxes.

...

Redevelopment is a tool used to further the Agenda 21 vision of remaking America's cities. With redevelopment, cities have the right to take property by eminent domain--- against the will of the property owner, and give it or sell it to a private developer. By declaring an area of town 'blighted' (and in some cities over 90% of the city area has been declared blighted) the property taxes in that area can be diverted away from the General Fund. This constriction of available funds is impoverishing the cities, forcing them to offer less and less services, and reducing your standard of living. They'll be telling you that it's better, however, since they've put in nice street lights and colored paving. The money gets redirected into the Redevelopment Agency and handed out to favored developers building low income housing and mixed use. Smart Growth. Cities have had thousands of condos built in the redevelopment areas and are telling you that you are terrible for wanting your own yard, for wanting privacy, for not wanting to be dictated to by a Condo Homeowner's Association Board, for being anti-social, for not going along to get along, for not moving into a cramped apartment downtown where they can use your property taxes for paying off that huge bond debt. But it's not working, and you don't want to move in there. So they have to make you. Read on.

Human habitation, as it is referred to now, is restricted to lands within the Urban Growth Boundaries of the city. Only certain building designs are permitted. Rural property is more and more restricted in what uses can be on it. Although counties say that they support agricultural uses, eating locally produced food, farmer's markets, etc, in fact there are so many regulations restricting water and land use (there are scenic corridors, inland rural corridors, baylands corridors, area plans, specific plans, redevelopment plans, huge fees, fines) that farmers are losing their lands altogether. County roads are not being paved. The push is for people to get off of the land, become more dependent, come into the cities. To get out of the suburbs and into the cities. Out of their private homes and into condos. Out of their private cars and onto their bikes.

...

High density urban development without parking for cars is the goal. This means that whole towns need to be demolished and rebuilt in the image of sustainable development.

...

Slowly, people will not be able to afford single family homes. Will not be able to afford private cars. Will be more dependent. More restricted. More easily watched and monitored.

This plan is a whole life plan. It involves the educational system, the energy market, the transportation system, the governmental system, the health care system, food production, and more. The plan is to restrict your choices, limit your funds, narrow your freedoms, and take away your voice. One of the ways is by using the Delphi Technique to 'manufacture consensus.' Another is to infiltrate community groups or actually start neighborhood associations with hand-picked 'leaders'. Another is to groom and train future candidates for local offices. Another is to sponsor non-governmental groups that go into schools and train children. Another is to offer federal and private grants and funding for city programs that further the agenda. Another is to educate a new generation of land use planners to require New Urbanism. Another is to convert factories to other uses, introduce energy measures that penalize manufacturing, and set energy consumption goals to pre-1985 levels. Another is to allow unregulated immigration in order to lower standards of living and drain local resources.

Phaedra Glidden
1363 Holly Park Way
Santa Rosa, CA 95403

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

I am a citizen/taxpayer who currently resides in Northern Santa Rosa with my husband and young son. I have been involved with the One Bay Area planning sessions for several months now and I have been closely following this issue. I am writing to you now to voice my opposition to this plan, as well as the process conducted to reach the consensus needed to move forward.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables."

www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's, city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

³ http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

⁴ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

Phaedra L Glidden

Phaedra Glidden

cc: [all of your county supervisors] ~~So. Co.~~
[all of your town or city council members] ~~Santa Rosa~~
[editor(s) of your local newspaper(s)] ~~P.D.~~
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

Phaedra Glidden
1363 Holly Park Way
Santa Rosa, CA 95403

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

I am a citizen/taxpayer who currently resides in Northern Santa Rosa with my husband and young son. I have been involved with the One Bay Area planning sessions for several months now and I have been closely following this issue. I am writing to you now to voice my opposition to this plan, as well as the process conducted to reach the consensus needed to move forward.

A lead agency must not approve a "plan[]" without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. Sierra Club v. State Bd. of Forestry, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App. 3d 813.) " The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a) (emphasis added). "The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). A "no project" alternative also must be evaluated, and "the 'no project' analysis should discuss the existing conditions at the time the notice of preparation is published." CEQA Guidelines § 15126.6(e)(1), (2). "The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration's Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the "no project" alternative. This data must also inform the Plan Bay Area EIR's consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area's "preferred alternative."

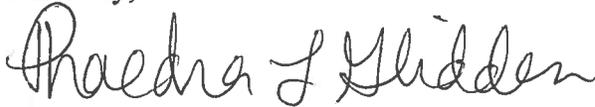
Plan Bay Area's enabling legislation states that AB 32 "requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020." SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32's mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been met. The fantastical assumptions underlying the "preferred alternative" and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990

¹ eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

² John Hanger, "Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again," ("After the first quarter, the USA's 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA's latest Monthly Energy Review."), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to at or about 1990 levels in the first quarter of 2012. Since California's population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000's versus 9.71% nationwide, and 13.82% in the 1990's versus 13.15% nationwide), California's emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area's population grew at only 95.95% of the national rate in the 1990's (12.62%) and then plummeted to 55.72% of the nation's population growth rate in the 2000's (5.41%), the Bay Area's greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area's greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area's "preferred alternative" and its coercive and untested elements purporting to address the statutory mandates of SB 375.⁴

Sincerely,



Phaedra Glidden

cc: [all of your county supervisors]—*So, Co.*
[all of your town or city council members]—*Santa Rosa*
[editor(s) of your local newspaper(s)]—*P.D.*
Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO
Mark Levin, Landmark Legal Foundation

³ "Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit," November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020).

http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf

⁴ Of course, the "preferred alternative" was developed as a sub-plan of United Nations Agenda 21, which has entirely different and much more sinister goals than reducing greenhouse gas emissions--but the statutory authority for SB 375 flows solely out of AB 32's mandate to reduce California greenhouse gas emissions to 1990 levels by 2020.

Phaedra Glidden
1363 Holly Park Way
Santa Rosa, CA 95403

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I am a citizen/taxpayer who currently resides in Northern Santa Rosa with my husband and young son. I have been involved with the One Bay Area planning sessions for several months now and I have been closely following this issue. I am writing to you now to voice my opposition to this plan, as well as the process conducted to reach the consensus needed to move forward.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural

tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated “preferred alternative”:

3. The American Planning Association and its chapters recognize the need

for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,



Phaedra Glidden

cc: [all of your county supervisors]—So. Co.
[all of your town or city council members] Santa Rosa
[editor(s) of your local newspaper(s)]—P.D.
Brian Sussman, KSFO
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Mark Levin, Landmark Legal Foundation

[Phaedra Glidden
1363 Holly Park Way
Santa Rosa, CA 95403

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating “the secondary or indirect environmental consequences of economic and social changes” resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I am a citizen/taxpayer who currently resides in Northern Santa Rosa with my husband and young son. I have been involved with the One Bay Area planning sessions for several months now and I have been closely following this issue. I am writing to you now to voice my opposition to this plan, as well as the process conducted to reach the consensus needed to move forward.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area’s “preferred alternative” suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents’ liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its “preferred alternative.” However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area’s EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area’s EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates.¹

¹ Even a cursory review of historic data suggests that the assumptions undergirding the “preferred alternative” are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay

Careful and thorough consideration of this hypothesis regarding the impact of the “preferred alternative” is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

- (2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.
- (3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.² Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.
- (4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion

Area towns, cities, and counties. The Bay Area’s decline in population growth from 155.61% of the national growth rate during the 1960s-1980’s (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990’s (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000’s (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the “preferred alternative-lite” zoning standards which were first introduced in parts of the Bay Area in the 1990’s and became more widespread in the 2000’s. This likely relationship between population and job growth rate declines and “preferred alternative-like” zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

² It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous “stack and pack” developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious--the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.³

- (5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



Phaedra Glidden

cc: [all of your county supervisors]—So.Co.

³ Further, it’s facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete.

[all of your town or city council members] - Santa Rosa
[editor(s) of your local newspaper(s)] - P.D.

Brian Sussman, KSFO

Melanie Morgan, KSFO

Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

Rebecca Brown
P.O. Box 2200
Orinda, CA 94563

July 2, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

Dear Ms. Nguyen,

I am a citizen of Contra Costa County and the City of Orinda. I have been attending the MTC/ABAG public meetings on the One Bay Area Plan and have considerable concerns, some of which are expressed herewith.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an Environmental Impact Report (EIR), and it states:

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further. Failure to remedy the inadequacy and incompleteness of

Plan Bay Area's environmental and economic impact reports will render them invalid and uncertifiable.

Please allow me to address five specific areas of inadequacy that must be remedied at the scoping stage:

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support.

The Bay Area's population growth rates from the 1960's to the 1990's were dramatically higher than the overall US growth rates, yet the Bay Area's population growth rate plummeted far below the US growth rate in the decade of the 2000's. From 1960 to 2000, the Bay Area's population grew by an average rate of 17.00% per decade, or 142.46% of the national average of 11.94%. In the 2000's, however, the Bay Area's population growth rate slowed to 5.4%, only 55.72% of the national average of 9.71%.

The two recessions of the 2000's do not account for the decrease in the Bay Area's population growth rate, as there were also recessions in each of the four previous decades when the Bay Area's growth rate far exceeded the national average. While the national population growth rate decreased only slightly in the 2000's compared to the previous four decades, the Bay Area's growth rate decreased dramatically. Yet, the Plan Bay Area forecasts inexplicably predict an increase in the population growth rate to 8.87% per decade for the next three decades – significantly higher than the 5.41% growth rate of the past decade.

The Plan Bay Area forecast for job growth is even less substantiated by empirical data and sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 26, 2012 its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years."¹ There is no plausible explanation or theory by which ABAG can project a higher rate of job growth in the Bay Area than the 10,000 per year observed over the past 20 years, let alone a more than tripling of that rate.

2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period. Heretofore, this has not been the case.

¹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single-point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary for adequate and complete decision-making.

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide high, medium, and low growth estimates in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.²

The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single-point estimate for population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the rates for job growth, population growth, and household formation in the 2000's to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000's with respect to national growth rates due to the economy in the Bay Area has no empirical or analytical foundation.

4) There must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for

² The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf

And, directly relevant to Plan Bay Area, the Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period – together with a transparent set of assumptions underlying those assumptions – then compared that with the growth assumptions by local jurisdictions.

