



April 17, 2014

Carrie Bowen  
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**Re: Offer of Assistance to Fend Off Further Disputes Regarding Environmental Review  
for I-710 Expansion Project**

Dear Ms. Bowen:

On behalf of the Coalition for Environmental Health & Justice (“CEHAJ”), we write regarding the recirculated Environmental Impact Report (“EIR”)/Environmental Impact Statement (“EIS”) (“REIR/EIS”) for the I-710 corridor project. In recent months, we have heard many mischaracterizations of our positions and other troubling comments from members of the project team about the REIR/EIS analysis that is currently underway. This information compels us to reach out to CALTRANS to prevent further strife down the road. This letter addresses two issues. First, it clarifies the message of the Governor’s veto of SB 811, which directed CALTRANS to continue to work with local groups on the project. Second, it clarifies the role that CALTRANS plays in this environmental review as the lead agency for California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”) purposes.

**I. Introduction**

CALTRANS has important duties to keep environmental justice at the heart of the environmental review process for the I-170 expansion. We are concerned that recent actions and misinformation could careen this project onto a path of unending strife between the project proponents and the organizations and communities represented by CEHAJ. As such, in the spirit of cooperation, we want to reach out to CALTRANS to help resolve any misunderstandings. In particular, we are fearful that strong misinformation about Community Alternative 7 (“CA-7”) is precluding a full and fair environmental analysis.

## **II. SB 811 and Its Impact on the Environmental Review for the I-710**

At recent I-710 meetings, such as the March CAC and TAC meetings, members of CEHAJ heard various staff of the agencies involved in the REIR/EIS indicate that Governor Brown's veto of SB 811 made it clear that CALTRANS cannot consider CA-7 in the revised environmental documents. In fact a representative from Caltrans stated that CA-7 will not be included as an alternative analyzed in the REIR/EIS. This decision has been presented in a folksy tone, indicating that CALTRANS' "boss" said it could not analyze CA-7. This is flatly incorrect for several reasons.

First, nowhere in SB811 is there any reference to CA-7. Thus, extrapolating that the veto of SB 811 rejects the provisions of CA-7 is factually incorrect. Second, CALTRANS and the project team's apparent conflation of the "mitigation" described in Governor Brown's veto message is similarly factually incorrect. CA-7 is an alternative *project*, not alternative mitigation measure or an alternative mitigation plan. Thus, portions of CA-7 such as the comprehensive bike and pedestrian element, which are part of the project and not mitigation, were therefore not precluded by the Governor's veto.

Third, and most importantly, Governor Brown specifically directed all parties to continue discussing community impacts: "Caltrans is instructed to continue to work with the author and local stakeholders on identifying mitigation measures within the scope of CEQA that ensure the I-710 project benefits motorists, good [*sic*] movement, the community, and the environment."<sup>1</sup> In other words, "CALTRANS' boss" directed the agency to continue working closely with impacted communities on the project. Yet recent actions of the project team seem to indicate an unwillingness to continue discussions with community members and groups. It is our understanding that coalition members have been made to feel they are agitators in public meetings by people working on the project. This is contrary to the Governor's directive, the spirit of cooperation intended by the environmental review process, and the federal guidance discussed below.

Finally, notably, the Governor's veto message is solely concerned with the agency's role under CEQA. It is important that the Governor and the legislation did not specifically reference NEPA and the underlying obligations of compliance under CALTRANS delegated duties from the Department of Transportation ("DOT") and the Federal Highway Administration ("FHWA").

## **III. CALTRANS' Delegated Authority Requires Compliance with NEPA, its Implementing Regulations, and DOT and FHWA Policies and Regulations**

As your staff is intimately aware, CALTRANS currently operates under a Memorandum

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<sup>1</sup> Letter from Governor Jerry Brown to Members of the California State Senate regarding SB 811, October 11, 2013 [attached as Exhibit A].

