

Appeal of Approval of Coastal Development Permit

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Background

For at least six decades, the progressive widening of Highway 101 through South Santa Barbara County has been a work in progress for the State of California. As the population of the state exploded, the need to increase roadway capacity to accommodate millions of new cars became a priority for state government. By the 1970's, it became obvious that the constant influx of people into California would, at some point, overwhelm every infrastructure system in the state, including transportation infrastructure.

After the stop lights were eliminated on Highway 101 in the early 90's, the state began designing the final widening of Highway 101 from the City of Santa Barbara to the Ventura County Line. Opposition to the final widening began to materialize.

Concurrent with the expansion of transportation infrastructure in the state, California began to regulate emissions from motor vehicles. In 1960, new motor vehicles sold in the state were required to be equipped with Positive Crankcase Ventilation systems. In 1966, Air Injection Reaction systems became commonplace on new vehicles. In 1970, Exhaust Gas Recirculation and evaporative recovery systems appeared as standard equipment. In 1975, catalytic converters and solid state ignition systems were installed on new vehicles.

Between 1960 and 2020, the emissions of Nitrogen Oxides (NOX), Reactive Organic Gases (ROG) and Carbon Monoxide (CO) from the average passenger car and light duty truck was reduced by 98%.

The dramatic reduction in tailpipe and evaporative emissions resulted in incredible improvements in air quality in California. In Santa Barbara County, federal air quality standards were met years ago.

However, traffic congestion kept increasing. The increase in motor vehicles, coupled with city, county and state approved development, induced an increase in Vehicle Miles Traveled (VMT). Highway 101 was not immune from that increase.

As the California Department of Transportation (CalTrans) began planning for the final Highway 101 widening, residents began suggesting that reducing the number of motor vehicles, and reducing the miles they are driven, could be the solution to ever increasing traffic congestion. In 2007, the California Coastal Act was amended, and all new state, county and city government transportation developments located in the Coastal Zone are now required to “minimize... vehicle miles traveled”. That amendment was the genesis of Senate Bill 743, which was signed into law in 2013.

In 2012, CalTrans began the process of preparing an Environmental Impact Report (EIR) for the Highway 101 widening project. At the time CalTrans began the EIR process, SB 743 had not yet been enacted. However, Coastal Act section 30253(4), which required (and still requires) CalTrans to minimize VMT for any new development on Highway 101, was in full effect.

The debate over the highway widening and project EIR developed into two ways of looking at the issue. The first, which I accepted pre- SB743, was that the widening was necessary because state, local and county governments refused to stop developments which placed jobs in one location, and housing for employees dozens of miles away. The other way of thinking, which I came to accept after SB743 began to take shape, is the widening would be unnecessary if the amount of vehicle traffic was reduced on the highway.

In 2014, CalTrans finalized the EIR for the now called Highway 101 HOV project. CalTrans was sued, and it was determined by a court of law that CalTrans had prepared a faulty EIR. Cal Trans was ordered by the court to prepare a revised EIR (REIR).

In December of 2016, a scoping hearing was held for the REIR. I attended that hearing. At that meeting I submitted a comment that reduction of VMT on Highway 101 through the project would be an alternative to the construction of the HOV lanes and the proposed mitigations. Soon after the REIR scoping hearing, the draft REIR was released. I submitted written comments, requesting that reduction in VMT be studied as an alternative to the construction of the HOV lanes and the mitigation projects that were now required to be constructed as part of the HOV project.

My logic for supporting reduction in VMT as an alternative to the construction of HOV lanes and mitigations was this: The rules, regulations and procedures for implementing SB 743 were being developed, and it appeared that SB 743 may provide the people with the required tools to rein in government's ability to approve developments and planning documents that increase VMT. I believe that a 25% reduction of VMT from the 2008 baseline VMT volume on Highway 101

would improve conditions on Highway 101 that would be equal to adding a HOV lane, without inducing increased traffic onto streets.

CalTrans refused my request to study reduction in VMT as an alternative to construction. The revised EIR was approved by the court in 2017.

It took 3 years from the approval of the project REIR for the the Coastal Development Permit (CDP) for segments 4b and 4c of the HOV project to be heard by the Santa Barbara Planning Commission. The hearing was conducted in February of 2020, and the CDP was approved. According to County staff, segments 4D and 4E have not yet had any CDP hearings, and county staff has acknowledged that CDPs will be required for 4D and 4E. Both the San Ysidro Roundabout and the Olive Mill Roundabout are located in segments 4D and 4E, respectively.

