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**Submitted electronically**

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May 18, 2016

**RE: Proposed Mitigated Negative Declaration (MND)/Environmental Assessment (IS/EA), Interstate 110 High-Occupancy Toll Lanes Flyover Project**

Dear Mr. Kosinski and Mr. Damrath:

Thank you for the opportunity to provide comments on the Interstate 110 High-Occupancy Toll Lanes Flyover Project and the Draft Initial Study with proposed Mitigated Negative Declaration (MND). We greatly appreciate the additional time granted to review materials before submitting our comments. The Los Angeles Conservancy is invested in working with Caltrans to identify and pursue all feasible and prudent alternatives that can avoid and minimize harm to historic resources.

We are doing this through the California Environmental Quality Act (CEQA) process as well as Section 106 as a consulting party. We also believe Section 4(f) applies and should be properly evaluated in terms of the proposed project and impacts. In regards to the CEQA process, the Conservancy is deeply concerned about Caltrans' intent on pursuing a Mitigated Negative Declaration (MND) rather than a full Environmental Impact Report (EIR). **Given the circumstances and evidence presented, CEQA requires Caltrans to prepare an EIR and consider feasible alternatives.**



The Conservancy strongly believes an EIR is required in this case, as the California Environmental Quality Act (CEQA)<sup>1</sup> is clear on this point where there is “substantial evidence in light of the whole record” that demonstrates the proposed project will result in significant impacts. Despite assertions stated otherwise by Caltrans in the Draft Initial Study and at the February 23, 2016 public meeting, the proposed impacts and effects cannot be adequately mitigated to a “less than significant” level or to a point where no significant effects would occur. An MND is woefully inadequate in light of the proposed project as is the analysis provided to date by Caltrans. It fails to acknowledge and address significant impacts as a result of the proposed project.

A visual intrusion as a result of a proposed fifty-four-foot-high flyover structure and proposed project is clearly evident. It should be considered and treated as a significant impact that cannot be adequately mitigated to a less than significant level. Further, a Caltrans memorandum of December 11, 2015<sup>2</sup> referencing a November 23, 2015 email from within the Caltrans Cultural Resources Unit confirms that there is not universal agreement on this point even within Caltrans regarding impacts analysis. It specifically cites internal disagreement on this specific point and appears to disregard comments made by Caltrans own qualified cultural resource professional. In addition to case law, the CEQA Guidelines are clear that a conflict in expert opinion over the significance of an environmental impact normally requires preparation of an EIR.<sup>3</sup>

The same December 11, 2015 Caltrans memorandum concludes proximity impacts not resulting in constructive use issues means the provisions of Section 4(f) are not triggered for this project. While our comments are primarily focused on the CEQA process at this time, we do want to address Section 4(f) since Caltrans states it is not applicable. The Conservancy respectfully disagrees. Section 4(f) clearly states and precludes project approval if there is a use of a historic site when a prudent and feasible avoidance alternative is available. Based on visual impacts as well as potentially noise, vibration, etc. there is a constructive use indirect impact on St. John’s Cathedral. We believe there are feasible and prudent alternatives that have not been adequately explored. We strongly urge Caltrans and FHWA to reevaluate its position on Section 4(f) and its applicability to the proposed project and undertaking.

**Substantial evidence supports a fair argument that the proposed project will cause a substantial adverse change to a historic resource(s), requiring preparation of an Environmental Impact Report**

“Since preparation of an EIR is the key to environmental protection under CEQA,” an EIR is required “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant

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<sup>1</sup> PRC §21080(c), 14 C.C.R. §15070

<sup>2</sup> Memorandum, Memo to File on Subject: Response to Cultural Resources Change in Level of Impact E-mail dated November 23, 2015. State of California, State Transportation Agency. December 11, 2015

<sup>3</sup> Guideline § 15064(g). *Sierra Club v. CDF* (2007) 150 Cal. App. 4<sup>th</sup> 370.



environmental impact.”<sup>4</sup> The “fair argument” test establishes a low threshold for initial preparation of an EIR, which reflects a preference for resolving doubts in favor of environmental review.” Evidence supporting a fair argument of a significant environmental impact will trigger an EIR even if the record contains contrary evidence. It is a question of law, not fact, whether a fair argument exists, and courts owe no deference to a lead agency’s determination. There is a clear preference for resolving doubts in favor of preparing an EIR.<sup>5</sup>

