



U. S. Department of Justice

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December 23, 2003

Antonio Rossmann  
Rossmann and Moore, LLP  
380 Hayes Street, Suite One  
San Francisco, CA 94102

Re: City of South Pasadena, et al. v. Rodney E. Slater, et al.  
Case No. CV 98-6996 DDP

Dear Mr. Rossmann:

Attached are two documents relevant to the above-entitled litigation involving the State Route 710 Project: (1) an Environmental Re-evaluation for the Project that determines that the Final Environmental Impact Project must be supplemented before the Project can proceed as a Federal aid highway project; and (2) a letter from the Federal Highway Administration to the Director of the California Department of Transportation ("Caltrans") informing Caltrans of the determination reached in the Environmental Re-evaluation.

Very truly yours,

DEBRA W. YANG  
United States Attorney

KEVIN B. FINN  
Assistant United States Attorney

Enclosure



FEDERAL HIGHWAY ADMINISTRATION  
CALIFORNIA DIVISION  
650 Capitol Mall, Suite 4-100  
Sacramento, CA. 95814

December 17, 2003

IN REPLY REFER TO  
HDA-CA

Mr. Jeff Morales, Director  
California Department of Transportation  
1120 N Street  
Sacramento, California 95814

Dear Mr. Morales:

We are writing to inform you that we have determined that the Final Environmental Impact Statement (EIS) that supported the Record of Decision (ROD) for the State Route 710 (SR 710) project, approved by the Federal Highway Administration (FHWA) on April 13, 1998, must be supplemented before this project can proceed. The factors that lead us to this conclusion involve issues affecting more than a limited portion of the project, and thus, in accordance with 23 C.F.R. §771.130, FHWA must suspend any further activities that could have an adverse effect on the environment or limit the choice of reasonable alternatives to the Meridian Variation Alignment. A Supplemental EIS (SEIS), followed by new ROD, is required to advance this project as a Federal aid highway project.

FHWA has broad discretion to require a SEIS whenever it believes that doing so furthers the purposes of the National Environmental Policy Act. See 40 C.F.R. §1502.9(c)(2). A supplement is required under specific circumstances set forth in both §1502.9(c) and 23 C.F.R. §771.130. The following factors and events have led us to conclude that a SEIS is now appropriate:

1. The FHWA is now involved in a matter pending before the United States Court of Appeals for the 9<sup>th</sup> Circuit that hinges in part on the finality of the action taken on April 13, 1998. This is an appropriate time to ensure that the record that supports that action remains valid. Consultations between FHWA and the California Department of Transportation have led to the joint preparation of a Reevaluation (enclosed) of the environmental documentation supporting the SR 710 project. See 23 C.F.R. §§771.129 (b) and (c).
2. While much of the information contained in the previous Reevaluation that preceded the issuance of the 1998 ROD is still current, it is clear that there have been a number of important new developments that are not adequately addressed in the documents supporting the 1998 ROD. The enclosed Reevaluation sets out these developments in greater detail.
3. The 1998 ROD contained three key elements that have yet to be implemented: First, a series of interim transportation improvements that would be evaluated; second, the development of a more comprehensive mitigation plan; and third, a fiscal plan for the implementation of the project as a whole. None of these tasks has been finalized to date. The reasons for this delay are attributable to a variety of causes, including a statutory prohibition on Federal funding



that covered much of the time since 1998, budgetary difficulties in California, and continued local disagreements about the project as a whole. Irrespective of the reasons, it is safe to say that in 1998, key decisionmakers did not expect this lack of progress almost six years after the issuance of that ROD.

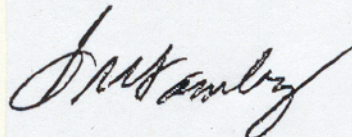
4. In another lawsuit involving the SR 710 project, the United States District Court for the Central District of California issued a preliminary injunction in 1999 precluding further Federal construction funding of this project. That preliminary injunction remains in effect. In its opinion supporting the preliminary injunction, the District Court identified a number of problems, particularly concerning PM<sub>10</sub> hotspots and that the 1998 ROD was issued at a time when the SR 710 project was not included in the fiscally constrained Transportation Improvement Program (TIP).

