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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 CITY OF SOUTH PASADENA)

19 Petitioner,)

20 v.)

21 METROPOLITAN TRANSIT AUTHORITY,)

22 Respondent.)

23 CALIFORNIA DEPARTMENT OF)
24 TRANSPORTATION, and DOES 1 to 10;)

25 Real Parties in Interest.)
26)
27)
28)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 27 2008

John A. Clark, Executive Officer Clerk
BY *Shaunika* WEBB, Deputy

CASE NO.:

BS 116620

(California Environmental Quality Act,
Pub. Res. Code §21000 et seq.)

PETITION FOR WRIT OF MANDATE

1 **INTRODUCTION**

2 1. The Metropolitan Transit Authority (“Metro”) voted on July 24, 2008 to place a
3 Sales Tax Measure on the November 2008 ballot. This Sales Tax Measure would fund
4 numerous public transportation projects in Los Angeles County. Although being touted as a
5 public transportation bond initiative, the Sales Tax Measure would also provide funding for
6 several freeway projects as well. Funds would be generated by raising the sales tax by one half
7 percent for a period of thirty years.

8 2. One of the non-public transit items identified in the Sales Tax Measure is a so-
9 called “I-710 North Gap Closure (Tunnel)” (hereafter the “710 tunnel project”), which is
10 proposed as a joint project of the State Department of Transportation (Caltrans) and Metro. The
11 Tunnel is described as a 4.5-mile facility, which can only be constructed along a straight-line
12 route north from the existing state route 710, to the state route 134-interstate route 210
13 intersection.

14 3. The Sales Tax Measure would provide \$780,000,000.00 in funding for the 710
15 tunnel project.

16 4. The federal government has authorized funding for a “710 Freeway Study to
17 comprehensively evaluate the technical feasibility of a tunnel alternative to close the 710
18 Freeway gap, considering all practicable routes, in addition to any potential route previously
19 considered, and with no funds to be used for preliminary engineering or environmental review
20 except to the extent necessary to determine feasibility.” The feasibility study is also required
21 to be “route neutral”; that is, no commitment to a specific alignment can be made before the
22 feasibility study and subsequent environmental review are completed. (Pub. L. 110-244,
23 technical correction # 232.) The feasibility analysis has not yet been completed, nor has
24 environmental review begun.

25 5. The 710 tunnel project is included on a list of “other high priority projects” in
26 proposed amendments to Assembly Bill 2321. (Proposed Assembly Bill 2321, Section (c) (2).)
27 However, even if the proposed amendments become law, the amendments merely direct that
28 Metro “strive to complete those capital projects as soon as possible, *consistent with the*

1 *requirements of the proposing ordinance, state and federal law.*” (Section 1(d), emphasis
2 added.) Thus, the proposed legislation would confirm that the 710 tunnel project is subject to
3 applicable state environmental laws including the California Environmental Quality Act
4 (CEQA).

5 6. The inclusion of funding for the 710 tunnel project in a ballot measure qualifies as
6 a discretionary project proposed to be carried out or approved by a public agency, and therefore
7 CEQA applies. (Pub. Res. Code §21080(a).)

8 7. Metro relied upon an exemption under CEQA to allow funding for the 710 tunnel
9 project as part of the Sales Tax Measure.

10 8. No exemptions from CEQA are applicable to the 710 tunnel project, and therefore
11 its inclusion as part of the Sales Tax Measure violates CEQA.

12 9. Because the 710 tunnel project is a discretionary action by a public agency subject
13 to CEQA and does not fit within any exemptions to CEQA review, obtaining funding for the
14 710 tunnel project through a ballot measure prior to environmental review under CEQA
15 represents improper approval of the tunnel project prior to compliance with CEQA. (14 Cal.
16 Code Regs. §15378.(b)(3); *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th
17 165, 186-191.)

18 10. Metro has yet to perform *any* environmental analysis pursuant to CEQA for the
19 710 tunnel project. Metro and Caltrans are still conducting an analysis for the 710 tunnel
20 project, using federal funds obtained under the conditions of Public Law 110-244. Funding the
21 project while the feasibility analysis is ongoing, and prior to compliance with CEQA, risks
22 biasing the results of both the feasibility analysis and environmental review process, thereby
23 depriving decision makers and the public of neutral information on project feasibility, impacts,
24 alternatives and mitigation. Funding the tunnel project as described in the Sales Tax Measure
25 also violates Public Law 110-244 because that statute requires the feasibility study to be route
26 neutral.