In March, 2020, It was noticed that the proposed approval for the San Ysidro Roundabout CDP would be heard by the Montecito Planning Commission. I attended all MPC meetings on the project. At all 3 meetings, I expressed my opinion the CDP for the project should no be approved because the county failed to evaluate reducing VMT as an alternative to the construction project. In June, the MPC approved the CDP for the project. 10 days after the approval, I filed an appeal.

In July, 2020, it was noticed that the proposed approval for the Olive Mill Roundabout would be heard at a joint meeting of the MPC and the Santa Barbara City Planning Commission (SBPC). The first hearing for the Olive Mill CDP was conducted on August 20, 2020. At that meeting, the SBPC approved a CDP for the city's section of the project. The MPC continued their deliberations to September.

At the August 20 joint meeting, a significant development took place. Both the SBPC and the MPC used new CEQA guidelines and Section 15064.3 to provide support for their positions on the Olive Mill Roundabout and provide technical analysis for the project to support the approvals of permits for the project. Both the county and city used Section 15064.3 to support the CDP's for the project. Section 15064.3 was developed from the document Office of Planning and Research Technical Advisory on Evaluating Transportation Impacts in CEQA (which will be referred to as The New CEQA Guideline). Both Section 15064.3 and The New CEQA Guideline were developed and implemented to create and enforce the legal requirements of SB 743.

During the review of the environmental and permitting documents and staff reports used to support the approval of the San Ysidro CDP, I found only 1 reference to CEQA guidelines Section 15064.3. That was on Page 76 of the Addendum to the South Coast HOV EIR, SCH# 2009051018. In that addendum, which was used by the MPC staff and commission to support the approval of the project's CDP, it is stated that conformance with Section 15064.3 was "non applicable". The reason given was that Section 15064.3 was implemented after the certification of the 2014 EIR.

To summarize the prior 2 paragraphs: County Staff and the MPC Commission are using Section 15064.3 as the CEQA guideline to determine if the Olive Mill Roundabout meets CEQA requirements. On the other hand, County Staff and the MPC Commission determined that Section 15064.3 would not be used for the San Ysidro Roundabout. Both projects are part of the same Highway 101 HOV project, their purposes and operational theories are identical and they are located on the exact same highway just a few miles from each other.

Grounds for appeal

A

the project, as currently proposed, violates Coastal Act Section 30253(4) and County Coastal Land Use Plan (CLUP) 3.11.1

As mentioned earlier, SB 743 has its genesis in Coastal Act Section 30253(4). The main purpose of Section 30253(4) is reducing energy use and VMT in an effort to reduce emissions of toxic air pollutants and Green House Gases (GHG). SB 743 took Section 30253(4)'s emission reduction purpose and made it statewide.

The county clearly acknowledges the air quality/emission reduction purpose of Section 30253(4). CLUP 3.11.1 is located in the air quality section of the CLUP and clearly states that the purpose of Section 30253(4) is reduction of toxic emissions and GHG.

In August of 2018, the Santa Barbara County Board of Supervisors voted to amend the CLUP and declared the roundabouts at San Ysidro and Olive Mill in compliance with CLUP 3.11.1, and their construction mandatory. The California Coastal Commission (CCC) certified the amendment.

However, CEQA guidelines Section 15064.3 was not certified by the California Natural Resources Agency until December, 2018, months after the BOS August, 2018 action. As a reminder, County Staff and MPC Commission are now using Section 15064.3 and The New CEQA Guideline to determine CEQA compliance and environmental impacts for the Olive Mill Roundabout project. They also determined that Section 15064.3 was not applicable to the San Ysidro roundabout. If it was not considered applicable in April of this year, it was not considered applicable in August, 2018.

As mentioned earlier, compliance with Section 15064.3 was determined by County Staff and MPC Commissioners to be “non-applicable” to the San Ysidro Roundabout CDP. They are utilizing and relying on Section 15064.3 for the Olive Mill project, but did not for the San Ysidro Project. However, since this CDP appeal will be heard de novo by the BOS, Staff will be required to now apply Section 15064.3 to the San Ysidro project. The Olive Mill CDP hearing process now pre-dates the San Ysidro de novo hearing process. The de novo San Ysidro CDP approval process will now have to apply the new CEQA guidelines County staff is currently using for Olive Mill.