This project has a long and unique history. Few projects pending before FHWA have been as controversial. Although the EIS for the project was comprehensively reevaluated in 1998, prior to the issuance of the ROD and approval of a modified Meridian Variation Alignment, no full EIS has been circulated to the public since the late 1980s. FHWA approved that Final EIS in March 1992. It took an unprecedented period of six years before FHWA was able to issue a ROD that finally decided the project's location, but left design and mitigation details for a subsequent document. As noted above, since 1998, further progress on the project has fallen short of what both Federal and State decisionmakers anticipated at that time.

The combination of all of these factors leads us to conclude that the purposes of the National Environmental Policy Act are best served by a SEIS before further resources are committed toward this project. FHWA stands ready to work closely with the California Department of Transportation on the development of the SEIS or any other appropriate steps you may wish to take with respect to the SR 710 project.

Your assistance and cooperation in working with our office leading up to this decision are greatly appreciated.

Sincerely,



Gary N. Hamby  
Division Administrator

Enclosure



## Environmental Re-evaluation California State Route 710 Gap Closure Project

### Introduction and Summary

This Re-evaluation has been prepared to review the continued validity of the environmental record that supports the Record of Decision (ROD) for this project that the Federal Highway Administration (FHWA) approved on April 13, 1998. FHWA has broad discretion to conduct such a reexamination of the record. See 23 C.F.R. §771.130. Based on this review, and the totality of the factors set forth herein, FHWA has concluded that the purposes of the National Environmental Policy Act (NEPA) are best served by requiring the preparation of a Supplemental Environmental Impact Statement (SEIS). This means that further activities for the California State Route 710 (SR 710) project that adversely affect the environment or limit the scope of alternatives must be suspended until a new ROD is issued after the preparation of a SEIS. The ROD issued on April 13, 1998, can no longer serve as a basis for FHWA decisionmaking.

The April 13, 1998, ROD approved a modified Meridian Variation Alignment for the project, authorized the initiation of a number of interim transportation improvements pending the ultimate completion of the SR 710 project, and set forth a number additional conditions for proceeding with the final implementation of the project. Since the issuance of the ROD, there has been extensive litigation regarding the project brought by both the opponents and proponents of the project. Federal funding for the construction of the project has been enjoined since 1999 as the result of a preliminary injunction issued by the United States District Court in *City of South Pasadena v. Slater*. Although the California Department of Transportation (Caltrans) has continued to work to fulfill the conditions of the 1998 ROD, many of the key conditions for further action have not yet been completed. More recently, the City of Alhambra, which has historically supported the project, has sued asserting that the 1998 ROD is not a final agency action. FHWA prevailed in the U.S. District Court in the *City of Alhambra* case. Alhambra appealed, and the resolution of this appeal before the United States Court of Appeals for the 9<sup>th</sup> Circuit hinges in part on the finality of the action taken on April 13, 1998. This is an appropriate time to ensure that the record that supports that action remains valid. Consultations between FHWA and Caltrans have led to the preparation of this Re-evaluation. See 23 C.F.R. §§771.129(b) and (c). FHWA and Caltrans have worked together to prepare a Re-evaluation of the environmental documentation supporting the SR 710 project.

The project proposed completion of the 10-kilometer gap in the current freeway system and would consist of a six-lane freeway/HOV Transitway between the San Bernardino Freeway (I-10) and the Foothill Freeway (I-210). The project alignment generally passes through the cities of Alhambra, Los Angeles, South Pasadena, and Pasadena. In 1964 the California Highway Commission adopted the "Meridian Route" through the City of South Pasadena for completion of the Long Beach Freeway. This would close the last critical gap in the Los Angeles Freeway System. In 1973, South Pasadena filed suit in U.S. District Court in an attempt to stop the project. A settlement agreement in that litigation required the completion of an EIS.

