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July 25, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

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Re: Comments for South County Traffic Relief Effort Draft PSR-PDS

Dear Ms. McFall, Mr. Speirs and Mr. Nowshiravan:

This letter is submitted on behalf of the City of San Clemente in connection with the circulation of the initial draft South County Traffic Relief Effort Draft Project Study Report-Project Development Support (“PSR-PDS”). The City of San Clemente (“City”) is one of the nine cities within the PSR-PDS’s Project Area. The PSR-PRD contemplates four alternatives that involve the territorial jurisdiction of San Clemente (Alternatives 13, 14, 17, and 21, the “San Clemente Alternatives”). Therefore, these comments are limited to the document’s discussion of those alternatives. As detailed below, our review concludes that the preparation of the PSR-PDS has violated processes required for that preparation. Furthermore, the PSR-PDS lacks important substantive information necessary for completion and publication in this form. We ask that you carefully review these comments before taking any additional steps in furtherance of this project.

1. Authority. The City notes as a preliminary matter that the Foothill/Eastern Transportation Corridor Agency (TCA) lacks authority to do this. The Joint Powers Agreement (JPA) creating F/ETCA authorized TCA to construct the 16-mile remainder of the Foothill South Toll Road in the route designated as “SR-241,” following a pathway from the current terminus of the freeway at Oso Parkway, skirting the southeastern urbanized area of Orange County, then connecting to Interstate 5 (“I-5”) in the vicinity of Basilone Road. In 1988, the Legislature enacted Streets and Highways Code Section 541 officially designating this corridor, which was



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to extend “near the cities of Tustin and Irvine to Route 5 south of San Clemente.” (Streets and Highways Code, § 541.) As a limited purpose joint powers agency, TCA lacks the authority to support, fund, or partner with Caltrans on the San Clemente Alternatives. Thus, this entire PSR-PDS process is *ultra vires* to the extent it involves TCA’s participation in scoping alternatives beyond this limited statutory authority. This issue is set for hearing in San Clemente’s litigation challenging TCA’s authority to do this, so circulation and completion of this document is premature until the court in that case determines in the next few months whether TCA even has the ability to do this.

2. Project. The PSR-PDS fails to describe a coherent project for review. Instead, it designates an amorphous value, i.e., “south county mobility,” as a transportation project for analysis. The PSR-PDS presents eight “build” alternatives, each varying in location, scale, impact, and purpose. These alternatives affect different communities and lands, without reference to any methodology for their priority over other potential projects in TCA’s service area.

3. Consensus. The process of formulating this PSR-PDS has not conformed to law. Caltrans’s Project Development Procedures Manual (PDPM) provides the framework of policies and procedures for developing state highway improvement projects in line with federal policies and guidance. Chapter 8 in the PDPM covers the “Overview of Project Development” and Chapter 9 addresses “Project Initiation,” including the PID process. Appendix S-“Preparation Guidelines for Project Study Report-Project Development Support (PSR-PDS) Project Initiation Document” also specifically outlines how a PSR-PDS is prepared in the PID process.

The PDPM tasks Caltrans with responsibility to meet and confer with affected local entities to develop a “shared view” of the project and to establish an understanding of the procedures, roles, and responsibilities before the project initiation process begins. (PDPM, Appendix S, p. S-8.) By contrast, this PSR-PDS was conceived – it admits – secretly, having its genesis in “*confidential* interviews with residents and active community-based leaders.” (PSR-PDS, p. 2-4, emphasis added.) It has never been published in a TCA agenda, presented to the TCA board, or otherwise open to public comment. It fails to demonstrate any degree of consensus among public agencies as to how to address the stated needs in the document.

4. Incorporation of reports and studies. A PSR-PDS must incorporate the best available and most current reports and studies. That information is to serve as the basis for the conceptual design, development of alternatives, quantities and estimates, and exhibits. (PDPM, Appendix S, p. S-9.)