Staff will also now be required to use Section 15064.3 when preparing the CDP applications for Highway 101 HOV segments 4D and 4E. HOV lanes, under Section 15064.3, are considered VMT inducing, and therefore subject to VMT impact analysis. The EIR for the HOV project estimates that VMT associated with the HOV project will increase by 40% between now and 2040. And as stated earlier, county staff has acknowledged, in writing, that CDPs are required for segment’s 4D and 4E.

Getting back to the San Ysidro roundabout. As mentioned earlier, when the CLUP was amended to find the 2 roundabouts in compliance with 3.11.1, Section 15064.3 was not yet in effect. Now, both the San Ysidro and Olive Mill roundabout approvals will have to be evaluated in accordance with Section 15064.3. The amendment that found both roundabouts in compliance with 3.11.1 was approved under CEQA rules and requirements that have been superseded by far more stringent requirements. The CEQA requirements the projects are subject to today provide such dramatic increases in environmental protections compared to those CEQA requirements of pre- Section 15064.3 that the change can be considered substantial and significant by both CEQA and Coastal Act standards.

The Olive Mill Roundabout CDP approval process revealed the way both city and county staff and commissioners interpret Section 15064.3's position that roundabouts are not VMT inducing, and therefore exempt from VMT impact evaluation.

Both city and county staff and commissioners hold the position that roundabouts have a blanket exemption from VMT impact analysis under Section 15064.3. Because Section 15064.3 simply states that roundabouts are assumed to be non-VMT inducing, and therefore exempt from analysis, county and city staff and commissioners postulate that all roundabouts are exempt, regardless of the reason or purpose for construction. This interpretation is extremely flawed.

When The New CEQA Guideline and Section 15064.3 were being prepared, it was determined that roundabouts reduced toxic emissions and GHG when they replace standard intersections for the purpose of improving traffic circulation. The theory is roundabouts allow for smoother traffic flow, thereby allowing vehicles to move in more efficient, smoother patterns.

Section 15064.3 and the New CEQA Guideline never intended to exempt roundabouts that have the primary purpose of providing increased capacity to handle increased traffic from VMT inducing projects.

County and city staff and commissioners are perverting the intention of the New CEQA Guideline and Section 15064.3 concerning roundabout exemptions from VMT analysis.

The stated purpose for the Olive Mill and San Ysidro roundabouts, stated by CalTrans, County P&D, city of Santa Barbara P&D, the MPC and SBPC , is to provide increased intersection capacity to handle the increased vehicle traffic from the VMT inducing Highway 101 HOV project. Taken in the light of that fact, the roundabouts are VMT inducing because they support and make possible the VMT inducing Highway 101 HOV project. They are, therefore, not exempt from VMT impact analysis per Section 15064.3.

To sum up:

- 1- The de novo San Ysidro Roundabout CDP approval will be subject to the rules, requirements and guidelines of Section 15064.3 and The New CEQA Guideline.
- 2- The CLUP amendment that found the San Ysidro roundabout in compliance with CLUP 3.11.1 is no longer valid because the CEQA rules and guidelines used to support the amendment at the time of the August, 2018 BOS action have been superseded and replaced by rules that provide significantly stronger environmental protections.
- 3- The exemption from VMT impact analysis found in Section 15064.3 and The New CEQA Guidelines for roundabouts does not apply to the San Ysidro Roundabout. The San Ysidro Roundabout's purpose is to provide increased capacity to handle increased traffic volume from the VMT inducing Highway 101 HOV project. The San Ysidro Roundabout project is VMT inducing and subject to VMT impact analysis.

Because of the issues stated above, the San Ysidro Roundabout project as currently proposed does not comply with CLUP 3.11.1 and Coastal Act Section 30253(4) because the project will induce VMT, fails to minimize VMT, and was never analyzed for VMT impacts.

B

Approval of the project violates CEQA 21001.2

CEQA 21001.2 requires public agencies to not approve projects as proposed if there are feasible alternatives that would lessen the significant environmental impacts of the project.

