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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ROB ANDERSON, Plaintiff and Appellant, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent.	A129910 (San Francisco City & County Super. Ct. No. CPF-05-505509)

In recent years, many cities have decided that promoting the increased use of bicycles improves the quality of life and promotes a variety of public policies. Since 1997, San Francisco has been one of these cities. A decade later, an upgrade to the City's statutory Bicycle Plan generated an Environmental Impact Report (EIR) of more than 2,000 pages that was certified by the City's Board of Supervisors. Two groups and one individual objected, to no avail, to the trial court ruling that that the EIR complied with the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.[1]). Only the individual, Rob Anderson, continues the attack, appealing from the trial court's order. He contends that the EIR is riddled with fundamental procedural and

[1] Statutory references are to the Public Resources Code unless otherwise indicated. References to "CEQA Guidelines" or "Guidelines" are to "the regulations promulgated by the Secretary of the Natural Resources Agency found in title 14 of the California Code of Regulations beginning at section 15000. . . . These guidelines are binding upon all state and local agencies in applying CEQA. (CEQA Guidelines, § 15000.)" (*Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1256, fn. 12.)

substantive legal error, and that the massive administrative record of more than 36,000 pages will not support numerous findings of the trial court. Aided in large measure by the trial court's comprehensive written decision, we reject all of Anderson's challenges to the EIR itself. However, he does identify a defect in the process when the EIR was certified by the Board of Supervisors, which failed to make a handful of findings required by CEQA. We therefore must reverse in order that this omission may be corrected.

BACKGROUND

In 2005, the San Francisco Board of Supervisors decided to upgrade the City's Bicycle Plan, which had been adopted in 1997.[2] In adopting the upgrade, City authorities initially determined that no further CEQA review was needed. Anderson—together with the unincorporated associations Ninety-Nine Percent and the Coalition for Adequate Review (hereinafter collectively designated as petitioners by the trial court)—filed a petition for a writ of administrative mandate to overturn that decision. In November 2006, the trial court ordered issuance of the requested writ directing the City to comply with CEQA.

In its order granting relief, the trial court concisely spelled out the nature of the controversy:

"San Francisco first adopted a bicycle plan in March 1997 . . . . The 1997 Plan . . . had one goal: to 'provide a comprehensive guide for efforts that will make San Francisco a more "bicycle-friendly" city.' Within that overall goal, the Plan contained four objectives: 1) improve facilities for bicycles; 2) improve bicycle safety; 3) promote bicycling in the City; and 4) increase funding for bicycle projects."

"The Bicycle Plan originated in the City's Department of Parking and Traffic (DPT) as a complex, far-reaching plan to alter streets in San Francisco to accommodate

[2] And which appeared to be a resounding success. The EIR under review states: "According to the Bicycle Plan, San Francisco has the highest bicycle-to-work mode share of major US cities having more than 500,000 inhabitants. According to the US Census Bureau, American Community Survey 2006, 2.5 percent of all San Francisco residents cycle to work, five times the national average of 0.5 percent, and about three times the state average of 0.8 percent."

San Francisco residents who ride bicycles. To achieve the Bicycle Plan's goal of increasing the number of City residents who ride bicycles, the Bicycle Plan mandates a number of actions including: eliminating traffic lanes and street parking throughout the City to create bicycle lanes, requiring that cars, buses and trucks 'share' lanes with bicyclists regardless of speed, allowing bicycles inside Muni and other public transit vehicles, eliminating parking in existing and newly constructed buildings, allowing bicycles in exclusive bus lanes, installing physical impediments to motorized traffic or 'traffic calming,' allowing bicycles on sidewalks, and closing streets to vehicles to create exclusive 'bicycle boulevards.' The Bicycle Plan also contemplated the City doing away with established Level of Service (LOS) measurement of traffic impacts in CEQA analysis, and requiring that CEQA review of any proposed project in the City must resolve any 'traffic impacts or conflicts of parking access' by giving 'full or partial priority for bicycles,' that any proposed Area Plan in the City must be 'consistent' with the Bicycle Plan, and that automatic amendments of the City's General Plan will roll in '[a]s changes to the network occur.' "

In September 2009, the City filed a return to the writ, advising the court that the Board of Supervisors had completed certification of an EIR[3], by virtue of which the City

[3] To be precise, after a public hearing held on August 4, 2009 to consider appeals (one by the Coalition for Adequate Review) from the Planning Commission's certification of the EIR, the City's Board of Supervisors adopted a motion that "affirm[ed] the decision of the Planning Commission . . . to certify the FEIR [final EIR] and finds the FEIR to be complete, adequate and objective and reflecting the independent judgment of the City and in compliance with CEQA and the State CEQA Guidelines." By this action, the Board in effect incorporated the extensive work performed by the Planning Department (which actually compiled the EIR and the revised "CEQA Findings") and the Municipal Transportation Agency (described as the "primary Project sponsor"). The Board thus assumed ultimate responsibility for certain actions of the Planning Commission, such as the statement of overriding considerations and other findings required by CEQA.

On the same date, the Board voted on a pair of ordinances amending the City's Planning Code and its General Plan to harmonize with the updated Bicycle Plan, but these measures were not actually enacted until August 11.

sought the court's determination that "[t]he City has fulfilled its obligations under CEQA and the Court's Peremptory Writ of Mandate."

To summarize, the EIR identified 60 "near-term" "improvements" or "projects" that were geographically organized in eight area "clusters," plus an unspecified number of "minor," and "long-term" improvements.[4] A number of these projects, 27 in the Draft

[4] The EIR defines "near-term" improvements as those which "have been designed and are anticipated to be constructed within the next five years." They are summarized as "design elements intended to enhance safety and improve bicycle travel in the City. These elements vary from simple improvements such as pavement markings, including sharrows [see fn. 13, *post*], to more complex treatments, like the installation of bicycle lanes, pathways or other bicycle facilities."

The EIR defines "minor improvements" as "treatments that may be implemented as necessary to improve conditions for bicycle use within the City. They include the following design elements to improve bicycle travel: minor pavement marking and signage changes such as the installation of colored pavements materials or sharrows (shared lane markings) or minor changes to parking and traffic lane configurations; minor changes to intersection traffic signal timing plans; the installation of bicycle boxes ["striped waiting areas for bicyclists situated behind a crosswalk and in front of a motor vehicle stop bar where a bicycle lane approaches a signalized intersection. Bicycle boxes allow bicyclists approaching an intersection in a bicycle lane to move to the front of a queue of motor vehicles and position themselves for turning movements at the intersection. Bicycle boxes include a stenciled bicycle marking and are generally accompanied by signs communicating where bicycles and motor vehicles should stop"] at certain intersections; and bicycle parking within the public right-of-way, including bicycle racks on sidewalks meeting certain criteria and on-street bicycle parking."

The EIR defines "long-term improvements" as "bicycle route network improvement projects that consist of either major improvements to segments of the existing bicycle route network or are potential future additions of new streets and pathways to the bicycle route network. . . . [¶] The anticipated long-term improvements may include, but are not limited to . . . signage changes; pavement marking such as installation of colored pavement materials and the installation of sharrows; modifications to bus zones and parking configurations such as changes in the location, configuration, and number of metered or unmetered parking spaces and loading zones; changes to the locations and configurations of curbs, sidewalks and medians (including both planted and unplanted), including widening of roadways; reconfigurations of intersections to improve bicycle crossings, including installation of bicycle traffic signals; the installation of traffic calming devices, including designation of bicycle boulevards that prioritize bicycle travel over other transportation modes; installation of bicycle lanes, pathways or other bicycle

EIR, had two different "options" as to how the improvements would be made. Five of the 27 involved more significant, lengthy, or heavily traveled streets, which five were subdivided into "segments," in one instance producing as many as eight options for a single improvement.

In the "Project Description" of "Existing Site Conditions," the EIR stated: "The project site is primarily along the public street right-of-way, but also includes bicycle facilities on other public land. The existing site conditions consist of the existing bicycle route network that is lain out primarily along streets and thoroughfares throughout the City." The proposed location of each "Off-Street Path," "Bicycle Lane," "Wide Curb Lane," and "Signed Route" were shown on a map. Each of the projects was analyzed in terms of "existing transportation conditions," including descriptions of "roadway access, traffic, transit, parking, pedestrian, bicycle and loading conditions."

As required by the Guidelines, the "Comments and Responses" of the Planning Department, together with four appendices, constitute the final 600 pages of the EIR.[5]

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facilities, including in conjunction with the narrowing or removal of traffic lanes; the removal of parking spaces, and the designation of shared bicycle and transit lanes."

Use of the term "project" throughout the administrative record and the EIR to refer to what is merely a single component of the entire plan is unfortunate. The trigger for CEQA is the existence of a "project," which is statutorily defined to "mean[] an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (§ 21065.) The Guidelines have always defined project to mean "the whole of an action" which has the potential to result in either of these changes. (Guidelines, § 15378(a).) Nevertheless, because the misuse of the term is too pervasive to be corrected without massive editing of the record, we will reluctantly repeat this infelicitous terminology.

[5] This document described the comment process: "A NOA [Notice of Availability] for the Draft EIR was made available for review on the Planning Department's website on November 26, 2008. Written comments on the EIR were accepted until January 13, 2009. During the public comment period, the document was reviewed by various state, regional, and local agencies, as well as by interested organizations and individuals. Forty-eight comment letters were received from six agencies, three commissions, twenty-one organizations, and eighteen individuals. A public hearing before the City's planning Commission was held on January 8, 2009 to obtain oral comments on the Draft EIR. During the public hearing, oral comments were

(Guidelines, § 15132(b), (d).) The public responses may have been responsible for the "staff-initiated text changes" that were explained as follows:

"Following distribution of the Draft EIR, MTA [Municipal Transportation Agency] has refined the draft San Francisco Bicycle Plan. The changes are minor and . . . include a few editorial revisions. These changes are not substantive and do not affect the analysis or conclusions regarding significant impacts . . . .

"In addition, SFMTA also has refined the near-term improvements and developed preferred project designs for most near-term improvements since distribution of the Draft EIR. The staff-initiated text changes below indicate the preferred project design for each near-term improvement including a description regarding how or if the preferred designs differ from project options analyzed in the draft EIR . . . . The preferred project designs are within the range of project alternatives originally anticipated for these near-term improvements and fall within the analytic framework and conclusions presented in the Draft EIR. The project refinements are based upon input from stakeholder groups and City agencies . . . .

"Over half of the 60 near-term improvements remain unchanged from projects described and analyzed in the Draft EIR. Eleven of the near-term improvements have minor modifications and 13 others have additional modifications.[6] All of these design refinements are fully described and analyzed in this document. As set forth, and based upon substantial evidence in the record, these project changes, both individually and cumulatively, do not create any new significant impacts or a substantial increase in environmental impacts from those identified in the Draft EIR. Nor do they trigger any of

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offered by one individual and six Planning Commissioners." Only one of the petitioners is recorded as participating, while three "written comments" were received from the coalition for Adequate Review.

[6] What this meant is that in 31 instances the Planning Department had chosen one of the "options" in the Draft EIR for a near-term improvement, without any change, as the "preferred design." Fifteen of the modifications concerned improvements with only one option presented in the Draft EIR. By contrast, there were five near-term improvements for which a preferred design "has not yet been determined."

the other provisions that would necessitate recirculation . . . . Moreover, the limited extent of project design refinements and relatively small number of projects affected by measurable changes has not been denied the public a meaningful opportunity to comment on said projects in the context of the Draft EIR."

The petitioners, holding a very different opinion of the 2,052-page EIR, urged the court not to discharge its writ: "Far from complying with CEQA and the Court's orders, City's certification of the EIR was an abuse of discretion and a failure to proceed in a manner required by law. The EIR is inadequate [and] in violation of CEQA by failing to mitigate and offer alternatives to the Project's significant impacts, by failing to set forth an accurate Project description, by its flawed baseline, by its failure to identify and analyze air quality and parking impacts, by its failure to analyze impacts from minor and long-term improvements, and by its last-minute changes that precluded required public participation and by failing to meet other requirements for legally adequate environmental review under CEQA. The Court should not discharge the Writ until City has complied with the law."

On June 22, 2010, the court heard extensive arguments on the City's return and the petitioners' criticisms. On August 6, the court entered an exhaustive 30-page order overruling the objections and discharging the writ of mandate. Anderson alone then perfected this timely appeal.[7]

REVIEW

Anderson advances a number of contentions aimed at perceived instances of reversible error. The final contention in his opening brief challenges the integrity and validity of the entire process undertaken by the City in response to the trial court's writ of mandate, and should be considered at the outset. We thus begin with it, and with the preliminary observation that considerable portions of this opinion will be comprised of lengthy quotation, with minor nonsubstantive editorial changes, from the trial court's

[7] We treat the court's order as functionally equivalent to a dismissal of Anderson's mandate petition, and therefore appealable. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1560.)

order. This is done for two reasons. The first is to underscore the deep and exhaustive nature of the effort expended by the court on this matter, specifically, the Honorable Peter J. Busch, who presided over all aspects of the litigation.[8] The second is economy, because we will be using the trial court's analysis as the framework for our own.

Overview Of CEQA And The Standards Of Judicial Review

Before addressing the particulars in Anderson's sometimes intricate—and sometimes overlapping—arguments, we believe it useful to set out a brief description of how CEQA operates.

"A public agency must prepare an EIR or cause an EIR to be prepared for any project that it proposes to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code, §§ 21100, subd. (a), 21151, subd. (a); Guidelines, § 15064, subd. (a)(1).) The EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (Pub. Resources Code, §§ 21100, subd. (b), 21151; Guidelines, §§ 15124, 15125.)

"The agency must notify the public of the draft EIR, make the draft EIR and all documents referenced in it available for public review, and respond to comments that raise significant environmental issues. (Pub. Resources Code, §§ 21091, subds. (a), (d), 21092; Guidelines, §§ 15087, 15088.) The agency also must consult with and obtain comments from other agencies affected by the project and respond to their comments. (Pub. Resources Code, §§ 21092.5, 21104, 21153; Guidelines, § 15086.) It must prepare a final EIR including any revisions to the draft EIR, the comments received from the public and other agencies, and responses to comments. (Guidelines, §§ 15089, subd. (a), 15132.)

[8] The administrative record is replete with evidence of the trial court's diligence in trawling through it.

"An agency may not approve a project that will have significant environmental effects if there are feasible alternatives or feasible mitigation measures that would substantially lessen those effects. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); Guidelines, § 15021, subd (a)(2) . . . .) An agency may find, however, that particular economic, social, or other considerations make the alternatives and mitigation measures infeasible and that particular project benefits outweigh the adverse environmental effects. (Pub. Resources Code, § 21081, subds. (a)(3), (b); Guidelines, § 15091, subd. (a)(3).) Specifically, an agency cannot approve a project that will have significant environmental effects unless it finds as to each significant effect, based on substantial evidence in the administrative record, that (1) mitigation measures required in or incorporated into the project will avoid or substantially lessen the significant effect; (2) those measures are within the jurisdiction of another public agency and have been adopted, or can and should be adopted, by that agency; or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or alternatives identified in the EIR infeasible, and specific overriding economic, legal, social, technological, or other benefits outweigh the significant environmental effects. (Pub. Resources Code, §§ 21081, 21081.5; Guidelines, §§ 15091, subds. (a), (b).) A finding that specific overriding project benefits outweigh the significant environmental effects (Pub. Resources Code, § 21091, subd. (b)) is known as a statement of overriding considerations. (Guidelines, § 15093.)

"Thus, a public agency is not required to favor environmental protection over other considerations, but it must disclose and carefully consider the environmental consequences of its actions, mitigate adverse environmental effects if feasible, explain the reasons for its actions, and afford the public and other affected agencies an opportunity to participate meaningfully in the environmental review process. The purpose of these requirements is to ensure that public officials and the public are aware of the environmental consequences of decisions before they are made." (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1198, fns. omitted.)

CEQA depends on the EIR. "An environmental impact report is an informational document" the purpose of which "is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list the ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061) According to our Supreme Court: "The purpose of an EIR is to give the public and government agencies the information needed to make informed decisions, thus protecting ' "not only the environment but also informed self-government." ' [Citation.] The EIR is heart of CEQA, and the mitigation and alternatives discussion forms the core of an EIR." (*In re Bay-Delta Etc*. (2008) 43 Cal.4th 1143, 1162.)

Once the EIR has been adopted, the scope of judicial scrutiny proceeds along two paths. " 'Section 21168.5 provides that a court's inquiry in an action to set aside an agency's decision under CEQA "shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." As a result of this standard, "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." [Citation.]' [Citation.] 'We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable.' [Citation.] [¶] 'An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo.' [Citation.]" (*In re Bay-Delta Etc*., *supra*, 43 Cal.4th 1143, 1161-1162.)

"The agency is the finder of fact and a court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. [Citation.] ' "Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure." ' [Citation.] 'A

court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so.' [Citation.] '[T]he relevant inquiry here is not whether the record establishes compliance but whether the record contains evidence [the agency] *failed* to comply with the requirements of its . . . regulatory program. In the absence of contrary evidence, we presume regular performance of official duty. (Evid. Code, § 664.)' " (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 918-919.) Every court "presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.)