San Clemente has prepared extensive consulting studies on this project’s background and need. The PSR-PDS makes literally no mention of them. TCA has offered no response to those reports and studies other than a real-time, hyperbolic critique of them by a TCA board member



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when San Clemente insisted on presenting them from the audience at a TCA board meeting. The PSR-PDS traffic analysis appears to have been prepared in complete isolation of the San Clemente analysis, which would call the PSR-PDS's needs assessment into serious question. (San Clemente's transportation consultant is preparing a separate response to this draft PSR-PDS, which will be provided next week.)

5. Comment submission. The PSR-PDS directs readers to submit comments on the PSR-PDS to GetMovingOC.com, which is a public relations site promoting the "build" alternatives (PSR-PDS, Executive Summary (PDF p. 3)). At the site, the reader is immediately greeted with the following statement: "With a growing population and new development, traffic delays are expected to increase by 64% by 2035. We need solutions now to fix our traffic problems." This site was designed to *promote* the "build" alternatives, not to objectively solicit input. It is unclear where on the site the reader should submit comments for the PSR-PDS, or if the general feedback option is the appropriate means to submit such comments. At a minimum, the PSR-PDS should solicit public feedback at public agency portal.

6. Flawed project objectives. The PSR-PDS fails to present a purpose of appropriate scope or measure. The PSR-PDS explains that the purpose of the eight "build" alternatives is to improve regional mobility, provide additional capacity in case of traffic incidents or emergencies, and to enhance multimodal opportunities. "A clear, well-justified purpose-and-need statement explains to the public and decision makers that the expenditure of funds is necessary and worthwhile, and that the priority of the project, relative to other transportation needs, is warranted." (Caltrans PDPM, ch. 9, p. 9-21.) The PSR-PDS's purpose statements could apply to nearly any transportation project. Further, they provide no guidance or measure to assess the success or failure of a project. "Objectives should be *quantified* during the project initiation phase and measures should be used to develop, evaluate, and compare reasonable solutions." (Caltrans PDPM, ch. 9, p. 9-21, emphasis added.) The PSR-PDS contains some discussion about levels of service, but fails to provide any useful benchmarks for congestion, safety, or multimodal transportation. In short, the PSR-PDS presents a purpose and need statement contrived to justify the "build" alternatives and divorced from commonly accepted metrics for transportation improvement warrants. Specific examples follow:

- a. North-south v. east-west.** The City's traffic study, and regional traffic models on which it is based, conclude that the main impediment to south county mobility is east-west movement. This is a significant discrepancy in the PSR-PDS.
- b. Evacuation and emergency response.** The PSR-PDS provides no evidence demonstrating that evacuation and emergency response are hindered by the current circulation network. One need identified is that "[t]he lack of sufficient north-south capacity impairs evacuation and emergency response." (PSR-PDS, p. 3-1 (PDF, p. 25).) This need is also listed in several of the attachments. The PSR-



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PDS provides some data on traffic accidents, but no data on response to accidents from first responders or law enforcement or how those compare to similar metrics on other highways. The PSR-PDS suggests that having a parallel freeway for the sole purpose of emergency response and evaluation is a legitimate project objective.

- c. **Multi-modal mobility opportunities.** The San Clemente Alternatives – by prematurely building unwarranted highway infrastructure – would create huge *disincentives* to multi-modal transportation solutions.
- d. **Obscure right-of-way delineations.** No “build” alternative discussion gives any indication of where its right-of-way will lie. The document’s discussion of alignments, section diagrams, acquisition estimates, and lists of “structures within project limits” are truncated, making it impossible to determine the project footprint. San Clemente believes that much of this information is readily available and publishable as part of this exercise.

7. Methodology. The PSR-PDS is not founded in standard methodology for traffic forecasting and transportation planning. For example, project objectives are described with reference to peak “event” (i.e., summer weekend) thresholds, rather than peak weekday levels of service. The analysis highlights the unique traffic pattern characteristic of summer weekend traffic (PSR-PDS, p.4-3 (PDF, p. 29), but does not use proper methodology to assess it or to moor it to traditional transportation planning. The PSR-PDS uses estimates of historical and future growth figures, because the Orange County Transportation Analysis Model (OCTAM) lacks a weekend module. Why this corner of TCA’s service area should be addressed instead of areas more significantly impacted by weekday peak traffic, or weekend traffic for that matter, is not discussed. It is unclear whether the baseline assessments were made during the recent I-5 construction, with its significant impairment of traffic flow.

