



RECEIVED

2014 FEB 26 PM 1 55

Agenda Item: 5:00 P.M.

Date: 2/27/14

CITY CLERK, FRESNO, CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Items – 5:00 P.M.

Supplemental Packet Date: February 27, 2014

Item(s)

HEARING to consider approvals related to the Proposed Fulton Mall Reconstruction Project (**Property located in District 3**) – City Manager's Office, Public Works Department and Development and Resource Management Department

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

This page intentionally left blank.

2014 FEB 26 PM 1 12

January 13, 2014

Via Electronic Mail and U.S. Mail

CITY CLERK, FRESNO CA

Mr. Elliott Balch
Downtown Revitalization Manager
City of Fresno
City Manager's Office
2600 Fresno Street
Fresno, CA 93721
Email: Elliott.Balch@fresno.gov

Dear Mr. Balch,

I have been retained by the Fresno Downtown Coalition to provide you with my opinion regarding whether the Draft Environmental Impact Report ("DEIR") for the Fulton Mall Reconstruction Project ("Project") was prepared in compliance with the California Environmental Quality Act ("CEQA") and whether it is consistent with the 2025 General Plan. In addition to the DEIR and its appendices, before reaching my opinion I considered information contained in the following documents:¹

- 2013 TIGER Grant Application and supporting documents as they appear on the City of Fresno's website (www.fresno.gov/NR/.../TIGERnarrative_mediumcompression.pdf); www.fresno.gov/NR/rdonlyres/4DD73165.../allTIGERletters.pdf; www.fresno.gov/NR/.../Fresno_FultonMall_TIGER_letters.pdf);
- 2012 Notice of Preparation of the EIR for Downtown Neighborhoods Community Plan ("DNCP"), Fulton Corridor Specific Plan ("FCSP"), and Downtown Development Code (http://fresnodowntownplans.com/media/files/Fresno_NOP_Signed.pdf);
- 2012 Draft DNCP and Draft FCSP (www.fresnodowntownplans.com);
- 2013 Fulton Mall Reconstruction Project, Finding of Adverse Effect, prepared by Caltrans, dated December 2013 (http://www.dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/fulton_mall_foe_1.pdf);

¹ Documents containing information that is not included in the DEIR and appendices are referenced by the document URL. I request that all referenced documents be included in the administrative record. (Pub. Resources Code, § 21167.6.)

- November 2013 Fulton Mall Reconstruction, Alternatives Analysis Report (http://www.fresno.gov/NR/rdonlyres/E74E6B88-33E5-4191-A4CA-44E6F57D6C79/0/AA_Report_Final_sm.pdf);
- 2013 Historic Property Survey Report for the Fulton Mall Reconstruction Project (http://www.dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/hpsr_fulton_mall_final092013.pdf);
- OPEN SPACE/RECREATION ELEMENT of the 2025 General Plan (<http://www.fresno.gov/NR/rdonlyres/C9764782-00C3-464D-8F08-527AEB17DCAE/0/2025GPChapter4SectionFOpenSpace.pdf>);
- PUBLIC FACILITIES ELEMENT of the 2025 General Plan (<http://www.fresno.gov/NR/rdonlyres/AFCF0095-472D-4F10-B96C-138E80A8D51D/0/2025GPChapter4SectionEPublicFacilities.pdf>); and
- Public Utilities and Services Element of the Draft 2035 General Plan Update (<http://www.fresno.gov/NR/rdonlyres/B69EAB66-46EF-490A-A096-FE40248F643A/0/GPUCh6PublicUtilitiesApril292013.pdf>).

Based upon my review, as explained below, it is my opinion that the DEIR is legally deficient in numerous respects and that the Project does not square with policies, goals and objectives in the 2025 Fresno General Plan.²

Guiding Legal Principles Regarding CEQA

The purpose of an EIR is to act as an “environmental alarm bell” and to demonstrate to the public that the environmental implications of governmental actions have, in fact, been analyzed and considered.³ CEQA defines the “environment” as “the physical conditions which exist within the area which will be affected by a proposed project.”⁴ An EIR must contain detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects the project might be minimized; and to compare reasonable alternatives to the project. (Pub. Resources Code, § 21061.) The discussion must include enough detail⁵ to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.⁶ It must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood

² My opinion is limited to the 2025 General Plan because the Draft 2035 General Plan has not yet been approved.

³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁴ Pub. Resources Code, § 21083.3.

⁵ For example, the absence of detailed maps and/or diagrams that identify the location of key elements of existing infrastructure makes it difficult to understand the impacts that physical changes caused by the Project will have on existing conditions in the area.

⁶ *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-91.

and weighed before the decision to go forward is made.⁷ This DEIR fails as an informational document.

CEQA defines “project” to mean “the whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, § 15378, subd. (a).) “In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project *and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.*” (CEQA Guidelines, §15064, subd. (d) [emphasis provided].) In describing what is required in an EIR, CEQA Guidelines section 15126.2, subdivision (a), provides:

“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. *The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.*”

CEQA defines “direct effects” as “primary effects which are caused by the project and occur at the same time and place.” (CEQA Guidelines, § 15358, subd. (a)(1).) “Indirect effects” are “secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.” (CEQA Guidelines, §15358, subd. (a)(2).)

While understanding the potential *economic* effects of revitalizing the Fulton Mall is critical to the determination of whether to approve the Project, the purpose of an EIR is to focus on the *environmental* effects of the Project. CEQA defines “environment” as “the physical conditions which exist within the area which will be affected by a proposed project.” (Pub. Resources Code, § 21083.3.) As pointed out in the Guidelines, “[I]ncreases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.” (CEQA Guidelines, §15126.2, subd. (d).) One cannot ignore the economic costs of failing to realistically consider the chain of cause and potential effect to aging and inadequate public infrastructure. Perhaps the Fulton Mall might not have deteriorated had the true impacts of suburban sprawl been recognized and mitigated. The point is that the City Council and the public cannot engage in an informed cost/benefit analysis without a much clearer understanding of the environmental issues discussed below.

⁷ *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.

Environmental Issues

The discussion of Population Growth fails to address the increase in population that will occur if this Project is successful in inducing more people to work, shop, conduct business, visit and live in the Fulton Corridor and Downtown Fresno. (CEQA Guidelines, Appendix XIII (a).) Without a good faith estimate of how many more people will be drawn to the area as a reasonably foreseeable consequence of the Project, it is not possible to understand the Project's potential impacts on traffic conditions, air quality, sewer and water infrastructure, and public services (such as police and fire) in the Fulton Corridor and Downtown area.

The discussion of Traffic Conditions fails to take into account the foreseeable effects of increased traffic volume in the Fulton Corridor area if the underlying goals of the Project are achieved. The DEIR's conclusion that the Project will not attract additional vehicle traffic is inconsistent with projections in the TIGER grant narrative that the Project is expected to increase parking revenue in the area by 482%. (TIGER Narrative, p. 6.) It is unreasonable to assume that parking revenues will increase by such a phenomenal amount without an associated increase in vehicle traffic. The DEIR should provide a good faith estimate of how many more vehicles will be drawn to the area as a reasonably foreseeable consequence of the Project and address the potential for increased congestion.

As a consequence of the faulty assumption that the Project will not cause increased vehicle traffic in the area, the DEIR significantly underestimates air quality impacts and greenhouse gas emissions.

The DEIR acknowledges that carbon monoxide "hot spots" are created by "traffic congestion and idling or slow moving vehicles." (DEIR, p. 5-34.) The DEIR *does not* address the potential for Fulton Street to become a CO hotspot as a consequence of traffic congestion on a street designed to create slow moving traffic. Nor does it address whether it is possible to avoid or mitigate this impact. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

The DEIR does not address the potential for higher levels of emissions from traffic congestion and slow moving traffic to impact sensitive receptors such as children, elderly and disabled pedestrians along the shared public space. (Guidelines Appendix G, III (d).) Nor does it address whether it is possible to avoid or mitigate this impact. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

The DEIR acknowledges that water and sewer facilities in the area are inadequate to serve increased use. Yet the DEIR fails to address the reasonably foreseeable effects of increased use of these facilities if the Project induces more people to work, shop, conduct business, visit and live in the Fulton Corridor and Downtown Fresno. Nor does the DEIR discuss mitigation measures that should be imposed and enforced in order to avoid overwhelming these critical public facilities. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

It is widely acknowledged that the downtown area has a severe shortage of park space. The City's website identifies the Fulton Mall as a park. According to the Caltran's 2013 Findings of

Adverse Effect the Fulton Mall is an urban park. (See p.11.) The hundreds of elderly, disabled and low-income families who visit the Fulton Mall every day consider it a park. The DEIR does not address the loss of park space and does not discuss how this loss can be avoided or mitigated. (Pub. Resources Code, § 21061; Guidelines Appendix G, XIV; CEQA Guidelines, § 15370.) The discussion of impacts to landfills fails to provide a good faith estimate of current capacity in existing landfill facilities or the amount of debris that demolition and reconstruction will generate. Without this information it is not possible to understand the basis for the DEIR's conclusion that the debris generated is not expected to exceed landfill capacity at the intended facility.

In April 2012 the City issued a notice that it was preparing an EIR for the "Downtown Plans." One of the plans, the Fulton Corridor Specific Plan ("FCSP"), encompasses the Fulton Mall. In fact, the FCSP's list of projects identifies the revitalization of the Fulton Mall as the number one project. An entire chapter of the FCSP is devoted to the Fulton Mall project. The introduction to the discussion in the FCSP declares:

"Revitalizing the Fulton Mall is key to revitalizing Downtown Fresno. If no provisions of this Specific Plan were implemented other than improving the function of the Fulton Mall, it would mark a huge step forward for the future of the Downtown economy." (FCSP, p. 4:1.)

According to the TIGER grant narrative, the environmental impacts of Project on the Fulton Corridor area would be reviewed in the EIR for the FCSP. (TIGER Narrative, p. 16.) However, in October 2013 the City gave notice that it was preparing a separate EIR for the Fulton Mall Reconstruction Project.

Despite its acknowledged central role in changing the Fulton Corridor and Downtown area, the DEIR for the Project fails to consider the reasonably foreseeable physical changes or the impacts on the area. CEQA prohibits piecemeal or segmented environmental review. The requirements of CEQA cannot be avoided by carving the Fulton Mall Reconstruction Project out of the Fulton Corridor Specific Plan EIR and then failing to consider the reasonably foreseeable effects of the Project on the area.