Legal error, in the form of failure to comply with CEQA, is reviewed independently, but all factual determinations are reviewed according to the substantial evidence standard. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427, 435.) "The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.)

But a substantial evidence challenge is subject to an important proviso: "As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266; accord, *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.)

The Public Was Not Denied The Opportunity To Participate In The CEQA Process

Concerning the opportunity for the public to respond to a proposed EIR, CEQA provides:

"(a) A lead agency that is preparing an environmental impact report . . . shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report . . . .

"(b)(1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.

"(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content if there has been substantial compliance with the notice content requirements of this section.

"(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice . . . ." (§ 21092.)

The trial court concluded that the City had complied with these requirements, its discussion as follows:

"[T]he Court finds that the public in general, and Petitioners in particular, were provided adequate notice and opportunity to participate in the review and certification of the EIR and the adoption of the Project, and that the City followed all procedures required by CEQA and the City's local regulations in preparation of the EIR.

"For example, the Notice of Preparation[9] and Notice of Availability of the Initial Study was widely distributed. (AR 10:4935; also 10:4942-5008 [distribution list for NOP]; AR 25:14625). Between July and November, 2008, the City staff gave monthly updates on the status of the EIR to the MTA Board of Directors and Planning Commission. (*Id*.) The Notice of Availability of the Draft EIR was also widely distributed and garnered a front page story in the San Francisco Chronicle's Bay Area section. (*Id*.) The official public comment period began on November 26, 2008 and continued through January 13, 2009. (Guidelines, § 15105(c)[10]; AR 21:11839; AR 21:11758.) The Planning Department accepted and responded to late comments, either in the Comments and Responses documents itself, or in writing to the Planning

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[9] The leading treatise describes the function of this notice as follows: "Immediately after deciding that an EIR is required, the lead agency must prepare and distribute a 'notice of preparation.' Pub. Res. C § 21080.4(a); [Guidelines] § 15082. The purpose of the notice of preparation is to solicit guidance from other agencies on the scope and content of the environmental information to be included in the EIR. Pub. Res. C § 21080.4(a); [Guidelines] § 15375." (1 Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2012)§ 8.9, p. 435.) Here, the Planning Department was the lead agency for the project and the issuer of the notice of preparation on June 5, 2007.

[10] The cited Guideline provides: "If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time." (Guidelines, § 15105(c).) The same Guideline also specifies that "The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse." (Guidelines, § 151015(a).) Although the record is unclear on this point, the State Clearinghouse may also have been involved because, in addition to the obvious impact on Bay Area transportation, the City was required to consult with state agencies having "jurisdiction . . . over natural resources affected by a project[] that are held in trust for the people of the State of California" (§§ 21070, 21080.3, subd. (a)), which in this instance would probably be tidelands. (See *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515.) This might explain why the State Department of Water Resources and the Department of Fish and Game were among the "reviewing agencies" alerted by the State Clearinghouse.

Commission and Board of Supervisors. (*See e.g.*, AR 25:14543 [responses to late comments].)

"The Court finds that the size of the Bicycle Plan EIR did not violate CEQA. Although CEQA encourages, it does not require that EIR's be limited to less than 300 pages. CEQA imposes no mandatory upper limit on length. [See fn. 12, *post*.] The Court recognizes that such a limit could place a lead agency in a position of not producing the EIR that was adequate or that analyzed all impacts. Here, the Bicycle Plan EIR contained an executive summary, and provided tables of both impacts and mitigation measures to help navigate through the EIR. (AR 1:41-114.) Near-term improvements were grouped geographically in clusters, which allowed readers to determine how proposed projects would impact a specific area of the City. (AR 1:304; AR 19:10469.)

"As a project of 'regional and statewide significances,' the Department [of Parking and Traffic] held a scoping meeting and submitted the Draft EIR to the State Clearinghouse for review, but no further processes were required. (Guidelines, § 15082(c)(1); 15206(a)(1); AR 10:4881; 21:11839.)

"The Comments and Responses document was published on June 11, 2009, more than the 10 days prior to certification required by CEQA Guidelines § 15088(b). (AR 22:12251.) Contrary to Petitioners' claims, none of the circumstances that can mandate recirculation of a Draft EIR was present here: none of the new information was 'significant' or changed the EIR 'in a way that deprived the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement.' (Guidelines, § 15088(a).) Tellingly, Petitioners provide no examples or evidence or any additions or deletions that met the criteria for recirculation set forth in Guidelines § 15088.5(a).[11]

[11] The trial court had additional comments about recirculation that will be quoted in the next section of this opinion.

"On June 18, 2009, Planning staff released to the public the proposed CEQA findings for City decision-makers, including a summary of MTA's preferred near-term improvements, a list of the unavoidable significant impacts from the project, and a proposed mitigation and monitoring and reporting program (MMRP). (AR:24:13281-483.) Neither CEQA nor San Francisco Administrative Code Chapter 31 (the City's local laws governing CEQA) require that proposed findings be provided at a particular time in advance of a certification hearing. Staff later discovered that the proposed written findings did not accurately reflect what was contained in the MMRP; staff revised the findings, and issued a supplemental memo on June 25, 2009 which clearly explained the differences in the two sets of findings. (AR 24:13591-853.) Members of the Planning Commission discussed the timing of this submittal, but stated that they had read it and were comfortable moving forward, and chose not to, as they could have, continued the hearing. (AR 8:3991 ['We sat with these documents for months . . . I'm ready to move forward with it.'].)

"Petitioners argue that the Board of Supervisors did not conduct a *de novo* hearing of the certifications of the EIR because they did not adopt their 'own' findings, and instead incorporated by reference the CEQA finding of the Commission and MTA Board of Directors. The Court rejects this argument. Consistent with the San Francisco Administrative Code § 31.16(c), the Board of Supervisors considered 'anew all facts evidence and/or issues' related to the EIR. (S.F. Admin. Code 31.16(c).) The Board specifically found that they had 'reviewed and considered the F[inal]EIR, the appeal letters, [and] the responses to concerns document that the Planning Department prepared.' (AR 5:2383.) This finding is evidence that they actually did review and consider the FEIR. (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 403.) The Draft EIR, the comments and responses document, appeal letters, and Department response were all submitted to the Board prior to the Board hearing. (*See* AR 23:14332 [summary of Board submittal].) Petitioners' reliance on *Vedanta Society of Southern California v. California Quartet, Ltd*. (2000) 84 Cal.App.4th 517, for the proposition that the Board did not conduct a *de novo* hearing is misplaced. The Court in

Vedanta specifically noted that 'there is no reason that an elected board cannot adopt the findings and explanations made by the lower unelected body.' (*Vedanta*, *supra*, 84 Cal.App.4th at 526.) In other words, the Board reviewed the certification of the EIR using the appropriate standard, and Petitioners have not shown otherwise."

Anderson attacks the trial court's reasoning and conclusion, but only obliquely. He does not mount a head-on assault at the court's reasoning to demonstrate its legal flaws, nor does he challenge the evidentiary basis of the court's analysis. Indeed, a comparison of his brief here with that filed below discloses that all he does is reframe the same arguments with slightly different language. For example, insinuating that he was the victim of underhanded politics, he reiterates his conclusion that the "time for public review" was limited and that "Public comment periods were cut short," but he does not bother to address the particulars of the trial court's reasoning and conclusion that the City's time for public comment complied with CEQA and the CEQA Guidelines. Anderson ignores the trial court's finding that the draft EIR was actually changed in response to public feedback. He again emphasizes the "massive" size of the draft EIR , but he says not a thing about the trial court's conclusion that "CEQA imposes no mandatory upper limit on length."[12] Anderson also directs glancing pejorative comment

[12] "The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages." (Guidelines 15141.) The leading treatise on CEQA notes that "These page limits are frequently ignored. EIRs are often invalidated by the courts for including too little information but never for including too much. This has led agencies and consultants to attempt to 'bulletproof 'EIRs by including massive amounts of technical information. This approach can, however, result in a lengthy, detailed, and complex EIR that decision-makers will not read and members of the public will not understand. Agencies and their consultants can improve the quality of EIRs by simplifying the discussion in the body of the EIR and including technical discussion and supporting data in appendixes to the EIR and by incorporating information by reference." (1 Practice Under the California Environmental Quality Act, *supra*, § 11.9, p. 545.) We are not intimating that the EIR here is a victim of this tendency to self-protective bloat, and this countywide project might very well qualify as one of "unusual scope or complexity." Nevertheless, some judicious editing could have produced an EIR that would have done the job without requiring more than 2,000 pages.

to the Board of Supervisors' adoption of the two ordinances accompanying certification of the EIR (see fn. 3, *ante*), but these are clearly matters collateral to the CEQA process. Finally, Anderson once more cites the *Vedanta* decision, but he makes no effort to establish that it was misread or misapplied by the trial court.

Almost all of the issues raised by Anderson involve the structural integrity of the CEQA process, and because these arguments implicate the validity of the procedures attending certification of the EIR, they have been considered as issues of law according to the de novo/abuse of discretion standard of review. (See *Sava Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131 ["we determine de novo whether the agency has employed the correct procedures"]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th 412, 435; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842, 857.) A differing standard must be applied to Anderson's remaining claim.

Anderson again cites the need for recirculating the draft EIR; again, as noted by the trial court, he "provide[s] no examples or evidence or any additions or deletions that met the criteria for recirculation set forth in Guidelines § 15088.5(a)." This, despite it being long established that the addition of new information to an EIR after the public comment period requires recirculation only if the new information is "significant" (§ 21092.1), that is, it changes the EIR "in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental impact of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement," but "recirculation is not required where the new information . . . 'merely clarifies or amplifies [citations] or makes insignificant modifications . . . .' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129-1130, quoting *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822-823.)

The City's decision not to recirculate in the wake of the Planning Department's responses to the public and governmental comments is to be upheld if supported by substantial evidence, that is, evidence which, viewed favorably to the City, is consistent

with its evaluation that the near term improvement changes did not qualify as "significant new information." (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 6 Cal.4th 1112, 1135.) That would require Anderson to disprove the characterizations that the changes and modifications were "minor" and the refinements "not substantive," and also disprove it was incorrect to claim that all of the "preferred project" selections were "within the range of project alternatives originally anticipated for these near-term improvements and fall within the analytic framework and conclusions presented in the Draft EIR." Such a presentation would have to be especially powerful, given that the scope of Anderson's complaint is directed at fewer than half of the examples in only one of the three categories of improvements used in the EIR. (See fn. 4, *ante*.) In other words, Anderson would have to demonstrate that the defects affecting only near-term improvements—not the long-term improvements and not the minor improvements—significantly distorted the picture of the entire project. Or even another way, Anderson would have to establish that choosing the "preferred project design" did not qualify as a insignificant clarification, amplification, or modification (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, at pp. 1129-1130), and that this decision actually increased uncertainty even though one of several options for development had been definitely chosen. Anderson makes no real attempt to carry this onerous burden.

Anderson is ignoring the two most elemental principles of appellate review: that the judgment under review is presumed correct, and it is the appellant's burden to overcome that presumption. (*Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 530.) Simply rehashing or tweaking arguments rejected by the trial court neither rebuts that presumption nor carries that burden. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 102; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Once a trial court has produced a written decision that is obviously the result of considerable labor, it is only fitting that respectful attention be given to those labors. (Cf. *Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 791 ["The fact that review de novo . . . does not mean that the trial court is a potted plant in that

process"]; *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 45 ["Although we often exercise de novo review in CEQA cases, in many such cases, trial courts provide us with a thorough written opinion which helps to clarify issues for appeal."].) Counsel is certainly at liberty to argue that the lower committed an error of law, or determined an issue of fact that lacks the support of substantial evidence. But to totally ignore, as Anderson does here, the particulars of the trial court's lengthy opinion is hardly a promising stratagem.

Given the huge record, it is most appropriate to remind Anderson of what should be an unnecessary admonition: " 'Instead of a fair and sincere effort to show the trial court was wrong, appellant's brief is a mere challenge to respondent[] to prove that the court was right. And it is an attempt to place upon the court the burden of discovering without assistance from appellant any weakness in the arguments of the respondents. An appellant is not permitted to evade or shift his responsibility in this manner.' " (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505 quoting *Estate of Palmer* (1956) 145 Cal.App.2d 428, 431.)

This admonition is doubly appropriate concerning any contention challenging the evidentiary sufficiency of municipal actions. " ' "As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. A reviewing court will not independently review the record to make up for appellant's failure to carry his [or her] burden. [Citation.]" [Citation.]' " (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; see *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113 ["We are a busy court which 'cannot be expected to search through a voluminous record to discover evidence on a point raised by [a party] when his brief makes no reference to the pages where the evidence on the point can be found in the record.' "].)

In the course of its decision, the trial court noted that "Petitioners fail to provide any evidence of where a preferred or modified option fell outside the analysis of the Draft

EIR." That observation is still true here. The trial court properly concluded that the public was not denied the opportunity to participate in the CEQA process.

The Project Description Was Adequate

"CEQA does not expressly mention the term 'project description,' but numerous appellate decisions have affirmed the central importance of the project description to an adequate EIR." (1 Practice Under the California Environmental Quality Act, *supra*, § 12.2, p. 577.) This court is among the many which have recognized that " 'an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.' " (*Silveira v. Las Gallinas Valley Sanitary Dist*. (1997) 54 Cal.App.4th 980, 990, quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199; accord, *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655; *Maintain our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 443.)

The trial court rejected the petitioners' claim that the EIR's description of the project was inadequate for the following reasons:

"The Court finds that, as CEQA requires, the project description in the Bicycle Plan EIR provided a general description of the project's characteristics, including the project's integral components. (Guidelines, § 15124; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26; AR 1:125-214 [FEIR]; 19:10312-10379 [DEIR].) The EIR describes each part of the Project, both generally and specifically: the policy goals to support in bicycle movement and safety in San Francisco (AR 1:131; 195 [general]; 231-286 [specific]); the near-term improvements (AR 1:137-195 [general]; 319-504 [specific].); the minor improvements (AR 1:200 [general]; 2:1044-1055 [specific]); and the long-term improvements (AR 1:196-200 [general]; 2:1076-1092 [specific]) to the bicycle route network.

"Petitioners argue that the EIR's project description is insufficient for four reasons. First, Petitioners claim that the description of near-term improvements as 'options' was inappropriate and misleading. Second, Petitioners claim that the Draft EIR required recirculation because staff ultimately recommended one option for approval.

Third, Petitioners claim that the description of some aspects of the project as 'minor' impermissibly exempted them from review. Finally, Petitioners claim that by describing some aspects of the project as 'long-term' improvements, the EIR improperly deferred analysis of those improvements. The Court disagrees.

"First, Petitioners allege that the project description is inadequate because for many of the proposed 60 near-term improvements, the EIR identified two specific aspects by which a bicycle lane could be incorporated onto a particular street. In each case, both designs or 'options,' were analyzed at an equal level of detail. Petitioners contend that including the analysis of two different designs for many of the projects was misleading, but it was not. The Court finds that the Draft EIR specifically noted that both options were alternatives that could be considered by decision-makers for adoption. (AR 20:11209.) By analyzing each design in an equal level of detail, the EIR, in essence, included two potentially feasible alternatives to the improvements, which was an adequate level of detail under CEQA. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 547 [discussion and analysis of alternatives need not be exhaustive].) Rather than violating CEQA, the EIR met its requirements in this regard.

"Second, Petitioners argue that because MTA staff ultimately recommended only one of the options after publication of the Draft EIR, the project description 'changed' and recirculation of the Draft EIR was required. The Court rejects this argument. After input from neighbors, bicyclists and other City agencies, MTA staff recommended for approval their 'preferred project.' Some of the preferred designs were exactly the same as one of the two designs analyzed in the EIR, and some were designs that had been further refined. (*See e.g.*, AR 22:12507; 12560; 12574.) But the CEQA allows the modification of a project design to accommodate 'new and unforeseen insights' which come to light during the CEQA review process. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199-200.) Thus, it is understood and expected that a project description may change during the CEQA review process.

"For example, courts have found that it is proper for an agency to approve a modified project that has no greater environmental impacts than the one studied, or to

approve only part of the proposed project. (*See e.g., Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1040 [CEQA 'should not handcuff' decision makers, but provide for flexibility to implement portions of a project].).

"In addition, CEQA does not require recirculation of a draft EIR based on such modifications unless those modifications fall outside the scope of the draft EIR. Here, the modification of some of the designs and the selection of a preferred project did not introduce new impacts or otherwise fall outside the scope of the Draft EIR. Petitioners bear the burden of proving that substantial evidence does not support the City's decision not to revise and recirculate the Final EIR, and courts must presume that the City's determination is correct. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.) Petitioners fail to provide any evidence of where a preferred or modified option fell outside the analysis of the Draft EIR. The Court therefore rejects this argument.

"Third, Petitioners claim that the project description is inadequate because the EIR described some of the improvements as 'minor.' 'Minor improvements' included treatments such as sharrows, on and off street bike parking, colored pavement and signage changes.[13] (AR 5: 2638.) The Court rejects this argument as well. The EIR

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[13] The EIR identifies sharrows as "a traffic control device which consists of pavement markings within the traffic lane. The markings are intended to alert drivers that bicyclists share the traffic lane and also to reduce the chance of bicyclists impacting the open doors of parked vehicles." In other words, sharrows are paint.

