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11 SAN FRANCISCANS FOR SENSIBLE TRANSIT, INC.

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 IN AND FOR THE COUNTY OF SAN FRANCISCO
15
16 UNLIMITED JURISDICTION

17 SAN FRANCISCANS FOR SENSIBLE
18 TRANSIT, INC.,

19 Petitioner and Plaintiff,

20 v.

21 CITY AND COUNTY OF SAN FRANCISCO, a
22 municipal corporation; BOARD OF
23 SUPERVISORS OF THE CITY AND COUNTY
24 OF SAN FRANCISCO, governing body of the
25 City and County of San Francisco; SAN
26 FRANCISCO COUNTY TRANSIT
27 AUTHORITY, a public entity; SAN
28 FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY, a public
entity; and DOES 1 through 10, inclusive,

Respondents and Defendants.

Case No. CPF-17-515468

**PETITIONER’S OPENING BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDAMUS**

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

Hearing Date: August 9, 2018
Time: 1:30pm
Department: 503

Assigned for all purposes to the Honorable
Cynthia Ming-Mei Lee

Petition Filed: February 3, 2017

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I. INTRODUCTION

In this mandamus action, the non-profit civic corporation San Franciscans for Sensible Transit, Inc. (“Petitioner”) challenges Respondent City and County of San Francisco (“City and County”), Board of Supervisors of the City and County (“Board”), San Francisco County Transportation Authority (“SFCTA”) and San Francisco Municipal Transportation Agency (“MTA”) (collectively, “Respondents”) approval of the construction of the Geary Bus and Rapid Transit Project (“Geary BRT” or the “Project”) and certification of the corresponding Final Environmental Impact Report (“Final EIR” or “FEIR”).

Petitioner brings this action to this Court in the public interest, to highlight an inappropriate monument to governance and political hubris, which misled the public and was finalized in complete disregard for technological and environmental changes to the landscape of San Francisco’s transportation systems.

Respondents’ certification of the FEIR is not supported by the administrative record (“AR”). For instance, there are gaping holes in the FEIR and CEQA Process such as the complete failure to consider the role of Transportation Network Companies (“TNCs”) and ridesharing in transportation planning and the approval of the Project. Respondents stuck their heads in the sand and chose to ignore technological innovations and growth of TNCs (*of which they were aware*), skewing the data and information used in their evaluations of impacts on transportation, bus ridership, traffic, and greenhouse gas emissions and climate change.

Respondents abused their discretion in this process by failing to proceed in a manner required by law. From the outset, Respondents’ conclusion was set in stone by a radically under-prepared agency. Respondents manipulated figures in underlying studies; they misled the public with representations of federal financial support. The FEIR improperly relies on traffic management systems such as red bus-only lanes, the legality and efficacy of which are subject to future studies. And at the last hour, Respondents robbed the decision-makers of the time and support necessary to make an independent judgment – they ramrodded through a flawed and federally-abandoned FEIR in the final days of the Board term to avoid the scrutiny and

1 challenges from a newly elected Board member who would rightly question whether this Geary
2 BRT Project truly meets the stated Purpose and Need or is simply a waste of taxpayer money.

3 The Court's peremptory writ must issue in the public interest to require Respondents to
4 comply with all provisions of applicable environmental and other statutes, ordinances and plans.

5 II. STATEMENT OF FACTS

6 A. The Geary BRT Project

7 The Geary BRT is a \$300 million transportation project ostensibly designed to reduce
8 commute time of buses along the Geary Boulevard route (Transbay Terminal to 48th Avenue) via
9 a network of dedicated bus lanes, rerouted center-street-loading lanes and eliminated stops.

10 During the scoping and screening of the project and through the EIR process,
11 Respondents developed 5 alternatives to be assessed for environmental impacts. In January
12 2013, however, it was clear that side-running lanes would be required from Stanyan to Gough
13 (i.e., two alternatives would not be feasible), given the overpasses at Fillmore and Masonic
14 streets (AR 129047) and thus a combination of side-running and BRT center-lane was the only
15 option. Despite the physical impossibility of two alternatives which proposed a BRT center-lane
16 through Masonic and Fillmore, they remained as alternatives to the Hybrid project in the Draft
17 EIS/EIR, thus inflating the number of alternatives the Respondents considered. At no time
18 would Respondents consider modeling and evaluating a true "No Build"¹ alternative – one that
19 would require the City to implement incremental changes that do not involve significant
20 groundbreaking activity – such as repaving, improved traffic light control, electronic payments,
21 less invasive bus-only lanes, longer bus stop zones for tandem use, and increasing the number of
22 buses so the Respondents could measure the progress by these less invasive techniques. These
23 improvements were not calculated in the modeling of alternatives.

24 1. Objectives of the Project

25 The stated Purpose of the Project was to support the city's growth and development
26 needs, better serve existing transit riders, stem and reverse the trend toward transit mode share

27 _____
28 ¹ "No Build" is not the same as "No Action" which is a required alternative to do no project at all. No Build limits work to non-invasive steps to measure improvement from incremental, less-expensive steps – as one would do with a home project involving one's own money.

1 loss and improve operational efficiency and cost-effectiveness of the transportation system. (AR
 2 129047) [May 6, 2009 Adoption of Alternatives Screening Report.] Section 1.2 of the FEIR
 3 stated the objectives of the Project as [to create] better transit performance to improve the
 4 passenger experience and promote high transit use, to improve pedestrian condition and access
 5 and to enhance transit access and passenger experience, while maintaining vehicle circulation.

6 **2. Elements of the Project**

7 The Geary BRT, as adopted is called the “Hybrid Alternative” and is the Staff-
 8 Recommended Alternative. (AR 674.) It creates a “rapid transit” bus (“BRT”) that runs the
 9 Geary route along with the Geary Local, creating one-speed of transit (the slowest lead bus) in
 10 the areas where buses cannot pass one another from Stanyan to 28th Avenue. It eliminates the
 11 current Geary Rapid bus and eliminates 11 eastbound and 9 westbound Local bus stops (but has
 12 the same number of BRT stops as the Rapid).

13 As a means to mitigate the possible safety and traffic issues of the bus route, the Geary
 14 BRT proposes painting red “bus only” lanes, alongside businesses and other driveways, barring
 15 vehicles other than buses from entering or crossing those lanes. The FEIR does not discuss the
 16 fact that the red bus-only designations are in testing mode and require further study.

17 The Project also includes cutting the number of stops, repaving the pitted street, putting
 18 more buses in service and better synchronizing the traffic lights. The FEIR reports the Hybrid
 19 Alternative would reduce travel times (bus occupancy only, not walking or waiting) by 10 to 20
 20 percent for the entire Geary corridor and by 15 to 30 percent between Van Ness Ave and 25th
 21 Ave. (FEIR §3.3.4.4.) The bar graphs at Section 3 show that in the year 2035, the best
 22 eastbound time will be just less than 45 minutes. The current Geary Rapid makes that route in
 23 about the same time – 47 minutes. (AR 211515.) The Hybrid Alternative keeps the Local and
 24 the BRT, which travel at different speeds and make different stops (the Local making more stops
 25 except in Phase II segment). Buses cannot pass each other in Phase II on this route.