Eliminating this Project from environmental review in the EIR for the FCSP also reflects a pre-approval commitment to the Project that CEQA forbids. (CEQA Guidelines, § 15004, subd. (b)(2)(B).)

Eliminating renovation and rehabilitation from the scope of environmental review and comparison is improper because (1) it is identified in the FCSP as a feasible alternative for revitalizing the Fulton Mall, and (2) renovation and rehabilitation is the current plan for the area according to the Central Area Community Plan. (CEQA Guidelines, § 15126.6.)

Since the current plan for the Fulton Mall is renovation and rehabilitation, the current plan is the "no-build" alternative. (CEQA Guidelines, § 15126.6, subd. (e).) The DEIR improperly uses current baseline conditions as the "no-build" alternative.

General Plan Inconsistencies

California law forbids the approval of a project that will frustrate a general plan's goals and policies unless the project includes definite and affirmative commitments to mitigate the inconsistency. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 379.)

The demolition of the Fulton Mall is inconsistent with the 2025 General Plan's commitment to "[s]afeguard Fresno's heritage by preserving resources which reflect important cultural, social, economic, and architectural features so that community residents will have a foundation upon which to measure and direct physical change." (Policy Objective G-11.) Nor is eliminating the Fulton Mall compatible with the General Plan's strategy to "[p]erpetuate, protect, enhance, and revitalize historic resources." (Policy G-11-c.) This incompatibility cannot be mitigated.

The Project is inconsistent with the policy against auto-oriented development. (Policy Objective E-9.) There is no discussion of mitigation.

The Project is inconsistent with the policy against approving a project without determining whether it will exceed the capacity of existing water and sewer facilities. (Policy Objectives E-18, E-20, Policy E-22-d.) There is no discussion of mitigation.

The Project is not compatible with the General Plan goal of equitably distributing park space to meet the needs of primarily minority inner city neighborhoods. It eliminates park space that accommodates the specialized needs of a predominantly and senior citizen neighborhood without any discussion of mitigation.

Conclusion

The Fresno Downtown Coalition believes there is nothing of cultural or historical significance in the San Joaquin Valley that approaches the stature of Garrett Eckbo's Fulton Mall masterpiece and the incredible artwork that is integrated into his design. Caltran's 2013 Finding of Adverse Effect confirms their belief. The DEIR acknowledges the significance of losing this cultural and historical resource. However, my clients believe that the loss is greatly underestimated.

Furthermore, as discussed above, it is unreasonable to believe that the demolition of the Fulton Mall and the reconstruction of Fulton Street to increase the number of people to live, work, do business, shop and visit the area will not have a significant impact beyond the loss of the Fulton Mall.

Nor would it be acceptable for the City Council to approve the Project without a binding commitment to cure or mitigate the Project's inconsistencies with the 2025 General Plan's goals and policies.

I appreciate the opportunity to submit this comment letter on behalf of the Fresno Downtown Coalition.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Hedgpeth-Harris". The signature is fluid and cursive, written over a light blue horizontal line.

Sara Hedgpeth-Harris

cc: Fresno Downtown Coalition

This page intentionally left blank.

**Sara Hedgpeth-Harris**

A Professional Law Corporation



2014 FEB 26 PM 1 12

CITY CLERK, FRESNO CA

February 4, 2014

By Electronic Mail and U.S. Mail

Mr. Steve Brandau, Council President
Honorable Members of the Fresno City Council
2600 Fresno Street, Room 2097
Fresno, CA 93721

Email: District1@fresno.gov, District2@fresno.gov, District3@fresno.gov,
District4@fresno.gov, District5@fresno.gov, District6@fresno.gov,
District7@fresno.gov.

Re: Resolution authorizing the submission of applications for grant funding for the proposed Fulton Mall Reconstruction Project from the Fresno County Measure "C" Transit Oriented Development (TOD) Program and authorizing the execution of application-related documents by the City Manager or designee.

Honorable Council President Brandau and Honorable Members of the City Council:

I have been retained by the Downtown Fresno Coalition to submit this letter expressing their opposition to the proposed resolution authorizing the submission of applications for grant funding for the proposed Fulton Mall Reconstruction Project.

Background

The Downtown Fresno Coalition was formed to promote responsible revitalization of downtown Fresno.¹ Its primary focus is the restoration and preservation of the Fulton Mall as the masterpiece of modern urban park landscape and sculptural design that earned it a listing in the California Register of Historical Resources. Although formally deemed eligible for listing on the National Register of Historic Places by the Keeper of the National Register, the Mall was not formally listed because a majority of the adjoining landowners claimed ownership of the Mall and objected to its listing.²

¹ See the following websites for more information about DFC:

<https://www.facebook.com/DowntownFresnoCoalition>, and

<http://www.1000friendsoffresno.org/downtownfresnocoalition.html>

² This information is contained in the December 2013 Report entitled "Finding of Adverse Effect" ("FAE") that was prepared by Caltrans for the Fulton Mall Reconstruction Project.

http://dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/fulton_mall_foe_2v2.pdf

The determination of eligibility was based upon the Keeper's finding that the Fulton Mall was of significant importance as an urban park and that the Mall was "*exceptionally significant at the national level of significance...for its landscape architecture, as the finest example of post WWII era federal urban renewal pedestrian mall design, as the work of a master, Garrett Eckbo, and as an excellent example of Modernist design ideas' influence on landscape architecture.*" (See Caltrans' FAE, p. 11.)

The adopted plan for the Fulton Mall, as set forth in the Central Area Community Plan ("CACP"), is to "[i]mprove and maintain the Fulton Mall as an exciting, physically and visually superior pedestrian environment for the people of Fresno, the San Joaquin Valley and the world." (CACP, p. 84.) The goal of retaining the Fulton Mall as a "pedestrian-only environment" is identified by the CACP as "fundamental" to the adopted plan. (CACP, p. 84.)

Since September 14, 2010, my clients have participated in the planning process for Fulton Corridor Specific Plan ("FCSP"). The CACP policies regarding the Fulton Mall were being reviewed in this context. Three options for the Mall were identified for further study and environmental review in the October 2011 Draft FCSP: eliminating the Mall and replacing it with a traditional collector street; eliminating the Mall and replacing it with a curving street with "vignettes" to showcase "selected original features in their original Mall context"; and, preserving the Mall as pedestrian-only and renovating, repairing and restoring the mall and its artwork.³ According to the Draft FCSP, the decision regarding the final plan for the Fulton Mall would be made, as it should be, by the City Council after environmental review of all three options under CEQA.⁴

In May 2013 the City applied for and received a Measure C TOD grant of \$474,810 to prepare the preliminary plans and environmental analysis of all three options identified in the Draft FCSP. (See Exhibit A1 – Project Scope, attached hereto as Attachment A.) Note that the project at that time was entitled, "Fulton Mall Redevelopment" project. However, notwithstanding the terms of the City's agreement with the Fresno County Transportation Authority (FCTA), the funds were not spent to consider all three alternative plans for redevelopment of the Fulton Mall as detailed in the Project Scope.

The City changed course in September 2013 when the U.S Department of Transportation announced that the City had qualified for a TIGER Grant of \$15.9 million to eliminate the Mall and replace it with a collector street. At that point, the City abandoned the EIR for the FCSP. Instead, in October 2013 the City gave notice that it was preparing a separate EIR for the Fulton Mall Reconstruction Project. Given that the option of

³ See FCSP p. 4-7 at

<http://webapp.fresno.gov/FresnoPlans/FultonCorridor/FCSP_Ch_04_Fulton_Mall_0.pdf>

⁴ See FCSP p. 4-16 at

<http://webapp.fresno.gov/FresnoPlans/FultonCorridor/FCSP_Ch_04_Fulton_Mall_0.pdf>

preserving the Mall was eliminated from consideration and analysis, "reconstruction" is a serious misnomer. This is a demolition project--not a reconstruction project.

Furthermore, the City has eliminated the option of replacing the Mall with a curving street with vignettes. According to the proposed application for Measure C TOD matching construction funding, the funds that the City received in late 2013 for pre-construction engineering have already been used to develop the plans for demolishing the Mall and replacing it with a traditional collector street. See Capital Improvement Project Application, p. 5. In short, the City has committed to the demolition of the Fulton Mall and limited the Council's options to demolition or leaving the Mall in its current blighted condition.

As reflected in my comment letter to the DEIR for the Fulton Mall Reconstruction Project, the process and the EIR fail to comply with CEQA and the Project is inconsistent with the 2025 General Plan. (Attached hereto as Attachment B.) Furthermore, as reflected in the discussion below, in my opinion this Council cannot certify in good faith that eliminating the Mall and replacing it with collector street is an eligible project for Measure C TOD funding.

1. **The City Council cannot certify that the Fulton Mall Reconstruction Project is a public transit-oriented infrastructure project that will reduce private vehicle dependence as required by Measure C.**

On November 11, 2006, the citizens of Fresno County voted to extend the Measure C half-cent sales tax for 20 years pursuant to an adopted Expenditure Plan. The specific text of the ballot measure asks: "shall Fresno County Transportation Authority continue, but not increase, existing half-cent sales tax for 20 years, *per locally adopted Expenditure Plan.*"⁵ The Expenditure Plan provides for a very small portion (just over 1%) of Measure C funds to be dedicated to Transit Oriented Infrastructure Development (TOD).⁶ According to the program description in the Expenditure Plan, this type of infrastructure development "refers to transportation facilities in new or revitalized developments that support increased demand for transit with higher density and mixed land use. This type of development reduces our dependence on the automobile by providing funding incentives for more public or alternative transportation."

The Fulton Mall Reconstruction Project as currently proposed is not transit-oriented. The Project very clearly is an auto-oriented transportation facility. A search of the EIR finds no mention of the Project as being transit-oriented; the same is true for the January 2014 Environmental Assessment and Section 4(f) Evaluation of the Project. The project objectives, as described in both documents, do not include increasing the demand for

⁵ See http://www.sos.ca.gov/elections/county-city-school-district-election-results/county_report_2006.pdf.