The "colored pavement" mentioned is also paint, but implementation of this possibility is hardly unilateral. The EIR states: "Currently only yellow, white, red and blue pavement materials are approved for use as traffic devices. The *City of San Francisco Bicycle Plan Update: Supplemental Design Guidelines* include the use of colored bicycle lanes to further enhance the bicycle environment and improve safety. Recent Federal Highway Administration (FHWA)-approved studies by the cities of Chicago and New York and by the State of Vermont have all used the color green for . . . bicycle facilities . . . . [¶] FHWA has recently approved a study proposed by SFMTA of solid and dashed green pavement for bicycle lanes. Solid green colored pavement is proposed along portions of bicycle lanes demarcated by solid white lines to emphasize proper lane placement and discourage motorist encroachment, and dashed green colored pavement is proposed along dashed portions of bicycle lanes to encourage safe merging behavior between bicyclists and motorists. Results of the study, which would include

fully addressed the impacts of these improvements at a programmatic level, and analyzed their potential impacts. (AR 2: 1044-74; 20: 1-129.)

"Finally, Petitioners argue that the project description is inadequate because the EIR improperly deferred analysis of the 'long-term improvements.' Again, the Court rejects this argument. The long-term improvements set forth in the Bicycle Plan were fully and accurately described in the EIR as projects that might happen at a later date. (AR 1:196-200; AR 2:1076.) Consistent with CEQA's mandate to analyze the 'whole' of a project [see Guidelines § 15378(a), quoted at fn. 4, *ante*], the EIR included these foreseeable, but not-yet-designed projects in the project description, and made it clear that they could happen at a later date. (*Id*.) CEQA explicitly permits the analysis at a programmatic level of projects that are planned for a longer-term horizon. (Guidelines, § 15168(a), (c).) The EIR fully disclosed and did not minimize any potential impacts of the long-term improvements. (AR 2:1093-2:1105.) As a result, the City's analysis of the long-term improvements is permissible under CEQA."

Anderson recycles the same arguments presented to the trial court, omitting any discussion as to why the trial court's reasoning is erroneous or any demonstration that there is nothing in the 36,000 page administrative record that qualifies as substantial evidence. The claim fails for these reasons alone. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) But even if Anderson's arguments are examined on their merits, their fate here is the same as in the trial court.

Anderson begins by arguing that "by describing the near-term projects as 'options,' the EIR is misleading, inaccurate, and vague," thereby contradicting its

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before and after data collection at a number of locations throughout San Francisco, would be submitted to FHWA and California Traffic Control Device Committee (CTCDC). . . . Once the experiment is completed, and if use of colored pavement materials is approved by FHWA and CTCDC, San Francisco may add colored pavement materials to selected bicycle lanes."

function "to establish a stable and finite project description." He apparently reasons that because the EIR does not have an analysis for every possible specific project, the EIR misled the public, which "never had the opportunity to understand or comment on an actual project but only on a shifting set of options that were either eliminated or changed at the last minute, long after the close of public comment." This too "defeat[ed] the public's right to participate in the environmental review process."

The EIR's "summary of project alternatives" told the public: "Unlike most EIRs, this EIR contains no chapter analyzing alternatives to the proposed project. This is because this EIR does not analyze a preferred project. Instead, for many of the near-term improvements, this EIR evaluates two options as well as a future No-Project scenario . . . at an equal level of detail, as EIR alternatives. These options, and analysis of their potential environmental impacts, are presented throughout this document." We agree that this approach satisfied CEQA.

Anderson appears to believe that an EIR must cover every eventuality, anticipate every permutation, and analyze every possibility. Not so. In 1986, this court noted that because an EIR "is designed to provide comprehensive environmental analysis of the impacts of many different types of projects[,] . . . . EIR requirements must be sufficiently flexible to encompass these vastly differing projects with varying levels of specificity." We drew the conclusion that it was unreasonable and unrealistic to demand that an EIR "must describe in detail each and every conceivable development scenario." (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1336-1337; cf. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398 ["We do not require prophecy. . . . Nor do we require discussion in the EIR of specific future action that is merely contemplated or a gleam in the planner's eye."].) This conclusion has become the basis for repeated holdings that no ironclad rules should be imposed for the level of detail required of EIRs. (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 534; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 745-746; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 374.)

According to our Supreme Court, the minimum for an EIR is "analysis sufficient to allow informed decision making." (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, 404.) Moreover, because this EIR covered amendments to a general plan, it "need only conform with the general rule of reason in analyzing the impact of future projects, and may reasonably leave many specifics to [the]future . . . . 'CEQA recognizes that environmental studies in connection with amendments to a general plan will be, on balance, general.' " (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*, *supra*, 18 Cal.App.4th 729, 746-747.) Local authorities are granted broad discretion in this area (*Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 373-374; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 677-678), and Anderson makes no real attempt to establish that discretion was abused.

Finally, neither the Guidelines nor the courts require perfection. "[A]n EIR need not include all information available on a subject. An EIR should be 'analytic rather than encyclopedic' and should emphasize portions 'useful to decision makers and the public.' (Guidelines, § 15006, subds. (o) & (s).)" (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*, *supra*, 18 Cal.App.4th 729, 748.) "An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible . . . . The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151; see *Eureka Citizens for Responsible Government v. City of Eureka*, *supra*, 147 Cal.App.4th 357, 372; *Rio Vista Farm Bureau Center v. County of Solano*, *supra*, 5 Cal.App.4th 351, 368.) The Guidelines require only "a range of reasonable alternatives to the project." (Guidelines, § 15126.6(a).)

The options approach adopted here satisfied these standards. It identified the various ways in which particular "near-term" items would be analyzed. It specified how "near-term" improvement was defined. (See fn. 4, *ante*.) The location of each of the 60 projects was specified. Drawings showing what each of the options for each projects

would look like were included as Appendix B to the EIR. And the nature of the "objectives" for the changes to the Bicycle Plan was specified. However, as previously noted, not every "near-term" improvement had multiple options, and many of the multiple options were eliminated, which would reduce much of the confusion feared by Anderson.

Anderson's second claim, that "the EIR improperly defers analysis of parts of the Project by categorizing them as 'long-term improvements,' " also fails. The EIR advised readers that "Long-term improvement projects are either major improvements to segments of the existing bicycle route network or are potential future additions of new streets and pathways to the bicycle route network and may require additional environmental review in the future. Specific designs for these projects have not been developed as of publication of this document . . . . [¶] The impacts of those future improvements are evaluated at a program level in this analysis . . . and may require further project-level analysis that would consider the potential environmental impacts of those improvements in a separate environmental review process, once specific project designs are developed."[14]

The trial court's reading of Guidelines section 15168 as validating the EIR's approach was correct. "Under Guidelines section 15168, program EIRs are used for a series of related actions that can be characterized as one large project. If a program EIR is sufficiently comprehensive, the lead agency may dispense with further environmental review for later activities within the program that are adequately covered in the program EIR. (Guidelines, § 15168, subd. (c).) Thus, 'a program EIR may serve as the EIR for a subsequently proposed project to the extent it contemplates and adequately analyzes the potential environmental impacts of the project . . . .' " (*Center for Sierra Nevada*

[14] Even if it is determined that subsequent supplemental environmental review is not required, CEQA requires that the public be so notified. (§§ 21108, subd. (a), 21152, subd. (b); *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 46.)

Conservation v. County of El Dorado (2012) 202 Cal.App.4th 1156, 1171.) And the EIR expressly told readers that it was adopting a "Program-Level Review."

Anderson next reasserts his argument that the EIR improperly exempted "pieces of the project" by characterizing them as "minor." The EIR not only identifies the improvements it characterizes as minor, it defines that term (see fn. 4, *ante*); it also summarized their impacts, as it did for each of the 60 near-term improvements. Indeed, the EIR devotes 30 pages to the topic, includes photographs and charts, and concludes with a "Summary of Impacts of Minor Improvements." In sum, minor improvements were *not* exempted, just not analyzed in the manner Anderson wishes.

Finally, Anderson contends that "fragmenting the project descriptions to avoid and defer analysis violates CEQA." We reject this claim because it was not made to the trial court. (See *Sierra Club v. California Coastal Com*. (2005) 35 Cal.4th 839, 864, fn. 20; *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 912.) In any event is but a reframing of Anderson's already rejected second argument.

It appears an open question whether the inadequacy of a project's description is analyzed as a question of law or an issue of fact. The leadings treatise assigns it to the latter category. (1 Practice Under the California Environmental Quality Act, *supra*, § 11.39, p. 572, citing *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.) There is no need for this court to decide which standard is correct, because the project description here clearly satisfies both. Viewed as an informational document, the City's EIR plainly told decision makers and members of the public what was intended. (§ 21061; *In re Bay-Delta etc*., *supra*, 43 Cal.4th 1142, 1162; *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, 404.) Because the EIR complied with CEQA, no abuse of discretion is present. (§ 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc v. City of Rancho Cordova*, *supra*, 40 Cal.4th 412, 426, 435.) The above analysis demonstrates that the project description has the support of substantial evidence.

Substantial Evidence Supports The Trial Court's Determination The Project's "Baseline" Description Was Adequate

One of the CEQA Guidelines specifies that an EIR "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant." (Guidelines, § 15125(a).) The trial court rejected the petitioners' claim that the City failed to comply with this directive:

"The Court finds that the EIR's description of existing conditions complies with CEQA. Under CEQA, an EIR must contain a description of existing conditions in the vicinity of the project, usually measured from the time the notice of preparation for the project is published. (Guidelines, § 15125(a).) Petitioners argue that the EIR's description of existing conditions, referred to as the 'baseline,' is incomplete and inaccurate for two reasons: (1) the EIR contains no baseline date on traffic, bicycle, or pedestrian volumes, and (2) the EIR does not make clear how it arrived at existing level of service (LOS) conditions. [Citation.] These issues were specifically addressed in the hearing on the matter, and the Court finds that these arguments lack merit.

"The EIR describes the traffic setting for each near-term project, including the LOS of the study intersection or intersections impacted by that particular project. LOS is a qualitative description of the performance of an intersection based on the average delay per vehicle. (AR 13:6237.) The EIR relies on figures and details used to calculate the LOS at each intersection—such as turning movements, traffic volume and lane configurations—as well as the dates on which traffic counts were conducted, which were contained in the City's Transportation Impact Study, a publicly available report contained in the Planning Department's files. (*See* AR 23 and 14.) CEQA Guidelines section 15148 allows an EIR to cite to publicly available reports which contain the more technical information summarized and relied on in an EIR.

"Petitioners argue that the EIR *itself* needed to contain the exact number of vehicles using a particular intersection, and that merely including the LOS calculation was not enough. In its tentative ruling, the Court posed specific questions regarding whether the data underlying the LOS calculation was required to be in the EIR. These questions were resolved during the hearing, and the Court now rejects Petitioners' argument for two reasons. First, the Court recognizes that traffic impacts are routinely analyzed under CEQA in terms of LOS: generally, if a proposed project will result in the deterioration of a signalized intersection from LOS D or better to LOS E or F, or from LOS E to LOS F, the impact is considered significant. (AR 13:6238.) Thus, the EIR notes the existing LOS for each intersection studied, as well as LOS conditions with the projects and in future year 2025. Second, the Court notes that the LOS calculations are based on numerous factors, not just the number of vehicles traveling through an intersection during the peak hour. An EIR containing all the information and calculations that go into an LOS calculation, and which are contained in the Transportation Impact Study, would not be 'written in plain language' or 'rapidly' understood by the decisionmakers and the public as contemplated in CEQA. (CEQA Guidelines § 15140.) Moreover, as noted above, CEQA Guidelines section 15148 allows an EIR to cite publicly available reports which contain the more technical information summarized in an EIR.

"Furthermore, Petitioners contend that the City could only rely on data that was available at the time the Notice of Preparation was issued on June 5, 2007, and the City erred in relying on data collected from 2007, 2008, and 2009. Petitioners rely on CEQA Guidelines and *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310. CEQA Guidelines section 15125(a) provides: 'An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . . .' In *Communities for a Better Environment*, the Court considered the proper baseline physical conditions to use in determining whether there was a significant impact in the context of a permit application process for a refinery. The Court held that

the proper baseline to consider was the actual emissions of the refinery rather than the amount allowable pursuant to the refiner's permit."

"Neither the CEQA Guidelines nor *Communities for a Better Environment* support Petitioners' position. There is nothing which suggests that all information relied upon must be available at the time the Notice of Preparation is issued. Rather, *Communities for a Better Environment* stands for the proposition that current physical conditions must be considered rather than allowable amounts. Here, there is nothing to indicate that traffic conditions were any different in 2007 rather than 2008 or 2009. It would be impractical to collect data for the entire study on a single date, and data collected on other dates is nonetheless probative of conditions on the relevant date.

"The Court also finds that the EIR contained adequate descriptions of the baseline for bicycle and pedestrian volumes, which were described as 'low,' 'medium' or 'high.' The Court notes that the significance of impacts to bicyclists was determined by assessing whether the improvement would 'create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility.' (AR 13:6239.) Similarly, the significance of impacts to pedestrians was assessed based on whether the proposal 'would result in substantial overcrowding on public sidewalks, create potentially hazardous conditions for pedestrians or otherwise interfere with pedestrian accessibility.' (*Id*.) Contrary to petitioners' suggestions, the EIR was not required to analyze bicycle and pedestrian impacts in exactly the same way as traffic impacts, and likewise did not have to provide the *exact number* of bicyclists and pedestrians on a particular street in the project description. Rather, the qualitative description of 'low,' 'medium' or 'high' was sufficient to understand the significant effects of the project and the alternatives analyzed. (Guidelines, § 15125(a).)

"In addition, the Court finds that the EIR adequately explains the City's methodology for arriving at existing LOS conditions. Intersections were analyzed using the 2000 *Highway Capacity Manual* (HCM) methodology, which entails the use of a computer model using field observations and manual adjustments to observed operating conditions, in order to account for various factors that reduce the ability of the streets to

accommodate vehicles (such as presence of pedestrians, vehicle types and lane widths). (AR 13:6237; AR 1:314; 14:6883-84; 25:14613-14; 14642; see also *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 372 [use of an industry standard approach for assessing an impact is appropriate].)"

Again, Anderson resubmits his unsuccessful claims to the trial court. His most significant argument is that the EIR "contains no quantified data on the volume of vehicle, bicycle, or pedestrian traffic, which makes it impossible to identify, analyze and mitigate the Project's impacts, to assess the feasibility of mitigations and alternatives, and to weigh the Project's significant impacts against its alleged benefits." Although this argument initially appears troubling and problematic for the order under review, on careful analysis it proves unpersuasive.

The crux of Anderson's argument is the absence of hard numbers, what he terms "quantified data." It does, at first glance, seem puzzling that the City did not include firm figures. However, like the trial court, we are impressed by Anderson's inability to produce any authority demanding their inclusion. In any event, the trial court noted that the "LOS" approach adopted by the City was based in part on "traffic volume," and that these "figures . . . were contained in the City's Transportation Impact Study." Somewhat belatedly, the City's advises that the same document, which is in the administrative record, also includes "Bicycle and Pedestrian Counts," together with definitions of how many hourly crossings constituted "low," "medium," and "high" volumes. Guidelines section 15148 expressly allows for what is in effect incorporation by reference to an EIR. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1191; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1549; cf. § 21061 ["information or data which is relevant to [an EIR] and is a matter of public record or is generally available to the public need not be repeated in its entirety"].) And Anderson does not attempt to disprove the trial court's observation that "traffic impacts are routinely analyzed under CEQA in terms of LOS." In fact, "LOS analysis is a standardized method of rating the operating characteristics of an intersection" that has been accepted since at least 1989. (*Schaeffer Land Trust v. San*

Jose City Council (1989) 215 Cal.App.3d 612, 623.) The report prepared by the San Francisco County Transportation Authority for "Congestion Management Program 2007/8" pursuant to a state mandate (see Gov. Code, § 65088 et seq., esp. § 65089, subds. (b)(1)(A)-(b)(1)(B)), calls "LOS . . . the main indicator of congestion and . . . the uniform yardstick for measurement of improvement in transportation" that "has been used and codified more extensively and systematically than any other . . . method." And because it is a methodology obviously supported by substantial evidence, it passes review here. (*Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th 1184, 1198.)

Anderson next asserts that "the EIR's baseline fails to include baseline data necessary to analyze the project's impacts." The four pages of ensuing discussion establish that Anderson is challenging the City's failure to comply with its own Transportation Impact Analysis Guidelines for Environmental Review methodology to compile the LOS calculations, specifically, the failure to set out the dates on which vehicle traffic was measured and to include the mathematical raw data from which the LOS calculations were derived. Anderson forfeits review of this argument for failure to raise it in the trial court. (*Sierra Club v. California Coastal Com*., *supra*, 35 Cal.4th 839, 864, fn. 20; *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, *supra*, 157 Cal.App.4th 885, 912.) The same is true for Anderson's claims that it was improper to use a computer projection to fix the "LOS conditions . . . in future year 2025," and that the EIR included insufficient information to analyze the impact on existing modes of "transit" such as the City's buses and municipal railway.

