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**M E M O R A N D U M**

**DATE:** January 7, 2010

**TO:** Miroo Desai, Senior Planner  
 City of Emeryville

**FROM:** Dennis Brown, Project Manager  
 LSA Associates, Inc.

**SUBJECT:** EmeryStation West at the Emeryville Transit Center Project Response to Comments on the draft Initial Study and proposed Mitigated Negative Declaration

The purpose of this memorandum is to respond to comments made on the draft EmeryStation West at the Emeryville Transit Center Project Initial Study and proposed Mitigated Negative Declaration (IS/MND). The comments were provided in letters or e-mails received by the City from Lisa Carboni of the California Department of Transportation (Caltrans), Brian Donahue, Scott Donahue and Sam Foushee. The enumerated comment letters and e-mails are attached to this memo. The comment letters do not identify any new significant impacts or necessary mitigation measures that would require revisions to the IS/MND findings. Revisions to the draft IS/MND necessary to amplify or clarify material in the IS/MND are recommended. These responses supplement information provided in the IS/MND and should be considered by the decision makers in the City of Emeryville as they decide whether or not to adopt the Mitigated Negative Declaration.

**COMMENTOR A**

**Lisa Carboni, District Branch Chief  
 Department of Transportation (Caltrans)  
 Received: December 8, 2009**

**Response to Comment A-1:** The comment states that the City of Emeryville is responsible for all project mitigation, including any needed improvements to State highways. The comment also notes that financing, scheduling and implementation responsibilities for each proposed mitigation measure should be identified, that all roadway improvements should be completed prior to the issuance of the project occupancy permits, and that an encroachment permit for work within State right-of-way must be applied for and granted by Caltrans after all of their concerns are addressed.

No work within State right-of-way is proposed by the project or included in the mitigation measures recommended in the IS. Mitigation measures contained in the IS identify the financing, scheduling and implementation responsibilities for the recommended measures. The recommended mitigation measures contain requirements that they be implemented either during the construction phase or prior to issuance of the occupancy permit for the project, as appropriate. This information will be included in the project’s Mitigation Monitoring and Reporting Program should the proposed MND be adopted and the project approved by the City.

**Response to Comment A-2:** The comment urges the City to develop a regional transportation impact fee program to mitigate the impacts of future growth on regional corridors, such as Interstate 80.

As noted on page 127 of the IS, the City will update its Traffic Impact Fee Program in accordance with the General Plan implementation program (the City's new General Plan was adopted on October 13, 2009) and in a manner consistent with General Plan Policy T-P-3.

**Response to Comment A-3:** The comment identifies Caltrans' requirements for submitting mitigation monitoring and reporting information to the department.

The requirements are acknowledged for projects of State, regional or area-wide significance with traffic impacts. No new impacts to the State right-of-way were identified and no work in the State right-of-way is proposed by the project or included in the mitigation measures recommended in the IS.

**Response to Comment A-4:** The comment states that an encroachment permit is required for any work or traffic control within the State right-of-way.

No work within the State right-of-way is proposed by the project or included in the mitigation measures recommended in the IS.

## **COMMENTOR B**

**Brian Donahue**

**Emeryville Resident**

**Received: November 14, 2009**

**Response to Comment B-1:** The comment asserts that the proposed MND is not a legal document and may not be used in furtherance of the building of the proposed Transit Center project.

The proposed MND was prepared in accordance with Sections 15070 through 15075 (Article 6, Negative Declaration Process) of the *CEQA Guidelines*. The proposed MND and associated IS are draft documents until the MND is adopted by the City of Emeryville Planning Commission – an action that is subject to appeal to the City Council. Subsequent to adoption of the MND, the City would consider whether or not to approve the proposed project. In response to comments from agencies or the public the draft documents may be revised prior to the time of adoption in order to amplify or clarify material contained in the documents. Any revisions to the documents will be considered by the City of Emeryville before deciding whether to adopt the MND.

**Response to Comment B-2:** The comment states that the IS/MND makes no provision for the existence of the Horton Street Bicycle Boulevard and asserts that a metric of 3,000 Average Daily Traffic (ADT) for vehicles must not be exceeded on designated bicycle boulevards.