26 **B. Environmental Review and the Project Approval Process**

27 In November 2008, Respondent SFCTA issued a Notice of Preparation to prepare an
 28 environmental impact report (“EIR”) for the Project. Acknowledging the need for federal funds

1 to make this project possible, Respondents worked in conjunction with the Federal Transit
2 Administration (“FTA”) which issued a federal Notice of Intent to prepare an environmental
3 impact statement (“EIS”) under the National Environmental Policy Act (42 U.S.C. §§ 4321, *et*
4 *seq.*, “NEPA”). From 2008 at least, the environmental assessment document was framed to be a
5 joint EIS/EIR under NEPA and CEQA and the Draft document was in fact a joint EIS/EIR
6 published in October 2015 by TA, MTA and the FTA (“Draft EIS/EIR”). The Draft EIS/EIR
7 was 714 pages long and has over 7,000 pages more in appendices.

8 Thirteen months after the Draft EIS/EIR comment period, on December 9, 2016,
9 Respondents published a standalone FEIR under CEQA, not NEPA. The federal government
10 had withdrawn from the combined EIS/EIR transforming the project into a SF-only local project.
11 The FEIR still contains references to federal funding (FEIR Table 6-1) as well as other state and
12 local funding that no longer existed (FEIR §6.1.3.3). The FEIR contains a new Appendix – 870
13 pages of comments and responses. After publication of the FEIR, on December 22, 2016, a staff
14 report was published containing some of the FEIR documents, but not all required for
15 consideration by the Board. (AR 220.)

16 **C. Respondents’ Rush to Approve the Project Precluded its Exercise of**
17 **Independent Judgment**

18 The Board was in recess from December 15, 2016 to January 4, 2017. Despite the size
19 and scope of the newly-framed standalone document, and despite the time period falling during
20 the winter holidays and Board recess, the Board scheduled a special meeting to approve the
21 Project and certify the FEIR for January 5, 2017. Only seven (7) business days occurred
22 between publication of the FEIR and Board approval meeting. Only one Board member claims
23 he used his winter holidays and Board recess time to review the new document; the others
24 remained silent. (AR 13703.)

25 On January 5, 2017, the then-existing Board certified the FEIR prior to the new Board
26 member’s swearing in which took place at the regularly-scheduled Board meeting 4 days later on
27 January 9. The new Board member disfavored the Project’s assessment and would require time
28 to review the documents (see below).

1 **1. The Administrative Record Demonstrates the Plotting and Political**
 2 **Motivations for Rushing Approval of the Project**

3 The AR is full of admissions that the Board manipulated data and rushed the Project
 4 through approval over the holidays and recess to take advantage of the prior Board composition.

- 5 • In a December 19, 2012 e-mail, Chester Fung of SFCTA remarked that the ridership
 6 volumes were too low so Respondents should manually increase them (AR 127485).
 SFCTA knew this was questionable and the e-mail warned the agency to “document,
 7 document, document” because the manipulation could be “highly controversial.”
- 8 • At the end of May 2016, a staff presentation document stated concern about “upcoming
 9 elections.” (AR 98876.)
- 10 • On June 7, 2016, an MTA executive sought information about supervisorial candidates in
 11 light of “very tight timeline” and got information that top candidates “might be iffy on
 Geary brt.” (AR 276295.)
- 12 • In the agenda for the August 18, 2016 meeting (AR 286297) the first issue cited was a
 13 “potential risk of change in Board,” citing the position of lead candidate Fewer.
- 14 • On September 16, 2016, MTA cited a Marjon Philhour statement that “I oppose the
 15 Geary BRT plan in its present incarnation,” (AR 288727) attaching a copy of Sandra
 16 Fewer’s *Richmond Review* column.
- 17 • At an October 18, 2016 meeting with FTA staff, Colin Dental-Post, Project Manager for
 18 SFCTA, stated that the “Project schedule aiming for late November board meeting would
 19 require release document by early November; this produces significant implications for
 our political situation here.” (AR 235775.) Respondents worried on October 18, 2016
 20 that a new Board member could be less supportive of the Geary BRT Project. (AR
 21 235775.)
- 22 • On October 19, 2016, SFCTA Executive Director stated, “Am glad to see a schedule that
 23 still could work for Dec approval. Ed and I will press on the process/timeline and
 24 guidance flip flop issue. Let's not have John Cook call in, it's better to keep this to agency
 staff.” (AR 235911.)
- 25 • In an October 24, 2016 e-mail the project manager asked that meetings be set with all
 26 Supervisors and to include “schedule issues in the approval process.” (AR 293440.)
 27 That generated an e-mail (AR 236421) asking Board secretary Steve Stamos to set up 30-
 28 minute briefings for every Supervisor’s office to cover the rushed approval timeline and
 how the SFCTA Board is asking members to approve.
- The next month after briefings had been set for Board members, SFCTA Colin Dentel-
 Post stated on November 28, 2016 in an email that “my understanding is that [SFC]TA
 Board members are now discussing options among themselves.” (AR 297036.)
- On November 30, 2016 SFCTA Executive Director asked for a meeting “to share recent
 conversations we have been having with SFCTA Board members and confirm direction
 going forward.” (AR 297691.) The direction going forward was made clear on
 December 2, 2016 when the “Project Update” document (AR 241426) stated that the
 Board “will vote to approve project.” Shortly thereafter the posters placed at bus stops
 stated that the Board “will approve” the project. (AR 108569.)

- In early December 2016, MTA acting for SFCTA advised that the FEIR would be available December 9 and then brazenly stated that on January 5, 2017 the SFCTA Board “will vote to approve the project and the EIR” and further that the MTA Board would take action to approve the preferred design “later in 2017.” (AR 108569.)

2. Consideration of TNCs and Ridesharing in the Draft EIS/EIR, Responses to Comments and Final EIR – None

In late 2009 and early 2010, transportation network companies (“TNCs”) formed and began operating ridesharing services in San Francisco, changing the transportation scene drastically in the subsequent years with the introduction of Lyft, Chariot, Uber, Postmates, Caviar and other app-based transportation services. However, the number of times this home-grown technological phenomenon offering door-to-door service which competes with city buses for riders was mentioned in the Draft EIS/EIR, comment responses or FEIR: ZERO.