The City sensibly notes that "Traffic volume (the raw number of cars traveling through an intersection) is but one variable that influences the LOS—other variables include the number of lanes, the presence of exclusive turn lanes, or the number of seconds of green time [of traffic signals]. Data on each of these variables were contained in the Transportation Impact Study, referenced [in the] EIR." In any event, Anderson is challenging an established methodology, which we would have to sustain if it has the support of substantial evidence. (*Bakersfield Citizens for Local Control v. City of*

Bakersfield, *supra*, 124 Cal.App.4th 1184, 1198.) As shown by the trial court's discussion of cumulative impacts, the 2025 methodology does. (See fn. 20 and accompanying text, *post*.) Moreover, Anderson does not "explain what more current [or accurate] information was available to the city, how that information differed from the projections the city relied on, or how the more current information might have affected the city's decision." (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1206.) Anderson has thus failed to demonstrate that the study is so "clearly inadequate or unsupported" that it "is entitled to no judicial deference." (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, 409, fn. 12.)

The Supreme Court decision examined by the trial court includes the following: "Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured . . . ." (*Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 328.) The adequacy of a proposed project's baseline is an issue of fact. (*Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 562-563; *Cherry Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 337.) The record here demonstrates that the EIR's baseline has the support of substantial evidence.

The Trial Court Correctly Concluded That The Statement Of Overriding Considerations Was Legally Sufficient And Supported By Substantial Evidence

In addition to mitigating significant environmental impacts, or concluding that mitigation measures are "infeasible," a public agency may also conclude "that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (§ 21081, subd. (b).) "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental

benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.' " (Guidelines, § 15093(a).)

When it adopted the EIR, the City's Board of Supervisors also adopted a lengthy "Statement of Overriding Considerations" (originally drafted by the Planning Department) listing many factors justifying approval of the project. They included: (1) approval would be "consistent with" and "help fulfill the mandate of San Francisco's Transit First Policy as set forth in the San Francisco Charter"; (2) approval of the project would be "consistent with" the Metropolitan Transportation Commission's Regional Bicycle Plan"; (3) approval of the project would be "consistent with state, region, and Citywide plans and policies to reduce greenhouse gas emissions"; (4) creating eligibility for "substantial amounts of bicycle funding" from the state "instead of requiring the use of General Fund or other [City] money"; (5) expand the existing bicycle route network; (6) create "a significant increase of bicycle parking in key locations throughout the City" (7) educate the public about and improve bicycle safety; (8) "significantly reduce gridlock on, and facilitate more efficient use of, City streets"; (9) "significantly reduce the economic costs associated with driving"; (10) "improve access to many of the City's commercial corridors"; and (11) "stimulate significant economic growth by facilitating access to commercial zones" not readily accessible by automobile.

Such a statement must be supported by "substantial evidence in the record". (Guidelines, § 15093(b).) The trial court rejected the petitioners' claim that such support was absent from the administrative record:

"City decision-makers adopted a 'statement of overriding considerations' in their approval of the Project. (AR 7:3463-76.)[15] The Court finds that this Statement was supported by substantial evidence in the record. CEQA allows agencies to rely on economic, legal, social, technological, or other project benefits as a basis for a statement of overriding considerations. (Guidelines, § 15093.)

"Substantial evidence supports the City's determination that with the implementation of the Bicycle Plan, more people would choose to ride a bicycle than currently do—the idea of 'mode shift.' This determination was supported by documents in the record indicating that one of the main reasons San Franciscans do not ride bicycles is a lack of bicycle lanes, as well as testimony by individuals at the various hearings on the EIR and Plan. (AR 7: 3217 ['if you make bicycling safer, more people will bicycle']; 3250 ['I would be on my bike more if there were bike lanes']; *see also* PJR [Post-Judgment Record] 15550 [2008 State of Cycling Report—nearly two-thirds of those polled would bike more if there were more bike lanes]; PJR 15547.)

"Substantial evidence supports the other reasons given for adopting the Project despite its significant impacts. Speakers testified about the notion that bicycling has health benefits (*see* AR 3192-93 [testimony of Dr. Mitch Katz, director of the City's Department of Public Health]; 3272 [bicycling 'keeps me fit']; *see also* PJR 15545 [most San Franciscans ride bicycles for exercise].) Business owners testified that increasing the number of bicyclists on a commercial corridor could stimulate economic growth. (AR 7: 3217 ['No one goes shopping on the freeway']; 3249 [from owner of Design Within

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[15] The trial court was here referencing the statement of overriding considerations adopted by the MTA. This identical language can be found in the revised version of the CEQA findings recommended for the Planning Commission's approval. However, it is the original, unrevised version which is attached to the Planning Commission's resolution adopting the findings which is next to the Board of Supervisors' motion "affirming" this and other related resolutions passed by the Planning Commission. Even so, we assume—and Anderson does not claim otherwise—that it was the revised findings which were considered by both the Planning Commission and the Board of Supervisors. (Evid. Code, § 664; *Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th 911, 919.)

Reach: 'more people biking means much better business for us retailers']; PJR 16711, 16712, 16716, 16720, 16724 [bicycle rack request from business owners].) Moreover, common sense supports the City's determination that adding bicycle lanes benefits bicyclists, including those who bicycle because they cannot afford a car. (*See* PJR 15545 [bicycling is cheaper than driving].) The Court finds that these statements by members of the public constitute substantial evidence. (*Ocean View Estates Homeowners Assn. v. Montecito Water Dist*. (2004) 116 Cal.App.4th 396, 402 [statements by public on nontechnical subjects substantial evidence].)

"Substantial evidence also supports the City's determination that adoption of the Bicycle Plan is consistent with other adopted plans and policies, such as the City's 'Transit First' policy which states that 'bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes and secure bicycle parking.' (*See* S.F. Charter § 8A.115 [Transit First policy].) Similarly, substantial evidence supports the City's determination that the Bicycle Plan is consistent with the City's Climate Action Plan, which outlines actions to reduce greenhouse gas emissions, as well as the Department of Environment's Strategic Plan for 2009-2011, which among other things, outlines goals and actions to promote bicycle use to reduce greenhouse gas emissions from transportation. (AR 33:18676-77 [Climate Action Plan]; 33:18763-64 [Strategic Plan].) Public agencies are entitled to rely on a project's consistency and promotion of other plans and policies in adopting a statement of overriding considerations. (*Markley v. City Council of City of Los Angeles* (1982) 131 Cal.App.3d 656, 674.)

"The Court finds that petitioners' reliance on *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, for the proposition that the City Statement was inadequate is misplaced. In *Woodward Park*, the City of Fresno inappropriately based its statement of overriding considerations on a comparison of the proposed project to alternatives considered in the EIR and not the existing environment in Fresno. In contrast, the City compared the impacts from the Bicycle Plan against the existing environment, and it found that many of the individual projects would have

significant and unavoidable impacts. Impacts to traffic and transit were adequately disclosed, and decision-makers were aware of the relative number of drivers, transit riders and bicyclists. (AR 8:4063; PJR 15906-07; PJR 15910.) Nothing in the Statement downplays the number or magnitude of traffic or transit impacts, or overstates the number of bicyclists, the primary beneficiaries of the Project's benefits. In short, both the EIR and the City's Statement are consistent in their treatment of impacts and benefits. That the Petitioners would make different policy choices is of no significance."

Anderson contends that the statement of overriding interests is "legally inadequate and unsupported." He is wrong.

Although we bring our independent review to the legal sufficiency of the statement, we also accept that it "lies at the core of the lead agency's discretionary responsibility under CEQA, and is, for that reason, not lightly to be overturned." (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368.) "This does not mean, however, that an agency's unsupported claim that the project will confer general benefits is sufficient. The asserted overriding considerations must be supported by substantial evidence in the final EIR or somewhere in the record." (*Woodward Park Homeowners Assn. v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.)

This is another instance where Anderson purports to make a substantial evidence challenge without complying with the applicable principles. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) But even if Anderson had complied, he would not prevail.

The trial court's detailed analysis—the record references in which we have verified—clearly demonstrates that there is substantial evidence supporting the factors invoked by the Board. Granted, those factors are somewhat general and aspirational, but that is precisely why they are treated as discretionary. (See 2 Practice Under the California Environmental Quality Act, *supra*, § 17.34, p. 831.) The language of Guidelines section 15093(a) should banish any doubt that this is the arena where policies clash and must therefore be "balance[d], as applicable" to each setting. Insofar as these

policy resolutions are reflected in a statement of overriding considerations, it will not be overturned if they have the support of substantial evidence. (Guidelines, § 15093(b); *Cherry Pass Acres & Neighbors v. City of Beaumont*, *supra*, 190 Cal.App.4th 316, 357; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223.) Moreover, it should be remembered that this was not the consideration of a new policy, but the continuation of a policy already in place for more than a decade—and one that had proved successful. This court is among those which have held that ensuring continuity with existing policy is a proper consideration. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717-720; *Markley v. City Council* (1982) 131 Cal.App.3d 656, 674.) The City's statement of overriding considerations is supported by substantial evidence.

The Trial Court Correctly Determined That The EIR's Discussion of Alternatives Was Supported by Substantial Evidence

CEQA requires "governmental agencies at all levels to consider . . . alternatives to proposed actions affecting the environment." (§ 21001, subd. (g).)

At the beginning of the EIR, in its "Executive Summary," the EIR described its "Summary of Project Alternatives" as follows:

"As stated in Section 15126.6(a) of the *CEQA Guidelines*, 'an EIR shall describe a range of reasonable alternatives of the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.'[16] These are presented in Section VII of this Document.

[16] The text of the cited Guideline deserves quotation in full: "Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not

"Unlike most EIRs, this EIR contains no separate chapter analyzing alternatives to the proposed project.[17] This is because this EIR does not analyze a preferred project. Instead, for many of the near-term improvements, this EIR evaluates two options as well as future No-Project scenario (i.e., the 2025 Cumulative conditions, assuming that none of the bicycle facility options is adopted), at an equal level of detail, as EIR alternatives. . . . [¶] For the program-level actions, this EIR presents two additional alternatives, which can be combined with either of the project-level alternatives. One program-level alternative is the full implementation of all program-level actions proposed, or the 'Program-Level Improvements Alternative A.' A second alternative, the 'Program-Level Improvements Alternative B (Sharrows),' would limit the program-level actions to activities involved in locating, placing, and maintaining sharrows."

The trial court rejected petitioners' claim that "The EIR fails to propose and analyze a full range of alternatives" with this reasoning:

"The Court finds that the EIR presented a 'reasonable range' of 'potentially feasible' alternatives as required by CEQA. (Guidelines, § 15126.6(a).) Not only did the EIR analyze the 'no project' alternative, as well as two design options for most improvements, the EIR also analyzed two 'grouped' alternatives, as well as alternatives to the minor improvements and the long-term improvements. The Court finds this range

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consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The Lead Agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Heights Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.)" (Guidelines § 15126.6(a).)

[17] This is a quizzical statement. Both the ensuing discussion in the "Summary of Project Alternatives" and Section VII of the EIR—which is entitled "Alternatives"—leave no doubt that the alternatives were (1) adoption of various combinations of fewer than the full 60 near-term improvements plus long-term and minor improvements, or (2) doing nothing. Consideration of the "no project" alternative is expressly required in an EIR. (Guidelines § 15126.6(e).)

of alternatives reasonable, particularly when considered 'in light of the nature of the project, the project's impacts, relevant agency policies, and other material facts.' (Guidelines, § 15126.6(a); *Mira Mar Mobile Comm. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 487.) The Court notes that the EIR provided an analysis of an update to a previously adopted Bicycle Plan (the 1997 Bicycle Plan); that the near-term improvements were individual parts and approval of one did not require the approval of all parts, which gave rise to literally thousands of alternative ways to implement portions of the Bicycle Plan; that due to the fact that adding bicycle facilities to pre-existing city streets and routes often limited the ability of planners to design alternatives that reduced all significant impacts; and that the main objective of the Project was to increase bicycle ridership in San Francisco, consistent with a number of City policies. The Court finds that the City did not abuse its discretion in choosing the alternatives that it did, nor were they manifestly unreasonable. (*Federation of Hillside & Canyon Assn. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.)

"Moreover, neither CEQA nor CEQA case law supports Petitioners' claim that the alternatives had to mitigate all impacts of the project. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 546 [for complex projects, it is practically impossible to imagine an alternative that would provide substantial environmental advantages in all respects]; Guidelines § 15126.6(a) [alternatives should be capable of substantially reducing or avoiding 'any' significant project impacts]; Guidelines § 15126.6(d) [analysis of alternatives should include discussion of new impacts].)

"Neither does CEQA case law support Petitioners' claim that the EIR was required to include 'off-site' alternatives. (Guidelines, § 15126.6(a); *Mira Mar*, *supra*, 119 Cal.App.4th at p. 491 [use of disjunctive 'or' implies that the lead agency has discretion, depending on the nature of the project, to evaluate on-site or off-site alternatives or both].) The Court finds that for this Project, based on the nature of the near-term improvements, the Bicycle Plan EIR did not need to evaluate an 'off-site' alternative to each of the near-term improvements. The Bicycle Plan EIR evaluated

improvements to an already-existing bicycle network: the improvements fill in 'gaps' in that network.

"Finally, as discussed in oral argument, the Court finds it noteworthy that petitioners failed to suggest any other alternatives to the Project or to the locations of any of the improvements that the City should have considered."

"CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts," and an EIR must only consider "a reasonable range of alternatives to the project." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.) Whether an EIR includes a reasonable range of alternatives is tested for substantial evidence. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 312-313; *Jones v. Regents of University of California* (2010) 183 Cal.App.4th 818, 824-829.) Anderson asserts the City's EIR cannot satisfy this test.

In our opinion, it is with respect to alternatives that the EIR comes closest to failing in its role as an informational document. Chapter VII does not yield up its secrets without a fight, its language perhaps best described as a parody of bureaucratic jargon. It is only with a careful reading of Chapter VII, considered with the fundamental predicate behind this project—and with the addition of some common sense—that the fog lifts.

This project was not the construction on a new factory or housing subdivision in a virgin setting, but a setting that is perhaps the most intensely developed urban landscape in California. And the particular project concerns a plan to promote greater use of bicycles in that setting—more accurately, only *amendments* to an already existing plan that has been around for more than a decade. As already quoted, the EIR plainly states that "The existing site conditions consist of the *existing bicycle route network* that is lain out primarily along streets and thoroughfares throughout the City." (Italics added.) It also told readers that near-term improvements were "projects that will address gaps and deficiencies *within the existing bicycle route network*"; and long-term improvements were described as "projects that consist either of major improvements to segments of *the existing bicycle route network* or are potential future additions of new streets and

pathways to *the bicycle route network*." (Italics added.) The EIR was not proposing to shut down the bicycle route network already in place and replace it with a new version. The EIR was far more modest, to fine-tune and extend that network.

Our Supreme Court recently reminded us that "Common sense . . . . is an important consideration at all levels of CEQA analysis." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175.) "Like all laws, . . . CEQA should be given a reasonable and practical construction." (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 593.) The Guidelines recognize that the range of alternatives need only be "reasonable," that is, those "which would feasibly attain most of the basic objectives of the project." (Guidelines, § 15126.6(a), quoted at fn. 16, *ante*.) In addition, "An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is . . . speculative." (Guidelines, § 15126.6(f)(3).) Finally, we have already quoted the Guidelines' admonition that "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Guidelines, § 15126.6(a).)

It is only common sense to recognize that the purpose of this project thus imposed severe restrictions on the "range of reasonable alternatives to the project." (Guidelines § 15126.6(a).) Because the project only aimed to improve the existing route network, it naturally built upon that in-place framework. This explains why the EIR did not present alternatives that would have, in Anderson's words, "locat[ed] bicycle lanes on streets where they would have less impact." As the City cogently responds in its brief: "Anderson ignores that the 2009 Bicycle Plan is an *update* to the previous version—the 1997 Bicycle Plan, which vetted and evaluated appropriate streets for the City's bicycle network. The 1997 Bicycle Plan contained the City's selected bicycle routes—preferred for their ease of use by both novice and experienced bicyclists, for their connectivity to major neighborhoods and major attractions, as well as their freedom from deterrents that make bicycling on a particular street unsafe, difficult or unpleasant."

Anderson is attacking the omission of what is termed "off-site alternatives," which an EIR is not a required to include or expressly reject, particularly when it applies to less

than the whole of the proposed project. (See *Jones v. Regents of University of California*, *supra*, 183 Cal.App.4th 818, 825-826, 827-828; *California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4th 957, 992-995 [alternatives requirement is " 'applicable only to the project as a whole, not . . . various facets thereof' " or to "merely a component of the larger project"]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491.) Here again, we note that Anderson does not suggest a single one of the alternate locations he faults the EIR for failing to analyze. Finally, Anderson berates the alternatives the EIR did include for the numbers of parking spaces they would remove. This approach assumes that this consequence would amount to an environmental impact. This assumption is incorrect, as shown later in this opinion.

