



CITY OF BURBANK
OFFICE OF THE CITY ATTORNEY

275 East Olive Avenue • P.O. Box 6459 • Burbank, California 91510-6459
818.238.5700 • 818.238.5724 FAX

DENNIS A. BARLOW
City Attorney

JULI CHRISTINE SCOTT
Chief Assistant City Attorney

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VIA FACSIMILE AND U.S. MAIL

Jawahar P. Shah
City of Los Angeles
Public Works, Bureau of Sanitation
Wastewater Engineering Services Division
2714 Media Center Drive
Los Angeles, California 90065

Re: *Further Comments on the Final Environmental Impact Report for the
Integrated Resources Plan (SCH No. 2004071091)*

Dear Mr. Shah:

The City of Burbank ("Burbank") would like to take this opportunity to comment further on the Final Environmental Impact Report ("Final EIR" or "FEIR") for the City of Los Angeles' proposed wastewater Integrated Resources Plan ("IRP"), which was released by the City of Los Angeles ("City") in September 2006. We request that this letter, together with Burbank's six prior comment letters submitted on February 15, 2006, February 27, 2006, March 2, 2006, March 22, 2006, and March 30, 2006 (two letters), including the enclosures to those letters, be included in the City's administrative record for the proposed IRP and Final EIR. We recognize that our comments are voluminous, but the complexity and importance of the City's proposed IRP and Final EIR compel a thorough review of the potential environmental consequences associated with implementation of the project as proposed.

It is our understanding that the proposed IRP and Final EIR will be sent to the City's Energy & Environment Committee on Wednesday, November 1, 2006. Please include a copy of this letter in the Committee's agenda package.

As you know, the Final EIR for the IRP must comply with the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.*, and its implementing regulations, the State CEQA Guidelines, Title 14, California Code of Regulations section 15000, *et seq.* ("CEQA Guidelines"). CEQA includes an express policy that public agencies, like the City, should "not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available," which would avoid or substantially lessen the project's significant environmental effects. (Pub. Resources Code, §21002.) Indeed, the procedures required by CEQA are "intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or

feasible mitigation measures, which will avoid or substantially lessen such significant effects." (*Id.*) The function of an EIR is not to be a rubber stamp for a proposed project, but to provide a forum for changing and improving a proposed project, to get the most public benefit with the least environmental harm.

As explained in detail below, the Final EIR contains several substantive inadequacies, which constitute critical impediments to the fundamental goals articulated in CEQA and the CEQA Guidelines. In summary:

- (a) The EIR must be revised to state that the City of Burbank is a responsible agency under CEQA;
- (b) The selection of project alternatives was not the product of a CEQA alternatives analysis;
- (c) The EIR's evaluation of alternatives is not adequate;
- (d) The segment of the proposed GBIS hybrid alignment is not adequately described;
- (e) The segment of the proposed GBIS hybrid alignment is not analyzed;
- (f) The segment to the proposed GBIS hybrid alignment is a new project component;
- (g) The segment to the proposed GBIS alignment will result in new impacts;
- (h) Feasible alternatives exist but have not been analyzed in the EIR;
- (i) The EIR must evaluate project impacts against the existing physical conditions;
- (j) The EIR fails to analyze historic resources;
- (k) The EIR fails to analyze noise impacts;
- (l) The EIR fails to analyze impacts from hazards and hazardous materials concerning groundwater contamination surrounding the project;
- (m) The Final EIR is inconsistent in discussing "surface construction activity" along the segment of the proposed GBIS hybrid alignment;
- (n) The "voluntary" measures for the proposed GBIS hybrid alignment are illusory and unenforceable;
- (o) The Final EIR's conclusions regarding "contingency response" along the segment of the proposed GBIS hybrid alignment are inadequate, and there is no contingency response plan provided;
- (p) The Final EIR adds significant new information to the draft EIR without recirculating the document as required by CEQA;
- (q) Mitigation without analysis is insufficient under CEQA;
- (r) The EIR's proposed mitigation measures are vague, provide insufficient performance standards, and improperly defer the formulation of the mitigation; and
- (s) The EIR must describe mitigation for identified significant environmental impacts.

It is our understanding that the City Council will receive the Committee's recommendations on the proposed IRP and Final EIR at its tentatively scheduled hearing on Tuesday, November 14, 2006. We would appreciate receiving the City's written responses to this comment letter prior to that hearing.

Burbank's specific comments concerning the adequacy of the Final EIR are discussed in detail below.¹

THE EIR MUST BE REVISED TO STATE THAT THE CITY OF BURBANK IS A RESPONSIBLE AGENCY UNDER CEQA

1. A portion of the staff-recommended GBIS hybrid alignment -- the Barham/Olive/Pass Avenue segment -- is located entirely within the boundaries of Burbank. As a result, Burbank is vested with discretionary approval authority over that segment, and the City will be required to request that Burbank issue discretionary grading, excavation, and/or encroachment permits before any portion of the new segment may be constructed. Burbank, therefore, is a "responsible agency" under CEQA. (CEQA Guidelines, §15381, 15042.) Under CEQA Guidelines section 15042, "[a] responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve." Burbank requests that the City correct the EIR to add Burbank as a responsible agency.

2. Burbank requests that the Draft EIR, **Table 1-3, Agency Actions and Approvals**, be revised to reflect that Burbank has approval authority over the Barham/Olive/Pass Avenue segment, because it is located entirely within the boundaries of Burbank and will require one or more discretionary permit approvals from Burbank. (*See*, Burbank Municipal Code sections 13-101 *et seq.*, 13-201 *et seq.*, and 26-701 *et seq.*)

THE SELECTION OF PROJECT ALTERNATIVES WAS NOT THE PRODUCT OF A CEQA ALTERNATIVES ANALYSIS.

3. CEQA requires that the range of alternatives analyzed in an EIR "*shall* include those that . . . could avoid or substantially lessen one or more of the significant effects" of the project

¹ The comments presented in this letter focus primarily on the Final EIR; however, the City's responses to Burbank's prior comments on the Draft EIR, for the most part, are non-responsive, conclusory and unsupported by factual information, and impermissibly compare the staff-recommended GBIS hybrid alignment to the two prior GBIS alignments. (*See, e.g.*, Responses AJI-2, AJI-5, AJI-10, AJI-15, AJI-17, AJI-19; AJ13-1-AJ13-2; AJ31-2-AJ31-5; AJ32-1-AJ32-2; and AJ36-1-AJ36-15.) Therefore, Burbank requests that the City revisit and correct these deficient responses to comments.

(*Emphasis added.*) (See, CEQA Guidelines, §15126.6, subd. (c).) In this case, a review of the Facilities Plan prepared in connection with development of the four project alternatives reveals at least two fatal flaws relative to the threshold selection of the "alternatives," thereby rendering the EIR's alternatives analysis inadequate.

4. The first flaw is that the range of "alternatives" was selected *prior* to preparation of the EIR and, therefore, the selection could not have been made with the intention of avoiding or substantially lessening any of the significant environmental effects of the project because the significant effects of the project were not known at the time the alternatives were selected. (See, *City of Los Angeles Integrated Resources Plan, Facilities Plan Volume 4: Alternatives Development and Analysis ("Facilities Plan Vol. 4")*, pages 2-1 through 2-4.)

5. The second flaw is that the selection of the four alternatives was not based on the consideration of avoiding or lessening significant environmental effects, either individually or relative to the other alternatives. Rather, the selection was based on the results of a cost/benefit analysis with no apparent consideration given to the potential effects the alternative would have on the environment. (See, *Facilities Plan Vol. 4*, pages 7-1 through 8-2.)

6. In sum, the range of alternatives analyzed in the EIR is inadequate in that it fails to meet the basic purpose of a CEQA-based alternatives analysis -- to focus on alternatives that are capable of avoiding or substantially lessening the significant effects of the project. Because the selection of alternatives fails to comply with CEQA, the EIR's alternatives analysis, by necessity, is inadequate.

THE EIR'S EVALUATION OF ALTERNATIVES IS NOT ADEQUATE.