The Initial Study notes the presence of bicycle facilities on Horton Street (Class II bike lanes) on page 147 and discusses the impacts of the project on bicycle facilities on page 148. Horton Street is a bicycle boulevard as noted by the commenter – a fact not specifically stated in the draft IS. The text on page 147 is revised as follows:

***Bicycle and Pedestrian Facilities.*** Bikeway facilities are typically classified as Class I, Class II, or Class III. A Class I bikeway (bike path) provides a completely separate right-of-way for the exclusive use of bicycles and pedestrians. A Class II bikeway (bike lane) provides exclusive usage for bicyclists with “BIKE LANE” markings and solid white striping on the roadway. Typically, striped bike lanes are 5 to 6 feet wide. A Class III bikeway (bike route) is a signed roadway where bicyclists must share the road with vehicles; pavement markings are typically not installed. Emeryville designates some streets as Bicycle Boulevards on which bicycles are to be given priority over other vehicles. The City’s General Plan defines Bicycle Boulevards as through-routes for bicycles providing continuous access and connections to the local and regional bicycle route network. Through-motor vehicle traffic is discouraged. High volumes of motor vehicle traffic are also discouraged, but may be allowed in localized areas where necessary to accommodate adjacent land uses.

Directly abutting the two project parcels, Class II facilities are currently provided on Horton Street. This segment of Horton Street is designated as part of the Horton/Overland Bicycle Boulevard. This is a primary north-south route for bicyclists. Class II facilities are also provided on 59<sup>th</sup> Street west of Hollis Street. Class III facilities are provided on 59<sup>th</sup> Street east of Hollis Street. Farther from the immediate vicinity of the project site, Class II facilities are also provided on 40<sup>th</sup> Street/Shellmound Street.

The ADT metric referenced in the comment is among those used by the City of Berkeley as thresholds for deciding when traffic calming measures should be installed on its bicycle boulevards. However, the City of Emeryville has not adopted standards for ADT on its bicycle boulevards. The City of Emeryville’s Bicycle and Pedestrian Advisory Subcommittee to the Transportation Committee made a recommendation to adopt the same ADT threshold as Berkeley and a threshold for vehicle speed on bicycle boulevards at its November 2, 2009 meeting. However, neither the City Council nor the Transportation Committee has adopted the measure and the City Council has asked staff to further study the issue.<sup>1</sup>

**Response to Comment B-3:** The comment asserts that the traffic analysis is flawed and must be redone because project-generated traffic would need to be diverted away from Horton Street, a designated bicycle boulevard, where the ADT already exceeds 3,000.

As noted in Response to Comment B-2, the City of Emeryville has no requirement to maintain an ADT of less than 3,000 on the Horton/Overland Bicycle Boulevard. There is no requirement to divert traffic from Horton Street and the traffic analysis does not require revision.

**Response to Comment B-4:** The comment asserts that an Environmental Impact Report (EIR) is warranted because the IS/MND did not identify Horton Street as a designated bicycle boulevard and because of putative flaws in the traffic analysis that occurred because the street’s designation as a bicycle boulevard was not recognized.

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<sup>1</sup> Peter Schultze-Allen, 2009. *Recommendation from BPAC Regarding Bicycle Boulevards in Emeryville and Thresholds for Traffic Volumes and Speeds*, Memorandum to Transportation Committee. November 24, 2009, and City Council meeting of December 15, 2009

The IS has been revised as indicated in Response to Comment B-2 above to indicate that Horton Street is a designated bicycle boulevard. The revision does not change the impact analysis or conclusions of the IS and does not trigger the need to prepare an EIR.

**COMMENTOR C**

**Brian Donahue**

**Emeryville Resident**

**Received: December 7, 2009**

**Response to Comment C-1:** The comment asserts that the project allows thousands of new car trips onto the Horton/Overland Bicycle Boulevard in violation of the General Plan.

The City's General Plan discourages through-motor vehicle traffic and high volumes of motor vehicle traffic on bicycle boulevards, but states that high volumes of traffic may be allowed in localized areas where necessary to accommodate adjacent land uses.<sup>2</sup> The commenter is correct that traffic would increase on Horton (as noted in the IS), but he overstates the net increase in traffic. The project would generate about 300 trips during the AM and PM peaks; over half of the PM trips (about 170) would not use Horton Street because many cars would turn right when exiting the Heritage Square parking structure onto 62<sup>nd</sup> Street. The project generates additional trips as noted in the IS (see also Response to Comment C-2) but is not inconsistent with the General Plan, which allows additional trips in localized areas.

**Response to Comment C-2:** The comment states that the City's General Plan allows "new development but only if auto-oriented uses are limited" (Land Use Impact 3.1-4 in the Draft EIR) and that the "900 car parking garage" is not a limited auto use.