⁶ The Expenditure Plan can be viewed at <http://www.measurec.com/wp-content/uploads/2013/04/2006MeasureCExpenditurePlan.pdf>.

public transit. Furthermore, neither document explains how the re-introduction of vehicle traffic to Fulton Street will increase the demand for public transit or reduce our dependence on the automobile.

By design, the Project encourages our dependence on automobiles. The objective is to incentivize more individual vehicle trips to the Fulton Corridor area. Eliminating the Fulton Mall and replacing it with a street so that people can see the buildings from their cars does not incentivize more public transportation or alternatives to individual vehicle transportation.

2. **The City Council cannot certify that the Fulton Mall Reconstruction Project is consistent with adopted plans.**

According to Measure C TOD Program Policies and Guidelines (“Guidelines”) the application for TOD funds must demonstrate that the project “conforms to all applicable adopted plans.” (Project Evaluation No. 2.) Contrary to representations in the proposed application, the Project as currently proposed does not conform to all currently adopted plans.

Demolition of the Fulton Mall does not conform to the 2025 General Plan's commitment to “[s]afeguard Fresno's heritage by preserving resources which reflect important cultural, social, economic, and architectural features so that community residents will have a foundation upon which to measure and direct physical change.” (Policy Objective G-11.) Nor is eliminating the Fulton Mall compatible with the General Plan's strategy to “[p]erpetuate, protect, enhance, and revitalize historic resources.” (Policy G-11-c.)

The proposed reconstruction of Fulton Mall is also inconsistent with General Plan policies against auto-oriented development. (Policy Objective E-9.) Approval of the Project without first determining that existing water and sewer facilities are sufficient to handle the growth that the Project is projected to facilitate is also inconsistent with General Plan policies. (Policy Objectives E-18, E-20, Policy E-22-d).

Additionally, elimination of the Fulton Mall does not conform to the General Plan goal of equitably distributing parks to meet the needs of primarily minority inner city neighborhoods. The Project destroys a wonderful urban park that accommodates the needs of a predominantly minority and senior citizen neighborhood.

3. **The Council cannot certify compliance with CEQA.**

A detailed discussion of the defects in the CEQA process and the EIR for the Fulton Mall Reconstruction Project are provided in my attached comment letter.

In conclusion, the Downtown Fresno Coalition maintains there is nothing of cultural or historical significance in the San Joaquin Valley that approaches the stature of the Fulton

Resolution Authorizing Application for Measure C TOD Funds for Fulton Mall
Reconstruction Project
February 4, 2014
Page 5

Mall. As a result of the City's poor stewardship, this nationally recognized treasure has been allowed to become significantly blighted. Now, the City is sacrificing the Mall on a gamble that the revitalization of downtown Fresno depends upon whether people can see the buildings and storefronts along Fulton Street as they drive by in their cars. My clients believe the City is overestimating the value of a street and significantly underestimating the significance of losing the Fulton Mall.

In conclusion, it is the position of the Downtown Fresno Coalition that the City Council cannot in good faith adopt the proposed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Hedgpeth-Harris". The signature is fluid and cursive, with the first name "Sara" being the most prominent.

Sara Hedgpeth-Harris

cc: Downtown Fresno Coalition

This page intentionally left blank.

ATTACHMENT A

This page intentionally left blank.



EXHIBIT A1 – PROJECT SCOPE

Project– Fulton Mall Redevelopment

Responsible Agency
City of Fresno

Project Limits

The Fulton Mall consists of six blocks bounded by Van Ness Avenue to the east, Inyo Street to the south, Broadway Street to the west, and Tuolumne Street to the north. Fulton Street, Merced Street, Mariposa Street, and Kern Street are currently pedestrian-only, while Fresno Street and Tulare Street continue to include traffic.

Project Phase

- Phase 1 - Preliminary Engineering (Includes Preliminary Design/Engineering (PS&E) and Environmental)
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction (Includes Project Construction & Construction Management)

Project Phase(s) Scope

Phase 1 includes completing preliminary plans and the environmental analysis including CEQA and NEPA documentation. The actual construction of the project will be done under one construction contract.

Complete Project Scope

Upon completion of Phase 1, one of the following three alternatives will be selected:

- Reconnect the Grid on Traditional Streets and relocate the art features.
- Reconnect the Grid with Vignettes and relocate the art features utilizing the vignettes.
- Restoration and Completion of the mall within the present configuration of the streets.

Project Purpose

The revitalization of Downtown Fresno is one of the most important factors in the long-term success of the rest of the City. Revitalization of the thousands of acres that surround the Downtown depends entirely on the successful turnaround of Downtown's central business district.

Transportation Benefit

The Fulton Mall is the City's most likely target for multi-modal Transit Oriented Development. It is one-block from the current Downtown transit bay, one-block from the future Downtown BRT station, and two-blocks from a potential High Speed Rail station. Already several high-density, high-quality housing developments have been proposed along Fulton Mall, with more expected as essential infrastructure investments occur on and around the Mall, and the revitalization of the area becomes visible. Over time, due to its dense building stock and location, the Fulton Mall area has the unique potential to become a very intense mixed-use TOD center.

Implications of Not Doing the Project

Without the project the downtown would not enjoy the increased development and transit activity that the project envisions.

Community Engagement

The project limits are within a commercial area. Businesses will be kept informed of the Project's status and schedule through Project newsletters and the Project Website. FCTA will be added as an informed party to those lists.

Construction Staging

Construction phasing will be implemented to reduce or eliminate potential impacts on nearby residences and businesses.

Detours

Detours during construction of this Project are not anticipated.

Current Status

Phase 1 will be initiated with the execution of this agreement.

Contact

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.

This page intentionally left blank.

ATTACHMENT B

This page intentionally left blank.

Sara Hedgpeth-Harris

A Professional Law Corporation



January 13, 2014

Via Electronic Mail and U.S. Mail

Mr. Elliott Balch
Downtown Revitalization Manager
City of Fresno
City Manager's Office
2600 Fresno Street
Fresno, CA 93721
Email: Elliott.Balch@fresno.gov

Dear Mr. Balch,

I have been retained by the Fresno Downtown Coalition to provide you with my opinion regarding whether the Draft Environmental Impact Report ("DEIR") for the Fulton Mall Reconstruction Project ("Project") was prepared in compliance with the California Environmental Quality Act ("CEQA") and whether it is consistent with the 2025 General Plan. In addition to the DEIR and its appendices, before reaching my opinion I considered information contained in the following documents:¹

- 2013 TIGER Grant Application and supporting documents as they appear on the City of Fresno's website (www.fresno.gov/NR/.../TIGERnarrative_mediumcompression.pdf; www.fresno.gov/NR/rdonlyres/4DD73165.../allTIGERletters.pdf; www.fresno.gov/NR/.../Fresno_FultonMall_TIGER_letters.pdf);
- 2012 Notice of Preparation of the EIR for Downtown Neighborhoods Community Plan ("DNCP"), Fulton Corridor Specific Plan ("FCSP"), and Downtown Development Code (http://fresnodowntownplans.com/media/files/Fresno_NOP_Signed.pdf);
- 2012 Draft DNCP and Draft FCSP (www.fresnodowntownplans.com);
- 2013 Fulton Mall Reconstruction Project, Finding of Adverse Effect, prepared by Caltrans, dated December 2013 (http://www.dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/fulton_mall_foe_1.pdf);

¹ Documents containing information that is not included in the DEIR and appendices are referenced by the document URL. I request that all referenced documents be included in the administrative record. (Pub. Resources Code, § 21167.6.)

- November 2013 Fulton Mall Reconstruction, Alternatives Analysis Report (http://www.fresno.gov/NR/rdonlyres/E74E6B88-33E5-4191-A4CA-44E6F57D6C79/0/AA_Report_Final_sm.pdf);
- 2013 Historic Property Survey Report for the Fulton Mall Reconstruction Project (http://www.dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/hpsr_fulton_mall_final092013.pdf);
- OPEN SPACE/RECREATION ELEMENT of the 2025 General Plan (<http://www.fresno.gov/NR/rdonlyres/C9764782-00C3-464D-8F08-527AEB17DCAE/0/2025GPChapter4SectionFOpenSpace.pdf>);
- PUBLIC FACILITIES ELEMENT of the 2025 General Plan (<http://www.fresno.gov/NR/rdonlyres/AFCF0095-472D-4F10-B96C-138E80A8D51D/0/2025GPChapter4SectionEPublicFacilities.pdf>); and
- Public Utilities and Services Element of the Draft 2035 General Plan Update (<http://www.fresno.gov/NR/rdonlyres/B69EAB66-46EF-490A-A096-FE40248F643A/0/GPUCh6PublicUtilitiesApril292013.pdf>).

Based upon my review, as explained below, it is my opinion that the DEIR is legally deficient in numerous respects and that the Project does not square with policies, goals and objectives in the 2025 Fresno General Plan.²

Guiding Legal Principles Regarding CEQA

The purpose of an EIR is to act as an “environmental alarm bell” and to demonstrate to the public that the environmental implications of governmental actions have, in fact, been analyzed and considered.³ CEQA defines the “environment” as “the physical conditions which exist within the area which will be affected by a proposed project.”⁴ An EIR must contain detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects the project might be minimized; and to compare reasonable alternatives to the project. (Pub. Resources Code, § 21061.) The discussion must include enough detail⁵ to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.⁶ It must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood

² My opinion is limited to the 2025 General Plan because the Draft 2035 General Plan has not yet been approved.

³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁴ Pub. Resources Code, § 21083.3.

⁵ For example, the absence of detailed maps and/or diagrams that identify the location of key elements of existing infrastructure makes it difficult to understand the impacts that physical changes caused by the Project will have on existing conditions in the area.

⁶ *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-91.

and weighed before the decision to go forward is made.⁷ This DEIR fails as an informational document.

CEQA defines “project” to mean “the whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, § 15378, subd. (a).) “In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project *and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.*” (CEQA Guidelines, §15064, subd. (d) [emphasis provided].) In describing what is required in an EIR, CEQA Guidelines section 15126.2, subdivision (a), provides:

“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. *The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.*”

CEQA defines “direct effects” as “primary effects which are caused by the project and occur at the same time and place.” (CEQA Guidelines, § 15358, subd. (a)(1).) “Indirect effects” are “secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.” (CEQA Guidelines, §15358, subd. (a)(2).)