Courts often refer to the EIR as “the heart” of CEQA, providing decision makers with an in-depth review of projects with potentially significant environmental impacts and analyzing alternatives that would reduce or avoid those impacts.<sup>6</sup> Based on the objective analyses in the EIR, CEQA requires public agencies to deny approval of a project with significant adverse impacts when there are feasible alternatives or mitigation measures that can substantially lessen such efforts.<sup>7</sup>

The California Office of Historic Preservation has also concluded that there is a direct adverse effect on St. John’s Cathedral as well as potential indirect impacts on other nearby historic resources. This finding was made as part of the Section 106 process. The Conservancy concurs and does not believe mitigation or a Memorandum of Agreement (MOA), as suggested by Caltrans, can adequately address or minimize the impacts of a proposed fifty-four-foot-high flyover structure.

Further, based on initial discussions with Caltrans we are concerned about how it is approaching impacts to date and defining appropriate mitigation. A series of landscape renderings developed by Caltrans in early 2016 indicate a basic lack of understanding of the Secretary of the Interior’s Standards for Rehabilitation. The renderings call for highlighting and drawing attention to the proposed flyover structure rather than minimizing its impact. These mitigations, as defined by Caltrans, have no direct nexus with the impact and do not and cannot minimize the extreme visual intrusion and large physical barrier and damage to an historic setting caused by the project as proposed. It effectively will further and irreparably split this neighborhood. We firmly believe no amount of mitigation can reduce the impacts of the proposed project to a level of “less than significant.”

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<sup>4</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75 (emphasis added) I see also *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095. “Substantial evidence” includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Inaccurate information and unsubstantiated opinion are not substantial evidence. PRC §21082.2©; Guidelines §15384.

<sup>5</sup> *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal. App. 4th 1095, 1110.

<sup>6</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123.

<sup>7</sup> *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41 (italics added)



## **The MND Provides No Evidentiary Support of Insignificant Impacts to Historic Resources**

Caltrans' failure to properly identify, evaluate, and study impacts is a violation of CEQA. The purpose of an initial study is to provide a lead agency with adequate information regarding a proposed project to determine the appropriate level of environmental review and "documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment."<sup>8</sup> Where an agency...fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate."<sup>9</sup> Failure to adequately analyze all of a project's potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law. Instead Caltrans has chosen to dismiss and disregard expert and community opinions.

### **Conclusion**

The Conservancy continues to question the purpose and need for the proposed project, as well as the wisdom of pursuing a flyover structure in light of other alternatives that may well result in better transportation and community outcomes. The project as proposed is a very dated approach to transportation planning that has been demonstrated time and again to fail. The perceived benefits by Caltrans do not outweigh the significant adverse impacts, producing yet another physical barrier and scar on the community. For the purposes of this letter and comments on the Draft Initial Study, the Conservancy strongly urges Caltrans to take a step back and develop an Environmental Impact Report in light of the very serious consequences and impacts to historic resources that would result from the project as proposed.

### **About the Los Angeles Conservancy:**

The Conservancy is the largest local historic preservation organization in the United States, with over 6,500 members. Established in 1978, the Conservancy works to preserve and revitalize the significant architectural and cultural heritage of Los Angeles County through direct advocacy and education.

Thank you for your consideration of these comments. Please contact me at [afine@laconservancy.org](mailto:afine@laconservancy.org) or 213-430-4203 should you have any questions.

Sincerely,



Adrian Scott Fine  
Director of Advocacy

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<sup>8</sup> *Ctr. For Sierra Nevada Conservation v. County of El Dorado* (2012) 201 Cal. App. 4th 1156, 1170

<sup>9</sup> *Ctr. For Sierra Nevada Conservation v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597



cc: **Advisory Council on Historic Preservation**  
**Mayor Eric Garcetti**  
**Assemblymember Reggie Jones-Sawyer**  
**Councilmember Current Price, CD9**  
**Office of Historic Resources, City of Los Angeles**  
**Office of Historic Preservation, State of California**  
**West Adams Heritage Association**  
**California Preservation Foundation**  
**National Trust for Historic Preservation**