In 1975, a Draft Environmental Impact Statement (DEIS) was circulated and public meetings held. A Supplemental DEIS with the alternative favored by South Pasadena was circulated in



1976. Public meetings were also held at that time. A 1977 draft Final Environmental Impact Statement (FEIS) for a Partial Completion Alternative was not accepted by FHWA and studies were subsequently suspended. Caltrans completed a Final Environmental Impact Report (FEIR), pursuant to the California Environmental Quality Act (CEQA), in 1984. The California Transportation Commission (CTC) selected the Meridian Alternative after publication of the FEIR.

A third FHWA Supplemental DEIS was later circulated, which included the Meridian Variation Alignment. A public hearing was held in 1987. Nearly five years later, on March 2, 1992, FHWA signed the FEIS contingent on additional enhancements and mitigation refinements to be developed by an Advisory Committee.

Between 1992 and 1998 there were several changes related to the project, including revised enhancement and mitigation measures, historic properties mitigation, analysis and rejection of a multi-mode/low-build alternative, changes in project design, and new emphasis given to Environmental Justice in the form of Executive Order 12898 and the FHWA/FTA Planning Regulations. These issues were described in the April 1998 "Environmental Re-evaluation for the Route 710 Freeway" (ER). FHWA approved this ER in April 1998, before issuing its April 13 ROD for the "Depressed Meridian Variation Alternative Reduced with Shift Design Variation." The ROD incorporated commitments outlined in the FEIS, the 1998 ER, the Final Revised Section 4(f) Evaluation, and in the 1994 "Route 710 Meridian Variation Enhancement and Mitigation Advisory Committee Final Report Recommendations" prepared by Caltrans. The ROD required a financial plan for the project to ensure its ultimate implementation. No comprehensive financial plan for the project has been produced to date.

The selected alignment, scale, and several other aspects of the project were modified from those described in the 1992 FEIS. These are presented in detail in the 1998 ROD. In accordance with the ROD, Design Advisory Groups (DAGs) were established in Alhambra, South Pasadena, Pasadena, and El Sereno in late 1998. In March 1999, the DAGs of South Pasadena, Pasadena, Alhambra, and El Sereno developed a list of "interim" traffic improvement projects to improve mobility in the corridor. In early 2000, the DAGs of South Pasadena, Pasadena, and El Sereno reached consensus on a list of "surface transportation improvements" which would require \$46 million to implement. Then-Congressman Rogan was successful in securing this funding by earmarking \$46 million of California's Revenue-Aligned Budget Authority authorization for "traffic mitigation and other improvements to existing SR 710 in South Pasadena, Pasadena, and El Sereno."

Potential changes to the affected environment, updated information on historic properties, and changes to state law relevant to a Re-evaluation are summarized below.

### Project Description

The selected alternative in the 1998 ROD is the 1998 modification of the Meridian Variation Alternative described in the 1992 FEIS and reflects the adoption of the general alignment, but with reduced highway width, a shift to avoid the Short Line Villa Tract Historic District, and a commitment to further depress the highway in the El Sereno and South Pasadena areas. It is more fully described in the 1998 ER and ROD.

The project's selected alternative is a freeway/transitway between Route I-10 (San Bernardino Freeway) in the City of Alhambra and Route I-210 (Foothill Freeway) in the City of Pasadena, a



distance of 10 kilometers (6.2 miles), 7.2 kilometers (4.5 miles) of which remain to be constructed. The freeway transitway will also pass through the cities of Los Angeles (El Sereno neighborhood) and South Pasadena. The freeway/transitway will have six mixed-flow lanes and two high-occupancy-vehicle (HOV) lanes. Local service interchanges will be provided at various locations (Hellman Avenue and Valley Boulevard in the City of Alhambra, Alhambra Avenue/Mission Road and Huntington Drive in the City of Los Angeles, and Del Mar Boulevard in the City of Pasadena). The freeway is depressed for about 85 percent of the newly constructed section and is fully depressed through Pasadena and South Pasadena, except in the area of State Route 110. The freeway is depressed in virtually all of the residential areas. Approximately 25 percent of the remaining gap closure is in a series of six cut-and-cover tunnels.

