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April 8, 1991

Alexander Almeida
U.S. Federal Highway Administration
55 Broadway Street, 10th Floor
Cambridge, MA 02142

Re: Central Artery/Third Harbor Tunnel Project,
FHWA-MA-EIS-82-02-FS2

Dear Mr. Almeida:

On behalf of the City of Cambridge, I am writing to provide comments on the Final Supplemental Environmental Impact Statement (FSEIS) on the Central Artery/Third Harbor Tunnel (CA/THT) project.

As you already know, Cambridge is opposed to the selection of Scheme Z Modified as the preferred alternative for the Charles River crossing. On March 21, 1991, the City filed an action in state court challenging the adequacy of the Final Supplemental Impact Report (FSEIR) prepared pursuant to the Massachusetts Environmental Policy Act, G.L. c.30, §61 et seq. That document provides the basis for the FSEIS issued by FHWA.[1] As a measure of the City's opposition, I am attaching a copy of a resolution which was unanimously approved by the City Council on November 19, 1990. The Council's objections are based not only upon the design of Scheme Z Modified and the magnitude and scope of the adverse impacts of the proposed structure, but also upon the process by which that alternative has been selected. As is set forth below in detail, the process which has been followed in this case is seriously flawed. In addition, the FSEIS is substantively deficient in its analysis of both alternatives and environmental impacts. Accordingly, the FSEIS is inadequate.

In addition, the section 4(f) evaluation which is set forth in the FSEIS seriously misapplies federal law. The analysis

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[1]Because the FSEIS incorporates the FSEIR, the term "FSEIS" is used in reference to the entire document. Specific volumes will be designated "FSEIS" or "FSEIR" as appropriate.

fails to comply with 49 U.S.C. §303 and applicable FHWA regulations and policies in its assessment of recreational resources, application of the "constructive use" doctrine, and analysis of alternatives.

As a result, any decision by FHWA to issue a Record of Decision based upon the FSEIS will be subject to challenge under the National Environmental Policy Act (NEPA), 42 U.S.C. §4331, et seq., and under section 4(f).

The City's specific comments are as follows:

A. Failure to Comply with NEPA.

FHWA has failed to produce a FSEIS which satisfies the requirements of NEPA. Specifically, the FSEIS improperly dismisses the all-tunnel alternative, fails to provide substantially equal consideration of those alternatives which are presented, improperly describes the affected environment and the impacts of the proposed project, improperly evaluates proposed mitigation, and illegally segments part of the project. These deficiencies preclude approval of the FSEIS.

1. Improper dismissal of the all-tunnel alternative.

The FSEIR acknowledges at page IIB 1-7 that prior to publication of the DSEIR, the Massachusetts Department of Public Works (DPW) received a design of an all-tunnel Charles River crossing. The FSEIR refers to this design as "SK-4.02". Although the FSEIR states at page III-1 that this proposal has been "analyzed in detail", the concept is dismissed summarily at pages IIB 1-7 and 1-8. Apparently in recognition of the FSEIR's improper dismissal of the all-tunnel alternative, the FSEIS addresses the issue in greater detail in section 6.2.8. However, FHWA's supplemental attempt to dismiss the all-tunnel alternative falls short for several reasons.

FHWA's approach violates basic NEPA tenets. As stated by the First Circuit in Silva v. Lynn, 482 F.2d 1282 (1st Cir. 1973), an EIS serves three fundamental purposes: 1) it permits a court to determine whether an agency has implemented NEPA "in good faith"; 2) it insures "environmental full disclosure"; and 3) it precludes stubborn problems "from being swept under the rug". The DPW/FHWA approach fails when these tests are applied.

Instead of searching for creative solutions to DPW/FHWA's perceived problems with the all-tunnel alternative, the entire focus of the FSEIS is directed towards finding reasons why the alternative is unacceptable. Rather than objectively analyzing the all-tunnel alternative, DPW and FHWA have provided a skewed analysis which attempts to sweep the concept "under the rug".