7. There is a fundamental flaw with the EIR's description and analysis of the "project." This flaw is present in both the Draft and Final EIR. The proposed "project" is described as consisting of four alternatives for upgrading and improving the City's existing wastewater treatment, wastewater conveyance, recycled water, and runoff management systems. (*E.g.*, Draft EIR, p. ES-7, p. ES-2-1, and pp. 2-1-2-103.) The No Project Alternative is also included. (*Id.*) Each of the four alternatives, with the exception of the No Project Alternative, includes varying combinations of wastewater, recycled water, and runoff management proposals; however, there is no defined "project." To make matters worse, each of the four alternative projects identify the *same* wastewater conveyance system facilities, including the north and south GBIS alignments. In essence, then, the EIR proposes four separate projects--all of which include the GBIS (north and south alignment), but the EIR fails to describe and analyze true alternatives to the four projects.

8. In this regard, under CEQA, the EIR was required to describe and analyze "a range of reasonable alternatives *to the project*, or to the location *of the project*, . . ." (CEQA Guidelines §15126.6(a).) This requirement was ignored when the Draft EIR evaluated four separate projects, but never addressed alternatives to the four projects. The Draft EIR should have presented an

identifiable project, evaluated the environmental impacts of that project, and analyzed a range of reasonable alternatives to that project--alternatives that were required to have been developed to feasibly attain most of the basic objectives of the identified project, and to avoid or substantially lessen any of the identified project's significant effects. (CEQA Guidelines §15126.6(a).) Here, four separate projects were described in the Draft EIR, but there were no alternatives identified and evaluated for the four project proposals. Because the City elected to identify four projects, it was required to identify and analyze a range of reasonable alternatives *to each of those four projects*.

9. Had the above analytical approach required by CEQA been followed by the City in preparing the IRP EIR, the public and the decision makers would have been presented with alternatives to a defined project that would have avoided or substantially lessened the significant environmental effects of that defined project. Instead, four separate projects were advanced in the EIR. Each "alternative" project included the *same* GBIS component (south and north alignment); consequently, there was no attempt made in the Draft EIR to ever identify, discuss, and analyze alternative alignments to the proposed GBIS project component. The only time alternative alignments to the GBIS project component were considered was in the Final EIR. However, the Final EIR failed to include a range of reasonable sewer alignment alternatives to the GBIS component; it merely identified the one staff-recommended GBIS hybrid alignment, a key segment of which was never analyzed in the Final EIR (as discussed below).

10. The City's failure to address true alternatives to a proposed project, or to address alternatives to the four projects presented in the Draft EIR, renders the document inadequate under CEQA. This substantive inadequacy cannot be rectified, absent the redrafting and recirculating of the EIR. Only in this way will there be an adequate consideration of alternatives to the project, as proposed by the City.

THE SEGMENT OF THE PROPOSED GBIS HYBRID ALIGNMENT IS NOT ADEQUATELY DESCRIBED.

11. The "0.5-mile connector along Pass Avenue" connecting the former GBIS alignments is a misleading characterization of the newly proposed GBIS hybrid alignment. (*See*, Final EIR 1-19.) In fact, the new 0.5-mile segment to the GBIS hybrid alignment departs from the former southern GBIS alignment at Forest Lawn Drive, and traverses under Barham Boulevard, proceeding beneath the Los Angeles River, and continues north under West Olive Avenue in Burbank, and then further north under Pass Avenue in Burbank, before connecting to Riverside Drive as part of the prior GBIS north alignment. The Final EIR completely omits this project-level description of the GBIS hybrid alignment, including the kinds of structures (*e.g.*, residential, commercial, historic) that are located on the surface of the proposed new segment.

12. This failure to provide an accurate project description on which to base the EIR's analysis, in and of itself, violates CEQA's objectives to further public disclosure and provide an informative document. *See, County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185,

192. The EIR also fails to describe and analyze the potential impacts that will result from implementing the staff-recommended GBIS hybrid alignment, including the new one-half mile Barham/Olive/Pass Avenue segment, a further violation of CEQA. The conclusion that this new segment would not result in significant impacts "is insufficient to allow the EIR to fulfill its informational purpose." *See, Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

13. In *Santiago*, the EIR's project description omitted a description of the construction of additional water delivery facilities. *Santiago, supra*, 118 Cal.App.3d at 829. The court held that the omission hid several important ramifications of the proposed project at the time the project was being discussed and approved, which "frustrates one of the core goals of CEQA." *Santiago, supra*, 118 Cal.App.3d at 830. "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *Santiago, supra*, 118 Cal.App.3d at 830, citing to *County of Inyo, supra*, 71 Cal.App.3d at 192-93. Instead of assessing the impacts, the EIR at issue in *Santiago* concluded that the project would be supplied water. *Santiago, supra*, 118 Cal.App.3d at 830. This conclusion, without an assessment and disclosure of the impacts of this integral project component, was found to violate CEQA. The court held:

"[T]he conclusion, even if it were true, is insufficient to allow the EIR to fulfill its informational purpose. The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." *Santiago, supra*, 118 Cal.App.3d at 831.

14. The Final EIR should be revised and recirculated to correct this EIR deficiency.

THE SEGMENT OF THE PROPOSED GBIS HYBRID ALIGNMENT IS NOT ANALYZED.

15. No part of the new Barham/Olive/Pass Avenue segment has been analyzed in the Draft or Final EIR. The proposed new segment runs through a highly urbanized area of Burbank, but the EIR has failed to analyze this segment to determine if there are potentially significant environmental impacts associated with its implementation. The EIR must be revised to assess this new segment for potential impacts to aesthetics, air quality, cultural resources, geology, soils, hazards, hazardous materials, hydrology, water quality, land use and planning, noise, vibration, traffic, utilities, and public services. The EIR cannot simply state, without substantial evidence, that the analysis of other sections of the GBIS will also apply to the proposed new segment. Additional studies and analyses are required. This is particularly important where, as

here, the staff-recommended GBIS alignment, including the unstudied proposed new segment, is part of a project-level EIR.

THE SEGMENT TO THE PROPOSED GBIS HYBRID ALIGNMENT IS A NEW PROJECT COMPONENT.

16. On page 1-19, the Final EIR states that the staff-recommended GBIS alignment "does not constitute a new Project component" because: (a) the GBIS north and south alignments have been evaluated in the Draft EIR; (b) the staff-recommended GBIS alignment primarily is composed of portions of both GBIS alignments; and (c) the hybrid GBIS alignment would be constructed from the same shaft sites as the GBIS south alignment, as discussed in the Draft EIR. The above rationale is not supported by substantial evidence.

17. First, the fact that the GBIS north and south alignments have been discussed in the Draft EIR does not excuse the City from conducting an evaluation of the staff-recommended GBIS alignment, which includes the new one-half mile Barham/Olive/Pass Avenue segment. Second, the fact that the staff-recommended alignment would utilize the same shaft sites as discussed in the Draft EIR simply diverts the reader's attention from the point that there is absolutely no analysis of the existing physical environmental conditions of the new one-half mile Barham/Olive/Pass Avenue segment.

18. In light of the above deficiencies, the EIR must be revised and recirculated because: (a) the one-half mile Barham/Olive/Pass Avenue segment is not analyzed in the EIR; and (b) that segment constitutes an entirely new project component that was not studied in the EIR.

THE SEGMENT TO THE PROPOSED GBIS ALIGNMENT WILL RESULT IN NEW IMPACTS.

19. On page 1-19, the EIR concludes that the one-half mile Barham/Olive/Pass Avenue segment "would not result in new significant impacts." There is no substantial evidence in the EIR or record to support this conclusion. Nonetheless, the Final EIR, at page 1-19, states that the one-half mile Barham/Olive/Pass Avenue segment "would not result in differences in the types and intensity of impacts from those disclosed in the Draft EIR." This conclusion is also unsupported. The precise reason for conducting an EIR evaluation of the GBIS north and south alignment was to assess the types and intensity of impacts that may occur along each alignment, based on the unique setting of each alignment. It is impermissible for the City to conclude that the new one-half mile Barham/Olive/Pass Avenue segment, which is an entirely different geographic location, will result in the same types and intensity of impacts of the other alignments located elsewhere. If that were the case, an EIR for a sewer project could simply assess one sewer alignment and then apply that environmental assessment across the board to all other sewer alignments, asserting that one assessment "fits all." Burbank requests that the City conduct the appropriate environmental analysis of the new one-half mile Barham/Olive/Pass Avenue segment in a revised and recirculated EIR.

20. At page 1-20, the Final EIR asserts that the potential "noise and vibration, settlement, and traffic impacts" along the new one-half mile Barham/Olive/Pass Avenue segment would be "similar to those discussed in the Draft EIR for tunneling activities." This conclusion is unsupported.

