



# HAIGHT ASHBURY IMPROVEMENT ASSOCIATION

Ted Loewenberg, President  
415 522-1560  
tedlsf@sbcglobal.net

Edward Reiskin  
Executive Director, SF MTA  
Re: Oak and Fell Street Bike Lane Plan

14 May 2012

Dear Mr. Reiskin:

On behalf of the Haight Ashbury Improvement Association (HAIA), I write again to express our serious concerns regarding the proposed Oak and Fell street bike lanes. Through email correspondence to you and conversations with MTA officials and planners, HAIA has previously proposed that bike traffic from the Panhandle to the Wiggle instead be routed to Hayes and Page streets to lower the safety risk posed to bicyclists and motorists inherent in placing heavy bicycle traffic on a fast moving, high traffic street. We are dismayed to find a summary of our comments have not been placed on the project's website. Overall, MTA staff has generally been dismissive of our concerns.

At this point, MTA has made clear that it will not consider any alternatives that do not involve placing a separated bike lane on Oak Street. HAIA believes that if the MTA takes any further action in designing or implementing the Oak and Fell Bike Lanes project, including any action at the May 18th MTA hearing, it will be in violation of the California Environmental Quality Act (CEQA).

To our knowledge, no environmental review has been conducted for the project to date and the Oak and Fell bike lane improvements were not analyzed in the San Francisco Bike Plan Environmental Impact Report (Bike Plan EIR). Thus, this is a new a different project which cannot rely on the Bike Plan EIR or CEQA section 21166. By rejecting HAIA's proposed alternative and moving forward with design details, without conducting any environmental review, MTA is in violation of the principles set forth by California Supreme Court in

- *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, and
- *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.

In *Save Tara*, the Supreme Court was crystal clear that "before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.'"

But MTA has done just that. MTA staff has created the institutional momentum to force a separated bike lane on Oak Street without any consideration of HAIA's proposed alternative. Taking any action on the project at the May 18th meeting would make a mockery of CEQA. As the Supreme Court held in *Laurel Heights*, "CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, *before* it approves that project."

The Supreme Court went on to explain "A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken. We have expressly condemned this use of EIR's."

Here, any CEQA compliance attempts taken after the May 18th hearing would be *post hoc* rationalizations for MTA staff's predetermination of the location and design of the Oak Street bike lane. According to the

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MTA's project website, the project would eliminate up to 100 parking spaces while MTA has only identified replacement parking for a third of the lost spaces. A fair argument exists that the reduced parking, increased bicycle ridership, and the presumed changes in light signaling to allow bicycles to cross to Scott Street will increase congestion, idling of vehicles, and vehicle miles travelled (VMT) by up to 66 cars searching for parking. The increased idling and VMT will in turn increase greenhouse gas emissions. More importantly, there is a fair argument that the project will substantially increase the amount of Toxic Air Contaminants (TAC) emitted by vehicles in the neighborhood. As you know, Oak Street is predominantly residential in the project area, and residences are considered sensitive receptors for the purposes of a TAC analysis. To HAIA's knowledge, MTA has not undertaken a traffic, GHG, or TAC study related to the project. Yet it appears to have already committed itself to this project. In our opinion, this violates CEQA.

In addition to the potential environmental impacts described above, HAIA is concerned about the safety of bicyclists using the proposed bike lane. As described in our attached prior correspondence (attached), we believe encouraging cycling on a high speed and heavy volume roadway is unsafe. Bicyclists will also be at risk from the dozens of cars that will be pulling out with poor visibility from the driveways and garages along Oak Street. That would be in addition to other vehicles using the bike lane to load or unload passengers, and otherwise cross the bike lane. Unlike on low volume streets such as Page and Hayes, cars pulling out of driveways on Oak are only able to do so when car traffic is stopped by a red light. Given many cyclists' reluctance to obey traffic signals, vehicles could be pulling out of driveways quickly when they do not expect any traffic, only to tragically hit (or be hit by) an unexpected cyclist who is not moving along with the normal breaks in vehicle traffic. All of these safety concerns could be avoided by directing cyclists to Hayes at the end of the Panhandle or onto Page at the many low grade cross-overs from the Panhandle's multi-use trail such as Cole or Clayton Streets.

In sum, HAIA requests that MTA take no action at the May 18th hearing on the Fell and Oak Bike Lane project as such action would foreclose alternatives or mitigation measures in violation of CEQA. Instead, the project should be suspended until MTA has undertaken an environmental review of the project. Given that the traffic impacts will unlikely be able to be mitigated, and EIR will likely be required and the Planning Commission will be required to adopt a statement of overriding considerations before the project can legally move forward.

Finally, HAIA requests it be provided notice of all future actions related to this project.

Thank you for your consideration of these comments and please do not hesitate to contact me if you have any questions.

Sincerely,

Ted Loewenberg

Cc: Mayor Ed Lee  
Board of Supervisors  
City Attorney Dennis Herrera  
MTA Planner Luis Montoya