Questions regarding the DPW/FHWA approach are raised by the most recent version of Stephen Kaiser's work (Version 6.0), which he presented in a report dated March 1991. In his report, Dr. Kaiser demonstrates that the all-tunnel scheme can satisfy the design issues raised in section 6.2.8 of the FSEIS. In fact, Version 6.0 as presented by Kaiser appears to be better than Scheme Z in several significant respects. In addition to meeting all of the design goals for the CA/THT project, the all-tunnel plan has lower maximum grades, longer minimum distances between exits, and larger curve radii than does Scheme Z. The fact that an interested citizen has been able to single-handedly address the problems raised by DPW and its numerous consultants, suggests the inadequacy of the FSEIS.

The FSEIS also attempts to dismiss the all-tunnel alternative on the grounds that it would cost $1.7 billion more than Scheme Z. Assuming that the $1.7 billion figure is correct, the analysis fails to comply with NEPA because it totally ignores the benefits associated with the all-tunnel alternative. Depressing the Charles River crossing would make hundreds of acres of what is now largely an industrial wasteland available for open space, residential and commercial uses. The failure of the FSEIS to evaluate this benefit defies both common sense and NEPA. 40 C.F.R. §1508.8 defines "effects" to include both beneficial and detrimental economic effects. It is improper for the FSEIS to discuss the costs of the all-tunnel alternative without mentioning the benefits of that alternative.

For these reasons, the DPW/FHWA approach to the all-tunnel alternative will not withstand judicial scrutiny.

2. Failure to reconsider non-highway alternatives.

The FSEIS is also inadequate because DPW/FHWA have failed to reevaluate non-highway alternatives to the proposed project. Cambridge recognizes that the FEIR approved in 1986 rejected such alternatives. However, since that time, significant new circumstances have developed which require reconsideration of alternatives such as mass transit. Reevaluation is required by the NEPA regulations, 40 C.F.R. §1502.9(c)(ii).

The significant new information includes the fact that traffic volumes have increased much more rapidly than was anticipated at the time of the FEIR. According to Part I, page 3-4 of the FSEIR, the average weekday traffic count increased 26 percent between 1982 and 1987. This fact alone requires reconsideration of non-highway alternatives. The need for such analysis is further demonstrated by the fact that in the year 2010, much of the reconstructed Central Artery will operate at LOS E and F. See Part III, page 3-20. Figure 2.1 in the "Summary Of Changes To Appendices" volume of the FSEIR describes LOS E and F as follows:

> Level of Service E: Traffic moves in an unstable flow with low speeds, increased congestion, and delays. Traffic volumes are at or near capacity.
>
> Level of Service F: Forced flow conditions (stop and go). Traffic moves at very low speeds, if at all, resulting in significant congestion.

It is unreasonable for FHWA not to reconsider alternatives to spending $4.4 billion on a highway project which will result in such conditions within a decade of the time the project is completed.

The need to reevaluate mass transit in the context of the CA/THT project is further demonstrated by the recent Memorandum Of Understanding (MOU) between DPW and the Conservation Law Foundation. Page 1 of the MOU states that "expanded measures to provide transportation by alternative modes" are necessary in order to insure that improvements in traffic congestion are achieved. This constitutes an acknowledgment by DPW that more than the CA/THT project is required. Nevertheless, the FSEIS fails to analyze the full picture and evaluate the interrelationship between highway improvements and mass transit.

The failure to discuss mass transit as an alternative violates the requirements of FHWA Technical Advisory T6640.8A (October 30, 1987). Section V(E)(3) of that document specifically requires consideration of mass transit options even if they are outside the funding authority of FHWA. If the massive transit improvements discussed in the MOU are necessary for the success of the CA/THT project, then such improvements must be a reasonable alternative to highway construction.

Irrespective of whether mass transit must be considered as mitigation or as an alternative, NEPA mandates that the CA/THT and mass transit be evaluated jointly. 40 C.F.R. §1508.25(a)(3) requires that "similar actions" should be considered together. That regulation provides that

> [T]he best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

The interrelationship between the CA/THT and mass transit improvements requires that approach.