The comment incorrectly construes that the General Plan would allow development "only if auto-oriented uses are limited." The context of the discussion referenced in the Land Use analysis of the EIR for the General Plan is that "The intent of the Emeryville General Plan is to create a mixed use urban area that accommodates additional residential, office, retail, and hotel uses in a previously industrial area. These uses are compatible if building scale and character are consistent, pedestrian connections are provided, and auto-oriented uses are limited." This portion of the analysis in the EIR focuses on the potential impacts of the General Plan in allowing a mix of uses that would be incompatible – not on transportation impacts.

The proposed project has an auto-oriented component but also incorporates features conducive to transit, including bus parking and other amenities compatible with the adjacent Amtrak Station. The proposed project also provides a less congested area for transit vehicles, such as the Emery Go-Round, the parking area for which would be separated from other bus parking that would be provided on the ground floor of the EmeryStation West building parking podium. The separate but adjacent parking areas would improve service and circulation for both types of transit vehicles. The project also has a pedestrian link to the commercial area located west of the site on the opposing side of the railroad tracks. Bicycle parking would be provided in the project parking structure.

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<sup>2</sup> City of Emeryville, 2009. General Plan, Transportation Element, page 3-4.

The commenter overstates the amount of parking provided by the project. There are currently about 385 spaces in the two surface parking lots on the project site; the project would provide about 750 spaces - a net increase of 365.

**Response to Comment C-3:** The comment states that the proposed project would interfere with a bicycle facility and that this impact would be significant.

The proposed project would not permanently interfere with the existing Class II bike lanes on Horton Street or the Horton/Overland Bicycle Boulevard. The bike lanes would remain along the east and west sides of the street. The temporary disruptions of bicycle and pedestrian movements along Horton Street during the construction period are identified on page 125 and would be reduced to less-than-significant levels by Mitigation Measure TRANS-3. The entrance to Heritage Square parking structure would be in the same location as the entrance/exit for the existing surface parking lot and would not create any new interruptions of the bike lane on the east side of Horton Street. Placement of the exit for the garage on 62<sup>nd</sup> Street eliminates the potential conflict between bicycles on Horton Street and cars exiting the garage. The primary entrance/exit to the EmeryStation West parking structure would be located off of Horton Street on 59<sup>th</sup> Street; buses would enter only from Horton Street and exit on 59<sup>th</sup> Street. The project would eliminate a mid-block entrance/exit and replace it with an entrance-only portal that would be used only by buses. These changes would reduce the number of vehicles crossing the bike lane at mid-block. Although the project would increase the number of vehicles using Horton Street, but to a lesser degree than stated by the commenter (see Response to Comment C-2), the design features of the project make some aspects of the bicycle environment safer than existing conditions. For these reasons the impact would be less than significant.

**Response to Comment C-4:** The comment asserts that the developer of the proposed project is receiving special consideration with the IS/MND and that an EIR is warranted.

The developer of the proposed project has not been involved in the environmental analysis except to provide and confirm details of the project for purposes of preparing the project description. On the basis of the IS, City staff has concluded that the proposed project would not have a significant effect on the environment and, therefore, has prepared a proposed MND. The City of Emeryville Planning Commission will review the draft IS and proposed MND and then consider whether to adopt the MND. If the City finds that the proposed project will not have a significant effect on the environment, it may adopt the MND. This means that the City may approve the project without the preparation of an EIR. The MND reflects the City's independent judgment and analysis. The information received subsequent to publication of the draft IS and proposed MND does not identify any new significant impacts or necessary mitigation measures that would require revisions to the IS/MND findings.

#### **COMMENTOR D**

**Scott Donahue**

**Chairperson, Emeryville Bicycle/Pedestrian Advisory Subcommittee**

**Received: December 8, 2009**

**Response to Comment D-4:** The comment states that the IS/MND does not mention the Horton/Overland Bicycle Boulevard and that its presence should be taken into account.

Please refer to Response to Comment B-2.

**COMMENTOR E**

**Sam Foushee**

**Member, Emeryville Bicycle/Pedestrian Advisory Subcommittee**

**Received: December 8, 2009**

**Response to Comment E-4:** The comment states that the IS/MND does not mention the Horton/Overland Bicycle Boulevard and that it fails to take into account the project's impact on bicycle facilities, counter to the intent of the new General Plan.

Please refer to Responses to Comments B-2 and C-2.