#### Project Purpose and Need

The purpose and need for this project has not changed.

#### Changes Related to the Project

##### A. Litigation

Federal funding for construction of the SR 710 project was preliminarily enjoined in a 1999 ruling in the City of South Pasadena litigation. (*City of South Pasadena v. Slater*, 56 F. Supp. 1106, (C.D. Cal. 1999)). That preliminary injunction remains in effect. In its opinion supporting the preliminary injunction, the District Court identified a number of problems, particularly concerning PM<sub>10</sub> hotspots and that the 1998 ROD was issued at a time when the SR 710 project was not included in the fiscally constrained Transportation Improvement Program (TIP). FHWA believes a SEIS would provide a mechanism to correct these issues.

##### B. Tunnel Alternative

The local communities within the SR 710 project area have expressed an interest in Caltrans determining the technical feasibility of a tunnel alternative. FHWA and Caltrans have determined that it is appropriate to consider the feasibility of a tunnel or tunnel segments. If it is determined that any alternative(s) including a tunnel or tunnel segment(s) is feasible, this alternative(s) will be further studied to determine potential impacts and viability.

##### C. Interim Highway Improvement Measures

Condition 8 of the ROD stipulates Caltrans is to work with the Southern California Association of Governments (SCAG) and the Design Advisory Groups (DAGs) to develop interim improvements and traffic management measures in the communities of Alhambra, Los Angeles (El Sereno neighborhood), Pasadena and South Pasadena. Eleven potential projects were listed in the ROD as eligible for National Highway System and Surface Transportation Program funds as well as other funds for which the mainline SR 710 project is eligible, and the ROD required discussion with and review by "the DAGs at key points of their development during design and construction."

Since the ROD was signed, DAGS have been created in each of the affected communities. Until early 2003, the DAGS met regularly with Caltrans regarding these interim measures. As a result



of a severe budget shortfall Caltrans advised FHWA that regular meetings would be suspended due to lack of funding and FHWA concurred with this action.

The affected communities are at various stages in the development of these interim measures. To date none of the interim measures has been funded, although environmental compliance (in the form of Categorical Exemption/Exclusions (CEs)) has been completed for eight projects in the City of Pasadena, and by a Negative Declaration/FONSI for the Glenarm/Route 110 onramp project in South Pasadena.

Condition 10 of the ROD also requires a "before and after" study to determine the effectiveness of the project's mitigation measures on community cohesion and historic preservation. To date, since none of the interim projects have been funded, hence not completed, it is not possible to determine their post-construction effectiveness.

#### D. Construction and Opening of the Gold Line Light Rail Transit by LACTMA

In September of 2003, the MTA finished construction and opened the Gold Line for light rail service connecting Pasadena with downtown Los Angeles. Data are not available to indicate whether the Gold Line has significantly reduced the number of vehicles using 710 in the project area. The Gold Line was formerly called the Blue Line Light Rail Transit and was identified as the Blue Line in the ROD and the rejected multi-mode/low build alternative

The most recent statistics for the Gold Line (September 2003):

- 1) Average Weekday Boardings: 14,600
- 2) Average Saturday Boardings: 13,200
- 3) Average Sunday/Holiday Boardings: 11,000
- 4) Total September Boardings: 414,100

Assuming most people take round-trips, approximately 7,300 individuals use the system on any given weekday. Ridership on transit systems takes time to evolve and mature. By way of comparison, the older Long Beach Blue Line is up to 75,000 boardings on weekdays, and a monthly total of over 2 million boardings. And the more recent Green Line (in the median of I-105) is up to 36,000 boardings on weekdays and almost 1 million per month. Ridership on both these systems has increased approximately 20 percent since 2001.