This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete. rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf.

comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying the planning process from various stakeholders over the past several years. In just one of a multitude of examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs."³

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG."⁴ The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plans, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past several decades. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodologies.²

5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities, and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment of each county, city, and town, performed by the counties, cities, and towns themselves, of their informed expectations of job, population, and household growth over the next three decades. This must be done completely independently of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double-check on the validity of ABAG's top-down estimates (after those are prepared through a valid methodology), both in aggregate, and also by county, city, and town. Although aggregate estimates may be consistent with one another, if there are significant variances between ABAG's allocated numbers and a county's,

³ http://www.abag.ca.gov/planning/housingneeds/documents/12-07-07_Draft_RHNA_Allocations_-_Response_Letters_Received_-_July-September_2007.PDF

⁴ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=30066>

city's, or town's own informed estimates, then those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many cities and towns have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Brown". The signature is written in a cursive, flowing style.

Rebecca Brown

cc: Honorable Candace Andersen
Lamorinda Office
Fire District Headquarters
3338 Mt. Diablo Boulevard
Lafayette, CA 94549

Rebecca Brown
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July 3, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating “the secondary or indirect environmental consequences of economic and social changes” resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I am a citizen of Contra Costa County and the City of Orinda. As I expressed in my letter of July 2, 2012, I have been attending the MTC/ABAG public meetings on the One Bay Area Plan and have considerable concerns, some of which are expressed herewith.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those

secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “[t]he Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s “preferred alternative” will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area’s “preferred alternative” suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents’ liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its “preferred alternative.” However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area’s EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

- (1) Plan Bay Area’s EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of

restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates.¹ Careful and thorough consideration of this hypothesis regarding the impact of the “preferred alternative” is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

- (2) The EIR must quantitatively and explicitly identify the subsidies required to develop the “stack and pack” mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the “preferred alternative” zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.
- (3) There are already a number of “stack and pack” developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of “preferred alternative-lite” restrictive zoning standards in individual jurisdictions mandating “stack and pack” development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these “stack and pack” developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy

¹ Even a cursory review of historic data suggests that the assumptions undergirding the “preferred alternative” are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area’s decline in population growth from 155.61% of the national growth rate during the 1960s-1980’s (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990’s (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000’s (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the “preferred alternative-lite” zoning standards which were first introduced in parts of the Bay Area in the 1990’s and became more widespread in the 2000’s. This likely relationship between population and job growth rate declines and “preferred alternative-like” zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

rates.² Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

- (4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious--the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.³
- (5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in “transit villages” which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the “transit villages” will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the “preferred

² It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous “stack and pack” developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

³ Further, it’s facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete.

alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely.

A handwritten signature in black ink that reads "Rebecca Brown". The signature is written in a cursive, flowing style.

Rebecca Brown

cc: Honorable Candace Andersen
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3338 Mt. Diablo Boulevard
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July 5, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

Continuing on my previous letters of July 2 and July 3 2012 on the legal deficiencies of One Plan Bay Area, I ask that you consider further issues herein stated.

According to Section 15021(d) of the CEQA Guidelines, “CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors” (emphasis added). California’s CEQA Guidelines themselves are read together with the U.S. government’s NEPA regulations which state in Section 1508.14 that “[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) (“[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered”) (emphasis added).

Thus, the scope of Plan Bay Area’s EIR must include an assessment and analysis of “the secondary or indirect environmental consequences of economic and social changes” that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to

the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), “CEQA requires that decisions be informed and balanced.” Additionally, §15090(a)(1) states that “[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA,” and §15020 states that “The Lead Agency shall not knowingly release a deficient document.” Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area’s number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled “Bay Area Preferred Land Use Scenario/Transportation Investment Strategy,” is to “create jobs to maintain and sustain a prosperous and equitable economy.”

Plan Bay Area’s coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into “stack and pack” housing and mixed-use structures in so-called “transit villages” which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the “preferred alternative” contemplated by Plan Bay Area.

The “preferred alternative” will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court’s regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government’s regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court’s opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that “the Fifth Amendment is violated when land-use

regulation “denies an owner economically viable use of his land.” 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Ibid.

Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay Area. This is the essence of “unbridled, uncompensated qualification under the police power.” Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the “preferred alternative” will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other

purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Brown". The signature is written in a cursive, flowing style.

Rebecca Brown

cc: Honorable Candace Andersen
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July 7, 2012

Ashley Nguyen, EIR Project Manager
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Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on Plan Bay Area's inadequate and incomplete process; and on the "preferred alternative's" undisclosed linkages to and provenance in United Nations Agenda 21

Dear Ms. Nguyen,

I am a citizen of Contra Costa County and the Orinda community. I have considerable concerns with One Plan Bay Area, some of which are expressed herewith and supplement earlier letters.

According to the California Supreme Court,

The Legislature has made clear that an EIR is "an informational document" and that "[the] purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; Guidelines, §15003, subds. (b)-(e).)

Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal.3d 376, 392 (1988).

"The EIR process protects not only the environment but also informed self-government." *Id.* In order to do so, the courts will "scrupulously enforce all legislatively mandated CEQA requirements." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990). The CEQA Guidelines require an EIR to provide sufficient information for meaningful evaluation of the comparative merits of the proposed project and each alternative. § 15126.6(d).

Courts have been alert to a particularly grave threat to the principles of self-governance protected by CEQA—that being where the EIR is a sham and the entire public “decision making” process by the relevant government board is simply a “rubber-stamp[ing of] a predetermined result.” Redevelopment Agency v. Norm’s Slauson, 173 Cal. App. 3d 1121, 1127 (1985). There is no more egregious example of such a sham process moving inexorably toward a predetermined result than that playing out with Plan Bay Area:

(1) Plan Bay Area has prevented—rather than solicited—the public input required by both California laws and regulations and the procedural and substantive due process guarantees of the United States Constitution.

Since ABAG and MTC already decided upon and pre-committed to the “preferred alternative” prior to the beginning of the “decision-making” process,¹ public input has not only not been desired, but has been actively suppressed. Just a few examples of too many to mention here should suffice to illustrate this point:

(a) The “visioning” sessions in the fall of 2011 and winter of 2012 were carefully crafted with the assistance of trained consultants to give the “illusion” of public participation and input, but were in fact designed to manipulate attendees into “agreeing” to the already pre-determined decision (e.g., the “preferred alternative”).²

(b) Plan Bay Area’s “visioning” sessions appear to have been stacked with attendees who were either ABAG or MTC staffers, staffers of closely aligned local agencies, or staffers of non-governmental organizations (NGOs) who are proponents of the “preferred alternative” and are closely aligned professionally and financially with ABAG and MTC. This collaborative effort to script and stack the meetings with “citizens” favorable to the “preferred alternative” appears to have taken place through the active collusion of the aforementioned parties.

(c) Notwithstanding the carefully scripted nature of the “visioning” sessions, and the stacked attendees, citizen attendees who were not ABAG and MTC staffers or aligned NGO staffers were overwhelmingly in opposition to the plan and to the

¹ And, as noted below, the “preferred alternative” is a sub-plan of the United Nations Agenda 21, rather than a plan developed for the Bay Area by Bay Area public officials and citizens.

² “Exposing the Delphi Technique in Public Meetings,” <http://www.youtube.com/watch?v=-zpA1althjo&feature=related>

process by which it has been promulgated—anecdotal reports indicate up to 80-90% of those attending.³

(d) Despite the overwhelming public opposition to the Plan at the “visioning” sessions, the Plan proponents have included no mention of that public opposition in their documents reporting on these sessions to the ABAG and MTC boards and to the people of the Bay Area.⁴

(e) The scoping hearings for the EIR itself were likewise designed to preclude any substantive input from the public, even though soliciting public input was their statutory and regulatory purpose. Of the five hearings held in various locations in the Bay Area between Thursday, June 21, 2012, and Wednesday, June 27, 2012, only one of those was held after business hours. Holding these “public” hearings during business hours made it particularly easy for ABAG and MTC-aligned NGO and local planning staffers to attend as they were paid to do so and came as proponents of the “preferred alternative”, and made it particularly difficult for the general public to attend.⁵ The only plausible explanation for this hearing schedule is that it was designed for precisely this outcome.

Comments made by ABAG Senior Grant Administrator and Urban Planner Ms. Joanna Bullock at the June 22, 2012 EIR scoping hearing in San Jose illustrate precisely the attitude of the Plan’s proponents towards the public opposition to the plan. Ms. Bullock said that, in her opinion, the Bay Area public overwhelmingly supports the Plan, citing as her evidence for that astonishing conclusion that only a small number of Bay Area residents attended the “visioning” sessions to offer opposition. Thus, according to this senior ABAG staffer, every one of the seven million Bay Area residents who didn’t attend the “visioning” sessions can be imputed to be informed proponents of the broad, sweeping, and irreversible changes Plan Bay Area will entail in every Bay Area resident’s way of life. This

³ Compare this video of the January 9, 2012 Santa Rosa “visioning” session: “Near Riot at Delphi Meeting--Part 1”

<http://www.youtube.com/watch?v=vA4GKUUXkhA>, with ABAG’s report on the same session: http://www.onebayarea.org/pdf/winter_2012_summary/Sonoma/Sonoma_County-Santa_Rosa_1-9-12.pdf

⁴ See footnote 3, above.

⁵ Even at the hearing held in San Jose on Friday, June 22, 2012, attended primarily by ABAG and MTC-aligned NGOs and local planning agencies, numerous attendees remarked on the difficulties presented to the general public by the scheduling of four of the five scoping hearings during business hours.

without any credible evidence that any meaningful percentage of Bay Area residents have been presented with a fair and objective depiction of the “preferred alternative’s” features and implications, let alone having formed an opinion in favor of or opposed to the plan. And, further, this senior ABAG staffer dismissed entirely the only available objective evidence regarding public response to the plan—which is that the overwhelming majority of citizens who were not aligned with ABAG and MTC who attended the “visioning” sessions strenuously objected to the Plan and the process by which it is being promulgated.

(2) The schedule for the EIR itself demonstrates that public input is not desired, and will not be considered:

The EIR process is dramatically foreshortened and truncated, and does not allow for any meaningful consideration of whatever public input is received. For example, the EIR Project Team has solicited public comment on the scope of the EIR, asking that all public comments be proffered by Wednesday, July 11, 2012. However, the schedule being followed by the EIR Project Team requires them to “present final alternatives for review by Joint MTC Planning/ABAG Administrative Committees and recommendation to Commission and ABAG Executive Board” on Friday, July 13, 2012, only two days after the public input is received! This schedule facially and obviously allows no time for the EIR Team to review, let alone consider, let alone modify the scope of the EIR in response to the public comments.⁶

In fact, the EIR Project Manager herself disclosed at the scoping hearing in San Jose, June 22, 2012, that the EIR Team was aware that the schedule allows inadequate time for a complete EIR—indicating that the EIR Team was not happy about this, and adding that the schedule had been imposed on the EIR Team and they had no say in the matter.

⁶ This deeply troubling indication of the lack of any meaningful public input into the planning process was likewise commented on by several attendees at the June 22, 2012 scoping hearing in San Jose.