of Understanding with Federal Highway Administration (“FHWA”) to implement the NEPA pursuant to 23 U.S.C. 327.<sup>2</sup> Under this MOU, CALTRANS has agreed to assume the responsibilities of the US Department of Transportation, a division of FHWA. Thus, for purposes of this project, the agency wears two hats, that of the lead agency under CEQA and that of FHWA for purposes of the NEPA analysis,<sup>3</sup> and the agency must comply with both statutes.<sup>4</sup> Thus, even if it were correct that Governor Brown’s veto eroded the need for the agency to address the environmental justice issues raised by CEHAJ (which it did not), its independent duties acting as FHWA require that it fully address CA-7.<sup>5</sup>

First, Federal Executive Order (EO) 12898 (1994), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies, including the United States Department of Transportation—including FHWA—to make environmental justice part of their mission and to develop environmental justice strategies. The Presidential Memorandum accompanying the Executive Order specifically singles out NEPA, and states that “[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.”<sup>6</sup> DOT Order 5610.2(a), which implements Executive Order 12898, expands upon this requirement: “Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).”<sup>7</sup> Thus, even if CALTRANS persists in its erroneous belief that the veto of SB 811 somehow gives it license to ignore the communities’ concerns and suggestions, federal policy *requires* it to continue to work with communities in identifying potential effects,

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<sup>2</sup> October 1, 2012, MOU between FHWA and CALTRANS, *available at* [http://www.dot.ca.gov/ser/downloads/MOUs/nepa\\_delegation/nepa\\_mou.pdf](http://www.dot.ca.gov/ser/downloads/MOUs/nepa_delegation/nepa_mou.pdf).

<sup>3</sup> *See generally* July 1, 2007, MOU between FHWA and CALTRANS, at ¶ 3.1.1, *available at* [http://www.dot.ca.gov/ser/downloads/MOUs/nepa\\_delegation/sec6005mou.pdf](http://www.dot.ca.gov/ser/downloads/MOUs/nepa_delegation/sec6005mou.pdf).

<sup>4</sup> In addition to FHWA directives, on December 9, 2013, CEHAJ articulated how CEQA and NEPA themselves require a full analysis of CA-7. This letter is attached as Exhibit B.

<sup>5</sup> Since under this delegation CALTRANS is deemed to be acting as FHWA, FHWA’s regulations and policies addressing environmental review must be followed. Thus, even if one could consider the veto of SB 811 as CALTRANS’ “boss” rejecting the mitigation portions of CA-7, the fact that FHWA Administrator Victor Mendez and President Barack Obama have not rejected the common sense components of CA-7 indicates that the analysis for purposes of federal review has not been rejected. If these two public figures have weighed in against CA-7, please let us know.

<sup>6</sup> Memorandum from President Clinton, March 1994, *available at* [http://www.epa.gov/fedfac/documents/executive\\_order\\_12898.htm](http://www.epa.gov/fedfac/documents/executive_order_12898.htm).

<sup>7</sup> Department of Transportation EJ Order, 5610.2(a) (May 2012) (“DOT Order”), sec. 5.b.(1).

alternatives, and mitigation measures.

In addition, the DOT Order and FHWA's Order 6640.23A, which implements Executive Order 12898 and DOT Order 5610.2(a), call for the prevention of disproportionately high and adverse human health or environmental effects on minority and low-income populations. The DOT Order requires agencies to avoid discrimination and disproportionate impacts by, among other methods:

proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and *providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities*, where permitted by law and consistent with the Executive Order, [and]

*Considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts*, consistent with the Executive Order.<sup>8</sup>

Similarly, the FHWA Order requires CALTRANS to "identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decision making process--from early planning through implementation. Should the potential for discrimination be discovered, action to eliminate the potential shall be taken."<sup>9</sup>

Here, CEHAJ has identified potentially discriminatory impacts<sup>10</sup> and requested action to be taken (CA-7). It is our understanding that CALTRANS is not going to take the requisite action of examining an alternative like CA-7 that results in less adverse impacts, which is required by FHWA and DOT regulations and policies. However, CALTRANS' delegated duties require it to comply with FHWA Order 6640.23A, directing that FHWA (or, in this case, CALTRANS) will examine any adverse impact that "is predominately borne by a minority population and/or a low-income population." Since many of the impacts from this project are primarily borne by minority population and low-income populations, this adds an extra level of requirements in the environmental process. What is more, for projects like the I-710 expansion, CALTRANS is required to

ensure that any of their respective programs, policies, or activities that have the potential

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<sup>8</sup> DOT Order, 5610.2(a), sec. 7.c. (emphasis added).