27 11. The City of South Pasadena does not seek to prejudice the public transit measures
28 that are included as part of the Sales Tax Measure, and, with the exception of the 710 tunnel

1 project, does not express an opinion on the appropriateness of any of the other freeway projects
2 included as part of the Sales Tax Measure. The sole object of this Petition is to ensure that
3 Metro complies with CEQA prior to proposing, by initiative, funding for the 710 tunnel project.

4 12. Removing the improperly included 710 tunnel project from the ballot measure
5 would not endanger the funding of any other project on the list or reduce the total amount
6 available to fund necessary infrastructure projects. Section 11(a) of the measure allows Metro to
7 amend the list of projects or to transfer funds among projects. Therefore, if the 710 tunnel
8 project is removed from the measure, more funding would be available for public transit and
9 other projects that have properly complied with CEQA.

10 **JURISDICTION**

11 13. This Court has jurisdiction over this proceeding under section 1094.5 of the Code
12 of Civil Procedure and sections 21168 and 21168.5 of the Public Resources Code.

13 **PARTIES**

14 14. Petitioner City of South Pasadena is a political subdivision of the State of
15 California.

16 15. Respondent Metro is the state-chartered regional transportation planning and
17 public transportation operating agency for Los Angeles County.

18 16. Real Party in Interest California Department of Transportation (Caltrans) is the
19 state agency that would responsible for constructing and operating the tunnel as part of the state
20 system of highways.

21 17. Real parties named as Does 1 to 10 are given fictitious names because their names
22 and capacities are presently unknown to Petitioner.

23 **STATEMENT OF FACTS**

24 18. State Route 710 (SR-710) begins in Long Beach and runs northward, crossing
25 Interstate 10 (I-10) and ending just past I-10 in Alhambra. A separate portion of the freeway
26 runs for approximately one-quarter of a mile south of the intersection of the I-210 and SR-134
27 freeways, and terminates at the I-210 intersection.
28

1 19. Between the terminus north of SR-710 and the one-quarter mile portion of the
2 freeway south of I-210, a straight-line distance of 4.5 miles exists without a freeway. The
3 tunnel project would extend the SR-710 to the I-210 along that straight-line route.

4 20. The proposed extension of SR-710 has a long and contentious history. A straight-
5 line freeway connection between SR-710 and I-210 would divide the Los Angeles community
6 of El Sereno, the City of South Pasadena, and the western portion of the City of Pasadena. In
7 1964, Caltrans proposed a surface freeway connection on the straight-line route, approximately
8 following Meridian Avenue. In 1973, a federal lawsuit by the City of South Pasadena
9 successfully challenged the approval of this project, because federal highway officials did not
10 comply with the National Environmental Policy Act (NEPA), the federal counterpart of CEQA.

11 21. Between 1977 and 1981, Caltrans focused on and ultimately approved extension
12 of SR-110 as an alternative to extension of the SR-710. However, these plans were ultimately
13 rejected by federal highway officials.

14 22. In 1982, Caltrans revived plans for an SR-710 surface freeway extension, and in
15 1986 prepared a draft Environmental Impact Statement or EIS (the NEPA counterpart to a
16 CEQA Environmental Impact Report or EIR) analyzing a variant of the Meridian Avenue
17 alignment. Subsequent review by federal and state officials demonstrated that SR-710 would
18 produce more adverse impact to historic and community resources than any other highway
19 project still pending in the United States. For this reason the federal Advisory Council on
20 Historic Preservation consistently opposed SR-710 until its federal and state approvals were
21 ultimately withdrawn by the Federal Highway Administration and Caltrans.

22 23. In 1991, the City of South Pasadena formally requested that the environmental
23 review process include a “low build” alternative. In 1992, a final EIS was released for review.

24 24. In 1993, due to concerns about impacts on historic resources in the area of the
25 proposed extension, the final EIS was referred to the President’s Council on Environmental
26 Quality, which ruled that the EIS should evaluate a “low build” alternative. In September 1993,
27 the City of South Pasadena formally proposed a “Multi Modal Low Build Alternative”
28 (MMLB). This alternative would avoid the freeway extension and its significant historic and

1 community impacts, instead relying on signal coordination, parking management, intersection
2 upgrades, roadway widening, improvements to the existing freeways, and construction of the
3 nearly-parallel Gold Line light-rail route. The MMLB would also expand upon existing
4 investments in transit infrastructure, by adding circulator and feeder buses into the Gold Line
5 system, and encouraging more compact and community-compatible development at transit
6 nodes along the Gold Line, rather than new automobile-dependent sprawl.