E-mails and reports in the AR demonstrate that Respondents were aware of the role TNCs were playing in San Francisco transportation choices and ridership:

- On November 3, 2015, a member of the public pointed out TNCs and asked “where is the traffic analysis for those scenarios?” (AR1205) and was told that taxis and carpools were “proxies” for them. (AR 1211.)
- Concern about competition for transit services was a key generator of the feasibility study of 2007 (AR 11) and the November 20, 2008 agreement to evaluate Geary BRT.
- SFCTA was aware of TNC prevalence and use in San Francisco. SFCTA Executive Director used a TNC and submitted her receipt to the AR (AR 176938) [September 11, 2014].
- Respondent SFCTA was warned of the “hyper growth of TNCs” (AR 235226)[October 11, 2016].
- Prior to the January 5, 2017 hearing, SFCTA Executive Director asked to be kept up to date on what Board Supervisor Peskin was proposing to respond to the some 45,000 vehicles of the TNCs referenced in the article she cited (AR 244999.)

Yet on January 5, 2017, when a member of the public pointed out this gaping hole and asked the City to consider this direct competitor for transit services, Respondents declined. (AR 13707-8.)

III. STANDARD OF REVIEW

In deciding whether to grant judgment and issue a peremptory writ of mandamus, the Court shall decide whether Respondents committed any prejudicial abuses of discretion. Prejudice must be found if the agencies failed to proceed in a manner required by law, if any of their decisions are not supported by their findings, or if their findings are not supported by

1 substantial evidence in the AR. Code Civ. Proc. 1094.5; Pub. Resources Code § 21168. CEQA
2 is intended to be interpreted in such a manner as to afford the fullest possible protection to the
3 environment within the reasonable scope of the statutory language. CEQA Guidelines [14 Cal.
4 Code Regs] §15003(f); *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903,
5 926. Both of CEQA’s dual standards of review apply. The adequacy of the Geary BRT CEQA
6 process and analysis must be reviewed for Respondents’ failure to proceed in the manner
7 required by law, without deference to their opinions. Findings relating to environmental impacts
8 and feasibility of mitigation and alternatives should then be deferentially reviewed for substantial
9 supporting evidence.

10 Courts are to consider “whether the administrative record demonstrates any legal error by
11 the [agency] and [then] whether it contains substantial evidence to support the [agency’s] factual
12 determinations.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*
13 *Cordova* (2007) 40 Cal.4th, 412, 417. By the time of its project approval findings, an agency will
14 have considered the analysis provided by its public-process-vetted EIR and can exercise well-
15 informed discretion.

16 The California Supreme Court’s ruling in *Vineyard, supra*, 40 Cal.4th 412, 435 and *Save*
17 *Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131 confirm that challenges to EIR
18 adequacy are reviewed for failure to proceed in the manner required by law, without deference to
19 the lead agency. *Vineyard’s* set-aside of an EIR’s insufficient analysis of water supply for failure
20 to proceed in the manner required by law provided a rubric that applies to all topics of EIR
21 adequacy. After a lead agency certifies an EIR, the sufficiency of its project-related CEQA
22 finding is then reviewed for substantial supporting evidence in the record. *Ibid.*

23 The question of EIR adequacy logically differs from project findings. CEQA’s statutory
24 and regulatory authorities and implementing case law provide a detailed road map to assess EIR
25 adequacy as a matter of law, with legislative intent manifest in the policies of the Act. Leaving
26 to a lead agency’s discretion whether it has adequately complied with CEQA’s EIR requirements
27 is illogical – comparable to allowing any agency to judge its own compliance with the mandates
28

1 of state law. Issues of statutory compliance are always subject to de novo judicial review. *Save*
 2 *Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288.

3 IV. DISCUSSION

4 A. The Final EIR is Inadequate and Not Supported by Substantial Evidence

5 1. The Final EIR Contains No Analysis or Evaluation of the Effect of 6 TNCs or Ridesharing in Transportation Planning

7 The AR is devoid of a single document demonstrating that Respondents evaluated TNCs
 8 or ridesharing in its transportation analysis contained in the FEIR, despite it being a widely
 9 recognized phenomenon occurring throughout San Francisco and despite the fact Respondents
 10 were well aware of their existence and impact on bus ridership. Such an omission is a fatal flaw
 11 that precluded meaningful public comment and participation during the EIR process, distorted
 12 transportation and ridership analyses and illustrates that the Geary BRT does not meet its
 13 primary objective – to get people out of their cars and into the bus. Similar to the court’s holding
 14 in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, Respondents’
 15 analyses for traffic, air quality, congestion, climate change and cumulative impacts are
 16 inadequate because they are based on incorrect data and assumptions – that transportation
 17 choices are static without the ability to be radically changed by technology. In *Kings County*, the
 18 court found that because Respondents did not provide *any* information regarding other instances
 19 in which the proposed project would affect air quality, the analysis was faulty because it failed to
 20 include information regarding expected impacts by other foreseeable projects. Similarly, in
 21 *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, the court found
 22 an EIR’s cumulative impacts discussion inadequate where it was based on a previous air quality
 23 analysis that had not included data regarding offshore air pollutant emissions. The court observed
 24 that respondent must make a conscientious effort to provide “adequate and relevant detailed
 25 information” in its impact analysis. *Id.* at p. 431.

26 TNCs impact ridership numbers because they were (and are) a direct competitor to
 27 commuter buses; Respondents knew that. Increasing ridership was one of the goals of the
 28 Project in the EIR (FEIR §1.2). TNCs, formed in 2009 and beginning operation as early as 2010,
 were known to Respondents. Numerous news reports before and after the publication of the

1 Draft EIS/EIR described the heavy use of TNCs. In an October 7, 2016 letter to Tilly Chang
 2 from San Francisco Transit Riders (AR 235226) SFCTA was warned of the “hyper growth” of
 3 the TNCs and advised of the prevalence of such services. SFCTA communications director Eric
 4 Young, by December 8, 2016 email passed along to reporter Joe Rodriguez of the *Examiner*
 5 information about a study TNCs and congestion. (AR 242513.) The email contained a website
 6 which pointed to the TNC companies and stated that the pace of growth of these companies is
 7 “exponential.” The notice also raised the question whether the TNCs were taking transit riders.
 8 The MTA travel decisions summary for 2015 noted that “TNCs are the most used of the new
 9 travel options with ... 28% of San Francisco residents ... saying they use it at least monthly.”

10 The SFCTA Executive Director took at least one ride in 2014 – the AR includes her
 11 receipt from a ride sharing company. (AR 176938.) TNCs are alternatives which affect choices
 12 for bus riders. Thus, SFCTA Executive Director asked to be kept up to date on what Supervisor
 13 Peskin was proposing to respond to some 45,000 vehicles of the TNCs referenced in the article
 14 she cited. (AR 244999.)