8. Regional planning. The PSR-PDS fails to consider the maintained by the Orange County Transportation Authority’s (“OCTA”) Master Plan of Arterial Highways (“MPAH”). The MPAH maps the planned development of the region’s circulation network. The County’s Circulation Element is part of the County’s General Plan. For discussion of regional planning, the PSR-PDS mentions only studies and programs by councils of governments (“COG”). (PSR-PDS, p. 6-2.) However, neither the MPAH nor the County’s Transportation Element contemplate or permit the SR-241 extension. In fact, on May 22, 2018, the Orange County Board of Supervisors voted unanimously to remove reference to the SR-241 extension from its Transportation Element. (OC BOS Reso. No. 18-048, § 1(a).) The planning and environmental review for Rancho Mission Viejo do not rely on SR-241, yet the PSR-PDS suggests that this project is necessary for completion of that project. (PSR-PDS, sec. 8.3.)



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9. Local planning. The PSR-PDS fails to explain how the “build” alternatives are consistent with local planning regulations and policies. For discussion of local planning, the PSR-PDS states only that “[c]oordination for the Project construction phase will be constructed with all local jurisdictions within the Project limits.” (PSR-PDS, p. 6-2 (PDF p. 44).) The land use designation analysis conducted for the PEAR shows that the alternatives would drive through several designations clearly not intended for major roadways, including open space, recreation, residential, and coastal. (PSR-PDS, attach. E (PEAR), tables B-6, p. 18-32 (PDF p. 390-404).) The PSR-PDS should demonstrate how the “build” alternatives are consistent with these land use designations as well as other elements of local jurisdictions’ general plans (including San Clemente’s general plan, which dates back to the 1920s), specific plans, zoning codes, and initiative protections. The PSR-PDS planning assessment fails to take into account many recent San Clemente enactments for the protection of open space, trails, and parks, including a 2017 private-public partnership for the creation of a major conservation area where Alternative 14 is drawn.

10. Existing projects. The PSR-PDS fails to address how existing and expected projects may meet the stated needs for the “build” alternatives. The PSR-PDS lists ten projects already slated for the Project Area. (PSR-PDS, table 6-1, p. 6-3 (PDF p. 45).) However, the PSR-PDS does not show that the build alternatives are necessary despite these current projects underway, including new high occupancy vehicle (“HOV”) lanes on I-5.

11. Planned projects. Along with failing to account for existing projects, the PSR-PDS fails to account for planned projects. As explained above, the MPAH maps the planned development of the County’s circulation network. The PSR-PDS does not explain whether completion of the MPAH, which prefers public roadways over the SR-241 extension, would address the stated needs for the build alternatives. Several alternatives are completely inconsistent with existing habitat conservation agreements with state and federal resource agencies. San Clemente is the third party beneficiary to several of these, which were provided as consideration for development agreements.

12. Local agency approvals. The PSR-PDS claims that only “Freeway and Maintenance agreements” are required by way of local approvals and that “[n]o relinquishments are anticipated for the Project.” (PSR-PDS, p. 14-2 (PDF p. 114).) However, this directly contradicts the analysis for local land use designations performed for the PEAR. As discussed above, the PEAR shows that the alternatives will drive through land use designations not intended for major roadways. Neither Caltrans, the TCA, nor any other agency may by-right build major roadways through such designations without overriding local zoning and bringing an involuntary condemnation of them with payment of their inestimable value.

13. Omission of obvious alternatives. The PSR-PDS fails to consider two key transportation planning strategies as no-build alternatives: (1) eliminating tolls and increasing



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capacity on existing TCA toll roads or portions thereof and (2) dynamic pricing, a solution gaining widespread use and success in highways throughout California, including Orange County.

Based on these considerations, the PSR-PDS fails to satisfy the procedural and substantive requirements of the law. We ask that it be tabled until a court can address whether this process is legitimate at all, then finalized, if necessary, in proper consultation with affected stakeholders, as required by law. Feel free to contact me if you would like to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott C. Smith'.

Scott C. Smith
of BEST BEST & KRIEGER LLP

cc: James Makshanoff, City Manager