**DEPARTMENT OF TRANSPORTATION**

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December 8, 2009

ALA080154  
ALA-80-3.79  
SCH#2009112024

Ms. Miroo Desai  
Planning and Building Department  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Dear Ms. Desai:

**EmeryStation West at the Emeryville Transit Center Project – Mitigated Negative Declaration**

Thank you for including the California Department of Transportation (Department) in the environmental review process for the EmeryStation West at the Emeryville Transit Center Project. The following comments are based on the Mitigated Negative Declaration. As lead agency, the City of Emeryville is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, and implementation responsibilities as well as lead agency monitoring should be fully discussed for all proposed mitigation measures and the project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. An encroachment permit is required when the project involves work in the State's right of way (ROW). The Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application; see the end of this letter for more information regarding the encroachment permit process.

1

**Regional Impact Fees**

The traffic generated from the proposed project will have significant impacts to the already congested state highway system. Since reducing delays on Interstate (I)-80 will benefit the region and local jurisdictions by providing more reliable travel times for commuters, recreational travelers and freight traffic, the Department strongly urges the City to develop a regional transportation impact fee program to mitigate the impacts of future growth on regional corridors such as I-80. Traffic impact fees are a permanent funding mechanism with a demonstrated nexus to project impacts. These fair share fees would be used to fund regional transportation programs that add capacity and/or improve efficiency to the transportation system and reduce delays while maintaining reliability on major roadways throughout the San Francisco Bay Area.

2

Ms. Miroo Desai/City of Emeryville  
December 8, 2009  
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**Mitigation Monitoring**

The CEQA, Public Resources Code Section 21081.6 and 21081.7, requires the Department to establish mitigation monitoring submittal guidelines for public agencies. The guidelines affect agencies that have approved development projects and are required under CEQA to provide the Department reports on transportation related mitigation monitoring measures. Please see the Department's "Guidelines for Submitting Transportation Information from a Reporting or Monitoring Program to the Department of Transportation" at the following website for more information: [http://www.dot.ca.gov/hq/tpp/offices/ocp/igr\\_ceqa.html](http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html)

The Mitigation Monitoring Submittal Guidelines discuss the scope, purpose and legal requirements for mitigation monitoring reporting and submittal, specify the generic content for reports, and explain procedures for timing, certification and submittal of reports. Please complete and sign a Certification Checklist form for each approved development project that includes transportation related mitigation measures and return it to this office once the mitigation measures are approved, and again when they are completed.

Please send signed Certification Checklist forms and supporting attachments to the address at the top of this letterhead, marked ATTN: Yatman Kwan, Mail Stop #10D. For supporting attachments, the CEQA lead agency, at its discretion, may also submit the entire mitigation monitoring program report for each project with the required transportation information highlighted. When the District has approved the submittal and signed the Certification Checklist form, a copy of the form will be supplied to your agency.

**Encroachment Permit**

Any work or traffic control within the State ROW requires an encroachment permit that is issued by the Department. Traffic-related mitigation measures will be incorporated into the construction plans during the encroachment permit process. See the following website link for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans which clearly indicate State ROW to the address at the top of this letterhead, marked ATTN: Michael Condie, Mail Stop #5E.

Should you have any questions regarding this letter, please call Yatman Kwan of my staff at (510) 622-1670.

Sincerely,



LISA CARBONI  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse

3

4



Brian Donahue  
4333 Holden Street  
Emeryville CA 94608

November 14, 2009

To the Planning Commission and the Planning Director-

The recently released Transit Center Mitigated Negative Declaration (Neg Dek) is not a legal document and may not be used in furtherance of the building of the proposed Transit Center project. There is a glaring omission in this document that is so egregious that it renders the whole document invalid. As you all know, the proposed Transit Center is to be located on Horton Street and yet, the Transit Center Neg Dek makes no provisions at all for the existence of the Horton Street Bike Boulevard.

1

Givens:  
-The General Plan identifies Horton Street as a Bike Boulevard  
-Bike Boulevards may contain bike lanes  
-Bike Boulevards have metrics  
-Areas of striped lanes along a Bike Boulevard still must maintain the metrics

2

The salient metric for bike boulevards in this case is the universal provision that Average Daily Trips (for vehicles) must not exceed 3000. Recent traffic studies conducted on Horton Street note a sharp rise in ADT over the last five years. In the last year, the ADT now exceeds 3000. In order to maintain Horton as a bike boulevard, the City must install traffic calming measures to push this number back below 3000.

The Transit Center Neg Dek allows for much of the project-generated traffic to use Horton Street, not possible on a Bike Boulevard already in excess of 3000 ADT. Since this is not possible, all the traffic calculations in the Neg Dek are flawed. All this surplus traffic must be recalculated and placed on other streets to get an accurate appraisal of the real traffic impacts this project will have. This oversight is so large that many more intersections will be pushed into a Level Of Service (LOS) of F in my estimation.