15 **Ignoring TNCs Renders the Individual Environmental Assessments Invalid**

16 By completely ignoring the phenomenon of TNCs, Respondents understate the number of
 17 vehicles on the road, underestimate the impact on air quality, overstate the positive effects of its
 18 Project and make conclusions that are not supported in the AR or the EIR analyses.²

19 **Transportation/Ridership.** Cutting 20 bus stops under the adopted Geary BRT
 20 encourages ridesharing and other door-to-door transportation for people unwilling or unable to
 21 walk further distances to use the transit system. While the Project’s “rapid” bus time for this
 22 Project is limited to actual bus time, not the walk to a bus stop or waiting for a bus, an individual
 23 commuter will factor in a longer walk to a bus stop, when considering the TNC alternative.
 24 Upon seeing the Draft EIS/EIR ignored TNCs, a resident pointed out the “ever-increasing ride-
 25 sharing vehicles... where is the traffic analysis for those scenarios?” (AR 1205.) The Planners
 26 responded in a perfunctory and incorrect way, by stating “traffic modeling accounts for taxis and
 27 _____

28 ² A more shocking overstatement example is discussed below *supra* at pp. 13, 20 where an SFCTA engineer explains in an e-mail his agreement with SFMTA to “mak[e] manual adjustments upward” in the volume numbers, a practice which is admittedly “highly controversial.”

1 carpooling, which are reasonable proxies for other shared ride sources.” (AR 1211.) TNCs are
 2 not taxis, or carpooling, or vanpooling and the City and State address them differently.

3 At the end of a comment letter of January 4, 2017, the resident questions the assumption
 4 that people would rather walk to the bus than use a ride-hailing service point-to-point as “mere
 5 supposition not based on data which is left unanalyzed and incomplete in the FEIR.” (AR
 6 244869/880.) The advantage of riding directly from home to work was clearly seen as
 7 beneficial, saving time and adding convenience compared to a fixed route of a bus which
 8 requires walking to a (more distant) bus stop yet and Respondents failed to take this into account.

9 **Traffic.** Ignoring TNCs under-analyzes traffic. There will physically be more cars on
 10 the same road (traffic) or alternative routes (neighborhood impacts). TNCs drop off and pick up
 11 passengers, often in the parking lanes, or right hand lanes. By ignoring TNCs, the Respondents’
 12 analysis of removing loading zones and parking is flawed.

13 **GHG Emissions and Climate Change.** Respondents’ failure to evaluate TNCs,
 14 ridesharing and other technological advances impacting the transportation industry also makes
 15 the greenhouse gas analysis and impact on climate change in the FEIR unsupported and
 16 incorrect. The FEIR boasts of “long-term benefits to air quality . . . from an anticipated
 17 reduction in auto use in favor of bus use.” FEIR §4.17.³ Respondents’ omission of TNCs is
 18 comparable to the omission of relevant detailed emissions information in the *Ojai* case. It ignores
 19 45,000 vehicles. (AR 244999.) The lack of analysis of TNC data in transportation planning
 20 understates the Geary BRT’s impacts on air quality and skews sufficient discussion of
 21 greenhouse gas emission mitigation and cumulative impacts. Both the baseline and the impact
 22 analysis are wrong and the analysis should be recalculated. *See* FEIR §4.10.

23 **Cumulative Impacts.** The failure to evaluate TNCs also impacted analysis of
 24 Cumulative Impacts. Years of construction, longer walks to stops, and the allure of door-to-door
 25 transit alternatives increases the demand for TNCs, and likely will increase the number of TNCs.
 26 The Cumulative Impacts analysis in the EIR does not contain this foreseeable effect and should

27 _____
 28 ³ Even with the understated numbers, the reported impact on GHG emissions is negligible. In its Air Quality and
 GHG Emissions section, the FEIR reports reductions in Vehicle Miles Travelled of .2% in 2020 and .4% in 2035.
 (FEIR §4.10, p.4-14.)

1 be performed again. *See County of Amador v. El Dorado County Water Agency*. No. C027948
 2 (76 Cal. App. 4th 931) (Cal. Ct. App. November 3, 1999) (preclusion of relevant information is
 3 prejudicial abuse of discretion regardless of whether a different outcome would have resulted).

4 **Failure to Meet Project Objective.** The underlying assumption of the Geary BRT is its
 5 attraction of more riders (FEIR 3.3.4.1) and the FEIR concludes that the Project will result in
 6 “demonstrable long-term benefits, such as improved traffic times and increases in transit
 7 ridership.” (FEIR §4.17 at AR 737). The failure to grow ridership undermines a specific
 8 justification for the project, “to promote high transit use.” FEIR §1.2 (AR 666.)

9 This fatal flaw alone – ignoring such an important factor – defeats the purpose of the
 10 Project. While economic competition is sometimes a separate issue from the mandates of
 11 CEQA, the Geary BRT project objective (and purported success of) includes decreased use of
 12 autos and increased bus ridership; its very objective was to getting more people in the bus, and if
 13 people are choosing non-transit options, the failure to consider non-transit options is a failure to
 14 adequately analyze the impacts and objectives of the Project. Courts have held that failing to
 15 analyze an important factor, such as a competing option or a limited supply, is fatal to the final
 16 EIR. In *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, for
 17 example, the Court of Appeal ruled that without the facts necessary to evaluate the benefits and
 18 burdens of supplying water to a mine, where such diversion would impact others relying on the
 19 limited supply, the EIR was inadequate. The limited supply of roadway is analogous to a limited
 20 supply of water from a water district. Here, the FEIR did not consider the increase in number of
 21 private cars using the road which will lose 1/3 of its vehicle lanes.

22 The failure to consider TNCs in the Draft EIS/EIR precluded informed public
 23 participation and decision-making. *See Cleveland National Forest Foundation v. San Diego*
 24 *Assn. of Governments* (2017) 17 Cal.App.5th 413, 413 (the EIR’s discussion of project
 25 alternatives was deficient because it did not discuss an alternative that could significantly reduce
 26 total vehicle miles traveled, which shortened the vehicle trips that are made). The FEIR
 27 conclusions on transportation, traffic, parking and loading, greenhouse gases and cumulative
 28 impacts are not supported and a new Draft EIS/EIR should include correct analysis.

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2. The Final EIR Fails to Adequately Analyze Reduction of Commute Times in the Construction of Median Bus Lanes

The commute time savings publicized by Respondents and outlined in the FEIR, and which is the ultimate objective of the Geary BRT, are not supported by the AR. In fact, the AR shows that the reductions in commute times and affiliated volume numbers for traffic were made up of wishful thinking and arbitrary manipulation of undesirable data.

Further, the AR shows the SFCTA manually adjusted unfavorable data on traffic volume, knowingly manipulating numbers, and then made sure to cover up the manipulation. In a December 19, 2012 e-mail, Chester Fung of SFCTA remarks that the volumes are too low so Respondents should manually increase them. (AR 127485). The e-mail reports on “recent conversations with SFMTA with regard to the traffic projections” where they agree to change volume numbers: “...we have tentative agreement to make adjustments to the model outputs to add volumes to what the model is predicting. The issue has been that the model is predicting lower future volumes than exist today . . . so [SFCTA is] responding by making manual adjustments upward.” SFCTA knew this was questionable and the e-mail warns the agency to “document, document, document” because the manipulation could be “highly controversial” (AR 127485.) Evidently this doctored data is not unusual. “We often do this with ridership projections for instance.” *Ibid.*

This “manual manipulation” of volume numbers it deemed to be unfavorable (or at best, incorrect) produces documents and studies which do not support the findings on commute times and ridership in the EIR. This entire concept should be re-analyzed without the benefit of “highly controversial” actions, even if SFCTA can show that it “documented, documented, documented.”⁴ *See also* AR 17422. Manipulated data cannot be valid “support” in the AR.