<sup>9</sup> FHWA Order 6640.23A, at 6a.

<sup>10</sup> See, e.g., CEHAJ Comments on the DEIR/S (Sept. 28, 2012), Attachment B, pp. 39-51.

for disproportionately high and adverse effects on populations protected by Title VI (“protected populations”) will only be carried out if:

- (1) a substantial need for the program, policy or activity exists, based on the overall public interest; and
- (2) alternatives that would have less adverse effects on protected populations have either:
  - (a) adverse social, economic, environmental, or human health impacts that are severe; or
  - (b) would involve increased costs of an extraordinary magnitude.<sup>11</sup>

Here, CALTRANS has an alternative, CA-7, that does precisely what is required by FHWA in “hav[ing] less adverse effects on protected populations.” As such, it must be analyzed under FHWA’s policies.

This failure to adhere to federal policies applies to the exclusion of any of the suite of recommendations in CA-7, but a particular example may be instructive. Under FHWA Order 6640.23A, an adverse impact includes “destruction or disruption of the availability of public and private facilities and services.”<sup>12</sup> Thus, the portions of CA-7 that require no impact to various facilities and services like Bell Shelters, Shelter Partnerships, Multi-Service Center, and other facilities must be addressed according to FHWA’s policies and procedures.

We appreciate your review of this comment letter, and we look forward to reviewing the REIR/EIS for this project. The inclusion of CA-7 in the analysis is not only the lawful approach, but will also improve decision-making by providing a more robust set of options. We look forward to your prompt response to the question previously asked: whether CA-7 will be analyzed in its entirety in REIR/EIS. Please do not hesitate to contact us if you have questions about CA-7 or this letter.

Sincerely,

Adrian Martinez  
Staff Attorney  
Earthjustice  
*Counsel for CEHAJ*

Susanne Browne  
Senior Attorney  
Legal Aid Foundation of Los Angeles  
*Counsel for Housing Long Beach*

Maya Golden-Krasner  
Staff Attorney  
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*Counsel for CBE*

Ramya Sivasubramanian  
Staff Attorney  
Natural Resources Defense Council  
*Counsel for NRDC*

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<sup>11</sup> FHWA Order 6640.23A at 8(g).

<sup>12</sup> FHWA Order 6640.23A at 5f.

On behalf of:

Angelo Logan  
Executive Director  
East Yard Communities for Environmental Justice

Patricia Ochoa  
Deputy Policy Director  
Coalition for Clean Air

CC: Project Committee Members  
Ricardo Lara  
Cristina Garcia  
Anthony Rendon  
Bonnie Lowenthal  
Jared Blumenfeld, EPA Region 9  
Dr. Barry Wallerstein, SCAQMD

# **EXHIBIT A**



OFFICE OF THE GOVERNOR

OCT 11 2013

To the Members of the California State Senate:


I am returning Senate Bill 811 without my signature.

This bill requires that a specific mitigation plan be considered for the I-710 widening project.

I commend the author's objectives, as reflected in this bill, to improve air quality, ensure access to bicycle and pedestrian paths, and increase access to public transit. These are goals we share.

However, statutorily requiring the project environmental impact report to consider specified mitigation measures that exceed the project's scope is a precedent I don't wish to establish. Caltrans is instructed to continue to work with the author and local stakeholders on identifying mitigation measures within the scope of CEQA that ensure the I-710 project benefits motorists, good movement, the community, and the environment.

Sincerely,

  
Edmund G. Brown Jr.