7 25. In 1995, the Keeper of the National Register determined that portions of El
8 Sereno and South Pasadena through which the surface freeway would pass were (in addition to
9 previously-identified historic neighborhoods and properties) eligible for inclusion in the
10 National Register of Historic Places. Caltrans responded by proposing a realignment of the
11 freeway to miss the Register-eligible district by 15 feet. This new alignment was known as the
12 “Berkshire Shift.” In December 1995, the Department of Interior withdrew its previously-
13 stated concurrence in the project, stating the need for a Supplemental EIS to study the impacts
14 of the Berkshire Shift on historic resources. No Supplemental EIS was ever prepared.

15 26. In 1996, Caltrans rejected the MMLB as inconsistent with project purpose and
16 need, which was evaluated under an assumption that the project would result in additional
17 freeway infrastructure.

18 27. In 1997, Caltrans introduced yet another freeway variant, known as the
19 “Depressed Meridian Variation Alternative Reduced with Shift Design Variation”
20 (DMVARSDV).

21 28. In 1998, the federal Environmental Protection Agency and Advisory Council on
22 Historic Preservation announced opposition to the DMVARSDV, and requested study of a “low
23 build” alternative in a Supplemental EIS.

24 29. In April 1998, the federal Secretary of Transportation issued a Record of Decision
25 approving the project under NEPA.

26 30. In 1998, joined by the National Trust for Historic Preservation, the Sierra Club,
27 and others, the City of South Pasadena brought suit in the United States District Court for the
28 Central District of California alleging failure to comply with NEPA.

1 31. In July 1999, the United States District Court issued an injunction against the
2 DMVARSDV, ruling that the EIS was flawed because of a failure to fully evaluate the MMLB
3 and because of the impacts to historic resources. This injunction is still in place. (*South*
4 *Pasadena v. Slater* (C.D. Cal. 1999) 52 F. Supp.2d 1106.)

5 32. In December 2003, the Federal Highway Administration withdrew its approvals
6 of the surface freeway project, essentially endorsing the district court's rationale for issuing the
7 injunction. In June 2004, Caltrans similarly withdrew its approval of the surface freeway
8 project. Thus, a surface freeway is no longer actively under consideration at either the federal
9 or state levels.

10 33. However, Metro is now studying the feasibility of a subsurface highway (i.e.
11 tunnel) in lieu of a surface freeway. The environmental impacts of this latest incarnation of the
12 SR-710 extension have not been studied. The City of South Pasadena, along with the Cities of
13 Pasadena and La Cañada Flintridge, continue to advocate for study of the MMLB as a viable
14 alternative to a freeway extension, though the City of South Pasadena has taken a position that
15 it is not opposed to sound research of a tunnel alternative.

16 34. Despite the facts that no environmental analysis of the 710 tunnel project has yet
17 taken place, and the feasibility study has only just begun, Metro voted on July 24, 2008 to
18 include the 710 tunnel project for funding as part of the Sales Tax Measure to be voted on in
19 November 2008. No later than July 24, 2008, Metro filed a Notice of Exemption of the project
20 from CEQA.

21 35. This action is timely filed within 35 days of the filing of the Notice of Exemption.
22 (Pub. Res. Code §21167(d).)

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
24 **AND INADEQUATE REMEDIES AT LAW**

25 36. The \$780 million for the 710 tunnel was included in Metro's expenditure plan less
26 than a week before Metro voted upon the plan. Because the addition to the expenditure plan
27 was noted by a South Pasadena representative the day before the vote on the plan, counsel for
28 the City of South Pasadena sent a letter, which was presented orally and in writing to Metro

1 prior to its July 24 vote, objecting to the inclusion of the 710 tunnel project on the ballot
2 measure on the grounds stated in this petition.

3 37. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
4 unless this Court issues its mandate if the Sales Tax Measure is approved by the voters. In the
5 absence of such remedy, respondent's approval of the Sales Tax Measure will mean that the
6 tunnel project will proceed in violation of state law if the measure is approved by the voters.

7 38. Petitioner has complied with Public Resources Code section 21167.7 by filing a
8 copy of this petition with the California Attorney General. A copy of that notice is attached as
9 Exhibit A.

10 39. Petitioner has complied with Public Resources Code section 21167.5 by
11 providing Metro with notice of intention to commence the action. A copy of that notice is
12 attached as Exhibit B.