Longer Commute. The Geary BRT is two project areas, Phase I from Gough to Palm and Phase II between Stanyan and 27th Avenue.⁵ The FEIR does not state where transit time savings will occur. Planners have used transit time as the measure of importance; riders use total

⁴ This side agreement to change the numbers is also a violation of the Ralph M. Brown Act because the public could not meaningfully participate given the lack of transparency and the fact the public was unaware of the lack of truth and accuracy in the data. Gov’t Code §54950.

⁵ The inner Geary from Gough to Transbay is already in place and from 28th Avenue to 48th Avenue there are no significant changes.

1 commute time, which includes walking to and from bus stops and waiting for buses.⁶ But when
2 considering the additional amount of time by having to walk farther between stops as a result of
3 stops being taken out, the FEIR discards the inconvenience. The FEIR, just as the scores of
4 public outreach documents, only describes the federally-suggested goal of 30% reduction or ten
5 minutes across the entire line from its western end to the Transbay Terminal. Claiming time
6 savings over the entire length is meaningless and misleading. Various assertions, some as high
7 as 35% travel time reductions, are found throughout the AR. Meanwhile the Rapid was meeting
8 and exceeding its schedule by running regularly the entire distance between 43 and 49 minutes.
9 (AR 211515.)

10 Further, the failure of fair comparison between the No Build and Hybrid further distorts
11 the issue of travel time. Only 2012 data was used for modeling the No Build but it could have
12 been improved by recognizing that there was already electronic payment and low-boarding
13 buses, which cut dwell time at stations significantly, and signal optimization and peak time lane
14 restrictions that would have cut traffic time. The impacts of the decision not to upgrade existing
15 operations in model was made in 2009 and never changed. (AR 113469.)

16 **Cutting Bus Stops Increases TNC Use.** The FEIR contains no analysis or data to
17 connect mere transit time improvements with attracting riders in the face of significant
18 competition from TNCs. The absence of TNCs in the FEIR magnified the misleading marker
19 because TNCs compete on total commute time and have the advantage of point-to-point service
20 which buses cannot match. Commute time is the total time a rider requires to go from home to
21 job or other destination, which includes walking to and from bus stops which may be at some
22 distance from the start or ending point. Planners have not shown that they considered commute
23 time and were dismissive of the notion that the additional 280 feet that might need to be walked
24 because of cutting bus stops makes a substantial difference. The AR reflects this notion when
25 Respondents stated, “Wider stop spacing is inherent to faster transit service. Trips for some
26 residents may get longer due to the walk distance.” (AR 952.) Their judgment might not have

27 ⁶ The FEIR admits this natural choice. Section 3.3.4.1 states that Alternative 3-consolidated “would attract more
28 riders than the other build alternatives because it would offer the shortest waiting times and the shortest average
walking distances to stations.”

1 been challenged were there no competition, but the TNCs now provide the efficiency of door-to-
 2 door commute. A fixed bus system cannot do that. There is no reason to believe that riders will
 3 be attracted to a bus which has cut the transit time by five minutes when a ride-hailing service
 4 can cut it by 20 minutes.

5 **The Federal “Goal” of Commute Time Savings Became Fact.** The FTA, the federal
 6 “partner” of the Project, stated a goal of reducing commute times per BRT Section. (AR
 7 116299.) Somehow, without the benefit of supported studies, this goal became the result. That
 8 improvement is not documented; statements of improvement are not supported in the AR.

9 **3. The Final EIR Violates the Transit First Policy and Dismisses**
 10 **Whether Project Would Have Significant Safety Impact on**
 11 **Elderly/Senior Community, Disabled, Children**

12 Respondents’ FEIR must consider all potentially-significant environmental impacts,
 13 including to the Transit First Policy, which provides for mandates such as “transit priority
 14 improvements ... shall be made to expedite the movement of public transit vehicles . . . and to
 15 improve pedestrian safety.”⁷ The Transit First Policy also provides that the primary objective of
 16 the transportation system “must be the safe and efficient movement of people and goods.” The
 17 exclusion of the impact on San Francisco’s Transit First Policy precludes a review of an
 18 environmental resource for which substantial evidence supports a fair argument of significant
 19 impact. *Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099
 20 (EIRs must “consider and resolve every fair argument that can be made about the possible
 21 significant effects of a project.”)

22 The FEIR dismissed the Project’s infringement of the safety, quality of life and economic
 23 health on the Geary neighborhood. The Geary Corridor has evolved as the hometown area of the
 24 Richmond District, which itself is entirely residential and depends on its nearby shopping and the
 25 environment conducive to raising families, all of which will be displaced in the construction of
 26 the project. The FEIR summarily disregarded the Project’s safety impact on seniors, children,

27 ⁷ In Appendix comments about the Transit First Policy was described only as giving transit priority but ignored
 28 entirely the purpose of ensuring quality of life and economic health. (AR 786.) A letter of comment (I-11.3 at AR
 949) raised the issue of Transit First adroitly: “The recital of observations and data in the Draft EIS I EIR confuse
 and obscure the purpose of this project, and do not answer the critical question of whether the Project will improve
 the quality of life for people living in the Geary transit corridor.”

1 and the disabled in the Richmond community with regard to the more remote, longer and more
 2 frequent street crossings as a result of the Geary BRT. For instance, the FEIR indicates disregard
 3 for that fact that people prefer shorter walking distances to bus stops (“The Hybrid
 4 alternative/SRA would increase the average walking distance to the closest bus stop, with the
 5 longest increase of about 280 feet between 12th Avenue and 17th Avenue...”; “...access to some
 6 stops would be more challenging for some seniors and people with disabilities”) [FEIR, B-28-B-
 7 29]. Over 35% of the Richmond population is made up of seniors, a group that might have
 8 trouble walking an extra football field length or might be more likely to suffer a fall/injury/death
 9 as a result of crossing more cross-streets to get to the stop. In weighing these scenarios, the FEIR
 10 chooses faster transit time over the safety issues posed by the reduction in stops in the Phase II
 11 area.