(3) Only the “preferred alternative” is being considered.⁷

While there are grave problems with the data and assumptions underlying the “preferred alternative,” there are even greater problems with the EIR process itself. There are no meaningful alternatives being considered other than the “preferred alternative.”

Alternative 1—do nothing--will be mischaracterized and marginalized, and will not be meaningfully considered. Alternatives 3, 4, and 5 are simply straw men, not even plausible and would not be proffered by any serious proponent amongst the planning community⁸—and according to the EIR Project Team at the San Jose scoping hearing on June 22, 2012, Alternatives 3, 4, and 5 will not be given any serious analysis or consideration.

What is missing from the alternatives considered by Plan Bay Area is any input from individual cities, let alone individual landowners, which would enable one or more of the alternatives considered to be compliant and consistent with the mandates of the American Planning Association in their Policy Guide on Takings ratified April 11, 1995:

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

...

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

⁷ To emphasize the sham that is this “rubber-stamp[ing of] a predetermined result.” Redevelopment Agency v. Norm’s Slauson, 173 Cal. App. 3d 1121, 1127 (1985), Plan Bay Area’s published schedule concludes with “Commission and ABAG Executive Board Certify Final EIR and Adopt Final Plan” in April of 2013. Since only one alternative is being “considered” and that alternative was selected before the “decision-making” process began, why leave any doubt about the eventual result and when it will be formally “adopted”?

⁸ As an example of just how farcical alternatives 3, 4, and 5 are, alternative 4’s distinguishing characteristic is that it “eliminate[s] inter-regional commut[ing].” That is, no one who lives outside of the nine Bay Area counties would be allowed to commute for work into the Bay Area. Leaving aside the right to travel the Supreme Court has found in the Constitution—and of course, constitutional objections do not seem to have impeded the One Bay Area planners in any way—how will they implement this practically? Are they suggesting militarized checkpoints on the highways at every county line?

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

(emphasis added).

(4) Plan Bay Area's "preferred alternative" has not been formulated and will not in fact be approved by a democratically accountable government body. Neither has it been formulated by Bay Area officials or citizens.

(a) There are grave and unresolved problems with having two unelected, unaccountable regional government entities allocating close to \$300 billion in tax monies, and in their making sweeping planning mandates that will impose coercive, restrictive zoning standards that will irreversibly change the lives of every Bay Area resident. At the very minimum, (i) One Bay Area's planning process must be slowed down by a minimum of six to twelve months to solicit a range of citizen input, (ii) One Bay Area's planning team must contract with independent, objective and unaligned organizations to do the data gathering and analysis required to come up with an analytically-sound range of forecasts and to develop a set of plausible, credible plan alternatives that will be responsive to the American Planning Association's "do no harm" mandates noted above, and (iii) the resulting plan must be put up to a vote by all the citizens in the Bay Area before any plan goes into effect.

(b) At least as troubling, Plan Bay Area's "preferred alternative" has not been developed as a result of the unique conditions in the Bay Area, nor has it been developed by governmental staffers in the Bay Area, let alone by Bay Area citizens themselves. It is a sub-plan of the United Nations' Agenda 21 blueprint for global governance that is being implemented at the local level, and its salient features have been developed by United Nations entities such as the International

Council for Local Environmental Initiatives (ICLEI) and their locally-aligned operatives and NGOs.⁹

It is beyond the purview of this comment on the scope of the EIR to discuss in any detail the implications of local government officials and staffers acting as agents of a foreign power in performing their institutional functions as public servants working for the people of the Bay Area. However, it is mandatory that the EIR in particular and the One Bay Area planning process overall discuss the provenance of the “preferred alternative” and make explicit its linkages, alignments, and source as a sub-plan of United Nations Agenda 21. As part of this deliberative and fact-finding exercise, the EIR Project Team and Plan Bay Area must hold immediate public hearings¹⁰ where, at minimum, two local residents who are nationally-respected experts on United Nations Agenda 21, Mr. Michael Shaw of Freedom Advocates (freedomadvocates.org) and Ms. Rosa Koire of Democrats Against UN Agenda 21 (democratsagainstagenda21.com) are asked to testify at length. Both Mr. Shaw and Ms. Koire are life long environmentalists and Bay Area community leaders, as well as nationally known for their research and insights into Agenda 21.

Plan Bay Area’s EIR cannot be certified without performing this analysis into the “preferred alternative’s” linkages and alignment to and its provenance as a sub-plan of the United Nations Agenda 21. Attached to this letter are two sets of quotes, one from the Freedom Advocates site, and the other from the Democrats

⁹ United Nations Agenda 21 and its associated NGO’s like ICLEI are themselves controlled and funded by a cartel of international banking elites who seek a global authoritarian super state. No less an authority than Georgetown Professor Carroll Quigley, who had access to the cartel’s internal documents, described their agenda in his classic work Tragedy and Hope:

The powers of financial capitalism had [a] far-reaching aim, nothing less than to create a world system of financial control in private hands able to dominate the political system of each country and the economy of the world as a whole. This system was to be controlled in a feudalist fashion by the central banks of the world acting in concert, by secret agreements arrived at in frequent private meetings and conferences. The apex of the system was to be the Bank for International Settlements in Basel, Switzerland, a private bank owned and controlled by the world's central banks which were themselves private corporations. P.324

¹⁰ These cannot be private meetings—these must be public hearings, adequately noticed to the public, and covered by the press.

Against UN Agenda 21 site, which provide a brief introduction into Agenda 21,
and an illustration of the wealth of valuable information available at each site.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Brown". The signature is written in a cursive, flowing style.

Rebecca Brown

cc: Honorable Candace Andersen
Lamorinda Office
Fire District Headquarters
3338 Mt. Diablo Boulevard
Lafayette, CA 94549

Enclosures: Attachments A and B

Attachment A: on Freedom Advocates:

Michael Shaw, president of Freedom Advocates board, is a tax attorney and CPA, as well as self-employed small businessman and long time ecologist and conservationist in Santa Cruz County. He first became aware of Agenda 21 working on a county environmental task force, and recognized its chilling and authoritarian implications and plan. His bio:

<http://www.freedomadvocates.org/images/pdf/Michael%20Shaw%20bio%202009.pdf>

Telling, relevant quote from the Freedom Advocates site:

http://www.freedomadvocates.org/frequently_asked_questions/

“Participating in a U.N. advocated planning process would very likely bring out many... who would actively work to defeat any elected official... undertaking Local Agenda 21/ Sustainable Development. So we call our process something else such as ‘comprehensive planning’, ‘growth management’ or ‘smart growth’.”

– J. Gary Lawrence, 1998 UNEP Conference U.K.

Attachment B: from the Democrats Against UN Agenda 21 site:

<http://www.postsustainabilityinstitute.org/board-of-directors.html>

Rosa Koire

Rosa Koire is a forensic commercial real estate appraiser specializing in eminent domain valuation. Her twenty-eight year career as an expert witness on land use has culminated in exposing the impacts of Sustainable Development on private property rights and individual liberty.

<http://www.democratsagainstunagenda21.com/>

“UN Agenda 21/Sustainable Development is implemented worldwide to inventory and control all land, all water, all minerals, all plants, all animals, all construction, all means of production, all information, and all human beings in the world. . . . Is that just a coincidence? That every town and county and state and nation in the world would be changing their land use/planning codes and government policies to align themselves with...what? . . . The specific plan is called United Nations Agenda 21 Sustainable Development, which has its basis in Communitarianism. By now, most Americans have heard of sustainable development but are largely unaware of Agenda 21.

In a nutshell, the plan calls for governments to take control of all land use and not leave any of the decision making in the hands of private property owners. . . . Individual rights in general are to give way to the needs of communities as determined by the governing body. Moreover, people should be rounded up off the land and packed into human settlements, or islands of human habitation, close to employment centers and transportation. Another program, called the Wildlands Project spells out how most of the land is to be set aside for non-humans.

...

No matter where you live, I'll bet that there have been hundreds of condos built in the center of your town recently. Over the last ten years there has been a 'planning revolution' across the US. Your commercial, industrial, and multi-residential land was rezoned to 'mixed use.' Nearly everything that got approvals for development was designed the same way: ground floor retail with two stories of residential above. Mixed use. Very hard to finance for construction, and very hard to manage since it has to have a high density of people in order to justify the retail. A lot of it is empty and most of the ground floor retail is empty too. High bankruptcy rate.

So what? Most of your towns provided funding and/or infrastructure development for

these private projects. They used Redevelopment Agency funds. Your money. Specifically, your property taxes. Notice how there's very little money in your General Funds now, and most of that is going to pay Police and Fire? Your street lights are off, your parks are shaggy, your roads are pot-holed, your hospitals are closing. The money that should be used for these things is diverted into the Redevelopment Agency. It's the only agency in government that can float a bond without a vote of the people. And they did that, and now you're paying off those bonds for the next 45 years with your property taxes.

...

Redevelopment is a tool used to further the Agenda 21 vision of remaking America's cities. With redevelopment, cities have the right to take property by eminent domain--- against the will of the property owner, and give it or sell it to a private developer. By declaring an area of town 'blighted' (and in some cities over 90% of the city area has been declared blighted) the property taxes in that area can be diverted away from the General Fund. This constriction of available funds is impoverishing the cities, forcing them to offer less and less services, and reducing your standard of living. They'll be telling you that it's better, however, since they've put in nice street lights and colored paving. The money gets redirected into the Redevelopment Agency and handed out to favored developers building low income housing and mixed use. Smart Growth. Cities have had thousands of condos built in the redevelopment areas and are telling you that you are terrible for wanting your own yard, for wanting privacy, for not wanting to be dictated to by a Condo Homeowner's Association Board, for being anti-social, for not going along to get along, for not moving into a cramped apartment downtown where they can use your property taxes for paying off that huge bond debt. But it's not working, and you don't want to move in there. So they have to make you. Read on.

Human habitation, as it is referred to now, is restricted to lands within the Urban Growth Boundaries of the city. Only certain building designs are permitted. Rural property is more and more restricted in what uses can be on it. Although counties say that they support agricultural uses, eating locally produced food, farmer's markets, etc, in fact there are so many regulations restricting water and land use (there are scenic corridors, inland rural corridors, baylands corridors, area plans, specific plans, redevelopment plans, huge fees, fines) that farmers are losing their lands altogether. County roads are not being paved. The push is for people to get off of the land, become more dependent, come into the cities. To get out of the suburbs and into the cities. Out of their private homes and into condos. Out of their private cars and onto their bikes.

...

High density urban development without parking for cars is the goal. This means that whole towns need to be demolished and rebuilt in the image of sustainable development.

...

