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March 12, 2015

BY ELECTRONIC MAIL: robert.fabela@vta.org

Robert Fabela, Esq.
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Valley Transportation Authority
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RE: CEQA non-compliance of VTP 2040

Dear Mr. Fabela:

On the consent calendar of its October 2, 2014, board meeting, the Valley Transportation Authority (VTA) adopted Valley Transportation Plan 2040 (“VTP 2040”), the county transportation plan for Santa Clara County. VTA took that action without preparing, circulating or certifying an environmental impact report (EIR). VTA’s response to our January 30 request under the Public Records Act (request and response attached) appears to indicate that VTA took no action of any kind under the California Environmental Quality Act (CEQA) with respect to its adoption of VTP 2040.

We write on behalf of Urban Habitat to request that VTA rescind its adoption of VTP 2040 and adopt it, with any necessary changes or mitigations, only upon certification of an EIR that complies with the requirements of CEQA. As the time for filing suit will run on or about March 31, 2015 (180 days after adoption of the plan without notice¹), we ask for your response by Friday, March 20, or for your agreement to toll the statute of limitations to allow time for us and our client to discuss the matter with the agency and potentially to reach a non-litigated resolution.

VTP 2040 is a county transportation plan (CTP) within the meaning of section 66531 of the Government Code. As such, it is intended to become “the primary basis” of Santa Clara County’s contribution to the next regional transportation plan (RTP) that the Metropolitan Transportation Commission (MTC) is to adopt in 2017.² In preparing its CTP, VTA was required to use guidelines developed by MTC.³

¹ CAL. PUB. RES. CODE § 21167(a), (d); 14 CCR § 15112(c)(5).

² CAL. GOV’T CODE § 66531(f)..

³ *Id.*, subd. (c).

Under CEQA, all local agencies must prepare or cause to be prepared an EIR “on any project which they propose to carry out or approve that may have a significant effect on the environment.”⁴ A project “means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment”⁵

A CTP clearly fits this definition of “project,” and California case law supports this conclusion.

In *Edna Valley Association v. San Luis Obispo County*,⁶ the Court of Appeal held that San Luis Obispo County’s RTP was a “project” that required an EIR. The court noted that earlier case law recognized that the legislature intended CEQA “to be interpreted in such a manner as to afford the fullest possible protection of the environment within the reasonable scope of the statutory language.”⁷ In addition, the court noted that the adoption of a local general plan or its elements fall within the definition of a project, and that elements like a circulation, transportation, or transit elements “clearly resemble” the RTP.⁸ In addition, the court noted that “[i]t cannot be disputed that the [RTP] at issue, when implemented, may have a significant effect upon the environment.”⁹

All the same reasoning applies to VTP 2040. A CTP may have a significant effect on the environment and resembles both an RTP (particularly the RTP in *Edna Valley Association*, which was a county RTP) and elements of a general plan such as a circulation element consisting of existing and proposed transportation routes. In fact, a CTP has a broader geographic scope than a general plan. Therefore, just as the adoption of an RTP and a local general plan or elements thereof fall within the definition of a project,¹⁰ so too does the adoption of a CTP. Perhaps most importantly, VTP 2040 is a direct input to, and the “primary basis” of, the next RTP.¹¹

In email correspondence provided in response to our Public Records Act request, we found reference to the fact that MTC’s new CTP Guidelines no longer reference CEQA compliance. That rationale does not support the failure to certify an EIR, for two reasons. First, the underlying requirements of CEQA remain what they were despite MTC’s decision to omit this language in the new Guidelines. Second, the MTC resolution adopting the new CTP Guidelines provides that “[t]he effective date for the revised guidelines is for Countywide Transportation Plans *initiated* after October 1, 2014.”¹² We understand that VTA initiated the preparation of VTP 2040 months earlier, and accordingly, MTC holds that VTP 2040 is governed by MTC’s 2000 CTP Guidelines.¹³ MTC’s 2000 CTP Guidelines explicitly provide that “MTC’s RTP is

⁴ CAL. PUB. RES. CODE § 21151(a).

⁵ CAL. PUB. RES. CODE § 21065.

⁶ 67 Cal. App. 3d 444 (1977).

⁷ *Id.* at 447 (internal citations omitted).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ CAL. GOV’T CODE § 66531(f).

¹² MTC Res. 2120, rev. 9/24/14.

¹³ MTC Res. 2120, rev. 2000.

Roberty Fabela, Esq.
March 12, 2015

Page 3

subject to CEQA review. In order for Countywide Plans to be the 'primary basis' for the RTP, they too must undergo CEQA during their development."¹⁴

We phoned you earlier this morning to discuss this issue and potential avenues for its resolution, and look forward to discussing these matters with you soon.

Sincerely,



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Enclosures: Public Records Act request of Jan. 30, 2015
Response to Public Records Act request, dated Feb. 6, 2015

¹⁴ *Id.*, p. 2-9.