12 The determination of the point at which walkability for seniors and disabled creates a
 13 substantial harm has not been addressed, ignoring the responsibility to present that information
 14 rather than dismiss the potential problem. (*See* CEQA Guideline 15064.7) As early as 2014 the
 15 dismissive attitude could be seen in this comment: “We think that the effect will be minor. This
 16 is the trade-off that the SRA makes - in exchange for faster buses and preserving as much on-
 17 street parking as possible as the community has desired, the project needs to space the local stops
 18 more widely in order to still provide the buses with a travel time benefit.” (AR 264605.) This
 19 attitude of substituting their off-the-cuff judgment for serious analysis is emblematic of the
 20 manner of the planners who knew they had a goal to reach (approval of the project) above all
 21 else.⁸

22 **B. Respondents Prejudicially Abused Their Discretion and Did Not Proceed in a**
 23 **Manner Required by Law**

24 **1. Respondents Did Not Exercise Independent Judgment in Certifying**
 25 **the Final EIR**

26 In certifying an EIR, the decision-making body must confirm that it reviewed and
 27 considered the information contained in the FEIR prior to approving the project and that “the
 28 final EIR reflects the lead agency’s independent judgment and analysis.”⁹ The AR demonstrates

⁸ This knowing choice also opens Respondents to liability when these accidents occur.

⁹ Public Resources Code Section 21083 and CEQA Guidelines, Section 15090, subd. (a).

1 that the certification of the EIR was the result of a complete lack of independent judgment,
2 motivated by political lame duck governance, and a violation of the Ralph M. Brown Act.¹⁰ The
3 rush to approval over the holidays and before the changing of the Board members defeats the
4 claim to any exercise of independent judgment.

5 SFCTA Staff, Project Manager and Executive Director became concerned about the
6 position of likely replacements of retiring Supervisor Eric Mar and their opposition to the Geary
7 BRT. The January 5, 2017 special meeting was scheduled to approve the Project and avoid
8 opposition by a new supervisor. There was no time to exercise independent judgment – only 7
9 business days in December/January to review thousands of pages of comment responses and new
10 information for this new stand-alone document.¹¹ Many requests were made to the SFCTA to
11 delay the January 5, 2017 hearing to allow the new supervisor/Board members to participate at
12 the first regular meeting. The Chamber of Commerce letter cited the closing of supervisors’
13 offices and the need for board members to have time to review the FEIR. (AR 111085.) While
14 the Chamber of Commerce asked for a delay until February or early March, many others who
15 wrote requesting a delay noted the general acceptance of 30 days for review. The regular Board
16 meeting would have been January 24, 2017. (AR 111095.)

17 In the FEIR, Respondent SFCTA rejected the need for recirculation. They assert there
18 were no greater impacts imposed by the changes between the federal/local joint Draft EIS/EIR
19 and FEIR (AR 000670) but this determination would have required considerable review and
20 judgment by the Board members. Since Respondents chose not to examine the changes or holes
21 in the analyses (TNCs), they simply rubberstamped the document.¹²

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¹⁰ The Ralph M. Brown Act is codified at Government Code §54950.

25 ¹¹ Only one Board member could state he had used his family vacation time to review the Project documents (AR
13703.) None of the others could.

26 ¹² This inability to exercise independent judgment is also a violation of the Ralph M. Brown Act, which provides
27 that the public may comment on agenda items before or during consideration by a legislative body, and that “time
28 must be set aside for public to comment on any other matters under the body’s jurisdiction.” Respondents, by
rushing to approve the Geary BRT Project for political motivations and by calling a special meeting, failed to
encourage meaningful public outreach and participation regarding the FEIR, and accordingly, it is not a product of
informed decision-making.

1 **2. The Final EIR Improperly Contains Measures Which are Contingent**
 2 **on Subsequent Studies**

3 The FEIR directs MTA to consider certain lanes bus-only, and to paint right-hand lanes
 4 red prohibiting other vehicles from driving in those lanes, a prohibition that drastically impairs
 5 roadside businesses from operating. Moreover, the entire red-lane measure is an experimental
 6 project, contingent on future studies and reports. As such, it cannot be imposed. CEQA prohibits
 7 the imposition of a mitigation measure which includes future study and analysis. *See California*
 8 *Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 175 (“An [EIR] is
 9 inadequate if the success or failure of mitigation efforts may largely depend upon management
 10 plans that have not yet been formulated, and have not been subject to analysis and review within
 11 the EIR. A study conducted after approval of a project will inevitably have a diminished
 12 influence on decision-making. Even if the study is subject to administrative approval, it is
 13 analogous to the sort of post hoc rationalization of agency actions that has been repeatedly
 14 condemned in decisions construing [CEQA]”). An EIR cannot impose a to-be-studied measure
 15 because it is too contingent on the outcome and possible side effects of the method.

16 Throughout the EIR references to bus-only lanes are modified by “colorized.” In 2012
 17 the MTA applied for permission to experiment with colorizing all-day every-day bus-only lanes
 18 in red. That experiment was granted, subject to reporting every six months on data for safety and
 19 efficiency. (AR 35792 & 108995.) Until 2016 the reporting requirement was ignored; no report
 20 was filed. When the first report was submitted, the outcome did not result in approval for the
 21 experiment to end and the colorization of lines made permanent. The FEIR never considers
 22 modifying the lanes to be in effect during certain peak times or to restrict to bus only without
 23 colorized lanes.

24 The effect of conditional permission to experiment is to require further study and
 25 reporting with the contingency that colorization would be removed if not effective. This could
 26 result if using red, which denotes “stop,” creates confusion and unsafe behavior or fails to
 27 improve transit efficiency. It is a heavy price to pay, both the painting and disruption, if it is not
 28 effective. Where the colorization experiment has been implemented in San Francisco is on
 narrow streets with lighter traffic than the six-lane heavily traveled Geary Boulevard and it has

1 caused diversions the effect of which have not been discussed nor considered in the FEIR.
 2 Consequently, under *California Clean Energy* (supra), this experiment amounts to a mitigation
 3 measure to-be-studied and must be struck from the FEIR as not properly subject to approval until
 4 the experiment has been completed and the FEIR clarified to withhold authorization for red
 5 lanes. It must be struck from the FEIR and project approval.

6 **3. The Final EIR was a Deceptive, Misleading Document**

7 While an EIR need not be perfect, it must be an adequate, complete, and good faith effort
 8 at full disclosure of impacts. (Guidelines, §15151.) The purpose of an EIR is to provide
 9 “detailed information about the effect a project is likely to have on the environment, to list ways
 10 significant effects might be minimized and to indicate alternatives to the project.” (CEQA,
 11 §§21061, 21100.) An EIR’s analysis must be sufficient to provide information to make decisions
 12 that intelligently take account of environmental consequences. Guidelines §15151; *San*
 13 *Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 593;
 14 *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712. The knowing
 15 omissions and purposeful manipulation of data hid the necessary detailed information from the
 16 public and the decision-makers.

17 **a. Respondents’ Statements Regarding Time Savings and**
 18 **Increased Ridership Realized by the Geary BRT Were**
 19 **Deceptive and Misleading**

20 As set forth *supra* at 14, SFCTA engaged in knowing alteration and “manual
 21 manipulation” of numbers in underlying studies with the intent of arriving at the desired
 22 outcome. It also planned to cover itself and these highly controversial (but not unusual, by its
 23 own admission) tactics. Quite simply, SFCTA didn’t like the volume numbers so it changed
 24 them; it admitted to doing so “often” with ridership projections, as well, “to provide an
 25 additional step in supporting the assumption, adjustments and final projections” as reasonable.
 26 (AR 127485, 174222). The FEIR’s conclusions touching on volume, traffic, ridership (at a
 27 minimum) are infected by this deceptive manipulation and should be reviewed and re-calculated.