Slowly, people will not be able to afford single family homes. Will not be able to afford private cars. Will be more dependent. More restricted. More easily watched and monitored.

This plan is a whole life plan. It involves the educational system, the energy market, the transportation system, the governmental system, the health care system, food production, and more. The plan is to restrict your choices, limit your funds, narrow your freedoms, and take away your voice. One of the ways is by using the Delphi Technique to 'manufacture consensus.' Another is to infiltrate community groups or actually start neighborhood associations with hand-picked 'leaders'. Another is to groom and train future candidates for local offices. Another is to sponsor non-governmental groups that go into schools and train children. Another is to offer federal and private grants and funding for city programs that further the agenda. Another is to educate a new generation of land use planners to require New Urbanism. Another is to convert factories to other uses, introduce energy measures that penalize manufacturing, and set energy consumption goals to pre-1985 levels. Another is to allow unregulated immigration in order to lower standards of living and drain local resources.

Rebecca Brown
P.O. Box 2200
Orinda, CA 94563

July 9, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of properly identifying baseline conditions, and on having the data necessary to make an informed assessment of the environmental impact of Plan Bay Area

Dear Ms. Nguyen,

In my letters to you of July 2, 3, 5 and 7, 2012, I mentioned that I have great concerns regarding the Plan Bay Area project. The above Re: line states yet a further comment on this project.

A lead agency must not approve a "plan without having before it the data necessary to make an informed assessment of the environmental impact" of that plan. Sierra Club v. State Bd. of Forestry, 7 Cal. 4th 1215, 1220-1221 (1994). California courts have repeatedly emphasized this stern admonition:

"The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795; Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App. 3d 813.) " The ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946.)

Save Our Peninsula Committee v. County of Monterey, 87 Cal. App 4th 99 (2001) (emphasis added).

"Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 952 (1999); CEQA Guidelines § 15125(a). In addition, "[a]n EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a) (emphasis added). "The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). A "no project" alternative also must be evaluated, and "the 'no project' analysis should discuss the existing conditions at the time the notice of preparation is published." CEQA Guidelines § 15126.6(e)(1), (2). "The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." CEQA Guidelines § 15126.6(e)(1).

According to the U.S. Energy Administration's Monthly Energy Review for June of 2012,¹ nationwide energy emissions were at or about 1990 levels during the first quarter of 2012.² This data must inform the Plan Bay Area EIR analysis—not only its baseline assessment, but also its formulation and assessment of each alternative, including the "no project" alternative. This data must also inform the Plan Bay Area EIR's consideration of the harms and uncertainties which will inevitably flow from the coercive, restrictive zoning and other risky, untested, and problematic policies contemplated by Plan Bay Area's "preferred alternative."

Plan Bay Area's enabling legislation states that AB 32 "requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020." SB 375 § 1(b). In fact, the entire statutory authority for Plan Bay Area flows from AB 32's mandate to return to 1990 greenhouse gas emission levels by 2020—a goal that has already been

¹ eia.gov/totalenergy/data/monthly/pdf/sec12_3.pdf

² John Hanger, "Shale Gas Causes First Quarter 2012 US Carbon Emissions To Plummet Again," ("After the first quarter, the USA's 2012 emissions are falling sharply again and may drop to 1990 levels, or just slightly above that important milestone, according to data in EIA's latest Monthly Energy Review."), <http://johnhanger.blogspot.com/2012/07/shale-gas-causes-first-quarter-2012-us.html>.

met. The fantastical assumptions underlying the “preferred alternative” and its coercive and restrictive nature, as well as the unprecedented risks it poses to the business climate in the Bay Area and its deleterious impacts on the life of each Bay Area resident, purport to address a set of assumptions formulated by the California Air Resources Board, which concludes that California greenhouse gas emissions will increase by 41% between 1990 and 2020.³ But, as noted above, greenhouse gas emissions nationwide already returned to at or about 1990 levels in the first quarter of 2012. Since California’s population growth rate has closely tracked the national growth rate since 1990 (9.99% in the 2000’s versus 9.71% nationwide, and 13.82% in the 1990’s versus 13.15% nationwide), California’s emission levels are almost certainly at or about 1990 levels now, early in the third quarter of 2012. And, since the Bay Area’s population grew at only 95.95% of the national rate in the 1990’s (12.62%) and then plummeted to 55.72% of the nation’s population growth rate in the 2000’s (5.41%), the Bay Area’s greenhouse gas emission levels in the first quarter of 2012 (and hence at the time the notice of preparation was published on June 11, 2012) were almost certainly below the Bay Area’s greenhouse gas emission levels of 1990—thus obviating entirely any possible justification for Plan Bay Area’s “preferred alternative” and its coercive and untested elements purporting to address the statutory mandates of SB 375.⁴

Sincerely,



Rebecca Brown

cc: Honorable Candace Andersen
Lamorinda Office
Fire District Headquarters
3338 Mt. Diablo Boulevard
Lafayette, CA 94549

³ “Staff Report: California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit,” November 16, 2007, pp. i-ii (positing that California greenhouse gas emissions will rise from 427 MMT of CO₂ in 1990 to 600 MMT of CO₂ in 2020). http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf

⁴ Of course, the “preferred alternative” was developed as a sub-plan of United Nations Agenda 21, which has entirely different and much more sinister goals than reducing greenhouse gas emissions--but the statutory authority for SB 375 flows solely out of AB 32’s mandate to reduce California greenhouse gas emissions to 1990 levels by 2020.

From: eircomments
To: Robert Allen; boardofdirectors@bart.gov
Date: 7/2/2012 6:19 PM
Subject: Re: Plan Bay Area: Environmental Impact Report

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5809

>>> Robert Allen <robertseeallen@gmail.com> 6/23/2012 3:17 PM >>>
Comments re Plan Bay Area EIR.

Ashley Nguyen, EIR Project Manager, MTC

Five years before the 1962 3-county election funding BART, the San Francisco Bay Area Rapid Transit Commission in its 1957 "Report to the Legislature" detailed a long-range plan for mass rapid transit in the Bay Area. From its two pages of Conclusions and Recommendations I have distilled the essence: ***"...a coordinated system of mass rapid transit, operating on its own rights-of-way, removed from conflict with vehicular traffic...a comprehensive, unified network under one management...constructed in stages as the need develops through the population and economic growth of the area..."*** Pretty well describes BART!

Until the bond issue passed, San Francisco had only two buildings over a dozen stories high. Once it passed, high rise sprouted profusely near the planned downtown stations. Although the Report advocated BART to San Jose, San Mateo County supervisors withdrew their county from the planning, thus undercutting the concept of BART around the Bay via San Jose. BART across the Golden Gate was deemed impracticable and Marin was dropped from the District.

After the initial BART system was built, extensions have come to Pittsburg/Bay Point in Contra Costa County, to Dublin/Pleasanton in Alameda County, and to Millbrae/SFO in San Mateo County. Work is under way to San Jose (Berryessa) in Santa Clara County, and funding for extension to Livermore in Alameda County is on this November's ballot.

Reducing the cost for separate High Speed Rail along the Caltrain/UP peninsula rail line led planners to proposed "Blended" rail: electrify Caltrain now and later add HSR on the Caltrain tracks. Little consideration was given to the danger of HSR across 43 grade crossings and on tracks alongside often-crowded station platforms. Apparently no consideration was given to running HSR instead from San Jose north along the Mulford rail line used by Amtrak to a joint BART/rail station in West Oakland, with BART trains every few minutes to San Francisco and the West Bay. This would avoid costly tunneling and terminal facilities in San Francisco and an even costlier trans-Bay tube later for extending HSR to Sacramento. It would subsidize much of the cost to electrify Caltrain from HSR bond funds, rather than users or the three Caltrain counties.

5-County BART around the Bay would minimize greenhouse gas emissions. Ample parking at BART stations would slash long-distance automobile commutes, and even encourage the use of battery-powered automobiles. A given area, whether surface or in structure, should be able to hold many more parked automobiles than dwelling units. Transit patrons can drive many times farther than they can walk to train stations, and the drawing area varies as the square of the distance from the station. With further development near a station, fewer difficulties stem,

say, from converting surface parking to structure than from uprooting residential neighborhoods. Housing, as contrasted with parking, is unproductive as transit-oriented development.

Transportation planning should consider grade separating Caltrain south of Millbrae and converting it to BART, with two commute tracks and one freight track. It appears that about ten overpasses and something under 5 miles of shallow cut (BART requires only 13 ½' of clearance above top of rail) would allow a totally grade-separated trainway for BART and ten fewer grade crossings for the freight line.

Governance during planning, construction, and operation of 5-county BART ringing the Bay might be by BART expansion, a joint exercise of powers agreement, or maybe a special district. Whatever, it should come up with a balanced plan, probably including BART from Civic Center to the Golden Gate Bridge, from El Cerrito del Norte to the Carquinez Bridge, from Pittsburg to Brentwood, and over the Altamont. It could well include part of the cost to grade separate and multi-track the Mulford line for HSR. This would not only serve the six million dwellers in the five counties, but also enhance connections with the four North Bay Counties at the Golden Gate and Carquinez Bridges. Let the people vote on this long-range transportation plan.

What environmental issues should be analyzed?

Governance.

Optimal land use near stations for maximum transit ridership.

Minimizing land use regulation.

Effect of this 5-County BART plan on long-distance automobile commutes.

Encouraging parking of battery-powered automobiles at stations.

Patronage gains from unified rail rapid transit and fewer transfers.

Are there alternatives that should be evaluated?

5-County BART as suggested above.

An integrated BART/rail West Oakland station.

HSR to West Oakland instead of San Francisco.

Converting Caltrain to BART as above. North of Millbrae to a Muni SFO express line?

A Port Costa/Benicia HSR tube.

An SFO/OAK tube (HSR or BART?)

Replace "Regional Rail Plan" and "Blended Rail" with the above.

What mitigation measures would help avoid or minimize any negative impacts?

I see few negative impacts if the public has a chance to vote.

How can local jurisdictions and other agencies use this EIR?

Give the above concepts wide distribution and a chance to be studied.

Robert S. Allen

BART Director (1974-1988)

Retired, SP (now UP) Western Division, Engineering/Operations.

Life member AREMA (American Railway Engineering and Maintenance of Way Association)

Robert E Delgado
7575 Crow Canyon Rd
Castro Valley, Ca 94552

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating takings litigation liability resulting from Plan Bay Area

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). Citizens Association For Sensible Development of Bishop Area v. County of Inyo 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall

"The Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's coercive zoning standards which will be propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards—much of that land owned by tens if not hundreds of thousands of individual landowners, each of whom may wish to use their land over the next thirty years in ways which will be prohibited or made virtually impossible by the "preferred alternative" contemplated by Plan Bay Area.