3. <u>Failure to provide a proper comparative analysis of alternatives</u>.

NEPA requires a thorough and objective comparative analysis of alternatives. The federal regulations implementing NEPA state that the discussion of alternatives "is the heart of the environmental impact statement". 40 CFR §1502.14. The regulations require that the EIS "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options." 40 C.F.R. §1502.14 (emphasis added).

The FSEIS falls far short of meeting these requirements. The FSEIS sets out the proposed plan, Scheme Z Modified, and three alternative plans, Schemes 5A Modified, S Modified, and T Modified. However, the document fails to describe the four Schemes in the comparative manner required by law. In describing the effects that the different Schemes would have on the environment, the FSEIS focuses its comparative analysis on Schemes Z Modified and T Modified almost exclusively. In numerous discussions of environmental impacts it ignores both Schemes 5A Modified and S Modified.

In its discussion of air quality impacts the FSEIR states that in response to EPA comments, it has changed its modeling assumptions. However, the FSEIR admits to applying the new modeling assumptions only to an analysis of Scheme Z Modified. It does not apply these new modeling assumptions to any of the alternative Schemes. Therefore, any comparison between Scheme Z impacts under the new modeling and the alternative schemes under the old modeling is equivalent to comparing apples and oranges. This further demonstrates that the FSEIS fails to provide a clear basis for choice among options.

With respect to many other issues, including traffic noise, wetlands, floodplains, navigation and recreational areas, the FSEIR fails to make the proper analysis because there is no evaluation of Schemes 5A Modified and S Modified. Accordingly, the document fails to provide state and federal decision-makers with the comparative analysis mandated by law.

The inadequacy of the comparative analysis is confirmed in public documents in the files of the MEPA Unit. For example, a memorandum to former Secretary John Devillars dated December 20, 1990, states that in spite of requests by the Massachusetts Department of Environmental Protection, DPW failed to provide the same level of analysis for Schemes Z and T. Moreover, another memorandum prepared by the MEPA Unit describes the analysis as "skewed" in favor of Scheme Z.

DPW's attempt to use the NEPA process to advocate approval of Scheme Z will not prevail. NEPA demands an objective analysis of alternatives rather than one which attempts to rationalize the proponent's preferred alternative.

4. Failure to properly describe the affected environment and the impact of the project.

The NEPA regulations, 40 C.F.R. §1502.15 and §1502.16, require an EIS to describe the environment of the area to be affected by a project and alternatives, and to describe the effects of a project and alternatives upon that environment. The FSEIS fails to meet these requirements.

The greatest deficiency appears in Part III of the FSEIR and Part III of the FSEIS, which analyze impacts upon section 4(f) resources. While this issue is discussed in detail below in the context of section 4(f), the analysis does not comply with NEPA because of the failure to treat the area between the railroad bridge and the new Charles River Dam as a recreational resource.

The FSEIS is also deficient in its treatment of wetland resources in the Millers River area. The volume of the FSEIR titled "Summary of Changes To Appendices" states that there are no bordering vegetated wetlands adjacent to the Millers River. This conclusion is disputed by the Cambridge Conservation Commission, which has jurisdiction over the area pursuant to the Wetlands Protection Act, G.L. c.131, §40. DPW has apparently mischaracterized the resources and the impact of the project upon those resources.

The FSEIS is also deficient in its analysis of secondary impacts. NEPA requires an EIS to include a discussion of the "indirect effects" of a proposed action. That term is defined by 40 C.F.R. §1508.8(b) to include "reasonably foreseeable... growth inducing effects". The FSEIS fails to comply with this requirement because while the document concedes that the CA/THT project will relieve the vehicular congestion surrounding Logan Airport, it fails to address the question of how the project will affect growth at the airport. Because the link between reduced congestion and Logan Airport growth is reasonably foreseeable, NEPA requires that the FSEIS address the consequences of that growth.