Substantial Evidence Supports The Trial Court's Determination That The EIR Adequately Analyzed The Project's Impacts

An EIR is required to analyze a project's significant, direct, indirect, and cumulative impacts. (§ 21100; Guidelines §§ 15126, 15126.2, 15130.) The trial court rejected the petitioners' claim that the City failed to satisfy these obligations, doing so in elaborate detail:

"**A. The EIR Adequately Analyzed Transit Impacts.**

"The Court finds that the Bicycle Plan adequately analyzed impacts to transit on an individual, project and cumulative basis. The EIR analyzed twelve transit corridors and ten transit 'spot studies,' which were selected based on a review of near-term projects which overlapped with existing transit routes or where there were known high volumes of bicycles and high frequencies of transit services. (AR 13:6234-35.) But each near-term improvement's impact on transit was assessed, whether or not it fell along a 'transit study corridor' or 'transit spot study location.' (AR 19:10484.) For example, although there were no transit study corridors or transit spot study locations in the northwestern part of the City, each near term improvement in that area contained a description and analysis of

its impact on transit.[18] Petitioners provide no evidence to support their argument that transit impacts outside the study locations were ignored.

"The Court rejects Petitioners' claim that the transit analysis was inadequate because it noted that one aspect of transit delay was 'not quantifiable.' The EIR determined that the Project would have a significant impact on the environment if it would create unacceptable levels of transit delay. Transit delay was calculated as comprising 'transit travel delay' (the additional time experienced by a transit vehicle as it travels between stops due to increased congestion), 'transit re-entry delay' (the additional time representing the delay in re-entering the travel lane from a bus stop due to increased traffic flow), and 'transit/bicycle delay' (the increased time caused by the interaction between bicycles and buses as the buses pull into or out of transit stops). As the EIR notes, although standard methodologies exist for calculating the first two components of transit delay, no such standard methodologies exist calculating delay caused by the interaction with bicyclists. Thus, the Transportation Impact Study found this component 'not quantifiable.' (AR 13:6246.) The City appropriately concluded that a reliable method for assessing this impact was not available. (*Laurel Heights Improvement Association v. Regents of the Univ. of Calif*. (1993) 6 Cal.4th 1112, 1138.)

"In any event, even though the experts determined that this component of transit delay was not quantifiable—meaning that no specific number could be assigned to the delay—impacts from bus and bicycle interactions were analyzed and discussed in both the Transportation Impact Study and EIR. (See e.g., AR 13:6496 [bus/bicycle interaction would not be significant because of low volume of both buses and bicyclists; 13:6501 [bicycle volumes low therefore very little interaction between buses and bicyclists].) The Court finds this sufficient under CEQA.

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[18] At this point the trial court inserted a footnote that read: "For example, Project 7-3, which includes bicycle lanes on the Great Highway and Point Lobos Avenue, analyzes impacts from the project on Muni line 18, which also travels on Point Lobos Avenue. (AR 13:6790; 19:11071-72.) Project 7-6, signalizing the intersection of Page and Stanyan Streets, analyzes the impact from the signalization of Muni line 33, which also travels through that intersection. (AR 13:6795; 19:11077.)"

"The Court also rejects Petitioners' claim that the City abused its discretion in setting the significant criteria for transit delay—determined to be 6 minutes, or half the headway, whichever was less. This was another question specifically addressed at oral argument. The Court finds that, in using this '6-minute' significance criteria, the City both proceeded in a manner supported by the law and that the significance criteria was supported by substantial evidence.

"The Court finds, contrary to Petitioners' position, that the '6-minute' standard of significance was not required to be adopted by ordinance or other legislation. Standards of significance can be determined in many different ways, including development by experts preparing an EIR based on their assessment of the technical evidence. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 362); by use of ordinances, plans or other regulations adopted by the lead agency (*National Park & Conserv. Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1358); or by use of performance standards adopted by regulatory agencies (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) CEQA Guidelines section 15064.7 encourages lead agencies to adopt standard 'thresholds of significance' that can normally be used to find impacts significant or insignificant. Subsection (b) provides, 'Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.' Here however, the 6-minute threshold was not adopted for 'general use.' Rather, it was adopted for this specific Project. In any event, an agency can formulate significance standards in other ways, or specifically tailor a standard for the project under review. Here, the '6-minute' delay was developed by the experts who prepared the Transportation Impact Study based on their assessment of the various factors that influence transit delays. (AR 15:7745.) No ordinance was required.

"Further, substantial evidence supports the City's use of a '6-minute threshold.' Both the EIR and the Transportation Impact Study, adequately explain the significance criteria. (AR 19:10655-6; AR 13:6239.) The Department determined that 6 minutes was

an appropriate standard based on the assumptions that the average headway for all Muni lines was approximately 12 minutes, and each transit trip involved two bus lines. (*Id*.; AR 15:7745.) Thus, the average headway for each bus line per total trip was 6 minutes—half the average headway for all lines. (*Id*.) As noted in the EIR, the threshold was chosen in consultation with Muni and determined appropriate because 'a delay per bus below either the route's headway or a six-minute delay (whichever is less) would not significantly impact the route's frequency.' (AR 22:12441.) The Court finds this methodology satisfactory under CEQA. (*Eureka Citizens*, *supra*, 147 Cal.App.4th at 372 [court upholds use of methodology supported by substantial evidence].) Thus, although Petitioners contend that 6 minutes is too long, the Court finds that the City did not abuse its discretion in using this criteria.

"Finally, contrary to Petitioners' unsupported allegations, the City analyzes the impacts of allowing bicycles on transit vehicles (AR 19:10420 [finding impacts not significant]), and the transit significance threshold assumes that each transit trip included a transfer of bus lines. (AR 15:7745.) Petitioners' arguments to the contrary are without merit.

"**B. The EIR Adequately Analyzed Impacts to Parking.**

"The Court rejects petitioners' claim that the EIR is inadequate because it did not find parking deficits to be an environmental impact. The EIR correctly noted that, although parking deficits are an inconvenience to drivers, they are not a 'significant physical impact on the environment.' (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 697 ['Parking shortfalls relative to demand are not considered significant environmental impacts in the urban context of San Francisco.'].) Any secondary effects of a lack of parking, such as increased congestion or air quality impacts which could have an environmental impact, were included in the transportation analysis. (AR 13:6239.)

"Petitioners' reliance on inapposite cases is unavailing, as none consider the 'urban context of San Francisco.' (*San Franciscans Upholding the Downtown Plan*, *supra*, 102 Cal.App.4th at p. 697.) Instead, Petitioners' cases discuss parking, in dicta, as

it relates to decidedly less transit-rich and less urban areas. (*See Friends of 'B' Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [Hayward] and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011 [Sacramento].)

"The Court finds that substantial evidence supports the EIR's conclusion that parking is not an environmental impact in an urban context like San Francisco. The EIR notes that, in the experience of San Francisco transportation planners, when parking is scarce, would-be drivers make adjustments to their behavior, either by parking farther away, or by not driving and reaching their destination using other modes, such as transit or walking. (*See e.g.*, AR 2:637.) There is some evidence to support this conclusion. For example, due to constrained parking conditions near AT&T Park, scores of would-be drivers opt to take transit, walk, or bicycle to games played there. (AR 16:8589-8602.) While the shift from one mode (vehicles) to another mode (bicycles, walking or transit) was found 'not quantifiable'—meaning no precise numbers can be assigned to it—substantial evidence supports the EIR's conclusion that indeed it occurs. (*Id*. [compare 96% auto use for fans attending Giants games at Candlestick park with approximately 50% auto use at AT&T Park].)

"Recent amendment to the CEQA Guidelines also support the conclusions in the EIR: the California Natural Resources Agency, the State of California department tasked with providing guidance on implementing CEQA, specifically removed parking from Appendix G, the sample from that can be used for evaluating projects for environmental impacts under CEQA.[19]

[19] At this point the trial court inserted another a footnote and added: "In any event, the EIR discusses parking at length. The description of each near-term improvement notes the type of available parking in the vicinity of the project as well as a description of its utilization. And most of the 60 individual near-term improvements analyzed two designs, one of which usually removed more parking that the other. In addition, the EIR studies 13 'parking and loading corridors' chosen for additional analysis where near-term improvements would remove substantial amounts of parking."

"**C. The EIR Adequately Analyzed Impacts from the Project on Air Quality.**

"The Court finds that the EIR adequately analyzed impacts to air quality to implementation of the Project. (AR 3:1135-1158.) The air quality analysis selected an intersection within each cluster which would represent a worst case scenario on air impact due to low traffic speeds from congestion, nearby sensitive receptors (such as residences, schools and hospitals) and increased congestion from implementation of the Plan. The EIR estimated carbon monoxide levels and mobile sources air toxic levels using standard models developed by air quality experts and commonly used in environmental analysis, per the guidelines prepared by the Bay Area Air Quality Management District (BAAQMD), which provides standard direction on evaluating air quality impacts consistently throughout the Bay Area. (AR 3:1217.) The BAAQMD CEQA Guidelines set forth standards of significance for air quality, which are determined based on the impacts to human health. Air quality impacts were analyzed for existing levels, cumulative 2025 levels, and cumulative 2025 levels with the implementation of the Project. (AR 3:1149-52.).

"Without support, Petitioners claim that the year 2025 cumulative condition impact analysis was flawed because the standard air quality computer model takes into consideration the fact that emission controls on vehicles will be increasingly more stringent in the future. The methodologies for calculating future air quality emissions were defined by BAAQMD, and they account for overall improvements in pollution control technologies. (AR 22:12471-72; 25:14669.) Use of an industry standard approach for addressing an impact is appropriate. (*Eureka Citizens*, *supra*, 147 Cal.App.4th at 372.)

"The EIR presents a 'worst case scenario' in presenting the air quality impacts of the Project on bicyclists, as bicyclists are reasonably assumed to be receptors closest to the source of air polluters (i.e., cars). However, no violations of carbon monoxide ambient air quality standards were predicted. (AR 3:1151.) Even where mobile source air toxics were expected to increase, they were still lower than current significance thresholds, and were expected to be considerably lower in the future because of the more

stringent emission standards on vehicles. (AR 3:1153; see also 22:12470.) Thus, the EIR's finding that the impacts to air quality from the Project would be less significant is supported by substantial evidence. (AR 20:11190.).

"The Court finds that the EIR adequately analyzed impacts from greenhouse gas (GHG) emissions. (AR 3:1138, 1153.) The EIR noted that impacts from the Project on GHGs would be significant if the Project would conflict with state or local goals of reducing GHGs. (AR 3:1149.) The analysis notes that GHGs mainly consist of vehicle emissions, and that because the objective of the Bicycle Plan and implementation of its projects is designed to accommodate a mode shift from cars to bicycles, GHGs with the project are likely to be lower. Nevertheless, because the mode shift could not be quantified—in that an exact number cannot be assigned to it—the potential reduction in GHGs from the Project was not assumed in the EIR analysis. The EIR determined only that the Project would not interfere with state or local goals of reducing GHGs and that the impact was less than significant. In any event, Petitioners fail to explain how the GHG analysis is deficient.

"Finally, the Court finds that the Comments and Responses document adequately responded to the so-called 'criticisms' of the air quality in the Draft EIR. The Court notes that the purportedly inadequate response was in response to a general, unsupported comment regarding air quality. General responses to general comments on a Draft EIR are sufficient. (*Eureka Citizens*, *supra*, 147 Cal.App.4th at 378.)

"**D. The EIR Adequately Analyzes Impacts to Traffic.**

"The Court finds that the EIR adequately discussed 'spillover traffic,' and Petitioners provided no evidence in support of their argument that this discussion was inadequate. Spillover traffic (also called 'traffic diversion') are impacts caused by the possibility of some motor vehicles being diverted to other streets after implementation of a given near-term improvement. Here, the traffic analysis conservatively assumed that no cars would be diverted to other streets, thus providing concentrated, rather than dispersed, impacts on a particular intersection. At the same time, the traffic consultant also looked at the potential for spillover traffic where parallel routes existed in the vicinity of the

project. (AR 15:7758-63.) After identifying appropriate intersections with the potential for spillover traffic, the traffic consultant concluded that the only intersections sufficiently impacted such that a diversion analysis was appropriate were intersections in the south of Market area that offer access to regional freeways. (AR 15:7758-7763.)

"**E. The EIR Adequately Analyzes Impacts of the Project on Noise.**

"The Court finds that the EIR's analysis of impacts related to increased noise due to increased traffic congestion, using standard and accepted methodologies, was adequate. (AR 3:1164.) The EIR appropriately analyzed noise levels at seven representative 'worst case' intersections where traffic noises were high, existing nearby land uses included sensitive receptors, and project-related physical improvements to the intersection or street could move traffic closer to or further from adjacent noise sensitive land uses thereby worsening or improving noise levels. The analysis calculated existing and future vehicular noise levels using the standard Federal Highway Administration Traffic Noise Model, which calculates the noise level at specific locations based on traffic volumes, average speeds, roadway geometry and site conditions. (*Id*.) Again, use of an industry standard approach for assessing an impact is appropriate. (*Eureka Citizens*, *supra*, 147 Cal.App.4th at 372.)

"**F. The EIR Adequately Analyzes Cumulative Impacts**

"The Court finds that the EIR adequately analyzed cumulative impacts. CEQA requires that an EIR describe and analyze cumulative impacts if the cumulative impacts are significant and the project's incremental effect is cumulatively considerable. (Guidelines, § 15130.) Cumulative impacts are defined as 'two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.' (Guideline, § 15355.)

"For each area of potential impacts, the Bicycle Plan EIR analyzes the cumulative impacts from the Project as well as projected future conditions. (See e.g., AR 1:312-313 [traffic generally]; *see also* AR 3:1157 [air quality]; 3:1165-66 [noise].) Future traffic conditions, which provide the basis for traffic-related air quality as well as traffic-related noise, were analyzed for future conditions in year 2025. Future year 2025 traffic volume

forecasts were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority's travel demand forecasting model (called the SF-CHAMP Model), which predicts all person-travel for a full day based on assumptions of growth in population, housing units and employment, including proposed or adopted area plans.[20] (AR 13:6237; 14:6880-90.) Petitioners fail to explain how the cumulative analysis in the EIR, or the evidence supporting it, is lacking. This failure is fatal to Petitioners' claim." (Fns. omitted.)

As will be seen, the essence of Anderson's arguments is that this sextet of impacts was either improperly restricted or wrongly analyzed.

We address Anderson's claims in the order they were examined by the trial court, acknowledging that the assessment of the existence and significance of impacts leaves

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[20] In the "Study Methodology" portion of the "Transportation Impact Study" prepared by a private consultant, "Development of Year 2025 Travel Demand" was explained: "Future Year 2025 traffic volume forecasts were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority's travel demand forecasting model (SF-CHAMP model). The SF-CHAMP model is an activity based travel demand model that has been validated to represent future transportation conditions in San Francisco. The model predicts all person travel for a full day based on assumptions of growth in population, housing units, and employment, which are then allocated to different periods throughout the day, using time of day sub-models. The SF-CHAMP model provides future person travel by mode for auto, transit, walk and bicycle models. The SF-CHAMP model also provides forecasts of vehicular traffic on regional freeways, major arterials and on the study area local roadway network considering the available capacity, origin-destination demand and travel speeds when assigning the future travel demand to the roadway network. [¶] Future 2025 intersection turning volumes were developed by applying growth factors calculated from traffic volume growth between year 2007 and year 2025 conditions obtained from the SF-CHAMP model to traffic volumes collected in the field. The purpose of developing a model-based growth factor rather than using future traffic estimates obtained directly from the model was to compensate for potential errors that could exist in the model validation. Detailed methodology for travel demand forecasting is presented in Appendix A-2." The cited appendix states that "This future cumulative analysis year has been used consistently for recent large transportation studies in San Francisco." This study is mentioned by name and figures prominently in the EIR.

Parenthetically, 2025 had already been designated as one of the benchmarks target years for the City's Greenhouse Gas Reduction Ordinance.

much discretion to the agency preparing an EIR, whose findings on these subjects will be upheld if supported by substantial evidence. (Guidelines, § 15064(b) ["An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting."]; *W.M. Barr & Co., Inc. v. South Coast Air Quality Management Dist.* (2012) 207 Cal.App.4th 406, 433, 435; *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 475; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243-244.) Thus, as previously noted, the substantial evidence standard "applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th 1184, 1198.) We also bear in mind that "evaluation of the environmental effects of a proposed project need not be exhaustive, but reviewed in the light of what is reasonably feasible." (Guidelines, § 15051.)

Transit

Anderson spends a good deal of space in his brief attacking the EIR's analysis because it "fails to adequately identify, analyze, and mitigate the Project's impacts on transit, even though a number of bus lines will be delayed by eliminating traffic lanes to make bicycle lanes. [¶] Because the EIR contains no accurate baseline description, or even a map of existing transit in the Project area, a legally adequate analysis of the Project's significant impacts on transit is impossible." For Anderson, this omission "invalidates the EIR's transit impacts analyses and gravely flaws the EIR as an informational document."