28 Additionally, the FEIR combined Phase I and Phase II as if one project, obscuring the
 value for each part. Phase I has more riders but contains no time savings and Phase II has fewer

1 riders and only limited possible time savings. The arrays of loadings (AR 35107, 35137)
2 demonstrate that only 1200 riders regularly load during peak hours or commute times from bus
3 stops west of where the Phase II project begins; approximately the same number load from stops
4 within Phase I. No time savings will be achieved on Phase I because it is already side-running
5 and has very few stops. The inner portion of Van Ness to the Transbay Terminal is not affected
6 by the BRT Project and thus transit times for that segment are not relevant. If Phase II speeds
7 are now 7 mph but may achieve 10 mph, the time savings over the 1.6 mile run will only be four
8 minutes, experienced by only the 1200 riders getting on west of 28th Avenue. The public
9 testimony in the AR demonstrates the doubt of whether even four minutes could be saved when
10 it was pointed out that the current (No Build) performance of the Geary Rapid buses was
11 approximately what was predicted for the BRT in 2035. (AR 13724.) SFCTA testimony that the
12 BRT buses would be only four minutes apart neglected to point out that the Geary Rapid already
13 had that interval as MTA MUNI Forward noted in its publication January 5, 2017. (AR 302173.)
14 The public testimony also called into question that the major time savings comes from cutting
15 the number of bus stops. Yet the FEIR does not attribute any time savings to this basic fact; the
16 analysis should be performed in a new Draft EIS/EIR.

17 **b. Respondents Mischaracterized the Role of Federal and State**
18 **Funding for the Geary BRT**

19 Respondents mischaracterized the role of federal funding in the approval of the project.
20 When funding for a mitigation measure is not assured, the measure is not enforceable. *Anderson*
21 *First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189-90 (“Anderson”).
22 Further, CEQA Guidelines Section 15088.5 requires recirculation after a draft EIR if “significant
23 new information” is added to an EIR. Often, agencies that have invested time and money are
24 more likely to rush a project through because “[a]fter major investment of both time and money,
25 it is likely that more environmental harm will be tolerated.” *Envtl. Defense Fund v. Andrus*, 596
26 F.2d 848, 853 (9th Cir. 1979)); 40 C.F.R. § 1502.2(g). EIRs are meant to “serve as the means of
27 assessing the environmental impact of proposed agency actions, rather than justifying decisions
28 already made.” *See Beverly Hills Unified Sch. Dist. v. Fed. Transit Admin.* (C.D.Cal. Feb. 1,
2016, No. CV 12-9861-GW(SSx)) 2016 U.S.Dist.LEXIS 192573, at *165.) However, the

1 absence of the contemplated funding is significant new information requiring recirculation of an
2 EIR. *See, e.g. Riverwatch v. County of San Diego Dep't of Envtl. Health*, 2010 Cal. App.
3 Unpub. LEXIS 2281, at *40, citing *Vineyard, supra*, 40 Cal.4th at 431 (where a revised Final EIR
4 needed to provide enough information including accounting of funds to enable decision makers
5 to evaluate the pros and cons of the project).

6 Losing the federal support on this Project as a NEPA project cost \$100 million. Losing
7 \$100 million in federal funding was a new significant impact, and substantially increased the
8 severity of an impact. Losing the federal partner from the combined EIS/EIR on a \$300 million
9 multi-year, complex project is new information and modification. Losing federal participation
10 affects NEPA-based analyses. Without this information, the FEIR was fundamentally inadequate
11 and conclusory such that meaningful public review of the Draft was precluded, and the EIR
12 should have been recirculated. SFCTA stated its understanding of the requirement for
13 recirculation in Section 1.6 of the FEIR that excludes information which merely clarifies or
14 amplifies. Losing one-third of a project funding is not a mere clarification. Recirculation would
15 have allowed the public an opportunity to consider the new information.

16 It is unclear when Respondents first learned of the federal withdrawal, but on November
17 17, 2016, SFCTA received an email from the FTA regional office stating the requirement that for
18 the EIR to be coupled with the EIS it would have to be a stand-alone document with no
19 requirement to refer back to the Draft EIS/EIR. (AR 240150.) That problem was made evident
20 by an email at AR 304677 where TPI funding first discussed in Section 6.1.3.1 could not be
21 obtained without meeting the requirements of NEPA. Other requirements and the total redrafting
22 were estimated to require between 13 and 53 weeks' work. (AR 240902.) Respondent SFCTA
23 Executive Director Tilly Chang did not explain the tenuous nature of the FTA funding to the
24 public at a Board hearing on December 13, 2016 when challenged by Petitioner. She stated only
25 that there was a difference of approach regarding treatment of public comments and differences
26 of an administrative nature and did not expect change in content. (AR 0209.)

27 Respondents knowingly overstated state financial support as well. State and local
28 sources of funding inappropriately remained in the FEIR. Despite the fact a General Sales Tax

1 did not pass in the November 2016 election, the FEIR contains representations that up to \$30
 2 million from this failed measure would fund the Project. *See* FEIR §6.1.3.3 at p.6-6.¹³ A major
 3 issue not explored at all in the FEIR or other documents was the question if the project could be
 4 contemplated if carrying it out required local bond financing in a world of increasing interest
 5 rates, an issue for the public which deserves a voice in setting priorities for the issuance of local
 6 debt.

7 **c. The Final EIR Mischaracterizes Respect and Support for
 8 Trees**

8 The FEIR did not adequately assess the biological impacts of the tree removal
 9 contemplated by the Geary BRT Project, which would clear-cut 156 Geary Boulevard mature
 10 trees beneficial to the environment. Moreover, internal e-mails make clear the disdain
 11 Respondents treat environmentally-concerned people talking about the trees (“Again with the
 12 trees – ...”) and the acknowledgment the Project lacks funding for tree removal or replacement
 13 “I don’t think we should prioritize BRT \$ for trees...;” “It’s eligible though BRT Prop K
 14 category is already oversubscribed”; “It’s more ambiguous how the sidewalk trees will
 15 ultimately be funded . . . Both projects [Geary and Van Ness] are oversubscribed from their Prop
 16 K original targets and ultimately need more revenue bonds or other funds anyway.” (AR
 17 243365).¹⁴

18 **4. The Final EIR Contains Fatal Flaws**

19 The flaws in the Geary BRT FEIR are fatal and require a new environmental assessment
 20 because the No Build Alternative would implement improvements without destructive and
 21 massive construction and enormous resultant costs¹⁵ and the San Francisco Planning
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25 _____
 26 ¹³ “Charter Amendment/ General Sales Tax Funds. . . the sales tax could raise funds in the order of \$100 million
 27 annually for transportation, which would be distributed among various projects, potentially up to 30 million for the
 28 Project.”