The Gold Line will connect at its Union Station terminus to the six-mile Eastside Extension light rail project, which is just getting under construction and will open in six years. People will be able to ride from East L.A. through downtown to Pasadena without a transfer. This new project is expected to increase ridership on both segments.

#### E. The Alameda Corridor

In April 2002 the Alameda Corridor opened for use. The Alameda corridor is a 20-mile long double tracked rail corridor connecting the ports of Long Beach and Los Angeles with the transcontinental rail network. The environmental benefits resulting from the opening of the Alameda corridor include reduction in traffic delays, 25 percent reduction of truck traffic in the corridor area, and significant reductions of truck and auto idling emissions. No studies have been prepared to determine the impacts the Alameda corridor has had on number of trucks using



existing I-710 in Long Beach and Los Angeles. Moreover, no assessment of the effects of this reduction on the overall highway network has been completed.

#### Changes in Project Design

There have been no changes to the project design. Since the ROD was signed, a geologist with the California Geological Survey informed Caltrans that the cut-and-cover tunnels are feasible. FHWA concurred with this determination on August 3, 2000.

#### Changes in the Affected Environment

##### A. Affected Environment

###### 1. Cultural Resources

In the 1998 ER and the ROD, thirty historic properties were identified, including nine historic districts, which collectively contain well over 100 contributing properties. As outlined in the ROD, 11 of these properties would be adversely affected through direct use (7 individually eligible properties and 4 historic districts).

In the 1994 "Third Supplemental Historic Architectural Survey Report, Volume II," FHWA determined that seven properties affected by the selected alternative are individually eligible for the National Register, but SHPO did not comment on their individual eligibility. Neither FHWA nor SHPO forwarded these evaluations to the Keeper of the National Register of Historic Places for a formal determination.

Since 1998, rehabilitation and repair activities have resulted in the identification of 11 additional individually eligible historic properties and 2 additional contributors to a historic district. In addition to the rehabilitation and repair activities an additional 18 individually eligible historic properties and 2 new contributors in a historic district have been identified, and will require formal consultation between FHWA and SHPO.

The last cultural resources study of this area was completed in the mid-1990s. In some cases the most recent evaluation is more than 20 years old. With the passage of time and the possibility of new information, resources that were not 50 years old at the time of the initial evaluation will need to be reevaluated for eligibility. It is anticipated additional resources will be identified.

The number of Section 4(f) properties affected has increased by two additional contributing properties in the Markham Place Historic District. Until a focused Re-evaluation of the corridor is completed to satisfy commitments made in the ROD, it is unknown whether additional historic properties will be impacted by the project

###### 2. Air Quality

A number of things have changed in the air quality subject area since the original report was completed and the ROD signed. Key matters include:

- a. Change in nonattainment and State Implementation Plan (SIP) status (for conformity purposes): Since 1995, the South Coast air basin has been redesignated to attainment for Nitrogen Dioxide (NO<sub>2</sub>) (1996) and has attained the Carbon Monoxide (CO) standard (redesignation to attainment is likely to occur in 2005 based on a Maintenance SIP that will be submitted to the U.S. Environmental Protection Agency (EPA) in early 2004.). The PM<sub>10</sub> SIP has been approved and emission budgets for PM<sub>10</sub> now apply to the area. The ozone SIP has been updated at least once, and a further revision with new emission

budgets is scheduled for EPA submittal in early 2004. The area will be designated nonattainment for the 8-hour ozone and PM<sub>2.5</sub> standard (both of which were promulgated in 1997) during 2004, and EPA normally requires that NEPA documents now discuss these standards at least in a general fashion.