While understanding the potential *economic* effects of revitalizing the Fulton Mall is critical to the determination of whether to approve the Project, the purpose of an EIR is to focus on the *environmental* effects of the Project. CEQA defines “environment” as “the physical conditions which exist within the area which will be affected by a proposed project.” (Pub. Resources Code, § 21083.3.) As pointed out in the Guidelines, “[I]ncreases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.” (CEQA Guidelines, §15126.2, subd. (d).) One cannot ignore the economic costs of failing to realistically consider the chain of cause and potential effect to aging and inadequate public infrastructure. Perhaps the Fulton Mall might not have deteriorated had the true impacts of suburban sprawl been recognized and mitigated. The point is that the City Council and the public cannot engage in an informed cost/benefit analysis without a much clearer understanding of the environmental issues discussed below.

⁷ *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.

Environmental Issues

The discussion of Population Growth fails to address the increase in population that will occur if this Project is successful in inducing more people to work, shop, conduct business, visit and live in the Fulton Corridor and Downtown Fresno. (CEQA Guidelines, Appendix XIII (a).) Without a good faith estimate of how many more people will be drawn to the area as a reasonably foreseeable consequence of the Project, it is not possible to understand the Project's potential impacts on traffic conditions, air quality, sewer and water infrastructure, and public services (such as police and fire) in the Fulton Corridor and Downtown area.

The discussion of Traffic Conditions fails to take into account the foreseeable effects of increased traffic volume in the Fulton Corridor area if the underlying goals of the Project are achieved. The DEIR's conclusion that the Project will not attract additional vehicle traffic is inconsistent with projections in the TIGER grant narrative that the Project is expected to increase parking revenue in the area by 482%. (TIGER Narrative, p. 6.) It is unreasonable to assume that parking revenues will increase by such a phenomenal amount without an associated increase in vehicle traffic. The DEIR should provide a good faith estimate of how many more vehicles will be drawn to the area as a reasonably foreseeable consequence of the Project and address the potential for increased congestion.

As a consequence of the faulty assumption that the Project will not cause increased vehicle traffic in the area, the DEIR significantly underestimates air quality impacts and greenhouse gas emissions.

The DEIR acknowledges that carbon monoxide "hot spots" are created by "traffic congestion and idling or slow moving vehicles." (DEIR, p. 5-34.) The DEIR *does not* address the potential for Fulton Street to become a CO hotspot as a consequence of traffic congestion on a street designed to create slow moving traffic. Nor does it address whether it is possible to avoid or mitigate this impact. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

The DEIR does not address the potential for higher levels of emissions from traffic congestion and slow moving traffic to impact sensitive receptors such as children, elderly and disabled pedestrians along the shared public space. (Guidelines Appendix G, III (d).) Nor does it address whether it is possible to avoid or mitigate this impact. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

The DEIR acknowledges that water and sewer facilities in the area are inadequate to serve increased use. Yet the DEIR fails to address the reasonably foreseeable effects of increased use of these facilities if the Project induces more people to work, shop, conduct business, visit and live in the Fulton Corridor and Downtown Fresno. Nor does the DEIR discuss mitigation measures that should be imposed and enforced in order to avoid overwhelming these critical public facilities. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15370.)

It is widely acknowledged that the downtown area has a severe shortage of park space. The City's website identifies the Fulton Mall as a park. According to the Caltran's 2013 Findings of

Adverse Effect the Fulton Mall is an urban park. (See p.11.) The hundreds of elderly, disabled and low-income families who visit the Fulton Mall every day consider it a park. The DEIR does not address the loss of park space and does not discuss how this loss can be avoided or mitigated. (Pub. Resources Code, § 21061; Guidelines Appendix G, XIV; CEQA Guidelines, § 15370.) The discussion of impacts to landfills fails to provide a good faith estimate of current capacity in existing landfill facilities or the amount of debris that demolition and reconstruction will generate. Without this information it is not possible to understand the basis for the DEIR's conclusion that the debris generated is not expected to exceed landfill capacity at the intended facility.

In April 2012 the City issued a notice that it was preparing an EIR for the "Downtown Plans." One of the plans, the Fulton Corridor Specific Plan ("FCSP"), encompasses the Fulton Mall. In fact, the FCSP's list of projects identifies the revitalization of the Fulton Mall as the number one project. An entire chapter of the FCSP is devoted to the Fulton Mall project. The introduction to the discussion in the FCSP declares:

"Revitalizing the Fulton Mall is key to revitalizing Downtown Fresno. If no provisions of this Specific Plan were implemented other than improving the function of the Fulton Mall, it would mark a huge step forward for the future of the Downtown economy." (FCSP, p. 4:1.)

According to the TIGER grant narrative, the environmental impacts of Project on the Fulton Corridor area would be reviewed in the EIR for the FCSP. (TIGER Narrative, p. 16.) However, in October 2013 the City gave notice that it was preparing a separate EIR for the Fulton Mall Reconstruction Project.

Despite its acknowledged central role in changing the Fulton Corridor and Downtown area, the DEIR for the Project fails to consider the reasonably foreseeable physical changes or the impacts on the area. CEQA prohibits piecemeal or segmented environmental review. The requirements of CEQA cannot be avoided by carving the Fulton Mall Reconstruction Project out of the Fulton Corridor Specific Plan EIR and then failing to consider the reasonably foreseeable effects of the Project on the area.

Eliminating this Project from environmental review in the EIR for the FCSP also reflects a pre-approval commitment to the Project that CEQA forbids. (CEQA Guidelines, § 15004, subd. (b)(2)(B).)

Eliminating renovation and rehabilitation from the scope of environmental review and comparison is improper because (1) it is identified in the FCSP as a feasible alternative for revitalizing the Fulton Mall, and (2) renovation and rehabilitation is the current plan for the area according to the Central Area Community Plan. (CEQA Guidelines, § 15126.6.)

Since the current plan for the Fulton Mall is renovation and rehabilitation, the current plan is the "no-build" alternative. (CEQA Guidelines, § 15126.6, subd. (e).) The DEIR improperly uses current baseline conditions as the "no-build" alternative.

General Plan Inconsistencies

California law forbids the approval of a project that will frustrate a general plan's goals and policies unless the project includes definite and affirmative commitments to mitigate the inconsistency. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 379.)

The demolition of the Fulton Mall is inconsistent with the 2025 General Plan's commitment to "[s]afeguard Fresno's heritage by preserving resources which reflect important cultural, social, economic, and architectural features so that community residents will have a foundation upon which to measure and direct physical change." (Policy Objective G-11.) Nor is eliminating the Fulton Mall compatible with the General Plan's strategy to "[p]erpetuate, protect, enhance, and revitalize historic resources." (Policy G-11-c.) This incompatibility cannot be mitigated.

The Project is inconsistent with the policy against auto-oriented development. (Policy Objective E-9.) There is no discussion of mitigation.

The Project is inconsistent with the policy against approving a project without determining whether it will exceed the capacity of existing water and sewer facilities. (Policy Objectives E-18, E-20, Policy E-22-d.) There is no discussion of mitigation.

The Project is not compatible with the General Plan goal of equitably distributing park space to meet the needs of primarily minority inner city neighborhoods. It eliminates park space that accommodates the specialized needs of a predominantly and senior citizen neighborhood without any discussion of mitigation.

Conclusion

The Fresno Downtown Coalition believes there is nothing of cultural or historical significance in the San Joaquin Valley that approaches the stature of Garrett Eckbo's Fulton Mall masterpiece and the incredible artwork that is integrated into his design. Caltran's 2013 Finding of Adverse Effect confirms their belief. The DEIR acknowledges the significance of losing this cultural and historical resource. However, my clients believe that the loss is greatly underestimated.

Furthermore, as discussed above, it is unreasonable to believe that the demolition of the Fulton Mall and the reconstruction of Fulton Street to increase the number of people to live, work, do business, shop and visit the area will not have a significant impact beyond the loss of the Fulton Mall.

Nor would it be acceptable for the City Council to approve the Project without a binding commitment to cure or mitigate the Project's inconsistencies with the 2025 General Plan's goals and policies.

I appreciate the opportunity to submit this comment letter on behalf of the Fresno Downtown Coalition.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Hedgpeth-Harris". The signature is fluid and cursive, with the first name "Sara" being the most prominent.

Sara Hedgpeth-Harris

cc: Fresno Downtown Coalition

This page intentionally left blank.

Sara Hedgpeth-Harris
A Professional Law Corporation
♦♦♦♦

2014 FEB 26 PM 1 12

CITY CLERK, FRESNO CA

February 24, 2014

By Email

Kirsten Helton, Senior Environmental Planner
California Department of Transportation
855 M Street, suite 200
Fresno, CA 93721
Kirsten.Helton@dot.ca.gov

Re: Environmental Assessment and Section 4(f) Evaluation for the Fulton Mall Reconstruction Project (EA 06-0R200).

Dear Ms. Helton:

I have been retained by the Downtown Fresno Coalition ("DFC") to submit these comments to the Environmental Assessment ("EA") and Section 4(f) Evaluation for the Fulton Mall Reconstruction Project. DFC is a §106 consulting party for the Project.

I. An EIS Must Be Prepared.

First of all, the description of this project as a "reconstruction project" is inaccurate and extremely disingenuous since it is undisputed that the TIGER grant funds will be used to demolish the Fulton Mall and no funds will be used to reconstruct the Mall. An EA is appropriate when the significance of an environmental impact is unclear. 23 C.F.R. §771.115(c). It has been patently clear from the outset that this project's impacts will be significant. No reasonable person could seriously question whether the use of federal funds to demolish the Fulton Mall will have a significant impact on the quality of the human environment. An Environmental Impact Statement ("EIS") is therefore required by federal law. 42 U.S.C. § 4332(2)(C). The purpose of this letter is to identify some of the most potentially significant impacts the project will have on the quality of the environment.

A. The Project Will Demolish A Nationally Recognized Historical Resource.

As acknowledged in Caltrans' December 2013 Findings of Adverse Effect ("FAE") for the project, the Keeper of the National Register of Historic Places has determined that the Fulton Mall is of significant importance as an urban park and that the Mall is "*exceptionally significant at the national level of significance...for its landscape architecture, as the finest example of post WWII era federal urban renewal pedestrian*

mall design, as the work of a master, Garrett Eckbo, and as an excellent example of Modernist design ideas' influence on landscape architecture." (FAE, p. 11.)