21. First, the potential noise and vibration impacts due to tunneling underneath the new one-half mile Barham/Olive/Pass Avenue segment must be assessed against existing ground surface conditions along that segment. This new segment is located within a highly urbanized area of Burbank. According to the County Assessor, there are 155 residential units along Pass Avenue alone. Pass Avenue is one of the streets within the new one-half mile Barham/Olive/Pass Avenue segment. Noise and vibration impacts are a function of the types of land uses and activities in a given area. For example, proposed tunneling underneath a golf course (like that proposed under the GBIS south alignment) would not be expected to create significant noise and vibration impacts because golf course uses are recreational, intermittent, and devoid of improved land uses (e.g., occupied structures). In contrast, proposed tunneling beneath a highly urban area (like that found along the new one-half mile Barham/Olive/Pass Avenue segment) would be expected to create significant noise and vibration impacts to residential, commercial, and other existing land uses. The EIR should be revised and recirculated once the site-specific noise and vibration impacts along this new segment are analyzed.

22. Second, the potential settlement impacts due to tunneling beneath the new one-half mile Barham/Olive/Pass Avenue segment must be assessed against existing ground surface conditions along that segment. Again, potential settlement impacts due to tunneling are a function of types of land uses and activities in a given area. As a result, borings and other geotechnical analyses must be conducted along this new segment to properly assess soil conditions and settlement risks in this highly urbanized area. Once this analysis is conducted, it should be included in a revised and recirculated EIR.

23. Finally, the potential traffic impacts due to tunneling beneath the new one-half mile Barham/Olive/Pass Avenue segment have not been assessed. The traffic impacts will vary depending upon the land uses and activities along the new segment. However, the EIR fails to conduct a site-specific analysis of the segment and the traffic impacts expected to occur along that segment. Other obvious traffic impacts omitted from the EIR related to the new segment include, among others: (a) analysis of additional construction traffic and closure of travel lanes on Burbank roadways, leading to reductions in roadway capacity; and (b) assessment of the loss or displacement of on-street and off-street parking due to construction of the segment. The missing analysis is particularly important where, as here, construction of the GBIS hybrid alignment, including the new segment, is expected to last up to 3 years. (See, Draft EIR, p. 3.17-61.) Once this analysis is conducted, it must be included in a revised and recirculated EIR.

FEASIBLE ALTERNATIVES EXIST BUT HAVE NOT BEEN ANALYZED IN THE EIR.

24. As stated above, the Draft EIR included no analysis whatsoever of feasible alternatives to the GBIS alignments. In response to public criticism, the Final EIR added the staff-recommended GBIS hybrid alignment, and no analysis was provided of other GBIS alignment alternatives. At this point, the Final EIR must be revised and recirculated to identify, describe, and analyze feasible alternatives to the GBIS hybrid alignment, including the new one-half mile Barham/Olive/Pass Avenue segment.

25. In particular, based on an aerial review, there are at least four feasible alternatives to the Barham/Olive/Pass Avenue segment, which would avoid or minimize impacts through this highly-urbanized area of Burbank. The first of four feasible alternatives is the south GBIS alignment, which was discussed in prior comment letters submitted by the City of Burbank. The other three feasible alternatives are depicted on the graphic enclosed with this letter. The first of the three alternative alignments would avoid the Olive/Pass streets in Burbank, and instead continue west along the former south GBIS alignment, under the golf course on the Lakeside Country Club, and then proceed north beneath Forman Avenue, connecting to the north GBIS alignment. (See, enclosure, alternative alignment shown in red.) The second alternative alignment would follow the first alternative alignment, but would proceed further west along the south GBIS alignment, and then traverse north beneath Strohm Avenue, connecting to the north GBIS alignment. (See, enclosure, alternative alignment shown in black.) Finally, the third alternative alignment would follow the first/second alternative alignments, by proceeding further west along the south GBIS alignment, under the golf course on the Lakeside Country Club, and then proceeding north beneath Cahuenga Boulevard, connecting to the north GBIS alignment. (See, enclosure, alternative alignment shown in yellow.) As to the Cahuenga alternative alignment, there are two feasible options. First, this alignment could run along the south GBIS alignment, and then proceed north under Cahuenga Boulevard. Second, in order to avoid impacts to residential structures, this alignment could feasibly traverse under the Lakeside Country Club golf course, then veer south under a short segment of the Los Angeles River, before proceeding north beneath Cahuenga Boulevard.

26. Burbank requests that the EIR be revised and recirculated after conducting the appropriate alternatives analysis required by CEQA. This assessment also will require analysis and a comparative evaluation, consistent with section 15126.6, subd. (d) of the CEQA Guidelines.

THE EIR MUST EVALUATE PROJECT IMPACTS AGAINST THE EXISTING PHYSICAL CONDITIONS.

27. At pages 1-24-1-30, the Final EIR includes a "rationale" for selection of the staff-recommended GBIS hybrid alignment, including the new one-half mile Barham/Olive/Pass Avenue segment. This discussion is perhaps one of the more glaring flaws in the Final EIR. For the staff-recommended GBIS hybrid alignment, the Final EIR only compares the proposed new

alignment with the prior GBIS alignment plans. It does not meaningfully examine the existing physical conditions along the proposed new alignment, and in no sense does it evaluate project impacts against those existing physical conditions. Under CEQA, when assessing the environmental impacts of a project, the EIR must compare the proposed project against existing environmental conditions, *not* with potential impacts of another plan or project component. *See, Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 353-355 ("EPIC"); *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 190; *see also*, 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 1997) §6.29, pp. 329-330. The comparisons utilized in the Final EIR are misleading, because rather than provide full consideration of the actual environmental impacts that would result; it simply states that the likely impacts of the proposed GBIS hybrid alignment are "less" than the prior GBIS alignments.

28. In *EPIC*, EIRs prepared for use in considering amendments to a county general plan compared the environmental impacts of the proposed amendments to the existing *plan* rather than to the existing *environment*. *EPIC, supra*, 131 Cal.App.3d at 352. The Court determined that CEQA required an EIR to provide a detailed statement of "[t]he significant environmental effects of the proposed project" on the "physical conditions which exist within the area." *EPIC, supra*, 131 Cal.App.3d at 354-55, citing to Pub. Resources Code §§21100, subdivision (a), 21060.5; *see also, Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1196.

29. Similarly, in *Christward Ministry*, the local agency contended that a general plan amendment could be adopted without CEQA analysis because the amendment "did not authorize any new. . . use not previously authorized by the City's general plan and zoning ordinances. . ." *Christward Ministry, supra*, 184 Cal.App.3d at 185. The Court disagreed, holding that "[i]n assessing the impact of the amendment, the local agency must examine the potential impact of the amendment on the existing physical environment; a comparison between the proposed amendment and the existing general plan is insufficient." *Id.* at 186-187. The Court held that basing the analysis of impacts on a comparison to anything but the existing conditions of the site was "illusory." *Christward Ministry, supra*, 184 Cal.App.3d at 190-191.

30. Here, the Final EIR compares the environmental impacts of the staff-recommended GBIS hybrid alignment to the other GBIS alignments. It fails to assess the environmental impacts of the proposed new hybrid alignment against the existing physical environmental conditions. Accordingly, the EIR must be revised to correct this deficiency and then recirculated for public review and comment.

THE EIR FAILS TO ANALYZE HISTORIC RESOURCES.

31. The Draft EIR presents a historic and architectural resource analysis, which includes "a field survey to identify historic and archeological resources that might be affected by the Proposed Project," and "consultation" with national, state, and local historic lists. (*See*, Draft EIR

3.7-21.) First, the historic, archaeological, and paleontological resources investigation undertaken for the Draft EIR does *not* include the new one-half mile Barham/Olive/Pass Avenue segment, which was not properly analyzed for any environmental impacts. Additionally, the investigation of historic resources and structures for the GBIS alignment (Draft EIR, pp. 3.7-27 - 3.7-30) fails to mention one of Burbank's listed historic resources, Bob's Big Boy Restaurant, located on 4211 Riverside Drive. This location, immediately along the GBIS alignment route, is listed as a California Point of Historic Interest. Historic resources included on the California Point of Historic Interest list are automatically included on the California Register, and are thereby granted protection under CEQA. However, the Draft EIR's Cultural Resources section (Section 3.7) provides no historic resources analysis of this location. Furthermore, it is unclear, due to the lack of analysis of the new segment along Barham, Olive and Pass streets, why this historic location is not analyzed and how severely it will be impacted. Based on a review of the new GBIS hybrid alignment maps, it appears that the hybrid alignment traverses directly underneath this historic site or certainly within the "impact zone" as depicted on **Figure 3.13-13** of the Draft EIR. (*See also*, Final EIR, 1-18, **Figure 1.2**.) Since this historic location could be impacted by ground settlement due to tunneling and construction, an analysis is required from both a project and cumulative impact perspective.