¹⁴ Moreover, Respondents admit the tree work requires more environmental assessment: “On Van Ness there is a
 general agreement the sidewalk tree work can be done with the same contractors, but we did require DPW to get a
 separate environmental clearance.” (AR 243365.)

¹⁵ *See supra* at 2, fn 1.

1 Department, not Respondents, should have acted as the lead agency as it has the authority and
2 experience to assess a project of this scale.¹⁶

3 In the interest of embarking on a \$300 million transportation project, it would have been
4 prudent for Respondents to evaluate the incremental measures proposed by the No Build
5 Alternative. The Planning Association for the Richmond (“PAR”) in a December 15, 2008 letter
6 asked for delay in the deadline for comment pointing out that too much had been left undefined
7 about the No Project and the proposed BRT improvements would be compared to undefined
8 existing operations. (AR 17675.) Ignoring that request, on January 5, 2009, SFCTA’s Tilly
9 Chang specifically handicapped any analysis of the No Build by directing staff not to include
10 TEP improvements in the No Build models. (AR 113469.)

11 On February 18, 2009 the preliminary alternatives analysis statement described the No
12 Build as “fatally flawed” but was required to be studied. (AR 17956.) In discarding any intent
13 to analyze the No Build they cited possible incremental improvement but all bore the “fatally
14 flawed” label because the models assumed existing operations in 2012 without improvements.
15 Existing operations were frozen using 2012 data. (AR 689.) At a May 2, 2012 meeting with
16 PAR the planner estimated a one-third savings of time of which 5-10% would be from TSP and
17 off-bus collection of fares (AR 33965) which could have been incorporated into an analysis of
18 the No Build case but were not. By June 2012 the planners had chosen their locally-preferred
19 alternative (see AR 34431) which came later to be known as the Hybrid.

20 By failing to present and analyze the No Build as incrementally improved, SFCTA failed
21 to offer an alternative and consequently prevented meaningful public participation, which is a
22 critical element of CEQA requirements. *See Washoe Meadows Community v. Department of*
23 *Parks and Recreation* (1st Dist. Court of Appeal Case No. A145576; 2017 Cal.App.LEXIS
24 1009). CEQA Section 21002 requires that public agencies should not approve projects where
25 there are feasible alternatives with substantially lesser impacts on the environment. By refusing
26

27
28 ¹⁶ The Draft EIS/EIR, FEIR and AR omitted work conducted by the Planning Department which produced the 350-
page EIR on the Transit Effectiveness Project (“TEP”) on March 27, 2014 evaluating means of improving service.
In the Geary BRT, Respondents should have at least looked at the report on how to attract new riders, for example.

1 to analyze existing operations as improved incrementally, Respondents deprived the public of the
 2 opportunity to evaluate the feasibility and impacts of the incrementally improved No Build.

3 Voters of the unified City and County of San Francisco created the SFCTA in 1989 for
 4 the sole purpose of funding transportation projects set out in the transportation expenditure plan,
 5 and in 2003, voters authorized SFCTA only to fund transportation projects, not act on them.
 6 Chapter 12.5 of the California Public Utilities Code does not empower the SFCTA to plan
 7 projects and specifically states in 131507(a) that “The commission and any county transportation
 8 authority, in administering the adopted county transportation expenditure plan and imposing the
 9 retail transactions and use tax, shall have only those powers necessary for those purposes.”

10 The FEIR reveals SFCTA spent more than \$17 million on an EIR, spent by an agency
 11 needing to hire many consultants and rely on MTA expertise because it had few people and
 12 limited experience. It acceded to a misleading and deceptive outreach program aimed entirely at
 13 selling its Hybrid project and ignored the guidance of the Planning Department to collect
 14 sufficient facts to evaluate, analyze, and compare alternatives. It manipulated data it did not like.
 15 Lastly, it lost the funding partnership of the FTA choosing to rush to a Board decision to avoid
 16 the questions of new Board members. Respondent SFCTA withheld information making
 17 independent exercise of judgment by the Board impossible, then secured unanimous agreement
 18 in advance of the public hearing violated the provisions of the Brown Act.

19 V. CONCLUSION

20 The formulation of the FEIR precluded a meaningful public process and impacted the
 21 integrity of the public process. The public was falsely misled, believing the Geary BRT Project
 22 was secured by federal funding of \$100 million. The public was unable to comment on
 23 substantive areas Respondents excluded from environmental review such as the permeation of
 24 technological advances such as TNCs and ridesharing in San Francisco and its impact on the
 25 environment and transportation planning. The political motivations, coupled with Respondents’
 26 misstatements, breaches of fiduciary duties and rubber-stamping of the FEIR illustrate the
 27 professional and political inertia of the agencies, dead-set on approving the Project even if it did
 28

1 not meet the basic stated objectives. The only acceptable remedy is an order directing
2 Respondents to perform a new analysis of many sections and then recirculate a Draft EIR.

3 For all the foregoing reasons, Petitioner respectfully respects the Court issue a
4 peremptory writ of mandate compelling Respondents to set aside approval of the Geary BRT
5 Project and certification of the FEIR until Respondents have complied with CEQA, directing
6 Respondents to suspend all activity in furtherance of the Geary BRT Project until the FEIR is
7 recirculated to cure deficiencies as outlined by Petitioner and awarding Petitioner its attorneys'
8 fees.

9 DATED: May 11, 2018

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

11
12 By: 
Kerry Shea

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14 By: 
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16 Attorneys for Petitioner, SAN
17 FRANCISCANS FOR SENSIBLE TRANSIT,
18 INC.
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Proof of Service

I, Verna D. Abbott, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111

I caused to be served the following document:

- **PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

I caused the above document to be served on each person on the attached list by the following means:

- I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on May 11, 2018, following the ordinary business practice.
(Indicated on the attached address list by an [M] next to the address.)
- I enclosed a true and correct copy of said document in an envelope, and placed it for collection and mailing via Federal Express on for guaranteed delivery on following the ordinary business practice.
(Indicated on the attached address list by an [FD] next to the address.)
- I consigned a true and correct copy of said document for facsimile transmission on _____.
(Indicated on the attached address list by an [F] next to the address.)
- I enclosed a true and correct copy of said document in an envelope, and consigned it for hand delivery by messenger on _____.
(Indicated on the attached address list by an [H] next to the address.)
- A true and correct copy of said document was e-mailed on May 11, 2018.
(Indicated on the attached address list by an [E] next to the address.)

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on **May 11, 2018**, at San Francisco, California.


VERNA D. ABBOTT

Service List

Key:	[M] Delivery by Mail	[FD] Delivery by Federal Express	[H] Delivery by Hand
	[F] Delivery by Facsimile	[FM] Delivery by Facsimile and Mail	[E] Delivery by Email

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