Conspicuous by their absence is any attempt by Anderson to demonstrate either that the trial court's reasoning was erroneous or that there is nothing in the 36,000-page administrative record that qualifies as substantial evidence. To an appreciable extent, Anderson's argument merely repackages the claim that the EIR's baseline was inadequate, a claim we have already rejected. So Anderson's claim fails for these reasons alone. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572;

Sutter Health Uninsured Pricing Cases, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) Likewise on its merits.

The EIR clearly stated: "The project would have a significant effect on the environment if it would cause a substantial increase in transit demand that could not be accommodated by adjacent transit capacity, resulting in unacceptable levels of transit service or cause a substantial increase in operating costs or delays such that significant adverse impacts to transit service levels could result. The Bicycle Plan would not impact transit demand. Therefore, the focus of the transit impact analysis was on transit delay." As the trial court noted in its LOS analysis, the EIR then analyzed "transit travel delay," "transit reentry delay," and "transit/bicycle delay." The EIR explained why "an adjusted methodology was used to calculate transit delays at those locations where the LOS degrades to F," why "additional adjustments were made to calculate the total delay along a transit corridor," and various other steps in conformity with the 2000 Highway Capacity Manual.

We note at the outset that the EIR's analysis of impacts on "transportation" is one of the longest sections—778 pages—in an extraordinarily lengthy EIR. As the trial court noted (see fn. 18 and accompanying text, *ante*), the EIR did analyze transit impacts. However, undoubtedly because of the press of time, the trial court may not have done justice to the detail in the EIR, which, with respect to the individual project instanced by the court, reads as follows:

"Project 7-3 would add a Class II bicycle lane and remove one travel lane in both directions on Point Lobos Avenue between 48th Avenue/El Camino Del Mar and Balboa Street, except for the addition of sharrows on the south-eastbound segment of Balboa Street. Project 7-3 would also add a striped median from approximately the Cliff House to the Sutro Heights Park parking lot. With a separate project proposed by the National Park Service, the existing parking lot on the north side of Los Lobos Avenue would be expanded and relocated eastward by approximately 200 feet by the Park Service to accommodate approximately 135 parking spaces. As part of Project 7-3, approximately 10 on-street parking spaces would be removed on the north side of Point Lobos Avenue

from the 48th Avenue intersection westward by approximately 200 feet to provide space for a right-turn lane into the proposed new parking lot.

"Project 7-3 would also add a Class II bicycle lane in both directions along the Great Highway between Balboa and Cabrillo Streets by narrowing the travel lanes. There would be no parking removal in this segment."

Under the heading of "TRANSIT," the EIR continued:

"Muni bus line 18 operates in both directions along Point Lobos Avenue between the Great Highway and El Camino Del Mar, with approximately four buses per hour each way during the AM and PM peak periods. There are two westbound Muni bus stops, one on the far side of 48th Avenue/El Camino Del Mar and one located in front of the Golden Gate National Recreation Area west of Merrie Way. There are two eastbound bus stops, one on the nearside of the Sutro Heights Park parking lot entrance and one on the nearside of 48th Avenue/El Camino del Mar.

"Project 7-3 would remove on-street parking on the north side of Point Lobos Avenue between El Camino Del Mar Avenue and approximately 200 feet westward; the parking lane would be changed to a right-turn only lane. This right-turn lane would lead into the new access driveway of the parking lot, which is a part of a separate project being proposed by the National Park Service. Buses would stop in the right-turn lane to load and unload passengers. Because bus volumes are low (one bus every 15 minutes) and the parking lot occupancy during the weekdays would be low, there would be no significant conflict between buses and right-turning vehicles. While parking demand at the new parking lot on some weekends would be high, it is not expected that the right turn lane would cause significant delays to Muni service.

"The proposed eastbound bicycle lane would be striped along the curb on the south side of Point Lobos Avenue. When buses stop at the two eastbound Muni bus stops to board passengers, they would completely obstruct the bicycle lane and force bicyclists to pass to the left in the travel lane. This interaction between bicyclists and buses would not be different from current conditions, and would not affect transit capacity, transit

operation, or travel time. Therefore, there would be no significant transit impacts with implementation of Project 7-3."

Further, not every project had even a potential impact on the existing transit system. If a project's location was not near a transit line, the EIR said so. In Matrix 1.2, the "Summary of Project Level Impacts," the EIR identified 19 near-term improvements—almost one-third of the total—that would have "no impact" on transit.

Anderson insists that "the six-minute threshold of significance is invalid and unsupported" Thresholds of significance are not only authorized by the Guidelines, but local entities are encouraged to formulate them. (Guidelines, § 15064.7(a).) Anderson presents no reasoned argument as to why the trial court's analysis is either legally or evidentially deficient. Anderson has therefore failed to rebut the presumption of methodological correctness. (*Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 530; *Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 123 Cal.App.4th 1184, 1198.)

We add one final point to that analysis. Our colleagues in Division Four of this District have held that this Guideline "does not forbid an agency to rely on standards developed *for a particular project*." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896, italics added.) Citing this authority, the leading CEQA treatise states: "Agencies have authority to determine the significance of environmental impacts on a project-by-project basis . . . [¶] . . . or use significan[ce] standards specifically tailored for the project under review." (1 Practice Under the California Environmental Quality Act, *supra*, 13.12, p. 627.) That appears to be what happened here. Such is not invalid so long as the standard/threshold is not treated as conclusive or as foreclosing consideration of other evidence. (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

As previously noted, the substantial evidence standard "applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types

of challenges involve factual questions." (*Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th 1184, 1198.) The standard was met here.

Parking

Anderson's only attack on the "Parking" analysis is to challenge the conclusion of our colleagues in Division Three, cited by the trial court, that "[T]here is no statutory or case authority requiring an EIR to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability. The social inconvenience of having to hunt for scarce parking spaces is not an environmental impact; the secondary effect of scarce parking on traffic and air quality *is*. Under CEQA, a project's social impacts need not be treated as significant impacts on the environment. An EIR need only address the secondary physical impacts that could be triggered by a social impact. (Guidelines, § 15131(a))[21] [¶] Thus, the EIR correctly concluded that '[p]arking shortfalls relative to demand are not considered significant environmental impacts in the urban context of San Francisco. Parking deficits are an inconvenience to drivers, but not significant *physical* impact *on the environment*.' . . . The EIR then fulfilled its CEQA-mandated purpose by identifying ways in which the secondary *environmental* impacts *resulting from* the projected parking deficits could be mitigated, in keeping with the specific environmental strictures imposed by the City's own transit-first policy. It is not our place to reweigh the evidence or impose our opinion that the identified adverse effects could be better mitigated than as suggested in the EIR." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 697.)

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[21] The cited Guideline provides: "Economic or social information may be included in an EIR or may be presented in whatever form the agency desires. [¶] (a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes." (Guidelines, § 15131(a).)

This was very much the approach adopted in the EIR, which stated: "San Francisco does not consider parking supply as part of the permanent physical environment. Parking conditions are not static, as parking supply and demand varies from day to day, from day to night, from month to month, etc. Hence, the availability of parking spaces (or lack thereof) is not a permanent physical condition, but changes over time as people change their modes and patterns of travel." Citing Guidelines section 15131(a), the EIR classified parking deficits as "social effects, rather than impacts on the physical environment as defined by CEQA." It then explained how this "social effect" would be handled according to existing policy:

"In the experience of San Francisco transportation planners, . . . the absence of a ready supply of parking spaces, combined with available alternatives to auto travel (e.g., transit service, taxis, bicycles or travel by foot) and a relatively dense pattern of urban development, induces many drivers to seek and find alternative parking, shift to other modes of travel, or change their overall travel habits. Any such resulting shift to transit service, walking, and bicycling would be in keeping with the City's 'Transit First' policy. The City's Transit First Policy, established in the City's Charter Section 16.102 provides that 'parking polices for areas well served by public transit shall be designed to encourage travel by public transportation and alternative transportation.'

"The transportation analysis accounts for potential secondary effects, such as cars circling and looking for a parking space in areas of limited parking supply, by assuming that all drivers would attempt to find parking at or near the project site and then seek parking father away if convenient parking is unavailable. Moreover, the secondary effects of drivers searching for parking is typically off-set by a reduction in vehicle trips due to others who was aware of constrained parking conditions in a given area. Hence, any secondary environmental impacts which may result from a shortfall in parking in the vicinity of the proposed project would be minor and the traffic assignments used in the transportation analysis, as well as in the associated air quality, noise, and pedestrian safety analyses, reasonably address potential secondary effects."

Anderson argues that "the EIR's claim that eliminating 2,000 parking spaces is not subject to CEQA is a factual and legal fallacy," that by adopting *San Franciscans Upholding the Downtown Plan* the EIR approach "creates an erroneous standard" the consequences of which be that "under this rationale, air quality, noise and other impacts would be exempt from environmental review because they also vary." We disagree. Anderson mistakenly identifies what Guidelines section 15131(a) treats as "social effects" as the equivalent to a "significant impact," that is, one that presents "a substantial or potentially substantial, adverse change in the environment." (§ 21068; Guidelines § 15382.) But the CEQA Guidelines expressly state that a social effect "*shall not be considered a significant effect on the environment*" (Guidelines, § 15382, italics added), and that the "focus of the analysis [in the EIR] shall be on the physical changes." (*Id*. at § 15131(a).)

Air Quality

Anderson argues that the EIR is defective because it "fails to identify the increased pollutant and GHG emissions from idling vehicles due to degraded intersection levels of service caused by the Project; fails to disclose or analyze the amount the amount of emissions or the distribution of the pollutants that this increase will cause; and fails to evaluate the effects of increased GHG emissions on climate change. Nor does the FEIR adequately discuss the potential effects of the increase in emissions on human health."

Again, Anderson is simply resubmitting, in the identical language, the arguments made to the trial court, making no real effort to challenge the trial court's reasoning or show that it is not supported by substantial evidence. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) In any event, an examination of the 24 pages of "air quality" impacts in the EIR quickly disproves some of Anderson's arguments.

The EIR stated that "Project-specific CO concentrations and mobile source air toxics (MSAT) emissions were estimated near selected intersections," meaning one

intersection for each of the eight planned clusters, "in the San Francisco Bicycle Plan Area."

"This selection," the EIR explained, "was intended to provide an indication of project effects on MSAT emissions from roadways one act of the Cluster areas . . . . The intersections were selected because MSAT emission rates are known to be highest where traffic flow speeds are relatively low (as they are near congested intersections), . . . because physical modifications to roads/intersections under the Plan could worsen congestion and increase MSAT local emissions. The chosen intersections were selected specifically to represent worst-case air quality conditions for their Cluster areas, so that conclusions derived from model results at these intersections would reliably forecast the maximum adverse air quality impacts in the appropriate Cluster area." "CO levels were estimated using the CALINE4 dispersion model," which "is the preferred method of estimating CO concentrations" and "uses roadway-specific peak-hour traffic volumes to calculate ambient CO air concentrations." "Many of the on-street bikeway improvements would only require additional signage and pavements marking and would not affect motor vehicle operations. These improvements would not result in significant adverse air quality imports. Some of the proposed bikeway improvements would reduce the number of vehicle travel lanes or reduce or reconfigure turn lanes. The removal and reconfiguration of such lanes could reduce in localized traffic congestion and could result in localized, elevated levels of CO," but "No violations of CO ambient air quality standards are predicted."

"The MSAT analysis was focused on the six MSAT pollutants identified by the EPA as being the highest priority for motor vehicle sources (i.e., diesel particulate matter (DPM), acrolein, acetaldehyde, formaldehyde, benzene, and 1.3-butadiene)." "In all cases, MSAT emissions were found to be considerably lower in the future (Year 2025) because of the increasingly stringent control measures that the CARB [California Air Resources Board] is expected to impose on the motor vehicle fleet (and other TAC [Toxic Air Contaminant] sources) over the next 15 years. However, future MSAT emissions with the Proposed Project are expected to be higher in certain areas than they

would be without the Proposed Project. . . . But even so, the TAC emissions from the street segments leading to these intersections would still decrease from their existing levels, just not as much as they would have had the additional Plan-induced congestion not occurred. Also, the increased MSAT emissions would only occur on the portions of the streets that are affected by the intersection's congested operation; at other portions far from the intersection, MSAT emissions would be much lower. Thus, bicyclists using the bicycle routes installed under the Plan would be exposed to these higher MSAT exposures only over short segments of their routes that pass through the few intersections with increased traffic congestion from Plan implementation."

The EIR set out tables establishing the amounts of CO and TAC emissions measured at the specified intersections.

The EIR discussed greenhouse gas (GHG) emissions, but concluded they "are expected to be minimal and quantification of these emissions is extremely difficult." And it went on, "The Proposed Project would emit CHG's during construction of individual projects and from the amount of concrete required for specific projects. However, these construction emissions could be offset should the Bicycle Plan and its individual projects shift some modes of transportation from vehicles to bicycles. The Proposed Project would not impede actions to meet either the state GHG reduction goals or San Francisco's GHG reduction goals. In fact, the Proposed Project . . . [¶] . . . would further the goals of reducing GHG by shifting transportation modes away from motor vehicles and, therefore, the Proposed Plan would not be significant individually or contribute considerably to the cumulative effects of global climate change."

This analysis is more than adequate to meet Anderson's objections. The EIR clearly shows that it was considering the maximum numbers of vehicles passing through the specified intersections. This measuring cannot have been done solely while cars were passing through the intersection. Stopping at intersections is an intrinsic aspect of urban driving. (See *People v. Nelson* (2011) 200 Cal.App.4th 1083, 1098-1099; *id*. at pp. 1106-1107 (conc. opn. of Richman J.).) In short, Anderson's point about idling is misdirected, because idling *is* encompassed by the EIR's analysis. The EIR's statements

about "worst-case air quality conditions," and its frank acknowledgement that "To the extent that the Proposed Project reduces the levels of service at busy intersections, those intersections could experience higher concentrations of CO with the Proposed Project than they would without it," demonstrates that Anderson's point about "degraded intersection levels of service caused by the Project" *was* considered.[22] And the tables in the EIR refute Anderson's contention that "the amount of pollutants" was not considered.

Anderson faults the EIR because it treats drivers and cyclists as the only considerations, omitting "pedestrians and the other 97% of travelers who do not use bicycles." But pedestrians would not be exposed to air contaminants in any greater extent than cyclists, so the measurements would be equally applicable. Anderson points to nothing in the record substantiating his contrary assumption.[23] The same is true for his implicitly treating the project as entailing a permanent increase in GHG levels, when the EIR plainly states they are "expected to be minimal"—and transitory. Moreover, Anderson seems oblivious to the Bicycle Plan's goal to have bicycle use reduce use of motor vehicles, which would of course lower GHG emissions. Finally, to expect the EIR to "discuss the potential effects of the increase in emissions on human health" would appear to require the very same unquantifiable speculation Anderson otherwise finds so objectionable, not to mention increase the size of the EIR he already deems elephantine.

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[22] Indeed, the 61 "study intersections" were chosen because they already had abnormally high "average delay," an inferior LOS rating, or "the existing volumes were high or congested." In addition, the Transportation Impact Study stated that it "account[ed] for potential secondary effects, such as cars circling and looking for a parking space in areas of limited parking supply. . . at or near the project site and then seeking parking farther away if convenient parking is unavailable. Moreover, the secondary effects of drivers searching for parking is typically off-set by a reduction in vehicle trips due to others who are aware of constrained parking conditions in a given area. Hence, any secondary environmental impacts which may result from a shortfall in parking in the vicinity of the proposed project would be minor and the traffic assignments used in the transportation analysis, as well as in the associated air quality, noise, and pedestrian safety analyses, reasonably address potential secondary effects."

[23] It deserves mention that each of the near-term improvement analyses included a discussion of "pedestrian volumes."

Traffic

Anderson's argument on this point incorporates as its predicate his discussion about the EIR's "flawed baseline," and then attacks the EIR because the 61intersections analyzed are "not adequate for a project of this scope" to measure "spillover traffic where the Project eliminates traffic lanes and street parking and diverts traffic to other streets." Yet again, Anderson makes no effort to refute the trial court's conclusion that "the EIR adequately discussed 'spillover traffic,' " which is a prominent feature of the Transportation Impact Study commissioned by the City. (See fns. 20, 22, *ante*.) The point has therefore not been preserved for review. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.)

Anderson plainly thinks that the number of examined intersections should have been greater, but he advances no feasible limit as to the number or locations. Simply to demand "More" will not overcome the numerous authorities directing a reasonable approach to an EIR but not mandating encyclopedic perfection. (Guidelines, §§ 15006(o), 15126.6(a), 15151; *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, 406-407; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*, *supra*, 18 Cal.App.4th 729, 746-747.) As our Supreme Court noted early on: "A project opponent . . . can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR." (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, at p. 415.)

The EIR never denied that the project might "increase traffic delay in some areas of the City" or that it had the "potential to slow some transit movement in some locations." And, as already mentioned, the issue of various "transit"-related delays was examined at some length. Because Anderson is challenging only "the scope of an EIR's analysis of a topic," the EIR survives if it is supported by substantial evidence.

(*Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th 1184, 1198.) It is.