THE EIR FAILS TO ANALYZE NOISE IMPACTS.

32. The Final EIR states that construction of the south GBIS alignment would have increased noise levels by 5 dBA or more at approximately 88 single-family residences, 19 multifamily residential buildings, 2 schools, 2 churches, 4 parks, and one other sensitive receptor. (*See*, Final EIR, p. ES-38.) In contrast, the north GBIS alignment would have increased noise levels by 5 dBA or more at approximately 175 single-family residences, 47 multifamily residential buildings, 2 schools, 1 church, and 5 parks. (*Id.*) These impacts are identified in the EIR as potentially significant. (*Id.*) Due to the EIR's failure to study the staff-recommended GBIS hybrid alignment, there is no information about how many residences, schools, churches, parks, and sensitive receptors will experience potentially significant noise impacts on the new hybrid alignment, particularly along the new one-half mile Barham/Olive/Pass Avenue segment. (Final EIR, section 2, Figure 3.4-10.) This violates CEQA, by failing to study the area, identify and analyze significant impacts, and avoid or minimize those impacts; furthermore, the mitigation measures proposed for the former GBIS alignments would *require* identification of sensitive receptor locations (including residences), in order to adequately determine where noise barriers are necessary and notify surrounding uses. These significant omissions must be corrected in a revised and recirculated EIR.

THE EIR FAILS TO ANALYZE IMPACTS FROM HAZARDS AND HAZARDOUS MATERIALS CONCERNING GROUNDWATER CONTAMINATION SURROUNDING THE PROJECT.

33. The EIR acknowledges that the GBIS alignment is underlain by a massive groundwater contamination plume known as the San Fernando Valley Superfund area. (*See*, Draft EIR, p.

3.10-2.) It states that the "primary contaminants of concern in the Superfund areas are trichloroethylene (TCE) and perchloroethylene (PCE)."

34. The Draft EIR fails to analyze the possible presence of Chromium 6, which is the chief concern for groundwater contamination in that area. This is a major omission, as Chromium 6 is a severe threat to public health and safety. The presence of Chromium 6 in groundwater beneath or near any portion of the GBIS alignments must be analyzed, disclosed, and mitigated or avoided.

35. The Draft EIR details numerous significant impacts resulting from the groundwater contamination that lies under the GBIS alignments, but does not provide any mitigation for such impacts.

36. The Draft EIR states that construction of GBIS may include "excavations deep enough to encounter groundwater (such as tunneling) could require dewatering, which could expose the public or the environment to hazardous materials through handling of contaminated groundwater or by locally affecting the extent or flow of an existing contamination plume." (See, Draft EIR pp. 3.10-21 - 3.10-22.) The EIR responds to this impact by claiming that hazards "would be reduced by *avoiding* contaminated soil and plumes (by going around or tunneling below in bedrock), by testing and treating water produced by dewatering prior to discharge, and by using construction methods that minimize dewatering such as earth-pressure-balance tunneling." (See, Draft EIR, p. 3.10-21.) This response fails to explain *how* contaminated soil and plumes would be identified ahead of contact, in order to be *avoided*. Importantly, it also does *not* explain *how* the project will avoid the *spread* of contaminated groundwater, which is a major component of the contamination remediation effort.

37. The Draft EIR states that if "contaminated groundwater were encountered during construction, people or property could be exposed to health hazards as a result of an accidental release . . ." (See, Draft EIR , pp. 3.10-21-3.10-22.) The EIR responds to this impact by claiming that "[t]he type of tunnel-boring machine used [to construct the project will be] operated in such a way to reduce groundwater infiltration into the tunnel, although groundwater is present in the mined rock and could enter the tunnel in some instances. Water would be sampled and disposed properly. Worker safety would be protected through health and safety plans (per CalOSHA standards) that address these hazards." (*Id.*) This information, however, provides no explanation of *how* the machine will be operated to reduce or avoid groundwater infiltration, and thereby the spread of contaminants. Worse, it concedes that even with such operations, some contaminated groundwater could enter the tunnel. Therefore, a potentially significant impact would remain.

38. Notably, none of the EIR responses are included as enforceable mitigation measures. (See, Final EIR, p. ES-42.) The EIR does not provide any mitigation measures in response to the groundwater contamination being tunneled through to construct the project, and the potential for release. The EIR states that project construction will follow health and safety plans, sampling and analysis plans, and Occupational Safety and Health Administrative guidelines, *none* of which are explained. (See, Final EIR, p. ES-42.) Even if the EIR's responses were enforceable

mitigation measures, they would not be sufficient to reduce the potentially significant impacts to a less than significant level; however, the EIR determines that based on undefined "plans," impacts will be "less than significant." (*Id.*) The EIR must be revised to add mitigation to avoid or substantially lessen the identified effects, or to require a statement of overriding considerations, in order to overcome the potentially significant impacts related to tunneling through contaminated groundwater areas.

39. The Final EIR does not assess the potential hazardous impacts of implementing the new one-half mile Barham/Olive/Pass Avenue segment. The Draft EIR's assessment of hazardous materials for the GBIS alignment found that the south GBIS alignment would pass through a methane and methane buffer zone from landfills, and found that the groundwater beneath both GBIS alignments were underlain by the San Fernando Valley Superfund site, contaminated by PCE and TCE. (*See*, Draft EIR, p. 3.10-11.) It also included a database search, which found that "a total of 89 sites listed on 1 or more of the 72 government databases were identified in the GBIS Alignment corridors," and "[a]pproximately 44 of these 89 sites have soil and/or groundwater contamination." (*See*, Draft EIR, p. 3.10-11.) *None* of these investigations or assessments have been performed for the new Barham/Olive/Pass Avenue segment.

THE FINAL EIR IS INCONSISTENT IN DISCUSSING "SURFACE CONSTRUCTION ACTIVITY" ALONG THE SEGMENT OF THE PROPOSED GBIS HYBRID ALIGNMENT.

40. On page 1-27, the Final EIR concedes that, although the staff-recommended GBIS hybrid alignment would be constructed primarily underground using tunneling techniques, "some surface construction would be required to install maintenance holes, and possibly to inject grout along the tunnel alignment as a method to control the potential for settlement in areas of unfavorable subsurface conditions." However, in response to a Burbank resident's comment, the Final EIR concluded that the staff-recommended GBIS hybrid alignment "does not include aboveground construction in the City of Burbank." (*See*, Final EIR, p. (Individuals)-486.) Which is it?

41. The determination of this issue raises potentially significant traffic impacts along the new one-half mile Barham/Olive/Pass Avenue segment. It also raises issues concerning settlement risks along the new segment, including settlement causing damage to existing residential and commercial structures. In addition, it highlights a glaring omission in the EIR: The failure to assess, prior to construction, the potential for settlement in areas along the new segment where there may be unfavorable subsurface conditions. For example, on page 1-27, the Final EIR concludes that the "Pass Avenue section of the staff-recommended GBIS Alignment is more conducive to surface construction activities that could be required if unfavorable subsurface soil conditions are encountered." There is no explanation of *why* this new segment is more "conductive" to surface construction activities. There also is no analysis of whether unfavorable subsurface soil conditions exist along this new segment. The EIR strategy appears to be "tunnel first and address adverse subsurface soil conditions later."

42. The EIR must be revised and recirculated after having conducted the necessary geotechnical testing of representative soil samples along the new segment to determine if there are "unfavorable subsurface soil conditions" that may necessitate surface construction activities, which may give rise to significant traffic, air, and noise impacts on West Olive and Pass Avenue in Burbank.

THE "VOLUNTARY" MEASURES FOR THE PROPOSED GBIS HYBRID ALIGNMENT ARE ILLUSORY AND UNENFORCEABLE.