5. Failure to properly consider mitigation.

NEPA specifically requires that an EIS contain a discussion of proposed mitigation. 40 C.F.R. §1502.14(f) and §1502.16(h). Information concerning mitigation must be set forth in both draft and final EIS's. 40 C.F.R. §1502.9. NEPA also requires preparation of a supplement to a draft EIS whenever there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts". 40 C.F.R. §1502.9(c)(1)(ii). A review of the mitigation proposed for the CA/THT project demonstrates that

these requirements have not been satisfied.

NEPA has been violated because the FSEIS contains commitments as to mitigation which were not addressed in the DSEIR/S. Specifically, the FSEIS contains an agreement between DPW and the Metropolitan District Commission (MDC) dated November 9, 1990. This agreement sets forth proposed mitigation for the impacts of Scheme Z upon the Charles River Basin. Presentation of this mitigation in the FSEIS for the first time violates NEPA by failing to provide the public with an opportunity to comment. This approach directly contradicts the mandate of 40 C.F.R. §1500.2(d) that FHWA encourage and facilitate public involvement "to the fullest extent possible". The proposed mitigation should have been the subject of a supplemental EIS as required by 40 C.F.R. §1502.9(c)(1)(ii). FHWA regulations, 23 C.F.R. §771.130(e) and (b), contain the same requirement.

The mass transit mitigation set forth in the December 19, 1990 MOU between DPW and the Conservation Law Foundation violates NEPA for the same reasons. The MOU is the result of a year of behind the scenes negotiations between a private party and state officials and, according to the MBTA Advisory Board, calls for mass transit improvements costing more than $2.5 billion. The Advisory Board has characterized the MOU as "irresponsible" because it fails to disclose the funding for the proposed mitigation. DPW's commitment to such proposals without affording an opportunity for public comment fails to satisfy the requirements of NEPA.

The discussion of mitigation is also inadequate because the FSEIS makes no attempt to analyze whether the proposed mitigation will be sufficient to avoid future vehicular congestion. For all of these reasons, the FSEIS fails to comply with the NEPA requirements concerning mitigation.

6. <u>The FSEIS improperly segments ramp W-CN</u>.

NEPA contains a specific requirement that an EIS address all parts of a project in a single document. The purpose of this policy is to preclude "segmentation" of a project. 40 C.F.R. §1508.25(a)(1) requires that "connected actions" be considered in a single document. Actions are "connected" if they cannot proceed without other actions or are interdependent parts of a larger action. 40 C.F.R. §1508.25(a)(1)(ii) and (iii).

The FSEIS is violative of this requirement because of the manner in which it treats ramp W-CN (Traverse Street ramp). Both the FSEIR and page 13 of the FSEIS indicate that the width of the Charles River crossing has been reduced by eliminating ramp W-CN. However, both documents indicate that the ramp may be added to

the project at a later date. See page 13 of the FSEIS and page IIB 1-5 of the FSEIR. Moreover, numerous individuals and public officials, including the Mayor of the City of Boston, have demanded that the ramp be restored in order to reduce congestion on local streets.

Because the addition of ramp W-CN is reasonably foreseeable and is plainly a "connected action", the failure to discuss the consequences of the ramp violates NEPA.

B. Failure To Comply With Section 4(f).

FHWA regulations require that an EIS document compliance with the requirements of other applicable environmental laws. 23 C.F.R. §771.133. This requires the FSEIS to include an analysis of section 4(f) issues.

The analysis of section 4(f) resources in the FSEIS fails to satisfy §771.133 because the document fails to properly describe the affected recreational resources, fails to properly discuss prudent and feasible alternatives, fails to properly compare alternatives, and misapplies the doctrine of "constructive use". Most importantly, however, the FSEIS falls far short of demonstrating that there is no prudent and feasible alternative to Scheme Z or that the project includes all possible mitigation for section 4(f) resources. The failure to comply with section 4(f) precludes FHWA approval of Scheme Z.

1. Failure to properly describe recreational resources.

Page III-12 of the FSEIS states that the portion of the Charles River Basin between the railroad bridge and the new Charles River Dam is "a multiple use area suitable primarily to serve navigation and transportation purposes". Based on that assessment, the FSEIS concludes that that portion of the river is not subject to section 4(f) protection. The FSEIS also fails to treat the Millers River, a tributary on the north side of the Charles River, as a section 4(f) resource. This approach is erroneous both legally and factually and will be subject to legal challenge.