The "preferred alternative" will have such drastic effects on the private property rights of Bay Area landowners that the environmental and economic impact assessments must consider the potential liability for litigation before the EIR and economic impact analysis can be considered adequate or complete. Further, without performing then considering this sort of analysis, the EIR cannot be certified.

The Fifth Amendment to the United States Constitution prohibits the government from taking property from landowners unless it is for a public purpose and the government pays just compensation. Under the United States Supreme Court's regulatory takings doctrines formulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and other cases, even if the land owner continues to nominally hold title to property, the government's regulations can be so onerous as to constitute a taking requiring compensation to the landowner.

The Court's opinion in Lucas is particularly apposite here. In Lucas, the Court cited longstanding precedent in stating that "the Fifth Amendment is violated when land-use regulation "denies an owner economically viable use of his land." 505 U.S. at 1016 (citation omitted). The Court pointed out that under established principles of law,

If . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, "the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, 415 (1922). These considerations gave birth in that case to the oft-cited maxim that, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id. at 1014.

Plan Bay Area contemplates two unelected regional government bodies with tenuous constitutional authority directing the expenditure of \$277B in gas tax revenues while sharply restricting or disallowing new development or redevelopment outright in 96% of the land area in the Bay

Area. This is the essence of "unbridled, uncompensated qualification under the police power." Id. at 1016.

The potential liability for takings-related judgments or settlements could be in the tens of billions of dollars in thousands or tens of thousands of lawsuits, even before considering the cost of litigating the number of cases that may be brought. The environmental and economic impact reports must consider the potential liability for takings litigation exposure and its impact on county and city budgets, and on the timeframe and likelihood of implementation of the plan if it is passed.

For such an assessment of litigation exposure to be adequate and complete in the environmental and economic impact assessments, it must be conducted by an independent entity that is not an existing proponent of comprehensive regional plans expressing the goals of United Nations Agenda 21 at the local and regional level, as such an entity will not provide the public and the MTC and ABAG boards with an informed and balanced analysis. The assessment must also be transparent, and made available to the public at the same time it is made available to the EIR and economic impact analysis staffs and to the ABAG and MTC boards.

It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses resulting from the Plan will mean fewer funds available for all other purposes, including monies which would otherwise be directed to environmental causes and purposes.

The American Planning Association, in its Policy Guide on Takings ratified April 11, 1995, offered several admonitions which ABAG and MTC would do well to adhere to here, as each one of these admonitions is violated egregiously in both the Plan Bay Area process and in the substance of the contemplated "preferred alternative":

3. The American Planning Association and its chapters recognize the need for fairness to all persons and entities of government under laws and regulations imposed by all levels of government.

At a minimum:

C. Regulations affecting the use and development of land should be limited in scope to avoid unintended effects on land values except as necessary to carry out the public purpose of the regulations under the police.

D. Regulations affecting the use and development of land should permit reasonable flexibility to minimize hardship. In particular, regulations should permit alternative methods of compliance that may reduce or eliminate the economic costs of compliance while preserving the intent of the regulations.

E. Regulations affecting the use and development of land should be adopted only after a review process offering the opportunity for significant participation by affected governmental entities and persons, including property owners.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Delgado". The signature is fluid and cursive, with a large initial "R" and "D".

Robert E Delgado

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

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Robert E Delgado
7575 Crow Canyon Rd
Castro Valley, CA 94552

July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area itself

Dear Ms. Nguyen,

I have been a resident of Alameda County for my entire life. The last couple of years I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. If nothing else their elitist attitude has driven me to get involved.

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

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Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. Id. In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and

balanced." Additionally, §15090(a)(1) states that "prior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "[t]he Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's "preferred alternative" will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis—and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

(1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1] Careful and thorough consideration of this hypothesis regarding the impact of the "preferred alternative" is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

(2) The EIR must quantitatively and explicitly identify the subsidies required to develop the "stack and pack" mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the "preferred alternative" zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond

any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

(3) There are already a number of "stack and pack" developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of "preferred alternative-lite" restrictive zoning standards in individual jurisdictions mandating "stack and pack" development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these "stack and pack" developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.[2] Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

(4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.[3]

(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in "transit villages" which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the "transit villages" will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan

will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,



Robert E Delgado

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] Even a cursory review of historic data suggests that the assumptions undergirding the "preferred alternative" are entirely faulty, and that its contemplated policies will likely result in declining population and job growth, and dramatically impaired solvency of Bay Area towns, cities, and counties. The Bay Area's decline in population growth from 155.61% of the national growth rate during the 1960s-1980's (average per decade of 18.10% in the Bay Area versus 11.63% nationally) to 95.95% in the 1990's (12.62% in the Bay Area versus 13.15% nationally) to 55.72% in the 2000's (5.41% in the Bay Area versus 9.71% nationally) is likely causally related to the "preferred alternative-lite" zoning standards which were first introduced in parts of the Bay Area in the 1990's and became more widespread in the 2000's. This likely relationship between population and job growth rate declines and "preferred alternative-like" zoning standards must be evaluated in the Plan Bay Area environmental and economic impact reviews for those reviews to be adequate and complete.

[2] It should be facially obvious to anyone who travels around the nine county Bay Area that there are numerous "stack and pack" developments constructed with substantial subsidies to the developers and continuing to receive a number of ongoing operating subsidies, that nonetheless remain partially or mostly empty long after completion.

[3] Further, it's facially obvious that a bus traveling with only a small number of riders has a high cost per passenger mile, regardless of who pays, and also a high amount of GHG emissions per passenger mile. These effects must be analyzed and quantified, using a range of substantiated and analytically-sound forecasts for the level of ridership in the contemplated alternatives in Plan Bay Area for the EIR to be adequate and complete

Robert E Delgado
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July 6, 2012

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Comment on the inadequacy and incompleteness of the Plan Bay Area forecasting methodology and of the forecasts themselves

I have been a resident of Alameda County for my entire life. I have notice that our elected and self appoint officials are not acting with the best interest of their cities, counties or the Bay Area in mind. Their elitist attitude has driven me to get involved.

Section 15151 of the CEQA Guidelines governs the Standards for Adequacy of an EIR states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Plan Bay Area's forecasts for population, job, and household growth are fatally inadequate and incomplete and fail in every respect to meet the standards required by § 15151. These deficiencies have a substantive and material impact on the scope and content of the environmental and economic information that will be evaluated in the Plan Bay Area's environmental and economic impact reviews, and must be remedied before those reviews proceed further.

Specifically, (1) Plan Bay Area's forecasts are too high and lack analytical and empirical support, (2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period, (3) Plan Bay Area's forecast must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions, (4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes, and (5) Plan Bay Area forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

Without remedying these inadequacies, Plan Bay Area's environmental and economic impact reports will be invalid and will not be certifiable.

1) Plan Bay Area's forecasts are too high and lack analytical and empirical support

The Bay Area had population growth rates between the 1960s and the 1990s dramatically higher than the overall US growth rates (see attached), yet the Bay Area's population growth plummeted to far below the US growth rate in the decade of the 2000s. The Bay Area's average population growth per decade for the four decades from 1960 to 2000 was 17.00%-142.46% of the average national population growth rate of 11.94% over those four decades—but in the 2000's, the Bay Area's population growth rate dropped to 5.4%, only 55.72% of the national growth rate for that decade (9.71%).

This cannot be explained by the two recessions in the past decade, as there were recessions in each of the four decades prior to the decade of the 2000s, when the Bay Area's population growth rate remained far above the national growth rate. Also, the national population growth rate in the decade of the 2000s was roughly the same as it had been in the prior four decades despite the two recessions, yet the Bay Area's population growth dropped dramatically in the decade of the 2000's. Yet, the Plan Bay Area forecasts impute a population growth rate of 8.87% per decade for the next three decades—much higher than the 5.41% growth rate of the decade of the 2000s.

The Plan Bay Area forecast for job growth is even more untethered to and unsupported by empirical data or sound analysis. The City of Palo Alto has repeatedly questioned ABAG's forecasting methodology, pointing out in a staff memorandum dated January 25, 2012 (attached) its continued bafflement that "ABAG has estimated that the region will accommodate approximately 33,000 new jobs per year through 2040, as compared to only 10,000 jobs per year over the past 20 years." There is no plausible explanation or theory by which ABAG can project job growth in the Bay Area of any higher than the 10,000 per year seen over the past 20 years, let alone a job growth per year 330% of that experienced over the past 20 years.

In order to remedy the inadequacy and incompleteness of the forecasts underlying the Plan Bay Area project wide EIR, and to have the basis for valid economic and environmental impact reports:

(2) Plan Bay Area's forecasting methodology must be open, transparent, and accessible to third parties in order to evaluate the underlying assumptions and resulting forecasts, and for the forecasts to be modified as empirical data and analysis are gathered during the forecast period,

3) Plan Bay Area's forecasts must have a range of outcomes rather than a single point estimate to account for different underlying assumptions and to perform the sensitivity analysis necessary to adequate and complete policy decisions,

The forecasts underlying Plan Bay Area's environmental and economic impact reports must provide a range of growth estimates (low, mid-range, and high) in order for its economic and environmental analysis to be adequate and complete, and for the EIR to be valid and certifiable.^[1] The type of planning that ABAG and MTC are proposing will lead to substantial and irreversible changes in the way of life of every Bay Area resident, both current and future. A single point estimate for

population, jobs and households is inadequate and incomplete as a matter of simple methodology. In addition, the mid-range forecast, presumably most probable, must be no higher than the growth rates for jobs, population and household formation in the 2000s to be even remotely credible. The assumption that Bay Area growth rates plummeted in the 2000s with respect to national growth rates due to the economy has no empirical or analytical foundation.

(4) there must be an objective, unaligned forecasting agency to perform an independent forecasting analysis either to replace the current Plan Bay Area forecasts or for comparison purposes. This must be done before environmental and economic impact reports can be formulated, let alone certified.

ABAG and MTC have received repeated, strong objections to the forecasts underlying its planning process from various stakeholders over the past several years. In just one of many, many examples on ABAG's own website, the City of Berkeley notified ABAG on September 14, 2007 that ABAG's "unrealistic goals . . . may have unintended consequences in regard to meeting overall regional housing needs.'

In fact, the City of Palo Alto is calling for "independent analysis of the demographic and employment projections by ABAG." [staff memorandum dated January 25, 2012] The fact that ABAG and MTC have not provided this independent analysis is a severe inadequacy in its forecasts, plan, and methodologies that alone will invalidate its EIR and economic impact analysis, let alone any decisions made upon Plan Bay Area until this is remedied. However, this inadequacy is particularly glaring and severe given the facial implausibility of its projections with respect to empirical data over the past decade or two. ABAG and MTC simply must engage a neutral, objective organization to perform an independent forecast before its EIR and economic impact analysis continues any further, as everything it does from here is subject to being completely invalidated and voided due to the flawed forecasts and methodology.