43. On page 1-23, the Final EIR includes so-called "voluntary" measures as part of the staff-recommended GBIS hybrid alignment. Although these measures are included in the Mitigation Monitoring and Reporting Program (MMRP) at Appendix G of the Final EIR, it remains unclear whether these "voluntary" measures are enforceable as mitigation measures under CEQA. They are included in a separate section of the MMRP, and are consistently referred to as "voluntary" measures. (*See*, Final EIR, Appendix G, pp. G-1, G-35.) CEQA provides that mitigation measures must be "fully enforceable" (CEQA Guidelines section 15126.4(a)(2).) The City's "voluntary" measures are illusory, voluntary, and inherently unenforceable. Therefore, Burbank requests that the City revise its MMRP to clarify that all so-called "voluntary" measures are fully enforceable mitigation measures under CEQA. Burbank further requests that each "voluntary" measure be substantially revised to remove vague and ambiguous wording (see below), which renders each measure inherently unenforceable.

44. The so-called "voluntary" measures listed in the Final EIR (pages 1-23-1-24) are vague; and, therefore, inherently illusory and unenforceable.

45. The first "voluntary" measure, on page 1-23, states that the "City will attempt to eliminate the placement of maintenance hole structures within the City of Burbank, including along Pass Avenue." (*Emphasis added.*) This measure is not an enforceable mitigation measure that will eliminate maintenance hole structures along the new segment in Burbank. Its qualified wording renders it illusory.

46. The next measure, on page 1-23, states that "[n]o tunneling construction sites would occur within the City of Burbank, *unless* a construction emergency situation requires such construction," but no such emergencies are anticipated by the City. There has been no analysis of the new segment in Burbank; therefore, no substantial evidence exists to determine whether construction emergencies ought to be anticipated or not. Also, this measure is illusory and unenforceable because of its qualified wording.

47. The next measure, on page 1-23, states that the City will "[m]inimize, if not avoid, surface construction activities for GBIS in the City of Burbank, including along Pass Avenue." However, there are no enforceable performance standards explaining *how* the City will "minimize, if not avoid" such activities. In addition, other sections in the Final EIR suggest that it may not be possible to minimize or avoid surface construction activities along the new

segment "if unfavorable subsurface soil conditions are encountered." (*See*, Final EIR, p. 1-27.) Thus, the measure is illusory and inherently unenforceable.

48. In the last "measure," on pages 1-23-1-24, the City promises to implement "additional measures" to reduce potential (unstudied) traffic, noise, and vibration impacts due to tunneling activities associated with the staff-recommended GBIS hybrid alignment. However, each measure is merely a promise to do "plans" sometime in the future to "control" traffic, noise, and vibration impacts in Burbank that have not been analyzed in the first instance. Such measures are insufficient. (*E.g.*, CEQA Guidelines section 15126(a)(1)(B) ["Formulation of mitigation measures should not be deferred until some future time."].) The measures also fail to provide Burbank with input and approval authority over such plans, even though the plans would be implemented along the new segment on streets, located entirely within the City of Burbank.

49. Overall, these vague measures are being utilized to avoid disclosing project impacts. In *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195-197, an EIR was found inadequate because it failed to evaluate the impact of supplying water to the development project. Instead of evaluating the water supply, the EIR included a mitigation measure stating that the project would not proceed if adequate water was not available, thereby circumventing the required analysis of the water supply. The court held that "[t]o defer any analysis whatsoever of the impacts of supplying water to this project until after the adoption of the specific plan calling for the project to be built would appear to be putting the cart before the horse." (*Stanislaus, supra*, 48 Cal.App.4th at 200.) This type of mitigation *in lieu* of analysis "defeated a fundamental purpose of CEQA: To 'inform the public and responsible officials of the environmental consequences of their decisions before they are made.'" (*Stanislaus, supra*, 48 Cal.App.4th at 195.) Similarly, here, these voluntary measures are being used *in lieu* of conducting the necessary impact analyses of the one-half mile Barham/Olive/Pass Avenue segment.

THE FINAL EIR'S CONCLUSIONS REGARDING "CONTINGENCY RESPONSE" ALONG THE SEGMENT OF THE PROPOSED GBIS HYBRID ALIGNMENT ARE INADEQUATE, AND THERE IS NO CONTINGENCY RESPONSE PLAN PROVIDED.

50. On page 1-28, the Final EIR discloses the need for a contingency response plan, in the event unfavorable soil conditions are encountered during the tunneling process. According to the EIR, unfavorable conditions "could result in the need to excavate to the tunnel boring machine (TBM) from the ground surface. In such emergency circumstances, the City could need to excavate from the surface to the TBM, make repairs to the TBM, or in extreme cases, retrieve the TBM for above-ground repairs." (*See*, Final EIR, p. 1-28.) However, the EIR fails to provide an enforceable contingency response plan to avoid or minimize these conditions.

51. The EIR also states that "the City has considered the GBIS alignments in the context of contingency response." (*See*, Final EIR, p. 1-28.) This statement is unsupported. The EIR concedes that it makes no attempt to investigate the soil conditions along the GBIS alignments --

the *same* soil conditions that would be the catalyst for requiring massive surface construction along the selected alignment if a contingency response were required. To explain this glaring omission, the EIR states that the "actual subsurface soil conditions along the alignment cannot be known in their entirety because soil borings cannot be taken along every point along the alignment." (See, Final EIR, p. 1-28.) Based on this excuse, the EIR proceeds to take *no* representative soil borings, and conducts *no* form of analysis. This is a violation of CEQA's most basic policies of information disclosure, analysis, and mitigation.

52. Despite providing no investigation or analysis of soil conditions, which if unfavorable may require major surface construction activities along an unstudied segment of the staff-recommended GBIS alignment, the Final EIR then fails to propose any plan or mitigation measures that may alleviate the significant impacts such surface excavation would create. The Final EIR simply gambles on the hope that this contingency response will not be required, despite the acknowledgment "its possibility cannot be discounted." (See, Final EIR, p. 1-28.)

53. The Final EIR's only attempt to assess whether the GBIS alignments could accommodate a contingency response is the following statement: "In considering the GBIS alignments, the width of the streets and subsurface utilities are important considerations." (See, Final EIR, p. 1-28.) However, with respect to the new one-half mile Barham/Olive/Pass Avenue segment, the EIR *never* analyzes these "important considerations." Because the area has not been studied, the EIR does not disclose the existence of subsurface utilities along this segment, or the respective street widths. Instead, the EIR summarily concludes, based on no evidence, that:

"The section of the staff recommended GBIS Alignment along Pass Avenue is considered viable for contingency response based on the width of Pass Avenue. Some residential structures are located along a short section of Pass Avenue; however, the length of this section is considerably shorter than the length of Riverside Drive that extends through residential areas under the GBIS North Alignment." (See, Final EIR, p. 1-28.)

54. First, there is no substantial evidence to support the above statement that a contingency response along Pass Avenue is "viable." Second, the statement omits any so-called "viability" assessment along Barham and West Olive Avenue, streets included in the new segment. Third, the statement fails to identify and consider the existing land uses along the new one-half mile Barham/Olive/Pass Avenue segment; the existing subsurface utilities along the segment; the widths of these streets; or the street widths in relation to the existing land uses (*e.g.*, residential, commercial, historic, *etc.*)

55. This contingency response also raises the *same* potential impacts as discussed in the section above regarding surface construction: Potentially significant traffic impacts, settlement risks, and damage to existing residential and commercial structures along the new one-half mile Barham/Olive/Pass Avenue segment must be analyzed. Therefore, the EIR must identify the width of the Barham/Olive/Pass Avenue streets, identify the types of uses along those streets, conduct representative soil sampling, and investigate whether subsurface utilities exist under the

streets. Additionally, a plan and/or enforceable mitigation measures are required to avoid or substantially lessen the significant impacts that a contingency response would pose to this area. The inclusion of this additional analysis will require the EIR to be revised and recirculated.

THE FINAL EIR ADDS SIGNIFICANT NEW INFORMATION TO THE DRAFT EIR WITHOUT RECIRCULATING THE DOCUMENT AS REQUIRED BY CEQA.

56. On page 2-1, the Final EIR introduces a new section entitled, "**Section 2 Modifications and Updates to the Draft EIR.**" This new section consists of 71 pages of text and tables, plus 5 new figures. (*See*, Final EIR, pp. 2-1-2-76.) It also adds new and revised "related projects" information to the Draft EIR's cumulative analysis (Final EIR, pp. 2-9-2-11). As discussed in further detail below, the information contained in this new section constitutes "significant new information" requiring recirculation under CEQA. (CEQA Guidelines, §15088.5, subd. (a).)