B. The Project Will Demolish An Urban Park That Serves A Disadvantaged Community.

For purposes of NEPA and Section 4(f), Caltrans must assume the project will demolish an historical urban park. The City's claim that the Fulton Mall is not an urban park resource ignores reality. Not only is it inconsistent with findings of the Keeper of the National Register of Historic Places, it is inconsistent with the findings and conclusions of the August 2013 Historical Property Survey Report. It also contradicts the City's descriptions of the Fulton Mall in its grant application for state and federal grant funds¹ to improve the Mall. As reflected in the attached grant application for the Fulton Mall Children's Play Equipment Replacement Project, the City claims that the Fulton Mall is "a 7.3 acre linear urban park located in the heart of Downtown Fresno." (Exhibit A, p. 1.)

C. The Project Will Have An Adverse Impact On Community Character And Cohesion.

The City's application for park fund grants also paints a more accurate and complete picture of the community that is impacted by the demolition of this urban park. For example, it accurately explains that the Fulton Mall provides "a very high percent of the under-served and economically disadvantaged population in the Fresno Metropolitan area" with "access to a public park and recreation resources." (Exhibit A, p. 2.) In describing the need for park funds, the grant application accurately reflects that the tot lots are in front of buildings that house the offices of the U.S. Customs and Immigration Services and Fresno County Juvenile Dependency Court which hears primarily child welfare cases. Exhibit A, p. 3. This demonstrates that the funds were needed to improve the park so that children have access to a safe and convenient place to play while their families access the services they need.

The Community Impact Analysis ("CIA") that was prepared by the City lists the numerous federal, state and county offices that are housed on Fulton Mall including: U.S. Army Recruiting, U.S. Social Security Administration, Internal Revenue Service, Fresno Housing Authority, Fresno County Department of Public Health and Court Appointed Special Advocates ("CASA"). On a daily basis, these agencies serve the needs of a regional, county and local population of elderly, disabled and low-income families who visit the Fulton Mall and who utilize it as a park. Yet the City's CIA fails to consider how replacing this urban park with a street will impact the community that currently benefits from its existence. For example, it fails to address the potential traffic congestion that will occur when the thousands of people who currently access these

¹ As reflected in the EA, State Proposition 40 and Federal Land and Water Conservation Funds were used to improve the tot lots.

offices by walking on the Mall attempt to access them by driving their cars. It also fails to address the safety implications if children must cross the congested street to play on the tot lot equipment.

While the City may be able to change its policies with respect to the Fulton Mall, it cannot change the community that is currently served--*and that will continue to be served*--by the Mall. Furthermore, the City cannot avoid assessing the impact that the demolition of this urban park will have on the impacted community by limiting the study area population to those who live within the narrow geographical confines of a single census tract.

Without an accurate description of the setting and context, the EIS for this project cannot provide an accurate assessment of the project's impacts on the human environment. DFC is informed and believes that the City has possession of studies and reports that contain the information needed to accurately describe the community that the Fulton Mall currently serves on a daily basis.² Caltrans must insist that the City provide this information so that the EIS can provide an honest and accurate assessment of how the demolition of this urban park will impact the area's minority and low income community.

D. The Project Will Have Growth Inducing Impacts.

According to the CIA, "growth is anticipated to occur through the reoccupation of the ground floors of existing vacant buildings as vehicle access and parking become available." p. 37. The City projects a significant increase in the development of residential units in the area as a result of the project, yet the City fails to provide any estimates regarding the anticipated population increase. Again, the City cannot ignore the direct and indirect impacts on the environment by restricting its assessment of growth impacts to the confines of the Mall area. Without a good faith estimate of how many more people will be drawn to the area as a reasonably foreseeable consequence of the Project's success, it is not possible to understand the Project's potential impacts on traffic conditions, air quality, sewer and water infrastructure, and public services (such as police and fire) in the Fulton Corridor and Downtown area.

E. The Project Will Impact Existing Minority Businesses.

The CIA's analysis of the impact to businesses on the Mall is limited to the following comment: "Based on the types of businesses currently located on the Fulton Mall, many

² DFC also objects to the use of inadequate and incomplete data regarding the incidences of crime in the area as compared with other areas in Fresno. According to the Department of Justice Uniform Crime Reporting Statistics, there were 25,737 incidences of property crime and 2,748 violent crimes reported in the City of Fresno. Without any meaningful analysis or comparison of the Fulton Mall area with other areas of the City, the EA attempts to give the impression that the Fulton Mall is a high crime area. If crime is to be used as a factor in the decision regarding whether to approve this project, DFC insists that the EIS include accurate and data and that it provides a good faith assessment of crime in the area.

may be minority owned. Several retail businesses appear to serve the Hispanic community. Restaurants are mainly Hispanic or other ethnic foods." CIA, p. 67. The EA limits its consideration to the five mobile cart vendors that operate within the area, and claims they will not be impacted because they will be allowed to move to other locations within the general vicinity. EA, p. 33. Neither the EA nor the CIA provides the information necessary to assess the impacts to numerous existing minority owned businesses that are housed within the buildings that line the Mall as a consequence the demolition project.

F. The Project Will Impact Existing Utilities.

The City acknowledges in the EIR prepared for the Project that water and sewer facilities in the area are inadequate to serve increased use. Yet the EA fails to address the reasonably foreseeable effects of increased use of these facilities if the Project induces more people to work, shop, conduct business, visit and live in the Fulton Corridor and Downtown Fresno. Nor does the EA discuss mitigation measures that should be imposed and enforced in order to avoid overwhelming these critical public facilities.

G. The Traffic Impacts Are Potentially Significant.

The City's traffic analysis fails to take into account the foreseeable effects of increased traffic volume in the Fulton Corridor area if the underlying goals of the Project are achieved. The City's conclusion that the Project will not attract additional vehicle traffic is inconsistent with projections in the TIGER grant narrative that the Project is expected to increase parking revenue in the area by 482%. (TIGER Narrative, p. 6.) It is unreasonable to assume that parking revenues will increase by such a phenomenal amount without an associated increase in vehicle traffic. The City's claim that the project will merely shift existing traffic patterns is inconsistent with the City's goal of increasing the number of people who visit the area in their cars. The EIS should provide a good faith estimate of how many more vehicles will be drawn to the area as a reasonably foreseeable consequence of the Project and address the potential for increased congestion.

H. Air Quality Impacts are Potentially Significant.

Without accurate data regarding the projected increase in vehicle traffic in the downtown area, it is impossible to accurately assess vehicle emissions.

I. The Project Is Not Consistent With The Adopted Community Plans.

The adopted plan for the Fulton Mall, as set forth in the Central Area Community Plan ("CACP"), is to "[i]mprove and maintain the Fulton Mall as an exciting, physically and visually superior pedestrian environment for the people of Fresno, the San Joaquin Valley and the world." (CACP, p. 84.) The goal of retaining the Fulton Mall as a "pedestrian-only environment" is identified by the CACP as "fundamental" to the adopted plan.

(CACP, p. 84.) The proposed amendments that would allow for the demolition have not been approved by the Fresno City Council. Even assuming those amendment are approved, the project remains inconsistent with the 2025 General Plan's commitment to "[s]afeguard Fresno's heritage by preserving resources which reflect important cultural, social, economic, and architectural features so that community residents will have a foundation upon which to measure and direct physical change." (Policy Objective G-11.) Nor is eliminating the Fulton Mall compatible with the General Plan's strategy to "[p]erpetuate, protect, enhance, and revitalize historic resources." (Policy G-11-c.) The proposed reconstruction of Fulton Mall is also inconsistent with General Plan policies against auto-oriented development. (Policy E-9.) Approval of the Project without first determining that existing water and sewer facilities are sufficient to handle the growth that the Project is projected to facilitate is also inconsistent with General Plan policies. (Policy Objectives E-18, E-20, Policy E-22-d). Additionally, elimination of the Fulton Mall does not conform to the General Plan goal of equitably distributing parks. (Policy F-1-d.)

II. The §4(f) Analysis Is Inadequate.

Federal funds cannot be used for the destruction of historical resources or urban parks except in extraordinary circumstances where "there is no feasible and prudent alternative to the use of such land." 49 U.S.C. § 303(a); 23 U.S.C.A. § 138. There must be "truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes" must "reach[] extraordinary magnitudes." *Citizens to Preserve Overton Park, Inc. v. Volpe* (1971) 401 U.S. 402, 413, abrogated on other grounds by *Califano v. Sanders* (1977) 430 U.S. 99. The §4(f) analysis in this case does not identify what "truly unusual factors" exist in this case.

According to the City, the Fulton Mall must be demolished because economic development will not occur unless traffic can circulate through the area and park adjacent to the businesses that line the Mall. The City relies upon evidence that economic development occurred in other cities when their pedestrian malls were replaced with collector streets. However, there is no evidence that any of these pedestrian malls were historical resources of the magnitude of the Fulton Mall or that they were urban parks that served the needs of a very high percent of the under-served and economically disadvantaged population.

In essence the City has determined that the need for easier access to the businesses that line the Fulton Mall trumps the need to protect a historical resource and an urban park. However, under the mandate of federal law the protection of these resources is paramount and federal funds can only be used to destroy the Mall if: (1) alternative access routes are unavailable; or (2) alternative access routes present "uniquely difficult problems"; or (3) "the cost or community disruption resulting from alternative routes [reach] extraordinary magnitudes." *Stop H-3 Ass'n v. Dole* (9th Cir. 1984) 740 F.2d 1442, 1449, *quoting Overton Park, supra*, 401 U.S. at 413, 416. The mandate to protect the Fulton Mall

imposes a very stringent requirement of proof that its continued existence so disrupts the community that it poses a problem of extraordinary magnitude. *Stop H-3 Ass'n v. Dole, supra*, 740 F.2d at 1452. The mere fact that it would be easier to access and park in front of businesses if the Mall did not exist does not rise to the level of extraordinary magnitude that would justify its destruction. Nor is there anything unique or extraordinary about the need to increase economic development in the area. The need for downtown economic revitalization is not a unique problem. On the other hand, it is unique that a downtown has a historic resource and urban park of the stature of the Fulton Mall.