With respect to the facts, the MDC has stated repeatedly that the entire Charles River Basin is a significant recreational area. In a letter dated May 1, 1989, the MDC Commissioner stated as follows:

> The MDC believes that the statutory language is clear and that the Charles River Basin

> itself is a park, and that this park extends to the new dam.

In a letter dated May 29, 1990, the MDC Commissioner made reference to:

> MDC's intention to extend its park system throughout the New Charles River Basin, which runs from the old locks at the Museum of Science to the New Charles River Dam... .
>
> X X X
>
> [T]he Charles River itself is the most important element of the MDC's Charles River Reservation.

Similarly, by a letter dated August 27, 1990, the MDC Commissioner stated:

> The MDC manages the entire river, and the adjacent lands, as part of the Charles River Reservation... .
>
> X X X
>
> The Charles River Basin is known nationally and indeed internationally as an outstanding example of urban park design. We have every intention of assuring that the New Charles River Extension Basin is an equally fine example of public park space.

The entire Basin is also a recreational area as a matter of law. Chapter 524 of the Acts of 1909 and Chapter 550 of the Acts of 1962 direct the MDC to administer the entire area upstream of the new dam "as part of the metropolitan parks system". Moreover, contrary to the suggestion at page III-12 of the FSEIS, the fact that the Charles River narrows below the railroad bridge and is traversed by a transportation corridor does not change the legal status of the area. The Massachusetts legislature was plainly aware of those facts when it determined that the MDC should administer the entire area as a metropolitan park.

These facts and state statutes establish that the entire Charles River Basin including the river itself, is a park for purposes of federal law. The FHWA regulations implementing section 4(f) provide that consideration under section 4(f) is not required only if the MDC has determined "that the <u>entire</u> site is not significant." 49 C.F.R. §771.135(c) (emphasis added). Even if the MDC letter of November 1, 1990 is construed as stating that the river between the railroad bridge and the new dam is not

significant (a point which Cambridge vigorously disputes), the MDC has never stated that the entire site is insignificant. Consequently, the area in question is protected under §4(f).

The fact that the MDC letter of November 9, 1990 claims that the subject part of the river is a "multiple use area" does not lead to a different conclusion. 49 C.F.R. §771.135(d) states expressly that once one part of a multiple use area has been determined to be significant for recreation: "The determination of significance shall apply to the entire area of such park... ." Obviously, the MDC believes that at least the north and south shores of the river below the railroad bridge are significant. Consequently, §771.135(d) precludes DPW/FHWA from applying a different designation to the river itself.

This conclusion is confirmed in FHWA "Section 4(f) Policy Paper", dated September 24, 1987. Page 16 of that document states as follows with respect to rivers which are bounded by parkland:

> Of course, Section 4(f) would also apply to lakes and rivers or portions thereof which are contained within the boundaries of parks, recreational areas, refuges, and historic sites to which Section 4(f) otherwise applies.

For these same reasons, the failure of the FSEIS to treat the Millers River area as a section 4(f) resource is also illegal. The Millers River is part of the Charles River Basin pursuant to MDC regulation. 350 CMR 12.01. As discussed above, under Chapter 524 of the Acts of 1909, the entire Basin is a metropolitan park. Accordingly, the Millers River is subject to section 4(f).

Moreover, it should be noted that the MDC has never determined that the Millers River is not a significant recreational resource. To the contrary, in his letter of August 27, 1990 commenting on the DSEIR/S, the MDC Commissioner stated that: "The Miller's River presents a unique opportunity for renovation and enhancement for water related public purposes". DPW is already required to provide that enhancement as part of the mitigation package for the CANA project and the MDC has plans prepared as early as 1980 showing green space along both sides of the Millers River. Accordingly, the failure of the FSEIS to subject the Millers River to section 4(f) analysis will also be subject to challenge.