57. Recirculation of an EIR prior to certification is required when an EIR discloses that new significant environmental impacts would result from the project, or a substantial increase in the severity of an environmental impact would result, unless mitigation is adopted that reduce the impact to a level of insignificance, or a feasible project alternative or mitigation measure would clearly lessen the significant environmental impacts, but the project proponent declines to adopt it. (CEQA Guidelines, §15088.5, subd. (a)(1)-(3).) Here, the Final EIR adds significant new information regarding the: (a) Los Angeles' lower and upper reach River Supply Conduit ("RSC") project; (b) City Trunk Line South project; (c) Silver Lake Reservoir Complex Storage Replacement project ("Silver Lake project"); and (d) four other water recycling projects. (*See*, Final EIR, pp. 2-9-2-12.)

58. The significant new information relates to the construction timing or schedule for these projects. The Final EIR, for the first time, discloses that there will be substantial overlap in construction of the IRP and these related projects, which includes the staff-recommended GBIS hybrid alignment. This overlap in construction will result in significant cumulative traffic, noise, vibration, geotechnical (settlement), and air quality impacts, among others, which have not been studied in the Draft or Final EIR.

59. As shown on **Table 1** below, the Final EIR discloses the overlapping construction schedules for the proposed IRP in conjunction with the identified related projects:

TABLE 1
OVERLAPPING CONSTRUCTION SCHEDULES

Projects	Draft EIR	Final EIR
IRP	2006 - 2020	2006 - 2020
NEIS	2010 - 2012	2010 - 2012
GBIS	2012 - 2014	2012 - 2014
RSC Project	2005 - mid-2010	2008 - 2014
City Trunk Line South Project	Not disclosed	2007 - 2009
Silver Lake Project	Not disclosed	2007 - 2013
Water Recycling Projects (4)	Not disclosed	Not disclosed, but cumulative impacts acknowledged.

Source: Draft EIR, pp. 2-100, 3.1-5 - 3.1-7, 3.17-40, 3.17-46, 3.17-61, 3.17-66; and Final EIR, pp. 2.9-14.

60. Specific to the RSC project, the Final EIR discloses that both the NEIS and GBIS alignments would closely follow the new lower reach RSC alignment, but at a greater depth. (Draft EIR, p. 2-10.) As shown above, according to the Final EIR, construction of the RSC project (2008-2014) will now overlap entirely with construction of the NEIS and GBIS alignments (2010-2014). The Final EIR also concedes that "possible conflicts" may exist between the RSC project and the proposed GBIS alignment; however, the EIR fails to disclose those "possible conflicts" (Draft EIR, p. 2-10), and fails to offer any mitigation measures to reduce the cumulative impacts associated with overlapping construction. (CEQA Guidelines §15130 subd. (b)(5) ["An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects."].) The "conflicts" could be severe: Construction of the GBIS and NEIS alignments will occur simultaneously with the lower reach RSC alignment, but at a greater depth. As such, the possibility for subsurface settlement is likely to be exacerbated.

61. According to the Final EIR, the tunnel contractor is required to limit surface settlement to three-quarters of an inch along the tunnel alignment. (Final EIR, p. 2-25, GEO-MM-2.) If the same three-quarters of an inch settlement is allowed along the RSC project alignment, a full one-and-one-half inches of settlement can be expected in overlapping areas; however, such cumulative impacts are not disclosed and no mitigation is proposed or adopted to avoid or reduce such settlement impacts. Other related issues arise from the overlapping construction of the IRP and the RSC projects. For example, what is the impact zone for construction of the IRP, in combination with the RSC project? Will the "cumulative" impact zone expand due to overlapping construction? Does the RSC project contain mitigation for subsurface settlement? If so, what is that mitigation? What are the traffic, noise, vibration, and air quality impacts resulting from this overlapping construction? Please provide responsive answers to these questions.

62. The above analysis applies with equal force to the City Trunk Line South project, the Silver Lake project, and the four Los Angeles' water recycling projects. In fact, the Final EIR acknowledges cumulative impacts resulting from implementing the selected IRP in combination with the RSC project, the City Trunk Line South project, the Silver Lake project, and the four Los Angeles' water recycling projects, but fails to describe and analyze such impacts and offers only "close coordination" between two Los Angeles' departments as the method for "avoiding" the impacts. (Final EIR, p. 2-12.) In addition, the Final EIR is the first time that the City discloses the existence of cumulative impacts resulting from implementing the IRP in conjunction with the identified "related projects." Again, other related issues arise from construction of the IRP, in combination with all of these "related" projects. As indicated above, please explain the settlement, traffic, noise, vibration, and air quality impacts resulting from all of this overlapping construction.

63. Finally, the promise of "coordination" is not spelled out and there are no performance standards associated with this coordination effort, in order to determine if the cumulative impacts would be avoided, minimized, rectified, reduced, or compensated for in a measurable way. (*Id.*) In addition, "coordination" is not identified as "mitigation" for the cumulative impacts that necessarily will arise from simultaneous construction of the IRP and the other closely related projects. Absent enforceable performance standards, "coordination" is insufficient mitigation under CEQA in any event.

MITIGATION WITHOUT ANALYSIS IS INSUFFICIENT UNDER CEQA.

64. At pages 1-20-1-24, the Final EIR identifies general mitigation measures that were crafted in response to identified impacts to the prior GBIS alignments. The Final EIR proposes to apply these measures to the staff-recommended GBIS hybrid alignment, but there have been no impact analyses performed to determine if the previously identified mitigation is sufficient, or if additional mitigation is required to address impacts along the proposed GBIS hybrid alignment, including the new one-half mile Barham/Olive/Pass Avenue segment. The Final EIR's approach of offering mitigation *in lieu* of impact analysis defeats the fundamental purpose of CEQA, which is to inform the public and responsible officials of the environmental consequences of a decision *before* it is made. (See, e.g., *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195-197; and *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 732.) The EIR must be revised and recirculated once the required impact and mitigation assessment has been conducted.

THE EIR'S PROPOSED MITIGATION MEASURES ARE VAGUE, PROVIDE INSUFFICIENT PERFORMANCE STANDARDS, AND IMPROPERLY DEFER THE FORMULATION OF THE MITIGATION.

65. An EIR must propose mitigation measures that are designed to minimize the project's significant impacts by substantially reducing or avoiding them. (Pub. Resources Code §§21002,

21100.) In order to be adequate, mitigation measures must meet the definition of mitigation under CEQA. "Mitigation" includes any of the following: (1) Avoiding the impact altogether by not taking an action or part of an action; (2) Minimizing the impact by limiting the degree or magnitude of the action; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) Reducing or eliminating the impact over time by preservation or maintenance actions; or (5) Compensating for the impact by providing replacement or substitute resources or environments. (CEQA Guidelines §15370.)

66. In addition, the mitigation measures must "commit to mitigation and set out standards for a plan to follow." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.) They cannot defer essential environmental studies to the future rather than conducting them during the preparation of an EIR. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396-97.) The mitigation measures included in the Final EIR defer the formulation of the mitigation. Instead, the measures are general, conceptual, and do not include performance standards required by CEQA. Examples of such measures are as follows:

AQ-MM-3: *Schedule* construction activities such that odorous sources are uncovered or unsealed *for as short a time as possible*. (See, Final EIR, p. ES-21; *emphasis added*.)

AQ-MM-4: *Schedule* construction activities such that odorous sources are uncovered or unsealed during the time of day when odors are observed to be at a minimum (generally during low-flow hours). (See, Final EIR, p. ES-21; *emphasis added*.)

67. The "scheduling" of construction activities for unspecified times is insufficient to minimize odor impacts to nearby land uses. In addition, the "day-time" conditions along the highly urbanized new one-half mile Barham/Olive/Pass Avenue segment are not fairly characterized as "low-flow hours." This mitigation also does not suffice to reduce the release of potentially significant construction odors to a level of "not significant." (See, Final EIR, p. ES-21.)

AQ-MM-5: Implement a multiphased odor mitigation program at Tillman and LAG. Conduct odor control studies to identify odor sources and possible odor reduction measures, then implement the identified measures. For Hyperion, implement various odor control projects. (See, Final EIR, p. ES-21.)