13 40. Petitioner elects to prepare the administrative record. A copy of that election is
14 attached as Exhibit C.

15 **CAUSE OF ACTION**
16 **(VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT)**

17 41. Petitioner incorporates all previous paragraphs as if fully set forth.

18 42. CEQA is "an integral part of any public agency's decision making process."
19 (Pub. Res. Code §21006.) CEQA applies fully to projects carried out by public agencies such
20 as Metro. (Pub. Res. Code, §21001.1.) CEQA requires an agency to conduct adequate
21 environmental review prior to making any discretionary action that may significantly effect the
22 environment unless an exemption exists. (Pub. Res. Code, §21100(a); 14 Cal. Code Regs., §
23 15004(a))

24 43. An agency decision to place a project on a ballot measure constitutes approval of
25 the project for purposes of CEQA review. (14 Cal. Code Regs., §15378(b)(3); *Friends of*
26 *Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th 165, 186-191.)
27
28

1 44. Therefore, unless an exemption to CEQA review applies, Metro must prepare
2 either an adequate Final Environmental Impact Report, Mitigated Negative Declaration, or
3 Negative Declaration prior to approving the project.

4 45. No CEQA exemption applies to the tunnel project. Metro claims that the 710
5 tunnel project qualifies for an exemption from CEQA review as a “capital project necessary to
6 maintain service within existing service areas.” (Pub. Res. Code, §21080(b)(8)(D).) However,
7 the 710 tunnel project is clearly an *expansion* of service within existing service areas, as the
8 project results in development of a new freeway segment where none currently exists.

9 46. Furthermore, “[r]ate increases to fund capital projects for the expansion of a
10 system remain subject to CEQA.” (14 Cal. Code Regs. §15273(b).) As a clear expansion of a
11 system, the 710 tunnel project falls within the ambit of this section and is thus subject to
12 CEQA.

13 47. No other exemption applies. The project does not involve passenger or commuter
14 rail service along a highway right-of-way already in use (Pub. Res. Code, § 21080(b)(10)); nor
15 rail service on existing high occupancy vehicle lanes (Pub. Res. Code, §21080(b)(11)); nor a
16 facility extension of under four miles related to transit services (Pub. Res. Code, § 21080 (b)
17 (12)); nor a regional transportation improvement program pursuant to Government Code
18 section 65089 (Pub. Res. Code, § 21080(b)(13)).

19 48. CEQA requires public agencies to analyze all of a project’s reasonably
20 foreseeable environmental effects and to analyze mitigation measures and alternatives to a
21 project that may result in significant adverse environmental impacts. (Pub. Res. Code §21100.)
22 By failing to produce such analysis prior to approval of the project, Metro failed to proceed in
23 the manner required by law.

24 49. CEQA imposes upon Metro a clear, present and mandatory duty to include all
25 feasible mitigation measures or adopt alternatives that would substantially lessen the significant
26 environmental effects of the project. (Pub. Res. Code, §21002.) By failing to adopt such
27 measures prior to approval of the project, Metro failed to proceed in the manner required by
28 law.

1 50. Because CEQA is applicable, and Metro's inclusion of the 710 tunnel project on
2 the November 2008 ballot constitutes improper approval of a project without CEQA review, the
3 710 tunnel project must be removed from the proposed ballot measure if it approved by the
4 voters.

5
6 **PRAYER FOR RELIEF**

7 In each of the respects enumerated above, Respondent has violated its duties under law,
8 abused its discretion, and failed to proceed in the manner required by law.

9 WHEREFORE, Petitioner prays for relief as follows:

- 10 1. For a writ of mandate, commanding respondent to remove the 710 tunnel project
11 from the Sales Tax Measure, should the measure be approved by the voters;
12 2. For costs of the suit; and
13 3. For reasonable attorneys' fees; and
14 4. For such other and further relief as the Court deems just and proper.

15
16 DATE: August 27, 2008

Respectfully Submitted,

17 CHATTEN-BROWN & CARSTENS
18
19 ROSSMANN AND MOORE, LLP

20
21 By: Arthur S. Pugsley
22 Arthur S. Pugsley

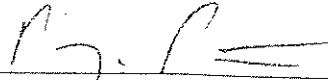
23 Attorneys for Petitioners
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VERIFICATION

I, the undersigned, declare that I am an officer of the City of South Pasadena, a Petitioner in this action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of August 2008, in South Pasadena, California.



Philip C. Putnam
Mayor of the City of South Pasadena