Noise

The EIR devoted eight pages to this subject. Anderson gives it one paragraph: "The EIR's analysis of noise impacts from the Project's increased traffic congestion is also defective, with the initial flaw of selecting intersections where existing noise levels were already 'relatively high,' minimizing the increased noise from the Project's impacts. The EIR concludes that increased congestion will not result in increased noise by relocating' 'traffic flows . . . to portions of the street farther from the facing homes and other noise-sensitive receptors,' adding that, 'Because the Proposed Project would not alter existing traffic volumes, it would not lead to an increase in traffic-related noise.' These unsupported conclusions do not comply with CEQA. There is no analysis of the additional noise from added congestion, spillover traffic in nearby streets, or circling to find parking."

Once more, Anderson loses because he mounts an attack that completely ignores the trial court's reasoning and makes no effort to demonstrate the absence of substantial evidence. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) This time Anderson's argument fails for an additional reason.

" 'Where a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion.' " (*Fraley v. Allstate Ins. Co*. (2000) 81 Cal.App.4th 1282, 1291; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, p. 769.) " ' "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." ' " (*In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1392-1393, quoting *Estate of Bibb* (2001) 87 Cal.App.4th 461, 470.) "A 'passing reference' in a brief does not suffice to establish a legal argument." (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 526, fn. 9.) Simply

asserting that a lengthy EIR contains "unsupported conclusions [that] do not comply with CEQA" comes within these rules.

Cumulative Impacts

Anderson opens his argument on the trial court's analysis of the EIR's cumulative impacts assessment by attacking the purported "legal error of using the computer-generated Year 2025 baseline for its cumulative traffic, transit and air quality analyses." It has already been shown that use of this methodology cannot be overturned.

The remainder of Anderson's contention, in its entirety, runs as follows:

"There is no identification of past, other current, and foreseeable future projects affecting traffic, transit, parking, and air quality, such as the Market-Octavia Plan, the Eastern Neighborhoods Plan, and the Treasure Island project that will have impacts on traffic, transit, and parking that must be identified in the EIR and analyzed in combination with the Project's impacts, even though that information was readily available to [the] City.

"[The] City's conclusion that the Project will not itself generate traffic is beside the point, since it will cause many significant traffic, transit, and air quality impacts by reducing street capacity, eliminating traffic lanes, forced turning, and generating spillover traffic. Those impacts, when combined with other projects that will generate increased traffic, must be analyzed in the EIR. The failure too do so is a failure to proceed as required by CEQA."

Again, there is no attempt to rebut the trial court's reasoning or cite to the record to buttress the argument. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.) Instead, there is simply the naked assertion of failure. Anderson throws out other plans and projects as if they will self-evidently have "impacts on traffic, transit, and

parking that must be . . . analyzed in combination" with this project.[24] But he does not explain the nature of these plans and projects and show why they must inevitably produce the impacts he asserts. Anderson cannot throw this issue into the lap of this court and expect us to make good his omission. (*In re Marriage of Mosley*, *supra*, 165 Cal.App.4th 1375, 1392-1393; *Defend the Bay v. City of Irvine*, *supra*, 119 Cal.App.4th 1261, 1266; *Lewis v. County of Sacramento*, *supra*, 93 Cal.App.4th 107, 113.)

Substantial Evidence Supports The Trial Court's Conclusion That The EIR's Mitigation Measures Were Adequate

Finally, the trial court rejected the petitioners' claim that the discussion of mitigation measures in the City's EIR was inadequate, with this lengthy analysis:

"Petitioners argue that the EIR is inadequate because many of the individual projects had significant impacts for which no mitigation was identified. The Court rejects this argument as well. 'With regard to the discussion of mitigation measures, an EIR need not be exhaustive or perfect, it is simply required to describe feasible measures which could minimize significant adverse impacts.' (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 696, citing CEQA Guidelines § 15126.4(a)(1) and Pub. Resources Code § 21100(b)(3).) Indeed, CEQA case law includes many examples where significant impacts from a project were not amenable to any mitigation. (*Citizens for Quality growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 444-445 [no mitigation measures identified for impacts to wetlands; only way to avoid impacts were no project alternative and one other alternative]; *Markley v. City Council of City of Los Angeles* (1982) 131 Cal.App.3d 656, 672 [no mitigation measure for cumulative impact to housing].)

"In this case, there is substantial evidence that the City determined that some of the significant impacts identified were either not amenable to mitigation due to the constrained roadway geometry, or in some instances, the impacts from one design option were not found (and thus were 'mitigated') in the second option. (AR 25:14605.) For

[24] The EIR did explain that "other planning efforts" it had considered were the Better Streets Plan, the Livable Streets effort, and the Transit Effectiveness Project.

many of the project pieces, 'mitigation' was built into the project design, for example by adding another turn lane to an intersection with a near-term improvement. (AR 19:10501; 10708 [Option 1 for 5th Street bike lanes includes left turn pocket at 5th Street and Folsom Street].) For many others for which there was more than one design, the alternative design could avoid or reduce the impact from the other design.

"Petitioners also contend that the discussion of mitigation measures was inadequate because the City failed to analyze every mitigation measure deemed infeasible in the EIR and failed to support every infeasibility finding by substantial evidence. (*Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1509.) But CEQA Guidelines 15126.4 states that an EIR must discuss feasible mitigation measures, not infeasible mitigation measures. Moreover, the *Lincoln Place* decision is distinguishable and does not resolve the issue in this case. The Court in *Lincoln Place* was faced with the question of what type of CEQA process was required when an agency adopted a feasible mitigation measure at project approval, but later found that the mitigation measure was no longer feasible; not whether feasible mitigation measures needed to be discussed in an EIR. The Court accepted the notion that adopted mitigation measures could be deleted, but rejected the notion that the lead agency could simply ignore the mitigation measure it previously found feasible, and determined that the proper procedures for deletion of a previously adopted mitigation measure was a supplemental EIR under CEQA Guidelines section 15163(c). Thus the *Lincoln Place* court was not required to decide the issue presented here.

"In support of their contention that analysis of every infeasible mitigation measure must be included and supported in the EIR, petitioners rely on the following passage in *Lincoln Place Tenants Association*, 130 Cal.App.4th 149: '[B]ecause an initial determination a mitigation measure is infeasible must be included in the EIR and supported by substantial evidence it is logical to require a later determination a mitigation measure is infeasible be included in a supplemental EIR and supported by substantial evidence.' (*Id*. at 1509.)

"*Lincoln Place Tenants Association* does not support Petitioners' position. The present case does not involve previously adopted mitigation measures *identified* in the EIR, which is the scope of the statutory requirement. Rather, the present case involves the City's lack of discussion of mitigation measures not even deemed worthy of mention in the EIR. *Lincoln Place Tenants Association* cannot be read as requiring that every idea occurring to anyone, however informally, and considered, however briefly, but determined to be unworkable, must be fully analyzed in the EIR. Subsection (a)(3) of the statute and Guidelines, to which the court referred, provides only that the agency must include a finding that makes 'infeasible the mitigation measures . . . *identified* in the EIR.' (Italics added.) Thus, based on the statutory language, the mitigation measure must have initially been sufficiently significant to be identified in the EIR to require an infeasibility analysis.

"*Lincoln Place Tenants Association* does not suggest a departure from prior case law or that any mitigation measures not requiring analysis under the statute must nevertheless be included in the EIR with an evidentiary showing. Here, every potential mitigation measure identified in the EIR, whether proposed by the City or by the public, was analyzed, as were potential mitigation measures contained in the project alternatives. In response to specific suggestions for potential mitigation measures, the Department responded to each suggestion. For example, in response to a suggestion to mitigate loading impacts on Second Street from project 2-1 by creating new loading zones on perpendicular streets, the Department noted that 'large trucks could not turn into alleys or park in the alley, some alleys were dead end streets, and some alleys contained residences.' Thus, the Department found this suggestion infeasible. (AR 27:15363.) Similarly, the EIR responded to commentators who suggested mitigation during the comment period. (AR 22:12433 [response to suggested mitigations for project 6-2].) Thus the City fulfilled its obligation of analyzing every mitigation measure identified in the EIR.

"Petitioners' s alternative reading of the statute would result in an impossible process by requiring a discussion of every idea thought of, no matter how fleeting or

impractical as opposed to the practical requirement of analyzing those mitigation measures identified as real prospects by the agency or the public. There is no suggestion that any such measure was not analyzed in this case. Petitioners' allegation that project planners simply ignored feasible mitigation for significant impacts is unsupported by any evidence. As was the case with alternatives, the Court finds it telling that Petitioners do not suggest any other mitigation measures that the EIR should have included or analyzed. (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029 [EIR must respond to suggested facially feasible mitigation measures]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509 [because petitioner failed to introduce other alternatives, there was only uncontroverted evidence that project was only feasible means to accomplish project objectives].)

"There is no reason in the record to think the City arbitrarily failed to identify or analyze significant mitigation measures. The Court finds, based on the EIR and the record, that the City attempted to mitigate all significant impacts, even if the only feasible mitigation could not reduce the impact to a level of insignificance. For some improvements, the City identified mitigation measures such as lengthening the time for green lights. (*See e.g.*, PJR 2753.) In addition, for many impacts where no feasible mitigation measures were identified, the impact was a cumulative one due to increases in background traffic congestion, irrespective of the inclusion of a near-term improvement. (*See e.g.*, AR 19:10675; 10814.) Finally, the Court notes that the transportation consultant was specifically told to try to find mitigation measures for project impacts. (AR 15:7801-02.) In short, the City analyzed and 'describe[d] feasible measures which could minimize significant adverse impacts.' (*San Franciscans Upholding the Downtown Plan*, *supra*, 102 Cal.App.4th 4th at p. 696.)" (Fns. omitted.)

Anderson's contention that "the EIR fails to mitigate each of the project's significant impacts" is another substantial evidence issue. An EIR's determinations concerning the feasibility or effectiveness of mitigation measures require only this quantum of support. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th 412, 435; *Citizens for Open Government v. City of*

Lodi, *supra*, 205 Cal.App.4th 296, 323; 1 Practice Under the California Environmental Quality Act, *supra*, § 11.39, 573-574 and decisions cited.)

Before proceeding to an analysis of this contention, we feel obliged to mention that it brings up the most glaring editorial distraction of the EIR. The EIR's table of contents does a fairly good job of acquainting the reader with the structure and contents of what will come. Finding "project description," "environmental setting and impacts," and "alternatives" is no chore. But conspicuously missing, in fact totally absent, is the word "mitigation." It is not until the reader gets to part V, which is titled "Environmental Setting and Impacts" in the table of contents, that the reader notices the actual pages bear the heading "Environmental Setting, Impacts, *and Mitigation Measures*." (Italics added.) Further digging will reveal that mitigation measures are grouped and discussed by cluster, that is, for the five of the eight clusters where significant impacts were found. To be fair, there is also a table entitled "Summary of Significant Impacts and Mitigation Measures," but it is in part II ("Executive Summary"), subpart B ("Environmental issues"). No EIR, particularly one of this size, should make a decisionmaker or reader work so hard to find information. The City makes no attempt to defend this failure to comply with the Guidelines governing consideration of the subject in an EIR. (Guidelines, §§ 15126, 15126.4, 15160.)

Turning to the merits, it is here that Anderson most precisely directs his fire. Of the 139 significant impacts noted in the EIR, Anderson challenges 107. For 84, he says, "[t]he EIR makes no attempt to identify and analyze mitigations of each significant impact, and instead repeatedly claims that 'no feasible mitigations have been identified' . . . ." And, he goes on, this is nothing more than a specious and "unsupported" mantra, "since there are no feasibility analyses in the EIR. Those analyses must be included in the EIR and supported by substantial evidence. [Citing *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724, 729.]" "The EIR admits that it conducted no feasibility analyses on 23 of its proposed mitigations, concluding anyhow that it must find that those significant impacts are unavoidable. . . . [¶] For 25 . . . , the EIR engages in a meaningless cut-and-paste exercise proposing traffic signal and

street configuration changes that it admits will not mitigate the impacts, but vows to implement them anyway. [¶] . . . [¶] The few mitigations that the EIR claims will reduce impacts to a 'less than significant' level consists of manipulations to get the transit impacts under the arbitrary six-minute threshold." The issue of parking spaces makes a reappearance because their elimination was not even analyzed for mitigation. Finally, Anderson maintains that the EIR's "failure to identify mitigations found infeasible does not make them 'unavoidable.' "

Several of these points have already been addressed. Specifically, Anderson's argument about "manipulations to get the transit impacts under the arbitrary six-minute threshold" presumes the illegitimacy of that threshold, but the contrary methodological presumption has not been rebutted. The same is true for the eliminated parking spaces, which have been shown not to qualify as an environmental impact.

Excepting parking spaces, Anderson is not asserting that significant impacts were omitted from the EIR. Numerically, Anderson's most significant complaint slams the EIR for its repeated claims that "no feasible mitigations have been identified." But nothing in *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, *supra*, 150 Cal.App.4th 683 supports Anderson's claim that analyses of rejected mitigation measures "must be included in the EIR." The pages cited by Anderson for this proposition are simply recitals of "applicable law" (*id*. at p. 724); a discussion of the peculiar situation of a private developer's "last-minute offer" to pay $45,000 as a voluntary "mitigation fee"; and the unexplained reduction of that figure to $43,897 when the EIR was certified, while the EIR itself never mentioned the developer making such a payment, which qualified as significant new information that required recirculation of the EIR. (*Id*. at pp. 729-730.)

To be fair, there is language in *Lincoln Place Tenants* to the effect quoted by Anderson (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 449 [" 'an initial determination a mitigation measure is infeasible must be included in the EIR' " quoting *Lincoln Place Tenants Assn. v. City of Los Angeles, supra,* 130 Cal.App.4th 1491, 1509]). But no other court has embraced this language, and we

believe that a sounder statement is the established principle that "Nothing in CEQA requires an EIR to explain why . . . . mitigation measures are infeasible." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 245; see *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1054-1055 [rejecting contention that "the city was required to set forth an analysis of each mitigation measure that it considered and rejected as infeasible"].) Inclusion of mitigation measures considered but rejected as infeasible is not obligatory, because courts have long held that "CEQA does not require analysis of every *imaginable* . . . mitigation measure." (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1083; accord, e.g., *Clover Valley Foundation v. City of Rocklin*, *supra*, 197 Cal.App.4th 200, 244; *Cherry Pass Acres & Neighbors v. City of Beaumont*, *supra*, 190 Cal.App.4th 316, 348.)[25]

In a related vein, none of Anderson's citations to the EIR substantiate his assertion that "the EIR admits that it . . . conducted no feasibility analyses on 23 of its proposed mitigations."

Anderson's blast at the EIR for its "meaningless cut-and-paste exercise" is nothing more than an attack on the efficacy of the selected mitigation measures, and his snide claim that the EIR 25 times "admits" that some proposed "changes . . . will not mitigate the impacts, but vows to implement them anyway!" is unfair. What the EIR does in each of the 25 instances is to note that a proposed mitigation measure or measures "will not reduce the project impacts to a less than significant level." Rather than coming off as underhanded, these admissions make the Planning Department seem admirably above board. We certainly do not think any agency in charge of reducing environmental impacts is to be faulted for implementing measures that reduce, but do not entirely neutralize, those impacts.

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[25] Such inclusion would only have added a goodly number of pages to a document Anderson repeatedly blasts as overlong already, and would be difficult to square with the Supreme Court's periodic admonitions that "[t]he purpose of CEQA is not to generate paper . . . ." (*Bozung v. Local Agency Formation Com*. (1975) 13 Cal.3d 263, 283.)

Anderson here must confront the entrenched principle that the mechanics of mitigation are a matter where judicial deference prevails unless the absence of substantial evidence is demonstrated. (See 1 Practice Under the California Quality Act, *supra*, § 14.9, pp. 693-394 and decisions cited.) For the last time, Anderson makes no effort to carry that burden, or to disprove the administrative record evidence cited by the trial court. (*Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1572; *Sutter Health Uninsured Pricing Cases*, *supra*, 171 Cal.App.4th 495, 505; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 547.)

Such an effort would in any event fail because the City's brief proves that the record does include such evidence, above and beyond that cited by the trial court: "Decisionmakers noted that 'a coordinated effort between SFMTA, its transportation consultants, and the MEA [the Major Environmental Analysis division of the Planning Department] staff was made to identify feasible mitigation measures to reduce the potential impacts identified in the Transportation Impact Study with respect to traffic, transit and loading to a less than significant level. . . . In some instances, due to the constraints of the existing roadway conditions, no feasible mitigation measures have been identified.' [II AR 1315, 1328-1329] Bill Wyko, the City's Environmental Review Officer, specifically stated that the City 'exhaustively looked at the feasibility of mitigating each and every significant impact. In many cases, it's a matter of street space.' [II AR 10837] He further noted that, for example, with changes to signal timing—a technique sometimes used to reduce impacts to intersection delays—planners could not look at potential mitigation measures in isolation, as signal timing changes had to be considered in light of how they impacted the other parts of the intersection, such as the ability of a pedestrian to cross the street, or the LOS for the other approaches to the intersection. The traffic consultant was specifically tasked with determining feasible mitigation measures [II AR 13235, 78701-7802], and the Transportation Impact Study contains a section for each cluster of projects which outlines various mitigation measures for identified impacts. [II AR 11265 [cluster 1], 11506013 [cluster 3].]"