As a final point, you should be aware that the MDC letter of November 9, 1990, upon which the entire section 4(f) analysis is based, never states that the subject portion of the Charles River

is not a significant recreational resource. Even if the MDC's statement that the "primary" use is not recreational is sustained, that does not permit the conclusion that the area is not significant. The fact that 35,000 recreational vessels use the area each year refutes any such conclusion. Furthermore, the MDC has concluded that Scheme Z will adversely affect recreational boating. The Commission's comments on the DSEIR/S included the following:

> The proposed structure will also be five to eight times wider since the bridge crosses the channel on the diagonal. Regardless of the bridge design selected, almost the entire distance will be in shadow. On sunny days (when the recreational boat traffic is heaviest), the contrast between the dark shadow areas and the reflected light of the open areas will increase the difficulty of navigating this area.

Based on this analysis, FHWA must reject the section 4(f) evaluation as being inadequate.

2. The FSEIS improperly applies the doctrine of "constructive use".

The section 4(f) analysis is also improper because it misapplies the doctrine of "constructive use". Pages III-5 and III-6 of the FSEIS conclude that parklands along the Charles River which "are not directly occupied" by Scheme Z are not constructively used by the project. The professed basis for this conclusion is the fact that the subject parkland is urban rather than rural and, therefore, would not be substantially impaired by Scheme Z. It is Cambridge's view that this conclusion is incorrect.

First, the conclusion is not supported by the MDC, the agency with jurisdiction over the parks. For DPW/FHWA to reach such a conclusion without consultation with the MDC is wrong. The FHWA section 4(f) regulations are premised upon consultation with the agency responsible for the protected resource and the FHWA "Section 4(f) Policy Paper" mandates coordination with the MDC.

Second, the conclusion is inconsistent with federal caselaw. In Coalition Against A Raised Expressway v. Dole, 835 F.2d 803 (11th Cir. 1988), the court held that construction of a highway in an urban area would constructively use adjacent areas because of noise pollution and "general unsightliness". In that case, the court noted that although the affected area was not "unsullied", construction of a highway adjacent to the area would "inevitably have a further adverse impact". Id. at 812. DPW/FHWA's argument

that Scheme Z will not constructively use an urban park which, according to the MDC, is of national and even international significance, is patently unreasonable. Moreover, you should note that the highway in Dole would have been raised only 17 feet and, therefore, compares favorably with Scheme Z, which will be more than 100 feet high and has been uniformly criticized for its ugliness.

3. The FSEIS fails to demonstrate that the all-tunnel alternative is not prudent and feasible.

The discussion above regarding the failure to properly consider the all-tunnel alternative under NEPA also applies to section 4(f). In addition, however, the FSEIS fails to satisfy the stringent standards of section 4(f). FHWA regulations require that DPW demonstrate "unique problems and unusual factors" before the all-tunnel alternative may be eliminated. Alternatively, DPW must show that the cost of the tunnel alternative reaches "extraordinary magnitudes". 49 C.F.R. §771.135(a)(2).

The FSEIS does not appear to satisfy these standards because Dr. Stephen Kaiser has developed an all-tunnel plan which addresses the various criticisms raised by DPW. Dr. Kaiser's work suggests that DPW's dismissal of the all-tunnel alternative may have been premature. Moreover, DPW cannot demonstrate that the costs of the tunnel scheme are excessive because, as discussed above, it has made no effort to analyze the economic benefits of that proposal. Stated simply, it is the net cost of the tunnel alternative which must be considered.

4. Section 4(f) mandates the selection of Scheme T.

The section 4(f) analysis is also deficient because it ignores the fact that the statute mandates the construction of Scheme T rather than Scheme Z because the former will have less impact upon recreational resources. The selection of Scheme T is required by 49 C.F.R. §771.135(a)(1)(ii) because it constitutes "all possible planning to minimize harm" to recreational resources.

The FSEIS establishes that Scheme T is prudent and feasible because that alternative is deemed reasonable for purposes of NEPA. If Scheme T is a reasonable alternative under NEPA, it is a prudent and feasible alternative under section 4(f). Furthermore, there is no indication in the FSEIS whatsoever that Scheme T is not prudent and feasible.