(5) Plan Bay Area's forecasts must be compared with and evaluated in the light of independent bottoms-up forecasts made by the Bay Area counties, cities and towns themselves.

For the forecasts underlying the EIR and the economic impact review to enable those exercises to be remotely adequate and complete, and for the EIR to comply with CEQA, there also must be a bottoms-up assessment by county and city by the counties and cities themselves, of their, informed expectations of job, population, and household growth over the next three decades. This must be done completely independent of the Plan Bay Area top-down forecasts as those have been allocated to individual jurisdictions, to avoid contamination and undue influence. This will provide an essential double check on the validity of ABAG's top-down estimates (even once those are prepared through a valid methodology), both in aggregate, and also by town and county. Even if the aggregate estimates are consistent with one another, if there are significant variances between ABAG's allocated numbers and a town or city's own, informed estimates, those variances will likely indicate flaws in ABAG's estimates, problems in securing public and stakeholder support for the eventual adopted plan, and difficulties in achieving the goals of that plan.

The fact that many towns and cities have objected to the Regional Housing Needs Assessment as unrealistic and inconsistent with their own informed estimates proves that this is a vitally

important exercise for the EIR to comply with CEQA and for the EIR and economic impact analysis to be even remotely adequate and complete.

Sincerely,



Robert E Delgado

cc:

Supervisor Scott Haggerty
Supervisor Richard Valle
Supervisor Wilma Chan
Supervisor Nate Miley
Supervisor Keith Carson

Brian Sussman, KSFO
Melanie Morgan, KSFO
Barbara Simpson, KSFO

Mark Levin, Landmark Legal Foundation

[1] The University of California's interpretation of the CEQA guidelines finds that "a range of forecasts" is necessary to provide "an adequate level of detail . . . for guiding the analysis" in the EIR. http://budget.ucop.edu/pep/ceqacomp/CEQA-Handbook/chapter_02/2.7.html. California's High Speed Rail Authority's Revised 2012 Business Plan also testifies to the importance of providing a range of forecasts. "To mitigate the risks related to . . . estimation issues and optimism bias, it is best practice to develop a set of scenarios (High, Medium, and Low) that provide a range of assumptions derived from key input variables." www.cahighspeedrail.ca.gov/assets/0/152/431/0219e13b-04df-46b0-af57-f4b996cc9172.pdf. The Southern California Association of Governments, in developing their 2012-2035 Regional Transportation Plan consulted with a panel of experts who developed a range of estimates for population, jobs, and household growth over the relevant period, together with a transparent set of assumptions underlying those assumptions—then compared that with the growth assumptions by local jurisdictions. rtpsc.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_GrowthForecast.pdf This sort of methodology is precisely what is necessary for the forecasts underlying Plan Bay Area, in order for the Plan Bay Area environmental and economic impact reviews to be adequate and complete.

Re: Scoping comments for Bay Area Plan: Three questions, a transportation strategy to evaluate, and a legal issue

From: eircomments

To: rob.means@electric-bikes.com

BC:

Date: Tuesday - July 10, 2012 10:06 AM

Subject: Re: Scoping comments for Bay Area Plan: Three questions, a transportation strategy to evaluate, and a legal issue

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission

101 8th Street

Oakland, CA 94607

(510) 817-5700

>>> Rob Means 07/06/12 11:25 AM >>>

Ashley Nguyen, EIR Project Manager July 6, 2012

Metropolitan Transportation Commission

101 Eighth Street

Oakland, CA 94607-4700

Scoping comments for Bay Area Plan:

Three questions, a transportation strategy to evaluate, and a legal issue

At the June 21 public meeting in San Jose on MTC/ABAG's Bay Area Plan, I asked the following question – to which I got an answer that was not clear to me: If transportation accounts for 40% of California's CO2 emissions, why does this Plan include a reduction target for the year 2035 of only 15% instead of our state's target of reducing our CO2 emissions approximately 55% by the year 2035? (See ARB, Scoping Plan, Figure 6, at p. 118) Doesn't such lenient action on transportation mean that other ways of mitigating CO2 emissions must pick up the slack? Global climate change is accelerating and bringing more costly impacts as we go. Reversing that trend requires us to make major and rapid reductions in our CO2 emissions.

Question #2: Why does the Plan focus so heavily on TOD development rather than seeking changes in CO2 emissions by the existing in-place

population? Even if this Plan is highly successful with TOD projects, only a fraction of the built environment that will exist in 2035 is well served by transit. Although I applaud your efforts to get more people using transit more often, your efforts seem so focused that they offer no approach that addresses the larger metropolitan area that is not well served by transit (more than 15-minute waits).

Question #3: How does a municipality effect a “periodic interim revision” as mentioned on slide 7 of the June 21 presentation? Milpitas needs to amend the Transportation Improvement Program (TIP) currently being considered in order to qualify an innovative project for funding in 2013. Unforeseen events have recently surfaced this project, but only after the submission deadline last year for the current TIP.

Evaluate this Transportation Strategy

The EIR Scoping Questions slide (#14) includes an invitation to propose other alternatives to be evaluated. Let me suggest a transportation strategy that includes the intelligent application of Automated Transit Networks (ATN). Many transportation projects included in the TIP could be eliminated or reduced in scope using ATN or Personal Rapid Transit (PRT), the most common and familiar ATN type. ATN is scalable from the smallest 2-station loop crossing a barrier to a large network with 91 miles of elevated guideway and 117 stations covering many square miles of a metropolitan area. An example of the former and the latter are at <http://www.electric-bikes.com/prt/ferry.html> and <http://www.electric-bikes.com/prt/bart-prt.html>

The fact that this Plan, the TIP and the Regional Transportation Plan (RTP) all purport to be planning documents with a long-range vision, yet have no advanced transit options listed exposes a fundamental problem in the process used to create these documents. Although various forms of ATN have been demonstrated and several implemented, no such options are included in these plans. Is this due to restrictive funding rules that support only the status quo? Or lack of vision on the part of elected officials? Or transportation experts educated 30 years ago who have yet to learn about transportation technologies that are less than 80 years old? Absence of any advanced transit options from these plans may point to a fatal flaw.

Legal Issue

Which brings us to the legal issue. If advanced transit options could be demonstrated to better accomplish the Plan Bay Area Goals (slide 4) for less cost, would that fact leave agencies vulnerable to charges of neglecting their fiduciary responsibilities? In short, could MTC be sued because they overspent (in a fiscally tight times) to accomplish the

goals of AB 32 and SB 375? Before MTC dismisses this question with a flippant “we are always getting sued”, consider the following scenario.

Of the \$11B that MTC spends each year on the TIP, assume that \$2B over a period of 4 years is used to build the ATN outlined at <http://www.electric-bikes.com/prt/bart-prt.html>. Compared with any other uses of \$2B in that area, does the ATN provide dramatic improvements in the Plan's goals (slide 4) of Climate Protection, Healthy & Safe Communities, Equitable Access, Economic Vitality, and Transportation System Effectiveness? If so, then litigation on this issue may become more than mere nuisance. Two facts from slide 28 could support such a lawsuit: 1) Of the \$277B Plan budget, \$244B (88%) will go to O&M of the existing system; 2) only \$0.5B goes to making the transit system sustainable. Your fiscal priorities clearly favor the status quo rather than sustainability.

Learn More

Since I have found that key people at MTC are surprisingly unaware of ATN's potential, let me offer the following. ATN is an umbrella term that includes Personal Rapid Transit (PRT) and offers clean, quiet, responsive public transit with automated non-stop service available 24 hours a day. In addition to these service benefits, PRT costs far less to build and operate than other transit options.

A quick introduction to the technology is this excellent 3-minute video that shows PRT at the Microsoft campus. Folks in Santa Cruz, CA have been working to get a PRT system for years. This 15-minute video is their next step and, among other topics, reviews recent advances in PRT installations worldwide: <http://www.youtube.com/watch?v=VljtS7Po2Io>

Here in Milpitas, CA, a PRT crossing of the railroad tracks will cost less than the standard steel-and-concrete pedestrian over-crossings (POC) that are customarily used - and fit into the site's physical constraints. Here is a proposal for the project:

<http://www.electric-bikes.com/prt/ferry.html>

Such a simple PRT system (really just a ferry or horizontal elevator to take people from one side to the other) could be built for \$3M and would provide a low-risk opportunity to test the technology. Success could lead to a citywide feeder to the Milpitas BART/LRT/bus transit hub that would dramatically increase mobility without the negative health and economic consequences of automobiles.

Both the Advanced Transit Association (www.advancedtransit.org) and advanced transportation expert Jerry Schneider's website (<http://faculty.washington.edu/jbs/itrans/>) provide in-depth background

information and links.

I look forward to your responses as they become available to MTC Board members for their July 13th meeting. Please feel free to contact me for further information and discussion.

Sincerely,

Robert S. Means, rob.means@electric-bikes.com
408-262-8975 work, 408-230-2585 cell
1421 Yellowstone Ave., Milpitas, CA 95035

(A hard copy of this letter goes out with today's mail.)

Ashley Nguyen, EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607-4700

July 6, 2012

**Scoping comments for Bay Area Plan:
Three questions, a transportation strategy to evaluate, and a legal issue**

At the June 21 public meeting in San Jose on MTC/ABAG's Bay Area Plan, I asked the following question – to which I got an answer that was not clear to me: If transportation accounts for 40% of California's CO2 emissions, why does this Plan include a reduction target for the year 2035 of only 15% instead of our state's target of reducing our CO2 emissions approximately 55% by the year 2035? (See ARB, Scoping Plan, Figure 6, at p. 118) Doesn't such lenient action on transportation mean that other ways of mitigating CO2 emissions must pick up the slack? Global climate change is accelerating and bringing more costly impacts as we go. Reversing that trend requires us to make major and rapid reductions in our CO2 emissions.

Question #2: Why does the Plan focus so heavily on TOD development rather than seeking changes in CO2 emissions by the existing in-place population? Even if this Plan is highly successful with TOD projects, only a fraction of the built environment that will exist in 2035 is well served by transit. Although I applaud your efforts to get more people using transit more often, your efforts seem so focused that they offer no approach that addresses the larger metropolitan area that is not well served by transit (more than 15-minute waits).

Question #3: How does a municipality effect a “periodic interim revision” as mentioned on slide 7 of the June 21 presentation? Milpitas needs to amend the Transportation Improvement Program (TIP) currently being considered in order to qualify an innovative project for funding in 2013. Unforeseen events have recently surfaced this project, but only after the submission deadline last year for the current TIP.