As explained earlier, I submitted a request To CalTrans asking them to evaluate reducing VMT as an alternative to the widening project and mitigation projects. I made that request on 2 separate occasions: The first time in December of 2016 at the scoping hearing for the REIR for the widening project, and the second time as a written comment submitted for the Draft REIR for the project.

It is my position that reducing VMT on Highway 101 by 25% from the 2008 baseline will achieve the objectives of the HOV lane and mitigations construction project.

My request to CalTrans was submitted in the lawfully required manner. The request was made both in writing and verbally. My request was made in a clear, easily understood format. My request was made during the period public comment for the REIR was open. My comments and request are part of the record for the REIR and can be viewed by county and city staff, the BOS, SBPC and MPC.

My request for an alternative to to the HOV project and mitigation construction projects was not accepted by CalTrans, and no analysis of reducing VMT to levels that would achieve the goals of the HOV project and mitigations was prepared for the project's REIR.

In 2015, CalTrans was ordered by a court to prepare a revised EIR for the Highway 101 HOV project. The court reasoned that CalTrans had not properly studied the impacts the HOV project would have on local streets and intersections.

CalTrans acknowledged during the lawsuit, and in the REIR, that adding HOV lanes on Highway 101 will induce increases in VMT, and local roads and intersections would experience increases in traffic volumes, VMT and congestion from the addition of the HOV lanes. They admitted it at the December, 2016 scoping hearing for the REIR. In public.

I suggested that programs and planning that reduce VMT on Highway 101 would prevent increases in traffic, VMT and congestion on surface streets. I reasoned that since it was the increase in VMT and traffic caused by the addition of HOV lanes that would cause the impacts on surface streets, CalTrans should reduce VMT on High 101 as the solution to the problem of congestion on the highway instead of adding the HOV lanes. CalTrans disagreed. They concluded that massive construction projects intended to add increased capacity to intersections was the preferred alternative/mitigation, not eliminating the HOV lanes and reducing VMT as I suggested.

Just as a reminder to a previous stated fact: the San Ysidro and Olive Mill Roundabouts are primarily intended to increase traffic capacity at the intersections to handle the increased traffic that will be induced into those intersections by the VMT inducing highway 101 HOV lanes.

CalTrans did evaluate “alternative transportation” projects, and included them as mitigations. However, none of the mitigations for the HOV project will reduce VMT on Highway 101 below the 2008 baseline. Instead, VMT will increase by 40% by the year 2040, even with the mitigations approved by CalTrans. My alternative was the only alternative that actually reduced VMT from any of the baseline years used by CalTrans.

To sum this up:

- 1- I submitted an alternative for the San Ysidro roundabout that conformed with the spirit, intention, purpose and technical support documents of SB 743.
- 2- My alternative was and is feasible and would provide a significantly greater level of environmental protection compared to the San Ysidro project as proposed.
- 3- CalTrans rejected my environmentally superior alternative and refused to study it as an alternative in the Highway 101 HOV REIR.

For the above reasons, this project as proposed violates CEQA 21001.2 and, as a result of that CEQA violation, also violates Coastal Act 30253(4) and CLUP 3.11.1

C

The project as proposed violates CEQA Sections 15021(a)(2), 15064.4, 15126(a) and 15126.6.

CEQA requires that EIR's must describe a range of reasonable of alternatives, and must evaluate the comparative merits of those alternatives.

CEQA requires that the environmentally superior alternative for the project must be identified in an EIR.

CEQA requires that a good faith effort must be made to determine the GHG emissions associated with a proposed project.

To be brief, because CalTrans refused in the REIR to study and list my alternative that requires no construction, reduces VMT from the baseline, does not increase VMT at all, completely abides with the spirit, purpose, intent and technical supporting documents of SB 743 and does not support a VMT inducing project like addition of HOV lanes, this project violates CEQA sections 15021(a)(2), 15064.4, 15126(a) and 15126.6 and, as a result of those CEQA violations, violates CLUP 3.11.1 and Coastal Act 30253(4).

Because of time constraints that will be placed on me during the hearing, the following items originally listed in my appeal form will not be part of my appeal: CEQA 15097, 15088, 15083, 15003, 15002, 15083, 15162, 15153.

Finally, I will advise staff and the BOS to consider if the California Coastal Commission, the California Transportation Commission and the California Air Resources Board would want to approve permits for, provide funding to or give any support to a project that induces VMT, and violates the spirit and intent of SB 743.

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