# **EXHIBIT B**



December 9, 2013

Carrie Bowen  
CALTRANS, District 7 Director  
100 S. Main Street  
Los Angeles, CA 90012  
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**Re: Inclusion of Community Alternative 7 in the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”) analysis for the I-710 expansion.**

Dear Ms. Bowen:

On behalf of the Coalition for Environmental Health & Justice (“CEHAJ”), we write regarding Community Alternative 7 (“CA-7”) and inclusion of this alternative among those analyzed in the recirculated Environmental Impact Report (“EIR”)/Environmental Impact Statement (“EIS”) (“REIR/EIS”) for the I-710 corridor project. As your agency is intimately aware, there is broad support for inclusion of CA-7 in the analysis in the REIS/EIR for the I-710 corridor project. This support ranges from CEHAJ to the Project Committee to the cities of Commerce, Bell, Long Beach, and Huntington Park. Despite this overwhelming support for analyzing this alternative, there has been significant resistance from the agencies involved in this project. While we understand the natural tendency of the California Department of Transportation (“CALTRANS”) to dismiss alternatives developed by external entities, there are compelling policy and legal reasons under both CEQA and NEPA as to why CA-7 must be evaluated in the REIR/EIS.

## **I. Introduction**

The Council on Environmental Quality (“CEQ”) has identified the alternatives analysis as the “heart” of the EIS. Accordingly, it is crucial that CALTRANS identify a properly robust set of choices for expansion of the I-710. *See* 40 C.F.R. § 1502.14. An agency must “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.*; *see also* 14 Cal. Code Reg. (hereinafter “CEQA Guidelines”) § 15126.6(a) (“An 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.”). Realizing the importance of the alternatives analysis, the Project Committee directed the project staff to analyze CA-7. In addition, municipalities along the I-710 corridor have determined that a full analysis of CA-7 is important to fully informed decision-making on this project.

Still, despite the strong support for an analysis of CA-7, it has become increasingly clear that CALTRANS will not fully analyze CA-7 in the REIR/EIS.<sup>1</sup> At a minimum, the agencies involved with this project have not been clear about whether CA-7 will constitute a complete and independent alternative analyzed in the REIR/EIS. Accordingly, we specifically request that CALTRANS provide the “yes” or “no” answer to this question within two weeks. If CALTRANS is inclined to answer “no,” we provide the following analysis that justifies inclusion of an analysis of CA-7 under state and federal law.

## **II. Community Alternative 7 Meets the Project Objectives.**

The I-710 draft EIR/EIS includes the following project objectives:

1. Improve air quality and public health;
2. Improve traffic safety;
3. Modernize design of the I-710;
4. Address projected traffic volumes; and
5. Address projected growth in population, employment and economic activity related to goods movement.

CA-7 meets all of the project objectives. First, it improves air quality and public health through advancing zero-emission freight lanes, and by proposing active transportation infrastructure and public transit as opposed to expansion of “general purpose” lanes. Second, it improves traffic safety by implementing several proposals to modernize the I-710, including dedicated truck lanes, transportation demand management, and better infrastructure to ensure pedestrian and bicycling safety. Third, it modernizes the design of the I-710 by providing zero-emissions, dedicated truck lanes, in addition to safety improvements at several intersections throughout the corridor. Fourth, it addresses projected traffic volumes by providing more robust public transportation and active transportation options. This is consistent with state laws aimed at

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<sup>1</sup> The consultants for this project prepared a matrix that shows that CA-7 is not being reviewed in its entirety. The matrix can be found at the following link: <http://www.gatewaycog.org/download/I710%20Project%20Committee%20Agendas/Agenda%20May%2030,%202013%20I-710%20Project%20Committee-2.pdf>. The matrix is located in Attachment A of the May 20, 2013 memo on page 36 of the pdf.

reducing greenhouse gas emissions. Finally, it addresses the growth in population, employment and economic activity related to goods movement by facilitating more transportation options beyond just driving, additional freight through adding four freight lanes, and adding additional community amenities that reduce the impacts from the heavily impactful freight industry.

CALTRANS has not made any rational argument that CA-7 does not meet the project objectives. Given this, it must be studied as a reasonable alternative.

### **III. Community Alternative 7 is a Reasonable Alternative within the Meaning of NEPA and CEQA.**

Both CEQA and NEPA require environmental review documents to include a reasonable range of alternatives. The CEQA regulations require that an EIR must “describe a range of reasonable alternatives to the project, or to the location of 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] must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.” CEQA Guidelines § 15126.6(a). Indeed, “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” *Id.* § 15126.6(b). As described above, not only does CA-7 meet the project objectives, but it does so by lessening the significant effects of the project that will result from a widened freeway allowing more traffic rather than offsetting growth with active and public transit, accommodating more freight that will pollute the air and add noise impacts rather than requiring a dedicated zero-emission freight corridor, and displacing people and businesses.