68. This mitigation measure defers essential environmental studies to the future rather than conducting them during preparation of the EIR, and thereby improperly defers the formulation of mitigation. The odor control studies must be completed prior to certification of the EIR, and will likely propose additional mitigation measures that must be included in the revised EIR and MMRP.

AQ-MM-7: Locate ATF exhaust stacks a minimum of 100 feet from the nearest sensitive receptor, if feasible. (*See*, Final EIR, p. ES-21.)

AQ-MM-8: Set an ATF stack exhaust concentration performance standard limit equal to or less than 0.5 part per million, if feasible. (*See*, Final EIR, p. ES-21.)

69. The feasibility of these mitigation measures must be determined during preparation of the EIR. There is no reason provided as to why the feasibility of these mitigation measures cannot be determined at this time. As written, these mitigation measures are illusory and unenforceable.

HAZ-MM-1: Implement design and operational controls to minimize vector nuisances. Controls may include alternative wetlands designs (subsurface-flow wetlands) and/or a vector control plan and measures approved by the Vector Control District. (*See*, Final EIR, p. ES-33.)

70. This measure provides no performance standards that will allow for a determination of whether impacts have been avoided, minimized, rectified, reduced, or compensated for in a measurable way. Instead, the measure defers the formulation of the "design and operational controls" to some future time (unspecified), and, it uses permissive language like "may include," rendering the mitigation illusory and unenforceable. In order for the mitigation to be adequate, it must be possible to evaluate its effectiveness by providing measurable performance standards and/or committing to a specified level of mitigation. Because there is no way to determine whether this would be even minimally effectual, it cannot be adequate in reducing potentially significant health impacts caused by mosquito vectors to "less than significant." (*See*, Final EIR, p. ES-33.)

NV-MM-7: Prepare and implement a control plan to the satisfaction of the Bureau of Engineering Geotechnical Engineering Division that ensures that groundborne vibration does not exceed the applicable levels at locations along the NEIS II and GBIS alignments. Tunneling and tunnel lining will not exceed "threshold" or "limiting" levels for groundborne noise and vibration.

71. This measure is a promise to prepare and implement a vibration control plan that will reduce groundborne vibration impacts from "significant" to "less than significant." However, the measure defers the formulation of the plan to some future time (unspecified), and it fails to provide enforceable performance standards explaining *how* the City will ensure that groundborne vibration does not exceed applicable levels for the staff-recommended GBIS alignment. (*See*, Final EIR, p. 1-40.) The measures also illustrate what is lacking in the impact analysis: There is *no* identification and assessment of the "applicable" "levels for groundborne noise and vibration" at locations along the new one-half mile Barham/Olive/Pass Avenue segment. The measure is also insufficient, because it fails to provide any method of evaluating effectiveness or ability to adequately avoid or reduce impacts. It also fails to provide Burbank with input and approval authority over such a plan, even though the plan would be implemented along the new segment on streets, located entirely within the City of Burbank.

NV-MM-6: Conduct an acoustical analysis to determine the noise effects that dry and wet weather runoff URPs or air treatment facilities would have on nearby sensitive receptors. Locate the noisiest equipment for URPs and ATFs farthest from sensitive receptor. Provide noise reduction measures (i.e., sound walls) to ensure that ambient noise levels at nearby sensitive receptors would not incrementally increase by 3 or more decibels (CNEL). (*See*, Final EIR, p. ES-39.)

72. This mitigation measure defers essential environmental studies to the future rather than conducting them during preparation of the EIR, and thereby improperly defers the formulation of mitigation. There is no reason provided as to *why* the acoustical analysis must be deferred until a later date. The analysis must be completed prior to certification of the EIR in order to determine how to design the layout in a manner that will have the least environmental impact on sensitive receptors. These potential noise impacts could be significant and would likely require additional *enforceable* mitigation measures that must be disclosed in the EIR. The measure also promises "noise reduction measures" at "nearby sensitive receptors." The problem, however, is that these "noise reduction measures" are undisclosed for the most part. Importantly, there is only one reference to a noise reduction measure, "sound walls," but no information is provided regarding the number of sound walls required, the location of the walls, or their height. In addition, these sound walls are likely to cause one or more significant effects (in addition to those caused by the project itself). Under such circumstances, the environmental effects of the mitigation (here, sound walls) must be discussed in the EIR. *See*, CEQA Guidelines section 15126.4(a)(1)(D); and *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.) The locations of the "sensitive receptors" are also unspecified along the new one-half mile Barham/Olive/Pass Avenue segment. Without the analysis, it is impossible to determine if noise impacts will be avoided, minimized, rectified, reduced, or compensated for in a measurable way. This deferred mitigation also is not sufficient to reduce noise impacts to a "less than significant" level. (*See*, Final EIR, p. ES-39.)

TRA-MM-1: Prepare construction traffic management plans to the satisfaction of LADOT. (*See*, Final EIR, p. 1-47.)

TRA-MM-2: Prepare construction work site traffic control plans to the satisfaction of LADOT for construction in the public rights-of-way. (*See*, Final EIR, p. 1-47.)

73. Similar to the noise mitigation measure above, these mitigation measures promise to prepare and implement traffic management and control plans that will reduce traffic impacts such as "[c]onstruction-related trips" and "[t]emporary lane closures" that were determined to be "less than significant." Although it is not clear why these impacts are not significant, the mitigation measures remain inadequate. They defer formulation of the plans, and incorporate no enforceable performance standards explaining how the City will reduce traffic impacts to a "less than significant" level. They also fail to provide Burbank with input and approval authority over such plans, even though the plans would be implemented along the new segment on streets, located entirely within the City of Burbank.

CUL-MM-6: Develop a Cultural Resources Monitoring Plan for the IRP. (*See*, Final EIR, p. ES-29.)

CUL-MM-8: Develop a Discovery and Treatment Plan for the IRP. (*See*, Final EIR, p. ES-29.)

74. These mitigation measures defer the development of plans to some unspecified future time rather than preparing the plans during preparation of the EIR. There is no reason provided as to why these plans for the monitoring of cultural resources, or treatment of discovered resources, must be deferred until a later date. The plans must be completed prior to certification of the EIR, in order to determine whether the impacts they are designed to minimize will be avoided, minimized, rectified, reduced, or compensated for in a measurable way. Because there is no way to determine whether these plans would be even minimally effectual, they are inadequate mitigation measures.

REC-MM-2: The City of Los Angeles Bureau of Engineering will coordinate with the Department of Recreation and Parks and/or City of Burbank minimize construction impacts to affected recreational facilities and make improvements to other recreational resources.

75. This mitigation measure provides no enforceable mitigation or performance standards. "Coordination" between agencies to determine what mitigation will be needed to minimize construction impacts cannot be deferred until after preparation of the EIR, and that "coordination" is not suitable mitigation for potentially significant impacts to recreational resources, nor does it reduce the significance of such impacts. This mitigation measure is illusory and unenforceable, with no means to measure whether recreational impacts will be avoided, minimized, rectified, reduced, or compensated for in a measurable way. Instead, like the "voluntary" measures addressed above, this measure fails under the *Stanislaus, supra*, as a vague "mitigation measure" that is being utilized to avoid analyzing and disclosing project impacts.

THE EIR MUST DESCRIBE MITIGATION FOR IDENTIFIED SIGNIFICANT ENVIRONMENTAL IMPACTS.

76. An EIR must propose and describe mitigation measure to minimize the significant environmental effects identified in the EIR. (Pub. Resources Code §§21002.1 subdivision (a); 21100 subdivision (b)(3); CEQA Guidelines §15126.4.) The mitigation must be designed to minimize, reduce or avoid the identified environmental impact, or rectify or compensate for that impact. (CEQA Guidelines §15370.)

77. Some known significant environmental impacts are identified in the Final EIR, but are nonetheless determined to be "less than significant" without incorporating feasible mitigation measures. For these impacts, *enforceable* mitigation must be identified and disclosed in order to

make a proper determination of whether a particular significance level has been reduced to "less than significant." Two examples of this deficiency in the Final EIR are provided below.

78. **Hazards.** The Final EIR acknowledges that "[c]onstruction, demolition and earthwork could encounter contaminated soil, groundwater, or construction- and demolition-derived waste," and would thereby need to follow "health and safety plans, sampling and analysis plans, and Occupational Safety and Health Administration guidelines." (*See*, Final EIR, p. ES-33.) However, the Final EIR fails to find these hazards to be significant, requiring enforceable mitigation measures to reduce or avoid such impacts. The "health and safety plans" and "sampling and analysis plans" must be prepared prior to certification of EIR, and expressed in an enforceable mitigation measure, in order to determine if the impacts they are designed for will be avoided, minimized, rectified, reduced, or compensated for in a measurable way.