Evaluate this Transportation Strategy

The EIR Scoping Questions slide (#14) includes an invitation to propose other alternatives to be evaluated. Let me suggest a transportation strategy that includes the intelligent application of Automated Transit Networks (ATN). Many transportation projects included in the TIP could be eliminated or reduced in scope using ATN or Personal Rapid Transit (PRT), the most common and familiar ATN type. ATN is scalable from the smallest 2-station loop crossing a barrier to a large network with 91 miles of elevated guideway and 117 stations covering many square miles of a metropolitan area. An example of the former and the latter are at <http://www.electric-bikes.com/prt/ferry.html> and <http://www.electric-bikes.com/prt/bart-prt.html>

The fact that this Plan, the TIP and the Regional Transportation Plan (RTP) all purport to be planning documents with a long-range vision, yet have no advanced transit options listed exposes a fundamental problem in the process used to create these documents. Although various forms of ATN have been demonstrated and several implemented, no such options are included in these plans. Is this due to restrictive funding rules that support only the status quo? Or lack of vision on the part of elected officials? Or transportation experts educated 30 years ago who have yet to learn about transportation technologies that are less than 80 years old? Absence of any advanced transit options from these plans may point to a fatal flaw.

Legal Issue

Which brings us to the legal issue. If advanced transit options could be demonstrated to better accomplish the Plan Bay Area Goals (slide 4) for less cost, would that fact leave agencies vulnerable to charges of neglecting their fiduciary responsibilities? In short, could MTC be sued because they overspent (in a fiscally tight times) to accomplish the goals of AB 32 and SB 375? Before MTC dismisses this question with a flippant "we are always getting sued", consider the following scenario.

Of the \$11B that MTC spends each year on the TIP, assume that \$2B over a period of 4 years is used to build the ATN outlined at <http://www.electric-bikes.com/prt/bart-prt.html>. Compared with any other uses of \$2B in that area, does the ATN provide dramatic improvements in the Plan's goals (slide 4) of Climate Protection, Healthy & Safe Communities, Equitable Access, Economic Vitality, and Transportation System Effectiveness? If so, then litigation on this issue may become more than mere nuisance. Two facts from slide 28 could support such a lawsuit: 1) Of the \$277B Plan budget, \$244B (88%) will go to O&M of the existing system; 2) only \$0.5B goes to making the transit system sustainable. Your fiscal priorities clearly favor the status quo rather than sustainability.

Learn More

Since I have found that key people at MTC are surprisingly unaware of ATN's potential, let me offer the following. ATN is an umbrella term that includes Personal Rapid Transit (PRT) and offers clean, quiet, responsive public transit with automated non-stop service available 24 hours a day. In addition to these service benefits, PRT costs far less to build and operate than other transit options.

A quick introduction to the technology is this excellent 3-minute video that shows PRT at the Microsoft campus. Folks in Santa Cruz, CA have been working to get a PRT system for years. This 15-minute video is their next step and, among other topics, reviews recent advances in PRT installations worldwide: <http://www.youtube.com/watch?v=VljtS7Po2Io>

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Sincerely,



Robert S. Means, rob.means@electric-bikes.com
408-262-8975 work, 408-230-2585 cell
1421 Yellowstone Ave., Milpitas, CA 95035

Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

From: eircomments

To: sherylesq@gmail.com

BC:

Date: Tuesday - July 10, 2012 10:07 AM

Subject: Re: Comments on Inadequacy and Incompleteness of scoping stage of the EIR process

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "Sheryl Land" 07/06/12 11:45 AM >>>

Hello,

I attended a "visioning session" in San Francisco. The process was a sham. Public input was not desired or allowed. The entire set of "choices" rested on a narrow set of assumptions, which pre-determined the outcomes. The public does not want this central planning. ABAG is unelected and unaccountable. We are entitled to have elected officials making such proposals, so that we can boot them out of office as an expression of our discontent. This is a statement of my objections:

The scoping stage of the EIR process (hereafter referred to as THE PROCESS) is severely incomplete and inadequate for a number of reasons, detailed below. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) must reject the options provided in the scoping exercise that was presented to the public in June 2012 and initiate a 6-month long process to truly study the subject in an unbiased manner.

The major inadequacies of THE PROCESS fall into the following categories:

- I. The forecasts of population and economic growth for the region are fatally flawed and cannot provide a reliable basis for adoption of a comprehensive plan governing land use, housing, and transportation policies.
- II. THE PROCESS is woefully inadequate in its analysis of environmental impacts most likely to result from adoption of the various scenarios set forth in the Plan.
- III. The processes for preparation of the EIR and for review and submission of public input were seriously inadequate. The limitations on public input were severe, both in terms of the time allowed for review and limitations on public commentary that amounted to prior restraint. It is also clear that there was a complete lack of independence between the proponents of Plan Bay Area and the consultants, Dyett and Bhatia.

IV. THE PROCESS does not address the availability of the massive funding required to execute the plan or the likely results if the anticipated resources are not available.

The remainder of this document will address these issues in chronological order.

I. The forecasts of population and economic growth are fatally flawed.

a.. THE PROCESS is based on a forecast that the population of the region will grow by 8.7 percent per decade over the next 30 years.

b.. The forecasted growth rate is significantly higher than the actual growth rates over the past 30 years and the actual 5.4 percent growth rate since 2000.

c.. THE PROCESS does not consider alternative growth rate scenarios, e.g., low, mid-range, and high growth rates and the impact of different scenarios.

d.. The forecasted aggressive growth rate is undoubtedly premised, at least in part, on unrealistic forecasts of economic growth.

e.. The forecasts for both population and economic growth ignored objections from various stakeholders, including the Cities of Palo Alto and Berkeley that have independently made projections of population and economic growth.

f.. Even in the unlikely event that the aggregate forecasts of economic and population growth prove to be accurate, the lack of reliable forecasts for local communities makes such data meaningless in creating a comprehensive plan for land use, transportation, and housing that will influence critical decisions at the local level.

g.. The forecasts for economic growth ignore both the current depressed state of California's economy and widespread concern about the state's economic climate.

h.. California and the Bay Area consistently are rated as among the least "business friendly" environments due to high taxes, excessive regulations, and the precarious financial condition of the State of California and many cities and counties.

i.. Inadequate forecasts of economic and population growth will inevitably affect the availability of financial resources (i.e., tax revenues) that are envisioned in Plan Bay Area. THE PROCESS does not assess this concern, which will in turn have major impacts on environmental consequences.

II. The analysis of environmental impacts is incomplete, inadequate, and fatally flawed.

a.. Throughout THE PROCESS the bias of the authors is evident, equating intended consequences with likely results.

b.. THE PROCESS does not address alternative - and more likely - consequences of various elements of the plan.

c.. For example, both the authors of Plan Bay Area and the authors of the THE PROCESS assume that huge investments in public transportation will inevitably result in high ridership. This assumption cannot be supported by actual experience such as the very low utilization rates of the Santa Clara Valley light rail system.

d.. THE PROCESS ignores actual experience in major metropolitan areas such as San Jose, CA, and Portland, OR, where "smart growth" plans have been implemented.

e.. In Portland, restrictions on growth and development have resulted in a flight of residents to areas outside the growth boundaries and resulted in longer commute times and higher emissions from motor vehicles.

f.. THE PROCESS ignores evidence that imposition of strict limits on land use for housing and/or economic development significantly increases the cost of housing and business activity.

- g.. THE PROCESS does not address the consequences of a waiver of CEQA requirements for high-density development within priority development areas (PDAs).
- h.. THE PROCESS accepts without question or analysis the assumptions inherent in Plan Bay Area that policies favoring high-density housing, penalizing use of private motor vehicles, diverting gas tax revenues from away from maintaining and expanding roads and vehicles will translate into economic and population growth.
- i.. THE PROCESS provides no empirical evidence to support these assumptions and is further evidence of the bias toward Plan Bay Area that underlies the presentation to the public of the EIR process.
- j.. THE PROCESS ignores "real-world" experience under "smart growth" policies.
- k.. Actual experience with "smart growth" and urban boundaries in cities such as San Jose, CA, and Portland, OR, provide strong evidence that the results of such policies are vastly different from the intended consequences.
- l. Housing costs in San Jose have increased dramatically since the imposition of urban growth boundaries.
- m.. Significant investments in light rail in Santa Clara County have neither increased utilization of public transit nor reduced congestion on freeways and other roads.
- n.. In Portland, tens of thousands of families have fled to nearby communities such as Vancouver in pursuit of affordable housing.
- o.. Both commute times and congestion have increased as a result of policies that have caused a population flight from Portland.
- p.. A Harvard study in 2002 linked restrictive land use policies with increased housing costs and creation of "boutique cities" affordable only to the elite.
- q.. Actual experience has shown that public policies that coerce residents to live in high-density, "stack-and-pack" dwellings increase congestion to near-gridlock levels without increasing usage of high-cost public transit systems.

III. The processes for preparation and review of the THE PROCESS were inadequate and biased.

- a.. MTC and ABAG must disclose the process by which the consultants who prepared the THE PROCESS analysis were selected.
- b.. THE PROCESS consistently accepts as likely outcomes the intended consequences of various elements of the plan. A credible EIR entails at least a quasi-adversarial process that ensures a rigorous analysis of assumptions, alternatives, and consequences of proposed plans. What was presented to the public in the EIR hearings is seriously lacking in all of the above and therefore cannot be considered to be an adequate analysis of the impacts of Plan Bay Area.
- c.. The review process was designed to limit both the time and scope of public comment and to ensure the appearance of broad public support for the plan.
- d.. The review process made it abundantly clear that the authors of THE PROCESS and the advocates of Plan Bay Area did not have an independent relationship with the result that THE PROCESS is not an objective analysis of likely environmental impacts.
- e.. At one hearing, a consultant bluntly stated that "negative comments" would not be permitted at public hearings and that the consultants alone would decide which comments are "relevant" and will be included in the final report.
- f.. MTC and ABAG made a concerted effort throughout the review process to determine which "stakeholders" would be aggressively solicited to provide comments. Stakeholders considered likely to express negative comments about either THE PROCESS or Plan Bay Area were not solicited to participate.

IV. THE PROCESS does not address the availability of the massive funding required to implement Plan Bay Area or the likely environmental consequences if the requisite resources are not available.