Furthermore, even assuming for the sake argument that the need for easier vehicle access presents sufficiently unusual and extraordinary circumstances to justify the destruction of a historical resource and urban park, the §4(f) analysis provides no proof that "the program or project includes all possible planning to minimize harm to these resources." 49 U.S.C.A. § 303; 23 U.S.C.A. § 138. To the contrary, the analysis reflects that planning to minimize harm is conceptual and incomplete and there is no plan for mitigating for the loss of urban park space. EA, pp. 50-54.

III. The Title VI Analysis is Inadequate.

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C.A. § 2000d. As discussed above, the demolition of the Fulton Mall will have a disproportionately adverse impact on the minority community in the Fresno area. The data necessary to analyze the extent to which members of minority groups will benefit or disproportionately suffer from the demolition of the Fulton Mall must be disclosed and analyzed. The EA's conclusion that the demolition of the will not adversely impact the minority community uses an unreasonably narrow study area and fails to accurately identify the community that the Mall currently serves; those who will undeniably be impacted by its loss. For the same reason the EA's analysis of environmental justice is inadequate.

IV. The Use of Federal Funds for This Project is Inconsistent with DOT's Strategic Plan.

The DOT's Strategic Plan is a "transformational shift" away from funding new auto-oriented transportation projects to funding projects that support transit-oriented development.³ With regard to the livable communities strategic goal, the Strategic Plan identifies the need to move away from the historical pattern of transportation spending that resulted in auto-dependent communities. This project demolishes pedestrian and transit-oriented infrastructure and replaces it with an auto-oriented street.

³ http://www.dot.gov/sites/dot.dev/files/docs/990_355_DOT_StrategicPlan_508lowres.pdf

Although the EA claims replacing the Mall with a street will make it easier to access a future High Speed Rail Station and a future BRT station, it fails to explain how the existence of the Mall makes it difficult to access these stations. The BRT station will be located where the main station for FAX buses currently is located which is one block east of the Fulton Mall on Van Ness. It is currently accessible by car and is within easy walking distance from the Mall. The HSR station will be located one block west of the Fulton Mall on H Street. It will be accessible by car from H Street and is within easy walking distance from the Mall. The EA fails to explain how the demolition of the Mall is necessary to provide access to public transit.

The Fulton Mall Reconstruction Project is clearly auto-oriented--not transit-oriented. It is planned for in the 2014 RTP as a "streets and roads capacity increasing project." By design, the Project encourages our dependence on automobiles. The objective is to incentivize more individual vehicle trips to the Fulton Corridor area. Eliminating the Fulton Mall and replacing it with a street so that people can see the buildings from their cars does not incentivize more public transportation or alternatives to individual vehicle transportation.

One of DOT's goals is to augment Federal funds spent for walking and bicycling facilities to "increase safe, convenient, and attractive facilities for non-motorists." (DOT Strategic Plan, p. 49.) As it currently exists, the Mall provides a safe, convenient facility for non-motorists. It would be attractive if the City would make an effort to obtain DOT funding to make it more attractive.

Another DOT goal is to "transform the way transportation serves the American people by encouraging transportation that is less carbon-intensive... and active transportation that produces zero emissions like biking and walking." (DOT Strategic Plan, p. 56.) The DOT plans to meet the challenge by promoting "the use of bike/pedestrian modalities for daily activities through investment in on-and off- street bike/pedestrian infrastructure." (DOT Strategic Plan, p. 59.)

In short, the demolition of a pedestrian mall/urban park that is worthy of listing in the National Register of Historic Resources to make way for a traditional collector street with parallel parking is not consistent with DOT's transformational policy shift.

V. Conclusion

It is apparent from the content of this EA, the contract between Caltrans and the City, and the TIGER Grant Agreement that the EA was prepared to support a Finding of No Significant Impact. That cannot happen. An EIS must be prepared because there is substantial reason to believe that the demolition of the Fulton Mall to make way for a traditional collector street will have a significant impact on the human environment. The EIS must include a good faith analysis of the impacts discussed in this letter based upon reliable data that is readily available to the City of Fresno. The §4(f) analysis must

Environmental Assessment and Section 4(f) Evaluation for the Fulton Mall
Reconstruction Project Comment Letter
February 24, 2014
Page 8

provide an objective assessment of the justification for destroying the Fulton Mall that meets the stringent standards of federal law as explained in *Preserve Overton Park, Inc., supra*, 401 U.S. 402, 413. The Title VI analysis must assess, based upon reliable information, how the minority community that currently utilizes the Mall will be impacted by its demolition and how the impact will be mitigated.

Finally, the Downtown Fresno Coalition believes there is nothing of cultural or historical significance in the San Joaquin Valley that approaches the stature of Garrett Eckbo's Fulton Mall masterpiece and the incredible artwork that is integrated into his design. Caltran's 2013 Finding of Adverse Effect confirms their belief. Although the City of Fresno acknowledges that the loss is significant, it has decided to sacrifice the Mall on a gamble that the revitalization of downtown Fresno depends upon whether people can see the buildings and storefronts along Fulton Street as they drive by in their cars. My clients believe the City is overestimating the value of a street and significantly underestimating the significance of losing the Fulton Mall.

Sincerely,



Sara Hedgpeth-Harris

cc: Downtown Fresno Coalition

EXHIBIT A

This page intentionally left blank.

**FULTON MALL CHILDREN'S PLAY EQUIPMENT
REPLACEMENT PROJECT**

Project Summary

The City of Fresno Parks, Recreation and Community Services Department proposes to expand recreational opportunities at the Fulton Mall by replacing two children's play structures located on either end of the one-half mile long mall. The new play equipment will meet local and State health and safety standards and Federal Americans With Disabilities Act (ADA) access requirements for the physically challenged. The Department owns and operates the Fulton Mall, which is a 7.3-acre linear urban park located in the heart of Downtown Fresno. The estimated total cost of the proposed scope of work is \$100,000.

Compliance with 2002 California Outdoor Recreation Plan

1. Priority Statewide Outdoor Recreation Needs

The proposed replacement of children's play equipment on the Fulton Mall supports the Priority Recreation Venue 6. The play equipment is more than 40 years old and is unsafe and fails to meet Federal ADA standards for providing access for the physically challenged.

2. Identification of CORP Priority Issues

Issue I: The status of parks and recreation

- This project will promote the economic, social, and cultural benefits to the community and involves a high degree of community support. The Fulton Mall is located in Downtown Fresno and serves a diverse social, ethnic/racial and economic make-up of people comprising the Fresno Metropolitan Areas population. The Downtown Association and the Downtown Fresno Coalition support this project as a means to further revitalize Downtown Fresno. Replacing the

play equipment will attract children and possibly visit adjacent merchants providing a wide range of food and retail products. Use of the play equipment will be available year-round at no cost to the public.

Issue III: Access to public parks and recreation resources

- The Downtown Fulton Mall, with its many retail and food stores, serves a very high percent of the under-served and economically disadvantaged population in the Fresno Metropolitan Area. The Fulton Mall is located in and surrounded by neighborhoods eligible for Community Development Block Grant Program funding, Redevelopment Agency funding and within the Cities Enterprise Zone District. All of the elementary schools within a mile radius of the Fulton Mall are eligible for reduced lunch subsidies.
- This project will replace 40-year-old outdated, overused and worn out children's play equipment at two tot lots on either end of the one-half mile Fulton Mall. The play area and the equipment will be fully accessible for the physically challenged.

Issue IV: Protecting and managing natural resources

The Fulton Mall is one of the largest remaining pedestrian malls in the United States. Several major special events take place annually on the Mall or at the contiguous Grizzly Baseball Stadium or connecting Eaton Plaza attracting thousands of visitors annually. These include the Art/Wine Celebration, Cinco de Mayo Celebration, Classic Car Show, Sudz in the City, Taco Festival, and the Mexican Independence Celebration. Surrounding the Mall is Armenia Town, Chinatown, Uptown Art District, African America Museum of History, Mexican American Art Museum, Fresno Metropolitan Art, Science and Natural History Museum and a large number of art studios and art galleries. Many of these events, facilities and organizations are recent additions to the Downtown Fresno landscape. Their decision to remain or relocate to Downtown Fresno is based somewhat on

policies, goals and plans developed and approved by the Fresno City Council to aggressively pursue revitalization of the downtown area. Although dwarfed by the recent surge in downtown construction activity, the decision to submit for LWCF Program funding to replace the play equipment on the Fulton Mall is another positive effort directed towards meeting the overall commitment. This is one of many projects that will help to celebrate and strengthen the city's diverse ethnic makeup and cultural history.

Need for the Project

3. Outdoor Recreation Opportunities

In March of 1964, the City of Fresno broke ground for the Fulton Mall. The architect of record, Gruen, Eckbo, Dean and Williams, envisioned a park-like atmosphere with living trees, shrub beds, flower planters, lawn sections, water pools, fountains and a flow of pedestrian traffic that meandered through a central retail business area. Created to attract people and based on advanced City planning concepts, the Mall represents more than restoring life to what had been a decaying business street. The best of the old buildings were kept as a foundation for the plan. The Fulton Mall was the result of many years of public and private sectors working together to revitalize a downtown area. The City of Fresno has received recognition from the American Institute of Architects (AIA) for the Fulton Mall by receiving the AIA National Citation for Excellence in Community Architecture Award.

Today, through concerted revitalization efforts, the Fulton Mall remains a center focus and gathering place for the community. The Mall has two existing children's play structures located at either end of its one-half mile axis. One play structure is located in front of the Fresno County Juvenile Dependency Court, which hears primarily child welfare cases. The other play structure is located directly in front of the Federal Immigration and Naturalization Service. It is not uncommon

to see children playing on this equipment during all times of the day. These pieces of apparatus are over 40 years old and pose a safety hazard for young children. Additionally, these pieces of equipment have limiting access by virtue of inaccessibility to the developmentally challenged population in our community (Americans with Disabilities Act standards).

This proposal will improve and provide new recreational opportunities for children and families from all walks of life. Our community has become a powerful kaleidoscope of cultural and linguistic of diversity. The current population of Fresno is 427,652 (Census 2000 Supplementary Survey Profile, Fresno City, Table 1. Profile of General Demographic Characteristics). The population ethnicity of the City reflects a culturally rich environment [Hispanic (43%), Black (12%), White (36%), and Asian (9%)]. Within the five-mile service area, 37.64% of the population have a median income less than \$24,999 (U.S. Census Bureau, Census 2000, Median HH Income), which is well below the median income for the City of Fresno (\$28,336) and the State of California (\$41,779) (California Department of Finance, Demographic Unit, Median Household Income California, 2001). The following demographics are a snapshot of the current conditions within the City of Fresno in the year 2003.