It is also apparent from the FSEIS that Scheme T would have less impact upon recreational resources than would Scheme Z. A review of Figure 2 in Part III of the FSEIS demonstrates that Scheme T reduces impacts by the use of tunnels which narrow the

width of the bridge across the Charles River and greatly reduce the scale of the interchange on the north side of the Charles River. As stated at page III-13 of the FSEIS:

> In Scheme T Modified, there would be fewer loop ramps north of the river and the height of the top ramp would be approximately 45 to 65 feet, rather than up to 105 feet as in Z Modified.

Scheme T would also eliminate the need for a double-decked bridge across the Charles River.

In addition to having less visual impact, Scheme T would occupy less parkland than would Scheme Z. According to Table 3.1 in Part III of the FSEIS, Scheme T would use .57 acre of land and cover 235 feet of river bank. Scheme Z, on the other hand, would use .61 acre of land and cover "over 250" feet of bank. Scheme T would also be located further from Paul Revere Landing Park, the new dam, and the GSA parcel than would Scheme Z. According to Table 3.1, Scheme T would increase noise levels at more sites than would Scheme Z.

In spite of the fact that the impacts of Scheme T would be less, the FSEIS claims that there are "major differences" between the alternatives because the duration of Scheme Z's construction impacts would be less and because construction of Scheme Z avoids use of the GSA Parcel. The DPW/FHWA attempt to favor Scheme Z because of fewer short-term construction impacts fails because under federal caselaw, temporary impacts during construction do not constitute a "use" within the meaning of section 4(f). Coalition On Sensible Transportation, Inc. v. Dole, 642 F. Supp. 573 (D.D.C. 1986). Therefore, it is impermissible under federal law for DPW/FHWA to conclude that Scheme Z should be selected because of Scheme T's greater short-term impacts.

It should also be noted that this analysis provided by the FSEIS fails to consider all of the relevant section 4(f) resources. When the comparative impacts of Schemes T and Z upon the Charles River itself are compared, the case for Scheme T becomes even more compelling.

C. Conclusion

The comments set forth above demonstrate that the FSEIS fails to comply with NEPA and that the DPW/FHWA analysis of section 4(f) issues is deficient both procedurally and substantively. Consequently, any action by FHWA based upon the document will be subject to legal challenge.

Another reason for FHWA to delay action at this time is the fact that the issue of the Charles River crossing is the subject of an on-going review by the Bridge Design Review Committee created pursuant to the Certificate of the FSEIR. As I am sure you understand, the Committee is reviewing the alternatives to

Scheme Z in depth and is also considering alternatives which have not been the subject of an EIS. The City of Cambridge believes that the actions being taken by the Committee are a part of the NEPA process and, therefore, that any action by FHWA at this time would be premature. NEPA mandates that FHWA utilize the NEPA process to identify and assess alternatives which would minimize environmental impacts "to the fullest extent possible". 40 C.F.R. §1500.2(e). A decision by FHWA to issue a ROD prior to the completion of and an evaluation of the work of the Committee would violate that requirement.

In addition, as you know, 42 U.S.C. §4332(D) requires your agency to independently evaluate the FSEIS prepared by FHWA. The City of Cambridge fully expects FHWA to carry out this obligation.

On behalf of the City of Cambridge, I thank you for considering these comments.

Sincerely,

Robert W. Healy

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

To The Honorable, The City Council:

I am transmitting the attached copy of the comments on the Final Supplemental Environmental Impact Statement (FSEIS) on the Central Artery/Third Harbor Tunnel (CA/THT) in response to Awaiting Report Item No. 19. [illegible].

I submitted the attached comments to the United States Federal Highway Administration on Monday, April 8, 1991.

Very truly yours,

Robert W. Healy

Consent Agenda # 4 5523

Awaiting Report Item Number 19 regarding a response to the Fianl Supplemental Environmental Impact Report for the Central Artery Project.

In City Council,

April 22, 1991

Placed on file