3

I believe this flaw in this Neg Dek is fatal and that an Environmental Impact Report (EIR) clearly is warranted. I made a phone call to LSA Associates, the writers of the Neg Dek and they told me they “didn’t know” that Horton Street was a Bike Boulevard at the Transit Center site. This lack of knowledge of facts gives me no confidence that there is an objective analysis happening with regard to the Transit Center. The Horton Street Bike Boulevard is not a thing to be traded away. If we are to dispense with it, proper procedure must be followed and the General Plan must be amended.

4

Brian Donahue  
28-year resident & parent

**From:** Brian Donahue [mailto:sophbeau@yahoo.com]  
**Sent:** Monday, December 07, 2009 9:32 PM  
**To:** Miroo Desai  
**Cc:** Ruth Atkins House; Ruth Atkin; Michael G. Biddle; Kurt Brinkman; Charles Bryant; @City Council; Scott Donahue; Frank Flores; John Fricke; Arthur Hoff; Patricia Jeffery; Diana L Keena; Tom Modic; Patrick D O'Keeffe; John Scheuerman; Jennifer West; bike-walk-emeryville@googlegroups.com  
**Subject:** Miroo: Addendum to the Transit Center Neg Dek comment

To Miroo, et al-

This is to serve as an addendum to my previous response to the Mitigated Negative Declaration (Neg Dek) for the Transit Center project.

Emeryville's new General Plan states that through-traffic on bicycle boulevards is to be discouraged, The Neg Dek allows thousands of new car trips onto the Horton Street Bike Boulevard with no provisions to stop them from using the street as a through-street for the traffic it generates. This is a clear violation of the General Plan.

1

In addition, the General Plan states the intention of the Plan is to allow new development but only if "auto-oriented uses are limited." (3.1-4 in the DEIR). There is NO WAY any reasonable person can say the Transit Center development, with its 900 car parking garage has a "limited" auto use. Quite the contrary, this is one of the most auto-dependent new developments this city has had.

2

The Draft Environmental Impact Report for the General Plan states in the impact analysis section; bicycle impact criteria, that "a bicycle impact is considered significant if it would interfere with a planned bicycle facility" (page 3.2-18). Clearly, the Horton Street Bicycle Boulevard is a bicycle facility and it is very clear that the Transit center would indeed interfere with it, by any accepted metrics. The writers of the EIR for the General Plan accept this, so why can't the writers of the Transit Center Neg Dek?

3

For me, it's obvious that a favored developer, Wareham Development Corporation is receiving special consideration with this Neg Dek. It's very evident an EIR is necessary for this project but obviously Wareham isn't keen on spending the extra time and money on an EIR. If this project goes through without an EIR, it will be placed in the pantheon of other corrupt Emeryville Neg Deks' such as the the Neg Dek for the Powell Street Plaza that answered "NO" to the question: 'Will this project likely impact any archaeological remains?' This, on the site of the largest shellmound on the West Coast; clearly a corrupt document meant to save the developer money and time. Emeryville needs to finally and fully grow up and stop this cynical manipulating to the benefit of developers at the expense of the residents.

4

Brian Donahue  
28 year resident  
parent

**From:** Scott Donahue [scott@sdonahue.com]  
**Sent:** Tuesday, December 08, 2009 11:27 AM  
**To:** Miroo Desai  
**Subject:** transit center mitigated negative declaration

dear urban planners,  
I am chairperson of the bicycle and pedestrian subcommittee. The mitigated negative declaration for the transit center does not mention the Horton Street bike Blvd. I think it is important that the effects of the transit center on the bicycle Boulevard be taken into account. Please address this issue.  
Sincerely,  
Scott Donahue  
1420 45th St. studio 49  
Emeryville

1

**From:** Sam Foushee [slfoushee@comcast.net]  
**Sent:** Tuesday, December 08, 2009 2:04 PM  
**To:** Miroo Desai  
**Subject:** Transit Center Negative Declaration statement

Dear Miroo,

As a concerned resident and a member of the Bike-Ped Advisory Committee, I am concerned about the negative declaration statement for the Transit Center project. From what I can tell, this statement fails to take into account the impact that the project will have on one of our bicycle facilities, the Horton Street Bicycle Boulevard. This runs counter to the intent of the new General Plan.

Thank you,

Sam Foushee  
2 Admiral Drive #472  
510-658-4915

1