- Average Family Size: 3.76
- 38% of the population is under the age of 18
- Percent below poverty level:

| | |
|---------------------------------|---------|
| Total population | 30.8% |
| Related children under 18 years | 44.6% |
| Under five years | (44.7%) |
| Five to 17 years | (47.1%) |
| 18 years and over | (26.1%) |

- 219 births per 1,000 are women 15 - 19 years of age
- 36% of the population over the age of 25 years has attained less than a high school equivalency
- Local median household income is \$32,4112, as compared to and the State of California (\$41,779)
- Seasonal unemployment ranges from 9.4% to 18.2%

Sources: Census 2000 Supplementary Survey Profile, Fresno City, Table 1. Profile of
 General Demographic Characteristics
 California Department of Finance, Demographic Unit, Median Household
 Income California, 2001
 U.S. Census Bureau, Census 2000 Redistricting

Additionally, the Fulton Mall and surrounding area has received Federal Empowerment Zone designation. The Central San Joaquin Valley Empowerment Zone is an interagency task force directed to focus on the economic development of the Central San Joaquin Valley, as designated by Executive Order 13173. This Order was created to increase Federal assistance to an area defined as an economically distressed region. The benefit of this designation is directed toward encouraging business development by offering the private sector a number of incentives (e.g., tax savings by locating and/or expanding operations, wage credits, Section 179 deductions, commercial revitalization deduction, and environmental clean up cost deduction).

The City of Fresno has also received Enterprise Zone designation. Similar to Empowerment Initiative, the purpose of this Zone is to promote economic development. The Zones provide IRS tax credit eligibility to businesses based on locating within the zone(s). This translates into available funds going back into expanding a business and ultimately creating more jobs. Businesses can also

receive additional credits by hiring employees who live in the zone(s).

4. Public Involvement

In addition to public comments received by the Parks, Recreation and Community Services Department with regard to the need to replace and provide ADA access to the two children's play areas located on the Fulton Mall, both the Downtown Association (DTA) and the Downtown Fresno Coalition (DFC) have indicated their support to provide the needed improvements. The DTA represent over 180 merchants and businesses located along the Mall while the DFC is comprised of civic-minded volunteers who support preservation and revitalization of downtown Fresno.

5. Population and Population Density

The Fulton Mall is located in the Downtown Central Business District (CBD) and on a daily basis serves as the work place, shopping and/or business destination for thousands of people. On the weekends, the Fulton Mall is a major shopping destination for outlying rural areas providing a broad range of retail and commercial services. The City of Fresno is 110 square miles in size and has a population of approximately 427,652 people equaling a density greater than 1,000 people per square mile. This is amplified in the CBD due its role as a regional service provider.

Project-Specific Criteria

6. Cost-Use-Benefit

The two existing children's play areas on the Fulton Mall are over 40 years old and do not meet current Local, State and Federal (ADA) standards. Over the years several of the play apparatuses have become worn to the point that they had to be removed for safety reasons, leaving a noticeable void in the play area (See attached pictures). Although the remaining play equipment is heavily used, the removed equipment lessens the opportunity for more children to experience the joy of play at the same time. Conversely, this situation creates a potential hazard by having too many

children playing on less equipment at the same time. By removing the old equipment (if possible, we may restore a few pieces of the existing equipment) and installing new, attractive and physically/creatively challenging equipment, use of the two play areas will increase noticeably. Also, by installing soft-fall surface material, the play areas will be fully accessible by the physically challenged. This will offer new opportunities to this under-served population.

Assuming the new equipment will endure heavy use for a minimum of 25 years, the annual cost to the Land and Water Conservation Fund of \$2,000 is well worth the investment. The local match requirement of \$50,000 will be provided by State Prop 12 Per Capita Park Bond Act Funds.

7. *Accessibility*

The existing two children's play areas on the Fulton Mall are open daily throughout the year at no cost to the public. Even under their present condition, the equipment in these areas receives heavy use. Parents will sit on adjacent benches, shaded by mature trees, and enjoy conversation or food purchased at nearby outdoor vendors or restaurants. Often an adult or older sibling will watch the children while other family member's shop at the many adjacent retail stores along the Mall.

8. *Priority Acquisitions (Acquisition Projects only)*

Not applicable since this is a Development project.

9. *Suitability (Development Projects only)*

This project entails the replacement of old, worn and ADA non-compliant children's play equipment at two existing tot lots located on the Fulton Mall in Downtown Fresno. The new equipment will meet all Local, State and Federal health and safety standards and provide full accessibility to the physically challenged.

The initial California Environmental Quality Act (CEQA) study has been completed. The mitigated negative declaration concludes that an Environmental Impact Report (EIR) need not be

prepared for the project and that all requirements of CEQA and the Fresno Environmental Quality Ordinance have been met. The proposed project has also received clearance from the State Clearinghouse. All required National Environmental Quality Act (NEPA) requirements will also be met.

Applicant-Specific Criteria

10. Readiness

Project implementation and completion [project consultant selection (60 days); project design, construction drawings, bid documents (90 days); advertising (45 days); award and notice to proceed (30 days); construction and acceptance by City (60 days)], will occur within one year after grant award and execution of a contract with the State Parks and Recreation Department. Funding from the Prop 12 Per Capita State Park Bond Act will provide the required LWCS Program local match. These funds are currently available in the Department FY 04 capital budget and will be carried-over into FY 05.

11. Performance

As indicated, the project will begin immediately after execution of an agreement with the State Department of Parks and Recreation. The Department has selected and assigned key personnel based upon expertise and experience with projects similar in scope (LeRoy Milavich, Department Management Analyst; Michael McHatten, Parks Division Manager; Monte Clugston, Parks Supervisor I responsible for the Fulton Mall; Ken Tigson, Project Manager from the Public Works Department. They will be responsible for implementing all aspects of the project.

12. Operation and Maintenance

Upon completion of the project, the Parks Division will maintain the improvements. The Parks Division currently maintains the Fulton Mall on a daily basis, along with 1,235 acres of

additional park open space located at 66 other sites.

A Parks Supervisor I is assigned full time to Fulton Mall to provide supervision for all work and activities taking place on the Mall. A daily maintenance schedule is followed to ensure proper attention is given to all Mall improvements. The fiscal year 2004 Parks Division budget for the operating and maintenance of the Fulton Mall is \$412,100.

13. Additional Program Requirements

a) Toxins

No toxins have been identified in the Fulton Mall or adjacent properties that would adversely impact the proposed project.

b) Relocation of Persons and Businesses

The proposed project will not displace persons or businesses. If awarded, Federal monies will be directly injected into the local economy. This project will promote local businesses and enhance the local economy.

c) Overhead Utility Lines

There are no overhead lines around the existing Fulton Mall and adjoining privately owned property.

d) Flood Hazard Area

The Fulton Mall is not in a Flood Hazard Area.

This page intentionally left blank.

Sara Hedgpeth-Harris

A Professional Law Corporation



2014 FEB 26 PM 1 12

CITY CLERK, FRESNO CA

February 4, 2014

**By Electronic Mail and By Hand Delivery to Planning Commission hearing on
February 5, 2014**

Ms. Jaime Holt, Chair
City of Fresno Planning Commission Members
City Council Chambers
2600 Fresno Street, 2nd Floor
Fresno, CA 93721
Email:

**Re: Item No. VIII. A: Consideration of Plan Amendment A-13-008 and related
Environmental Impact Report No. Sch 2013101046 for the proposed Fulton
Mall Reconstruction Project.**

Honorable Chair Holt and Honorable Members of the City Planning Commission:

I have been retained by the Downtown Fresno Coalition to submit this letter expressing their opposition to the certification of the EIR and the proposed amendment of the General Plan and Central Area Community Plan to allow the demolition of the Fulton Mall.

Background

The Downtown Fresno Coalition was formed to promote responsible revitalization of downtown Fresno.¹ Its primary focus is the restoration and preservation of the Fulton Mall as the masterpiece of modern urban park landscape and sculptural design that earned it a listing in the California Register of Historical Resources. Although formally deemed eligible for listing on the National Register of Historic Places by the Keeper of the National Register, the Mall was not formally listed because a majority of the adjoining landowners claimed ownership of the Mall and objected to its listing.²

¹ See the following websites for more information about DFC:
<https://www.facebook.com/DowntownFresnoCoalition>, and
<http://www.1000friendsoffresno.org/downtownfresnocoalition.html>

² This information is contained in the December 2013 Report entitled "Finding of Adverse Effect" ("FAE") that was prepared by Caltrans for the Fulton Mall Reconstruction Project.
http://dot.ca.gov/dist6/media/hpsr_fulton_mall/docs/fulton_mall_foe_2v2.pdf

The determination of eligibility was based upon the Keeper's finding that the Fulton Mall was of significant importance as an urban park and that the Mall was "*exceptionally significant at the national level of significance...for its landscape architecture, as the finest example of post WWII era federal urban renewal pedestrian mall design, as the work of a master, Garrett Eckbo, and as an excellent example of Modernist design ideas' influence on landscape architecture.*" (See Caltrans' FAE, p. 11.)

The adopted plan for the Fulton Mall, as set forth in the Central Area Community Plan ("CACP"), is to "[i]mprove and maintain the Fulton Mall as an exciting, physically and visually superior pedestrian environment for the people of Fresno, the San Joaquin Valley and the world." (CACP, p. 84.) The goal of retaining the Fulton Mall as a "pedestrian-only environment" is identified by the CACP as "fundamental" to the adopted plan. (CACP, p. 84.)