In conclusion, this would appear to be a distinctly appropriate occasion for judicial deference to administrative expertise. The Planning Department and the Municipal Transit Authority have been involved with the Bicycle Plan since its inception 15 years ago. They must be presumed to have some acquaintance with urban transportation in general, the flow of San Francisco traffic in particular, and, most particularly, the nuts and bolts of the actual operations of the Bicycle Plan. And they undoubtedly have a healthy respect for the law of unintended consequences. So, when they make decisions based on their estimation of which measures will in fact mitigate, there should be a presumption that their recommendations are based on knowledgeable good faith. (See Evid. Code, § 664; *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, 393 ["A court's task is not to . . . determine . . . whether adverse effects . . . could be better mitigated. We have neither the resources nor the scientific expertise to engage in such an analysis"]; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th 523, 530; *Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th 911, 918-919.) Such an attitude accepts that "CEQA does not, indeed cannot, guarantee that [governmental] decisions will always be those which favor environmental considerations." (*Bozung v. Local Agency Formation Com*., *supra*, 13 Cal.3d 263, 283; see *Federation of Hillside & Canyon Assns. v. City of Los Angeles*, *supra*, 126 Cal.App.4th 1180, 1198 ["a public agency is not required to favor environmental protection over other considerations"].)

As we mentioned at the outset of this opinion, it was for Anderson, as the appellant, to demonstrate that prejudicial error infected the EIR. Although it might seem easy to find fault with a 2000- plus page EIR, Anderson has failed to do so, in the sense that he has not identified a materially inadequate or misleading particular. The EIR may be less than perfect, but it does fulfill its mission of being an informational document that "provide[d] public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list the ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061) In sum and in short, Anderson has shown no

error in connection with the EIR itself. He does, however, demonstrate error in the process by which the EIR was certified.

The Absence Of Infeasibility Findings Was A Prejudicial Abuse Of Discretion

To repeat, CEQA specifies that "no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out" unless the public agency finds that the significant effects are either mitigated, or that "economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report." (§ 21081.) If significant effects are identified, the EIR must describe feasible measures that could mitigate them (§§ 21002.1, subd. (a), 21100, subd. (b)(3); Guidelines, § 15126.4(a)(1)) or determine that no mitigation is feasible. (Guidelines, § 15091(a)(3).) In the latter situation, the public agency can still proceed with the project, but only after adopting a statement of overriding considerations. (§ 21081, subd. (b); Guidelines § 15093.)

On this point the petitioners lost in the trial court because the court concluded as follows:

"The Court rejects Petitioners' claim that the City's findings of infeasibility of project alternatives were not supported by substantial evidence. Under CEQA, if an EIR identifies potentially feasible alternatives, the Project sponsor must either adopt them, or find that the alternatives are, in fact, not feasible. (Pub. Resources Code, §§ 21102, 21081(a).) The City did exactly that.

"Here, the EIR identified alternatives to the Project that were potentially feasible including, for most near-term improvements, two potentially feasible alternatives in design. (Guidelines, § 15126(a).) Upon adoption, however, the City found that these potentially feasible alternatives were, in fact, infeasible based on several factors, including the failure to meet the project objectives or to comply with City policies. (AR 7:3413-3462.) Findings of infeasibility on policy grounds are proper. (*California Native*

Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1001.) Likewise, an agency may reject an alternative as infeasible if it is inconsistent with the project objectives. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1401; *Jones v. Regents of the University of California* (2010) 183 Cal.App.4th 818 [court upholds rejection of off-site alternative due to failure to meet project objectives].) Indeed, in *California Native Plant Society v. City of Santa Cruz*, the court upheld Santa Cruz's rejection of alternatives that did not meet the key project objective of completing a bicycle corridor that would encourage alternative transportation. (*California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4th at 1001.)"

Anderson hopes to have the statement of overriding considerations invalidated because it was not accompanied by "the required infeasibility findings," specifically, "findings on mitigating each of the 135 significant impacts in the EIR." Yet again, not a word addressing the trial court's analysis nor a mention of the reported authorities cited by the trial court can be found in Anderson's opening brief. He does, however, identify a fundamental error.

"When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives are *actually* feasible. (*Mira Mar* [*Mobile Community v. City of Oceanside*]*, supra,* 119 Cal.App.4th at p. 489; Guidelines, § 15091, subd. (a)(3).) While staff may draft the necessary findings, the decisionmaking body is responsible for the ultimate determination of feasibility, which cannot be delegated. (Guidelines, § 15025, subd. (b)(2); see *id.,* § 15091, subd. (a)(3).) [¶] At this final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report.' (§ 21081, subd. (a)(3).) Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives." (*California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4th 957, 999-1000.)

Here, the Planning Commission adopted an "Evaluation of Project Alternatives" prepared by the Planning Department staff. The evaluation recited the reasons why staff was opting for the "preferred project" design mentioned earlier, and why, in light of this decision, all other project alternatives—including the "no project" option—should be rejected. Each part of the evaluation ended: "For the foregoing reasons as well as economic, legal, social, technological, and other considerations set forth herein and elsewhere in the record, the [specified] alternative is hereby rejected." This language was in effect ratified when the Board of Supervisors "affirmed" the Planning Commission's decision, so it will be treated as the Board's finding on these points. The trial court implicitly treated the Board's "rejection" of the alternatives as equivalent to a finding that the alternatives were "infeasible," as were the ability to mitigate significant environmental impacts. (§ 21081, subd. (a)(3); Guidelines § 15091(a)(3).) Here, we cannot agree.

The City tells us that "No mitigation measures identified in the EIR were found infeasible, and thus findings of infeasibility were not required." The City also believes that "Anderson appears confused by this issue." But any confusion seems to be in the City's position.

The City appears to agree with the trial court, maintaining that specific findings of infeasibility were not necessary because the alternatives were rejected with a statement of overriding considerations. Yet such an approach cannot be reconciled with the plain language of section 21081:

"[N]o public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

"(a) The public agency makes one or more of the following findings with respect to each significant effect:

"(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

"(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

"(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

"(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment."

This statutory language is predicated on the existence of significant effects on the environment—not the rejection of alternatives. The express language requires "one or more . . . findings with respect to *each* significant effect." (Italics added.) Every such finding for each significant impact is a so-called infeasibility finding. (See *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 100.) The leading treatise states plainly: "One or more of these findings *must* be made for *each* significant environmental impact identified in the EIR." (2 Practice Under the California Environmental Quality Act, *supra*, § 17.16, p. 813, italics added.) If any doubt lingers, it is dispelled by various Guidelines.

Paralleling the statutory language, one guideline provides: "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of a project unless the public agency makes *one or more written findings for each of those significant effects*, accompanied by a brief explanation of the rationale *for each finding*." (Guidelines, § 15091(a), italics added.) Two guidelines expressly state a statement of overriding considerations is not a substitute for these findings. (Guidelines, §§ 15091(f), 15093(c).) And another directs that the public agency "must respond to each significant effect identified in the EIR by making findings under [Guidelines §] 15091 *and if necessary by making a statement of overriding considerations*." (Guidelines, § 15121(b), italics added].)

Merely because the Board of Supervisors adopted a valid statement of overriding considerations when it discarded some alternatives would not necessarily relieve the Board of the obligation to make the specific findings mandated by section 21081 and the relevant Guidelines concerning significant environmental effects. (*California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4th 957, 983; *Federation of Hillside & Canyon Assns. v. City of Los Angeles*, *supra*, 126 Cal.App.4th 1180, 1201.)

The revised CEQA findings adopted by the Board of Supervisors (see fn. 15, *ante*) adequately discuss the perceived failings of the alternatives recommended for rejection. For example, rejection of the No Project alternative was recommended because it would "fail to increase bicycle safety" in conformity with the Bicycle Plan, and "fail to close gaps in the existing bicycle network, which surveys have shown is a major impediment to additional increases in bicycle mode share in San Francisco." "Project-Level Alternatives A and B" got a thumbs down because they "would not benefit from the . . . refinements and modifications" made to the Preferred Project and "would not improve bicycle network functioning and safety to a greater extent than would be accomplished by the Preferred Project."

But the boilerplate conclusion just quoted is inadequate to establish a valid finding of infeasibility. It does not mention, or incorporate by reference, the statement of overriding considerations. And the formulation "economic, legal, social, technological, and other considerations set forth herein *and elsewhere in the record*" (italics added) could hardly be more inclusive—or less precise. As findings on the alternatives, each is "conclusionary and too general." (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034.) "[M]erely rejecting the project alternative was insufficient." (*Resource Defense Fund v. Local Agency Formation Com*. (1987) 191 Cal.App.3d 886, 897.) The Board of Supervisors did not identify which of these "considerations" was found applicable and why it is accepted as persuasive. (See Guidelines, § 15093(b) ["the agency shall state in writing the specific reasons to support its action"].) In short, "the board . . . did not explain *why* it found the alternative[s] . . . infeasible." (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, *supra*, at

p. 1034.) While the decision maker's explanation or rationale for its decision can be "brief" (Guidelines, § 15091(a)), "mere conclusory findings . . . are inadequate." (*Environmental Protection & Information Center v. California Dept. of Forestry & Fish Protection* (2008) 44 Cal.4th 459, 516-517; see 25A Miller & Starr California Real Estate (3d ed. 2007) § 25A:17, p. 25A-96 ["When there are adverse environmental effects, a mere statement that alternatives are '. . . infeasible' is not sufficient"].) The Board of Supervisors' findings rejecting the alternatives set out in the EIR do not measure up.

The situation with respect to significant environmental impacts that cannot be mitigated is better, but still flawed.

CEQA defines "significant effect on the environment" as meaning "a substantial, or potentially substantial, adverse change in the environment." (§ 21068.) The "CEQA Findings" adopted first by the Planning Commission and then by the Board of Supervisors included the following, at the start of section IV under the heading "**Significant Impacts That Cannot be Avoided or Reduced to a Less Than Significant Level**": "Based on substantial evidence in the whole of these proceedings, the Planning Commission finds that, where feasible, changes or alterations have been required, or incorporated into the Project to reduce the significant environmental impacts listed below as identified in the FEIR. The Commission determines that the following significant impacts on the environment, as reflected in the FEIR, are unavoidable, but under Public Resources Code Section 21081(a)(3) and (b), and *CEQA Guidelines* 15091(a)(3), 15092(b)(2)(B), and 15093, the Commission determines that the impacts are acceptable due to the overriding considerations described in Section VII below. This finding is supported by substantial evidence in the record of this proceeding. Also, as set forth above, the mitigation measures identified in this section and in Exhibit 1, the Mitigation Monitoring and Reporting Program, are adopted as part of the Project even though the impacts will remain significant and unavoidable."

The following section identified 15 "potentially significant impacts" that could be mitigated, but 90 impacts that "cannot be avoided or reduced to a less than significant level."

Here, unlike with the alternatives, there is an incorporation by reference of the entirety of section VII's statement of overriding considerations. Then comes a discussion of 15 near-term projects under the heading "*Project-Level Significant and Unavoidable Impacts and Overriding Considerations*." Finally, and under the heading "*Bicycle Plan and Long-Term Project Related Significant and Unavoidable Impacts and Overriding Considerations,*" there are two pages devoted to "Plan-related Significant and Unavoidable Impacts" "Long-term Improvements-related Significant and Unavoidable Impacts."

Concerning the project discussions in the *Project-Level Significant and Unavoidable Impacts and Overriding Considerations,*" the discussion for "Project 2-16: Townsend Bicycle Lanes, 8th Street to Embarcadero, Mod. Option 1" is typical: "Numerous significant and unavoidable intersection and transit delay impacts accompany this project as further detailed in the section on significant and unavoidable impacts [i.e, section IV]. These impacts, however, are balanced against the benefits of the preferred project supporting a crucial element of the Bicycle Network along Townsend Street. As part of Bicycle Route 36, Townsend Street provides a crucial link from the Embarcadero west through SoMa [the area south of Market Street], as well as connections to numerous north-south bicycle routes to/from downtown and key destinations in SoMa—the 4th and King Caltrain station, AT&T Park, and the waterfront. Townsend Street provides the most proximate east-west bicycle route to the 4th and Caltrain station and is essential to connecting bicyclists to regional train services. Bicycle ridership in this corridor has also increased substantially in recent years (a 39 percent increase at 2nd/Townsend since 2006). By reducing lane width, dedicating more space for bicyclists, slowing vehicle speed, and improving bicycle visibility, bicycle lanes on Townsend Street will ensure that a growing number of bicyclists can travel safely to destinations in SoMa. The abovementioned benefits outweigh the identified impacts of this project."

Remembering that we cannot demand perfection or exhaustive analysis (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 918), this appears sufficient because it does "reveal[] to citizens the analytical process by

which the public agency arrived at its decision." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.) The difficulties are not ignored or swept under the carpet, but subordinated to expressed policy objectives.

Comparable discussions address projects 1-3, 2-1, 2-2, 2-3, 2-4, 2-7, 2-9, 2-11, 2-16, 3-2, 5-4, 5-5, 5-6, 5-13, and 6-5. They address almost all of the specified "significant and unavoidable impacts." But not all. What are identified as substantial impacts Nos. 39, 41, 42 (all dealing with project 2-6), 58, 68, 69 (all dealing with project 3-1), and 102 (dealing with project 6-6) are not addressed. At all.

Thus, as to these impacts, and the rejection of the alternatives, there is nothing establishing the written balance struck by the Board in weighing the benefits of the project against "its unavoidable environmental risks," "based on the final EIR and or other information in the record." (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222; Guidelines § 15093(a), (b).) "Under [section 21081], a decisionmaking agency is prohibited from approving a project for which significant environmental effects have been identified unless it makes *specific findings* about alternatives and mitigation measures. [Citations.] The requirement ensures there is evidence of the public agency's *actual* consideration of alternatives and mitigation measures, and reveals to citizens the analytical process by which the public agency arrived at its decision." (*Mountain Lion Foundation v. Fish & Game Com.*, *supra*, 16 Cal.4th 105, 134, italics added.)

This failure by the Board of Supervisors to proceed in the manner required by CEQA establishes a prejudicial abuse of discretion.[26] (§§ 21005, subd. (a), 21168.5;

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[26] In fairness to the Board of Supervisors, there may be a factor in mitigation (no pun intended). As previously mentioned, the Board was considering the revised CEQA findings proposed by the staff of the Planning Department. (See fn. 15, *ante*.) However, it is the original findings, not the revised findings, which are Attachment A ("California Environmental Quality Act Findings; Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations") to "Planning Commission Resolution 17913." The subject of this resolution is specified as "Adopting Environmental Findings and a Statement of Overriding Considerations under the California Environmental Quality Act and State Guidelines in connection with the

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, *supra*, 40 Cal.4th 412, 426, 435; *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 362.) The cause must therefore be returned to the trial court with directions to direct the Board of Supervisors to correct this omission. (See § 21168.9, subd. (a)(3); *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 81-82; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cala.App.3d 433, 442, 448-449; *Environmental Council v. Board of Supervisors* (1982) 135 Cal.App.3d 428, 440-441.)

Amendment of the San Francisco General Plan and San Francisco Planning Code related to the 2009 San Francisco Bicycle Plan."

But uncertainty is introduced by looking at Exhibit B to "Planning Commission Motion 17912." The motion records its subject as "Adopting Findings related to a Certification of a Final Environmental Report for the Proposed Update to the 2009 San Francisco Bicycle Plan." Exhibit B lists 44 "Significant and Unavoidable Impacts that may result from the 2009 Bicycle Plan Preferred Project." The uncertainty is only aggravated upon returning to Attachment A to Resolution 17913, and discovering there is a list of 15 "Project-Level Significant and Unavoidable Impacts and Overriding Considerations" immediately following the statement of overriding considerations.

In addition, the references to adverse environmental consequences hardly seem calculated to maximize comprehension. The revised findings start with what appears to be an explanatory cover letter to the Planning Commission. Then comes "Exhibit 1 Summary of Modifications to the CEQA Findings for the San Francisco Bicycle Plan Project" advising that a number of impacts were identified in the original findings but "are no longer under consideration" because they "would not result from the Preferred Project." The impacts are tied to specific near-term improvements, but the impacts are identified by an as-yet unexplained references (e.g., "Significant Impact TR-P2-1j," "Significant Impact TR-P2-1x," "Significant Impact TR-P5-4f").

Thus, in all the material attending the actions of the Planning Commission, which was presumably adopted by the Board of Supervisors when it "affirmed" the Planning Commission, there are three separate compilations of significant and unmitigated environmental impacts resulting from the project. Neither Anderson nor the City states that the Board of Supervisors was actually confused, and we cannot assume it occurred. (See fn. 15, *ante*.) Nevertheless, the possibility is bureaucratically intriguing.

DISPOSITION

The "Order Overruling Petitioners' Objections to Respondent City and County of San Francisco's Return to Writ of Mandate" is reversed, and the cause is remanded to the trial court with directions to modify the writ of mandate (or issue a new writ if necessary) requiring the San Francisco Board of Supervisors to comply with CEQA as stated in this opinion. The parties shall bear their respective costs of appeal.

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Richman, J.

We concur:

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Kline, P.J.

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Lambden, J.