Further, with respect to NEPA, the CEQ has articulated that a reasonable alternative “include[s] those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.” 46 Fed. Reg. 18026 (March 23, 1981). Here, CEHAJ provided evidence that CA-7 was practical and feasible from a technical and economic standpoint. In addition, CEHAJ used common sense to promote the elements. CA-7 met this test so well that the Project Committee determined that it is a matter of “common sense” to analyze CA-7 in the REIR/EIS. CALTRANS would need to demonstrate either that CA-7 is not practical or feasible, or that that the Project Committee, the Cities of Commerce, Bell, Long Beach and Huntington Park lacked “common sense” in promoting an analysis of this alternative.

Beyond the inability of CALTRANS to demonstrate that the Project Committee and the cities supporting an analysis of CA-7 lacked “common sense,” longstanding precedent in the

United States Court of Appeals for the Ninth Circuit supports inclusion of CA-7. In particular, the Courts have determined:

An EIS will be found to be in compliance with NEPA:

when its form, content, and preparation substantially (1) provide decision-makers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in the light of its environmental consequences, and (2) make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information.

*Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 781 (9th Cir. 1980)(citing *Trout Unlimited v. Morton*, 509 F.2d 1276, 1282-83 (9th Cir. 1974)). An analysis of CA-7 is of paramount importance to meet both of these requirements. First, CA-7 helps provide the robust review necessary to help inform all stakeholders. Moreover, an expanded range of alternatives is certainly warranted for a project with an up-to \$10 billion price tag, one of the most expensive road expansion projects in the nation.

Second, the public has spent significant time and resources analyzing and articulating the elements of CA-7, considering the merits of each provision of CA-7, and ultimately supporting CA-7. To not even dignify this work and careful consideration with an analysis of CA-7 in the REIR/EIS does not "encourage public participation." Rather, it diminishes the public's confidence that the I-710 EIR/EIS process truly considers the input of the impacted community, including the representative body of elected leaders that stood up to support analysis of CA-7. Those interested in participating in a truly open and technically sound process that has been promised by the agencies could become dispirited, and instead rely on other tools like protest and litigation to make sure their voices are heard. Given that CA-7 is a reasonable alternative, failure to analyze it violates state and federal laws.

#### **IV. Analyzing CA-7 Makes Good Policy Sense.**

In careful collaboration with community members, health groups, and sustainability advocates, CA-7 represents a compromise to facilitate the dramatic expansion of the freight industrial complex desired by regional planners and freight lobbyists, while at the same time maintaining and providing safeguards to protect the community from the impacts from the construction and operation of this massive project. CEHAJ is simply requesting that the agencies analyze this alternative in total in the REIR/EIS. In the interest of fully informed decision-making and sound policy, CALTRANS should analyze this alternative to ensure that the public and Project Committee do not feel cheated of information related to all reasonable alternative available for this project.

We appreciate your review of this comment letter, and we look forward to reviewing the REIR/EIS for this project. The inclusion of CA-7 in the analysis is not only the lawful approach, but will also improve decision-making by providing a more robust set of options. We look forward to your prompt response to the question asked whether CA-7 will be analyzed in its entirety in REIR/EIS. Please do not hesitate to contact us if you have questions about CA-7 or this letter.

Sincerely,

Adrian Martinez  
Staff Attorney  
Earthjustice  
*Counsel for CEHAJ*

Maya Golden-Krasner  
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Susanne Browne  
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On behalf of:

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Executive Director  
East Yard Communities for Environmental Justice

Jessica Tovar, MSW  
Project Manager  
Long Beach Alliance for Children with Asthma

Paty Ochoa  
Deputy Policy Director  
Coalition for Clean Air

CC: Project Committee Members  
Ricardo Lara  
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Jared Blumenfeld, EPA Region 9  
Dr. Barry Wallerstein, SCAQMD