Since September 14, 2010, my clients have participated in the planning process for Fulton Corridor Specific Plan ("FCSP"). The CACP policies regarding the Fulton Mall were being reviewed in this context. Three options for the Mall were identified for further study and environmental review in the October 2011 Draft FCSP: eliminating the Mall and replacing it with a traditional collector street; eliminating the Mall and replacing it with a curving street with "vignettes" to showcase "selected original features in their original Mall context"; and, preserving the Mall as pedestrian-only and renovating, repairing and restoring the mall and its artwork.³ According to the Draft FCSP, the decision regarding the final plan for the Fulton Mall would be made, as it should be, by the City Council after environmental review of all three options pursuant to CEQA.⁴

In May 2013 the City applied for and received a Measure C TOD grant of \$474,810 to prepare the preliminary plans and environmental analysis of all three options identified in the Draft FCSP. (See Exhibit A1 – Project Scope, attached hereto as Attachment A.) Note that the project at that time was entitled, "Fulton Mall Redevelopment" project. However, notwithstanding the terms of the City's agreement with the Fresno County Transportation Authority (FCTA), the funds were not spent to consider all three options as detailed in the Project Scope.

On or before June 3, 2013, which was deadline for grant applications, the City submitted an application to the U.S Department of Transportation ("DOT") for TIGER Grant funding. As discussed below, although the City could have submitted an application for funding to preserve, restore and renovate the Mall as a pedestrian-oriented transportation infrastructure project, the application sought funding to demolish the Mall and replace it with a collector street. Consequently, if the funding application was approved, preservation, restoration and renovation would not be an option.

³ See FCSP p. 4-7 at

<http://webapp.fresno.gov/FresnoPlans/FultonCorridor/FCSP_Ch_04_Fulton_Mall_0.pdf>

⁴ See FCSP p. 4-16 at

<http://webapp.fresno.gov/FresnoPlans/FultonCorridor/FCSP_Ch_04_Fulton_Mall_0.pdf>

In September 2013, when the DOT announced that the City had qualified for a TIGER Grant of \$15.9 million to demolish the Mall and construct a street, the City abandoned the EIR for the FCSP. Instead, in October 2013 the City gave notice that it was preparing a separate EIR for the Fulton Mall Reconstruction Project. Given that the option of preserving the Mall was eliminated from consideration and analysis, "reconstruction" is a serious misnomer. This is a demolition project--not a reconstruction project.

In December 2013, the City applied for and received Measure C TOD funding to prepare pre-construction engineering plans for demolition and construction. On January 30, 2014, without first obtaining City Council authorization, the COG Policy Board approved the City's application for matching construction funds. According to the City's application, engineering plans for demolition and construction have already been prepared. See Capital Improvement Project Application, p. 5. In short, the City has committed to the demolition of the Fulton Mall and denied the Planning Commission and the City Council the opportunity to consider the environmental impacts associated with the three options for revitalizing the Mall or to decide which option best meets the needs of the effected community. Instead, you are being presented with the decision to approve demolition or to leave the Mall in its current blighted condition.

As reflected in my comment letter to the DEIR for the Fulton Mall Reconstruction Project, the process and the EIR fail to comply with CEQA and the Project is inconsistent with the 2025 General Plan. The purpose of this letter is to request that you: (1) deny the City's request that you recommend certification of the EIR as accurate and complete; and (2) that you deny the City's request that you recommend approval of the project as proposed.

The City has not provided you with the information you need to make an informed decision.

No matter how hard the City tries to finesse the facts, there will be no Fulton Mall if this project is completed as proposed. Has the City provided you with the information you need to make a fully informed decision about whether the Fulton Mall should be demolished to make way for vehicle traffic? You should *not* recommend certification of the EIR as accurate and complete if you believe important information is missing.

Where is the comparative analysis of the benefits of the adopted Central Area Community Plan to preserve, restore and renovate the Mall and the proposed plan to demolish the Mall and replace it with a street? You have no comparative analysis because the City contracted away its ability to consider any alternative to demolition when it committed to the terms of TIGER Grant.

Consider carefully the City's claim that TIGER grant funding is not available to restore the Fulton Mall. According to the TIGER Grant Notice of Funding Availability, eligible projects "include, *but are not limited to*: (1) Highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of

title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) marine port infrastructure investments.”⁵ In order to award the TIGER Grant for the Fulton Mall Reconstruction Project the Department of Transportation (DOT) must have found the project was eligible in the category of "not limited to" since the Project clearly does not qualify as any of the listed eligible projects. Why wouldn't restoration of the Fulton Mall be eligible for selection in this same category?

The five primary selection criteria are based on the priorities included in DOT's Strategic Plan for FY 2012-2016. The DOT's Strategic Plan identifies five long-term priorities: (1) maintaining transportation infrastructure in a state of good repair; (2) the project's contribution to economic competitiveness; (3) whether the project furthers DOT's livability principles; (4) whether the project will improve energy efficiency, reduce dependence on oil, reduce greenhouse gas emissions, and benefit the environment; and, (5) whether the project will improve transportation safety.

The DOT's Strategic Plan describes the goals and policies the DOT intends to promote when determining transportation investments. (DOT Strategic Plan, p. 6.)⁶ With regard to the livable communities strategic goal, the Strategic Plan identifies the need to move away from the historical pattern of transportation spending that resulted in auto-dependent communities. (DOT Strategic Plan, p. 7.) Transportation Secretary Ray LaHood describes livability as “being able to take your kids to school, go to work, see a doctor, drop by the grocery or post office, go out to dinner and a movie, and play with your kids in a park, all *without having to get in your car*.” (DOT Strategic Plan, p. 45.) One of DOT's goals is to augment Federal funds spent for walking and bicycling facilities to “increase safe, convenient, and attractive facilities for non-motorists.” (DOT Strategic Plan, p. 49.)

The strategic goal for environmental sustainability emphasizes DOT's efforts to reduce transportation-related air pollution. The Strategic Plan notes that the President has challenged DOT to “transform the way transportation serves the American people by encouraging transportation that is less carbon-intensive... and active transportation that produces zero emissions like biking and walking.” (DOT Strategic Plan, p. 56.) The DOT plans to meet the challenge by promoting “the use of bike/pedestrian modalities for daily activities through investment in on- and off- street bike/pedestrian infrastructure.” (DOT Strategic Plan, p. 59.)

Which is more compatible with the goals and policies of DOT's Strategic Plan and TIGER Grant criteria: The demolition of pedestrian infrastructure to make way for a traditional collector street with parallel parking? or, preserving, restoring and renovating a pedestrian mall/urban park that is worthy of listing in the National Register of Historic Resources?

⁵ <https://www.federalregister.gov/articles/2013/04/26/2013-09889/notice-of-funding-availability-for-the-department-of-transportations-national-infrastructure#h-13>

⁶ http://www.dot.gov/sites/dot.dev/files/docs/990_355_DOT_StrategicPlan_508lowres.pdf

The TIGER grant was awarded to the City to demolish the Fulton Mall and replace it with a traditional street because the City applied for funds for that purpose. It clearly could have applied for funds to restore the Mall, but it chose not to do so. The City has not provided you with the information you need to identify the environmental pros and cons of demolition versus restoration because the City's application for a TIGER Grant defined the project so that pedestrian-oriented transportation infrastructure is not an option.

Look carefully at the information the City has provided to convince you that demolition of the Mall to make way for a street will increase the City's economic competitiveness. Has the City demonstrated that the demolition of the Mall to make way for vehicle traffic will accomplish the economic revitalization of the Fulton Mall area? What is the source of the data used to project such a significant decrease in building vacancy rates? Are you confident the projections are not pure speculation? Likewise with respect to increased retail sales projections. Are the projections reliable?

Assuming the projections are reliable, the decrease in vacancy rates and increase in retail sales necessarily assume a significant increase in the number of people who drive their cars to work and shop in buildings along Fulton Street. How does this square with the EIR's assertion that opening the mall to traffic won't increase traffic in the area? How does the EIR's claim that opening the mall to traffic won't increase area traffic square with the City's claim in the narrative for the TIGER grant application that the project will increase parking fees by parking revenue in the area by 482%. (TIGER Narrative, p. 6.) Is it reasonable to believe that such a significant decrease in vacancy rates and increase in retail sales and parking revenues will occur without an associated increase in vehicle traffic?

Does it make sense that the already stressed-to-capacity water and sewer infrastructure in the area will not be impacted by increased use associated with the EIR's projections of growth that will occur because the Fulton Mall is open to traffic? Assuming demolition of the Fulton Mall and construction of a collector street will be paid for with TIGER grant funds and Measure C TOD funds, how will the City pay for increasing the capacity of the existing infrastructure to accommodate more people? What are the City's plans for ensuring this infrastructure is adequate to support more people?

Look closely at the EIR's data regarding crime in the Fulton Mall area. What can you conclude based solely on the comparison of graffiti and vandalism rates for a 6-month period of time? Certainly the City has had the time to gather data from the police department that would allow for a more meaningful understanding of how crime in the area compares with crime in other areas of the community. Has the City provided enough information for you to decide that crime, including graffiti and vandalism, will decrease if the Mall is demolished and cars are returned to Fulton Street?

It is widely acknowledged that downtown Fresno has a severe shortage of park space. How credible is the City's assertion that the Fulton Mall is not an urban park? How does this square with the determination of the Keeper of the National Register of Historic Resources that the Fulton Mall is of significant historical importance as an urban park? What about Caltran's Finding of Adverse Effect that identifies the Mall as an urban park? More importantly, consider how the surrounding community uses the Mall. Do you feel confident in concluding that predominantly low income minority families, seniors and disabled members of the community who use the Fulton Mall on a daily basis do not consider it to be an urban park? Do you have enough information regarding the community's use of the Mall to conclude this community will not be impacted by the loss?

In conclusion, the City cannot guarantee that the owners of property lining Fulton Street will restore and renovate their long-neglected buildings if the Mall is demolished to make way for a street. Nor can the City guarantee that more people will drive to the area to work, shop, do business or live. One thing is certain: If the Fulton Mall is demolished, downtown Fresno will have lost an urban park and perhaps the most significant cultural and historical resource in the City, if not the region.

As a result of the City's poor stewardship, this nationally recognized treasure has been allowed to become significantly blighted. Now, the City is sacrificing the Mall on a gamble that the revitalization of downtown Fresno depends upon whether people can see the buildings and storefronts along Fulton Street as they drive by in their cars. My clients believe the City is overestimating the value of a street and significantly underestimating the significance of losing the Fulton Mall.

The Downtown Fresno Coalition respectfully requests that you cast your vote to preserve the Fulton Mall.

Sincerely,

Sara Hedgpeth-Harris

Cc: Downtown Fresno Coalition