79. **Water Quality.** The Final EIR acknowledges that "[c]onstruction of the Proposed Alternatives would have the potential to encounter groundwater. Depending on the depth to groundwater, subsurface dewatering could be necessary. Existing groundwater contamination plumes would not be affected." (*See*, Final EIR, p. ES-36.) The EIR then summarily states that "[t]reatment of contaminated groundwater would keep impacts below significance," but no mitigation is provided to reduce or avoid the acknowledged impacts. (*Id.*) The methods of dewatering and treatment of contaminated water may give rise to significant impacts and *must* be addressed through enforceable mitigation measures. The EIR's conclusory statement that treatment would reduce impacts below a level of significance, without explaining how, or identifying mitigation (methods, timelines, funding, *etc.*) is inadequate. (*Id.*) Mitigation is required to determine if the water quality impacts will be avoided, minimized, rectified, reduced, or compensated for in a measurable way.

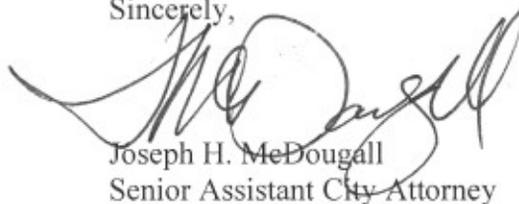
80. The EIR's water quality impact analysis also claims that "[t]he use of grouting during NEIS II and GBIS construction would keep the tunnels from serving as potential pathways for groundwater contamination movement;" "[p]otential breaks along recycled water pipelines would not result in significant impacts because they would comply with Title 22 separation requirements and because breaks would be repaired quickly;" and "[c]apture and percolation projects would not affect groundwater quality or contamination plumes." (*Id.*) These summary statements illustrate the EIR's failure to provide supporting evidence and enforceable mitigation measures to ensure that these potential significant impacts are avoided or substantially lessened. The EIR's assumptions that impacts from groundwater contamination and potential pipeline break would not be significant, without explaining the requisite plans and/or mitigation measures, is inadequate. Mitigation is required to determine if these water quality impacts will be avoided, minimized, rectified, reduced, or compensated for in a measurable way.

In closing, the staff-recommended GBIS hybrid alignment would bypass sparsely populated areas on and near the Lakeside Country Club in the City, and route the GBIS through heavily developed residential and commercial areas in Burbank. The GBIS hybrid alignment does not avoid impacts, it shifts them from primarily a golf course in the City of Los Angeles to a Burbank neighborhood. The data in the Draft and Final EIRs shows that the south GBIS

alignment is both feasible and far superior to both the north GBIS alignment and the hybrid GBIS alignment. The City of Burbank continues to oppose all portions of the north GBIS alignment. Burbank also opposes the hybrid alignment, particularly that segment that will be constructed beneath the streets of Burbank. Burbank urges the City to perform a comprehensive comparative evaluation of the south GBIS alignment, the hybrid GBIS alignment, and the two alternative alignments shown on the graphic enclosed with this letter. (CEQA Guidelines, §15126.6, subd. (d).) Finally, Burbank asks that the City of Los Angeles conduct the analysis requested in this letter, and that such analysis be included in a revised and recirculated EIR.

Thank you for considering these comments. If you should have any questions for the City of Burbank, please do not hesitate to contact this office.

Sincerely,



Joseph H. McDougall
Senior Assistant City Attorney

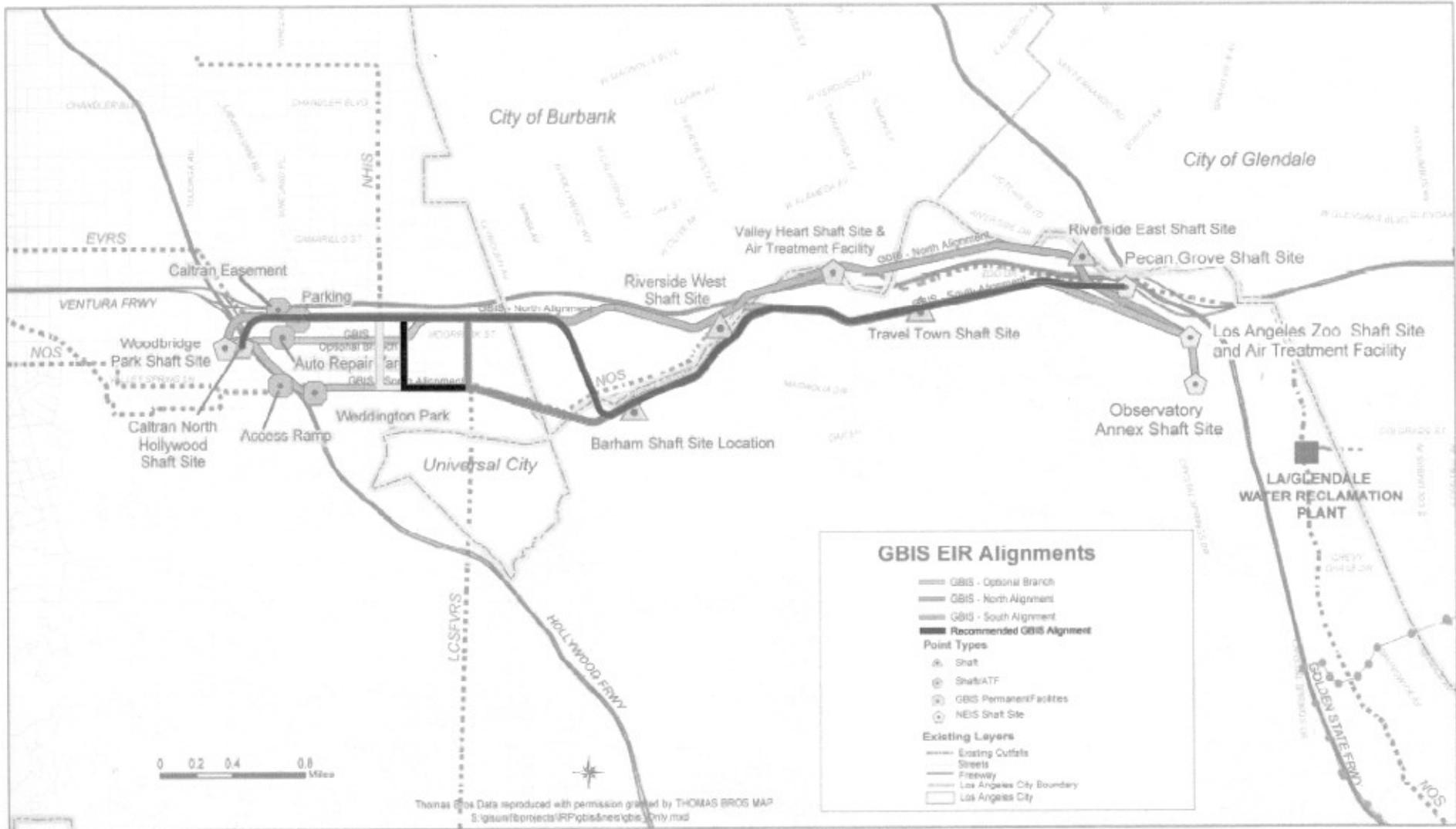
Enclosure

cc: Energy & Environment Committee
Los Angeles Councilmember Jan Perry (Chair)
Los Angeles Councilmember Eric Garcetti (Vice Chair)
Los Angeles Councilmember Tom LaBonge (Member)
Los Angeles Councilmember Wendy Greuel (Member)
Los Angeles Councilmember Alex Padilla (Member)

Burbank City Council
Marsha Ramos, Vice Mayor
Dave Golonski, Council Member
Dr. David Gordon, Council Member
Jef Vander Borcht, Council Member

Mary Alvord, City Manager
Mike Flad, Assistant City Manager
Gatzke Dillon & Ballance LLP

ALTERNATIVE ALIGNMENT ENCLOSURE



- Staff-Recommended GBIS Hybrid Alignment
- First Alternative Alignment (Forman Avenue)
- Second Alternative Alignment (Strohm Avenue)
- Third Alternative Alignment (Cahuenga Boulevard)