- a.. The plan does not fully state the costs of the various elements of Plan Bay Area - the Plan includes \$277 billion for the public transportation element alone.
 - b.. The Plan does not address the substantial additional costs that must be borne by local communities for schools, police and fire, "affordable housing" subsidies, and other essential public services.
 - c.. While the Plan provides for transit subsidies from regional authorities, it does not address the significant impact of ancillary costs or how these burdens will be borne by cities and counties already facing huge budget deficits.
 - d.. The Plan simply assumes that such resources will be available from various sources, including local communities and federal and state assistance programs.
 - e.. Although ABAG and MTC acknowledge that there will not be sufficient funds available for more than 200 PDAs, Plan Bay Area does not prioritize or identify which PDAs would be supported. THE PROCESS must address the impact of imposing land use restrictions in areas that will not be developed for years to come.
 - f.. THE PROCESS does not address the consequences of the highly likely event that available public revenues will fall far short of the levels needed to implement the plan or the environmental impacts of implementing the limitations on growth, punitive measures on the use of private automobiles, and required expenses by local communities in housing, schools and infrastructure if the essential revenues are not available.
 - g.. THE PROCESS totally ignores the significant fiscal constraints of the precarious condition of many cities, the State of California, and the federal government.
- WE DO NOT WANT THIS.

Re: EIR input {Scope stage of Plan Bay Area EIR is inadequate and Incomplete}

From: eircomments

To: scheye@eichleay.com

CC: jkennedy@cityofmartinez.org; ldelaney@cityofmartinez.org; mmenesini@cityofmartinez.org;
mross@cityofmartinez.org; pvince@cityofmartinez.org; rschroder@cityofmartinez.org

BC:

Date: Tuesday - July 10, 2012 10:01 AM

Subject: Re: EIR input {Scope stage of Plan Bay Area EIR is inadequate and Incomplete}

Thank you for your comments; they will be considered carefully during the preparation of the Plan Bay Area Environmental Impact Report (EIR). To stay updated on Plan Bay Area and the environmental process, please visit www.onebayarea.org.

The Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
(510) 817-5700

>>> "Scheye, Steve" 07/06/12 10:27 AM >>>

From:

Steven Scheye

2205 Castro Street Martinez California 94553

7/6/2012

Ashley Nguyen, EIR Project Manager

Metropolitan Transportation Commission

Joseph P. Bort MetroCenter

101 Eighth Street

Oakland, CA 94607-4700

Re: Comment on the necessity of evaluating "the secondary or indirect environmental consequences of economic and social changes" resulting from Plan Bay Area

Dear Ms. Nguyen,

I have lived in Northern California on and off for over twenty years. I am man of God and love the freedoms granted to me in the USA by our Declaration of independence and our constitutional form of government. I oppose government interference in my life and international interference in national and local politics. I feel that Plan Bay Area is an extension of United Nation agenda to cripple our nation and an ever over encroaching State into our lives.

Plan Bay Area is an effort to take our freedom and property. If successful it will define what property ownership is acceptable and what forms of transportation are allowed by self righteous government. The basis of the regulatory encroachment is to "save the planet", "improve the air" and "better utilize space". Our local and global environment is not in jeopardy from anything we do in the bay area and individuals and locally elected officials know better than an unelected bureaucracy.

My Assessment of the current state of the EIR process follows:

According to Section 15021(d) of the CEQA Guidelines, "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors" (emphasis added). California's CEQA Guidelines themselves are read together with the U.S. government's NEPA regulations which state in Section 1508.14 that "when an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

California courts have interpreted the CEQA Guidelines to require a lead agency to consider secondary or indirect consequences in its environmental impact report (EIR). *Citizens Association For Sensible Development of Bishop Area v. County of Inyo* 172 Cal. App. 3d 151, 169 (1985) ("[T]he lead agency shall consider the secondary or indirect environmental consequences of economic and social changes . . . Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered") (emphasis added).

Thus, the scope of Plan Bay Area's EIR must include an assessment and analysis of "the secondary or indirect environmental consequences of economic and social changes" that will result from the Plan itself. *Id.* In order to adequately and completely analyze those secondary consequences, any potentially significant economic and social changes due to the contemplated program or project must themselves be adequately and completely analyzed.

Furthermore, the lead agency may not perform this analysis in a conclusory or biased fashion. According to

CEQA Guidelines §15003(j), "CEQA requires that decisions be informed and balanced." Additionally, §15090(a)(1) states that "[p]rior to approving a project the lead agency shall certify that the final EIR has been completed in compliance with CEQA," and §15020 states that "[t]he Lead Agency shall not knowingly release a deficient document." Therefore, if the Plan Bay Area EIR does not include such an informed and balanced analysis, the EIR cannot be certified.

Plan Bay Area's number one goal, as stated by MTC Executive Director Steve Heminger and ABAG Assistant Executive Director Patricia Jones in a May 4, 2012 memorandum entitled "Bay Area Preferred Land Use Scenario/Transportation Investment Strategy," is to "create jobs to maintain and sustain a prosperous and equitable economy."

Plan Bay Area's "preferred alternative" will divert the majority of gasoline tax revenues away from maintenance and expansion of existing roads and bridges and into additional mass transit subsidies. In addition, its coercive and restrictive zoning standards propagated throughout the Bay Area will force virtually all new development and redevelopment into "stack and pack" housing and mixed-use structures in so-called "transit villages" which comprise no more than 4% of the land area in the nine county Bay Area. Virtually all development and redevelopment in the remaining 96% of the Bay Area will cease because of these coercive and restrictive zoning standards.

The proponents of Plan Bay Area's "preferred alternative" suggest that diverting gas tax revenues from existing roads and bridges into further subsidies directed towards already under-utilized mass transit, together with coercive zoning, loss of property rights, and restrictions on Bay Area residents' liberties and freedoms, will lead to increases in population and jobs, and improved solvency of local cities, towns, and counties, over not adopting its "preferred alternative." However, these expected outcomes are based on magical thinking wholly bereft of empirical support or sound analysis-and rather reflect the ideological and philosophical goals of the planners rather than the sober, cogent, and objective analysis required by CEQA.

For Plan Bay Area's EIR and economic impact reports to be adequate and complete under CEQA, let alone even remotely plausible and credible, ABAG and MTC must engage an independent, neutral forecasting firm that will, at minimum, provide the following analysis to the EIR Project Team for incorporation and evaluation in the EIR:

(1) Plan Bay Area's EIR must address the theories, data, and analysis of planning experts like Michael Tanner of Cato Institute who have found that the sorts of restrictive and coercive land use and zoning policies contemplated by Plan Bay Area tend to decrease, rather than increase, population and job growth rates. [1]

Careful and thorough consideration of this hypothesis regarding the impact of the "preferred alternative" is necessary for the analysis in the EIR to be informed and balanced. CEQA Guidelines §15003(j).

(2) The EIR must quantitatively and explicitly identify the subsidies required to develop the "stack and pack" mixed-use properties needed to meet empirically valid forecasts for growth in population, job, and household formation. If it was profitable to develop or redevelop such units without coercive and restrictive zoning and accompanying subsidies, developers would have already done so. Therefore, it is fair and reasonable to assume that every new development or redevelopment under the "preferred alternative" zoning will require subsidies—subsidies that may be massive especially given that the market will be flooded with this sort of property, far beyond any analytically-sound projections of demand for these sorts of facilities on the part of households and businesses.

(3) There are already a number of "stack and pack" developments throughout the Bay Area. Some of these may have been built by developers to satisfy the arguably small niche in the marketplace of households and businesses desiring these types of properties. Most developments of this type, however, have been built in recent years due to the implementation of "preferred alternative-lite" restrictive zoning standards in individual jurisdictions mandating "stack and pack" development, enabled only by the availability of massive subsidies to develop these properties. There must be an assessment of the performance of these "stack and pack" developments across the entire Bay Area that will examine both the subsidies required to build and operate each such development, and the performance of each development with respect to projected profit/loss margins and occupancy rates.[2] Then, this data must be considered and inform the analysis in both the EIR and environmental impact reviews for either to be adequate and complete, let alone certifiable. The tax revenues of all sorts from these properties both against projections and versus alternative uses must also be identified and analyzed.

(4) There must be an assessment and analysis of the impact on jobs, population, household formation, and greenhouse gas (GHG) emissions due to the diversion of most gasoline tax revenues over the next three decades away from the maintenance of existing roads and bridges and into additional mass transit subsidies. Such a dramatic decline in road and bridge maintenance will lead to lower average speeds, longer commute times, more accidents, and increased automobile repair costs, all of which may result in dramatically increased GHG emissions over what would be the case if the current portion of gas tax revenues remained dedicated to maintaining roads and bridges. Second, any rationale for diverting additional monies to mass transit must provide empirical cost and utilization data for the existing mass transit infrastructure to identify how much it costs to subsidize the system and how many people actually use it. If a significant number of bus routes in the Bay Area are currently under-utilized—an observation that is anecdotally obvious—the notion that increasing mass transit capacity will lead to increased ridership is empirically unsubstantiated and analytically unsound.[3]

(5) The proposed Plan Bay Area will result in virtually all new development and redevelopment over the next three decades taking place in "transit villages" which comprise only 4% of the actual Bay Area land area. Landowners in the 96% of the Bay Area that lies outside of the "transit villages" will inevitably experience declining property values due to the coercive and restrictive zoning in these areas, and many will request and receive reassessments for property tax purposes. It is therefore essential to assess and analyze the impact of declining property tax revenues on city, town, and county budgets resulting from Plan Bay Area.

The Plan Bay Area EIR Project Team must undertake the analysis outlined above and must do so in an informed and balanced manner in order for the scope of the EIR to be deemed adequate and complete. It is virtually certain that the "preferred alternative" will lead to significant, adverse, and as-of-yet undisclosed impacts on family, city, town, and county budgets. These must be analyzed and understood in order for the EIR to be adequate and complete. Budgetary funds are often fungible, and the substantial cost increases and revenue losses that will result from the Plan will mean fewer funds available for all other purposes, including monies that would otherwise be directed to environmental causes and purposes.

Sincerely,

Steve Scheye, P.E.

2205 Castro Street

Martinez California 94553

From: Ashley Nguyen
To: Brenda Dix; Stefanie Hom
Date: 7/9/2012 4:59 PM
Subject: Fwd: Plan Bay Area NOP

See below. Pls collect, compile and send to Hannah.

Ashley Nguyen
Senior Transportation Planner/Analyst
Metropolitan Transportation Commission
101 Eighth Street | Oakland, CA 94607
Tel. 510.817.5809 | Fax 510.817.5848

>>> "Wehrmeister, Tina" <cwehrmeister@ci.antioch.ca.us> 7/5/2012 10:58 AM >>>

Ashley – I was wondering about the CEQA exemption and streamlining provisions under SB 375. Will each agency that plans to take advantage of these provisions be considered a Responsible Agency? That would mean that each agency will need to comply with CEQA Guidelines Section 15096 which would mean more consultation than usual, mitigation measure adoption, findings, and a NOD.