- b. Regional Conformity status: Project listing in the current Regional Transportation Plan (RTP) and TIP will need to be confirmed and documented. It is not clear that the project is currently listed, with some form of funding commitment for a phase beyond the planning and environmental compliance stages, in both documents at this time.
- c. Hot Spot analysis for NEPA, CEQA, and Conformity: CO analysis procedures have changed slightly since 1995-1997. The Caltrans/University of California, Davis CO Protocol has been accepted through Interagency Consultation for use in the Southern California Association of Governments (SCAG) area. PM<sub>10</sub> Qualitative analysis guidance from both Caltrans (for initial screening, 2000) and FHWA (for detailed study, 2001) has been released.
- d. Other air quality issues not clearly covered in the 1995-97 air quality study include:
  - Diesel exhaust particulate matter was declared to be a toxic air contaminant by the California Air Resources Board in 2000. NEPA documents for projects in Boston and Hartford have included limited mitigation measures for diesel exhaust during construction.
  - Documentation of asbestos investigations and mitigation measures for potential asbestos during structural demolition and renovation has become standard matters for documentation in the NEPA and CEQA documents.

It is unknown whether changes to air quality have affected the environment until the existing air quality studies have been updated.

## B. Environmental Mitigation Measures

There is no change to the types of mitigation measures. Depending on the outcome of the Re-evaluation efforts for cultural resources there may be additional historic properties that require mitigation.

Until air quality impacts, based on updated studies, have been analyzed it is unknown whether additional mitigation measures would be necessary.

### Serving the Purpose of the National Environmental Policy Act

The history of this project is in many ways unique. The public debate and controversy surrounding the construction of the project are alluded to in this Re-evaluation, and are described more fully in the 1998 ROD. The issuance of the 1998 ROD followed extensive meetings with parties representing various interests in the project, proceedings before the Council on Environmental Quality and the Advisory Council on Historic Preservation, and extended public debate in California. FHWA prepared an extensive Re-evaluation in support of the 1998 ROD to ensure that the FEIS was still current at that time. In the 1998 ROD, FHWA required a set of specific steps to build and then evaluate interim transportation improvements, establish a comprehensive process for expanding and refining mitigation activities, and provide a process to ensure the full and timely completion of the project with all agreed upon mitigation. Now,



another six years has passed, and many of the actions anticipated in 1998 remain uncompleted. This lack of progress largely reflects continued funding constraints and public controversy about the project. Irrespective of the reason, FHWA is confronted with the very real problem of proceeding with a major transportation improvement based on a FEIS initially approved almost 12 years ago. These facts, while certainly not dispositive of the question of whether a SEIS should be prepared, must be considered in the overall assessment.

#### Environmental Determination

Based on this Re-evaluation, the FHWA concludes that the preparation of a new SEIS of the EIS approved in March 1992 is appropriate. The factors contributing to this conclusion include:

- Changes related to the project (Gold Line Light Rail Transit, Alameda Corridor, and lack of implementation of interim highway improvement measures)
- The more thorough evaluation of the feasibility of a bored tunnel for the entire length or large portions of the project alternative
- A variety of procedural and substantive issues relating to the treatment of air quality
- Additional cultural resources and related issues
- Continued uncertainty regarding the financing of this project and the failure to develop a comprehensive financial plan for its implementation.
- The unusual and extended period time involved and lack of progress on key initiatives anticipated in the 1998 ROD.

Because we have concluded that a SEIS is warranted, further activities based on the 1998 ROD must be suspended in accordance with 23 C.F.R. §771.130(f)(3). To be clear, the SEIS we require is a supplement to the March 1992 FEIS and not the more limited SEIS specified in the 1998 ROD. The scope of the SEIS we require is so broad that it will cover major aspects of the project and the provisions of 23 C.F.R. §771.130 that apply to more limited supplements, which allow some work to proceed, do not apply here.