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COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
APR 05 2013
By ________ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SPRING VALLEY LAKE ASSOCIATION, Petitioner and Plaintiff, vs. CITY OF VICTORVILLE; and DOES 1 through 100, Respondents and Defendants.	CASE NO. CIVMS 1200585 **OPPOSITION TO PETITIONER'S OPENING BRIEF BY CITY OF VICTORVILLE, WAL-MART STORES, INC., AND ROTHBART DEVELOPMENT CORPORATION** **[CEQA]**
ROTHBART DEVELOPMENT CORPORATION and DOES 101 through 1,000, Real Parties in Interest,	ASSIGNED FOR ALL PURPOSES TO: HON. DONALD R. ALVAREZ Department S32 Action Filed: October 16, 2012 Trial: May 10, 2013
WAL-MART STORES, INC., Real Party in Interest in Intervention.	

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Respondent the City of Victorville ("City"), and Real Parties in Interest, Wal-Mart Stores, Inc. ("Wal-Mart") and Rothbart Development Corporation ("Rothbart") submit the following in Opposition to Petitioner's Opening Brief in Support of Petition for Writ of Mandate:

I. INTRODUCTION

After conducting six years of extensive environmental review, holding numerous hearings, and reviewing and responding to hundreds of comments from the public and government agencies, the Victorville City Council certified the final Environmental Impact Report ("EIR") for the "Tamarisk Marketplace Project" and approved the Project. In doing so, it adopted voluminous findings that were supported by over 15,000 pages of Administrative Record.

The residents of nearby Spring Valley Lake, who are represented by Petitioner Spring Valley Lake Association ("Petitioner"), were not pleased. They did not want a Wal-Mart project – any project – near them. Thus, Petitioner elected to challenge the approvals, contending that: (1) they were improper due to alleged General Plan inconsistency; (2) modifications to the draft EIR required it to be recirculated before approval; and, (3) the EIR's General Plan consistency analysis, greenhouse gas emissions analysis, and traffic mitigation measures were supposedly deficient. Despite Petitioner's contentions, each of these assertions fail.

First, the EIR contains an extensive discussion of the Project's compliance with the entire General Plan. Such information is wholly absent from Petitioner's Opening Brief, which, as a matter of law, serves to waive the issue. Rather than discuss the substantial evidence supporting the City's findings of the Project's General Plan consistency, Petitioner limited its focus to Implementation Measure 7.1.1.4, which requires on-site power generation where feasible. Such argument, however, fails to reflect the City's determination that implementation is not currently feasible. It further fails to acknowledge the City's discretion to weigh and balance the evidence and make a determination that, even if the Project is not entirely consistent with part of the General Plan, overall, the Project is consistent with the objectives, policies, general land uses, and programs specified in the General Plan. Because the City made these findings and they are

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supported by substantial evidence, all Petitioner's land use and California Environmental Quality Act ("CEQA") arguments premised on General Plan inconsistency fail.

Second, Petitioner's claims also fail because there was no need to recirculate the EIR. An EIR needs to be recirculated only if the information discloses a significant new impact. Here, the additional information: (1) clarifies or amplifies information in the draft EIR; (2) does not result in new, unanalyzed, or unmitigated significant impact; or, (3) modifies the Project in a manner that either leaves impacts unchanged or reduces the previously analyzed impacts.

Third, the EIR adequately analyzed the Project impacts. Petitioner takes issue with the methodology utilized in the greenhouse gas analysis and the supposed lack of mitigation measures, but the City used the specific methodology permitted by CEQA Guidelines[1] and found no significant impact. Thus, no mitigation measures are necessary. Likewise, Petitioner takes issue with the sufficiency of the proposed traffic mitigation measures. Traffic mitigation, however, was extensively discussed and the Project incorporated a combination of measures that promote reduced vehicle traffic, constructed roadway improvements, and obligated Wal-Mart to pay fees for the construction of future roadway mitigation measures.

II. STATEMENT OF FACTS

A. The Environmental Review

The Project has been subject to environmental review since 2006. On September 1, 2006, the City circulated an Initial Study and related EIR Notice of Preparation identifying the environmental issues to be analyzed in the Project's EIR to the State Clearinghouse, responsible agencies, and other interested parties. (AR 14:114:9771-9864.)

Thereafter, experts were hired to conduct each of the necessary analyses. (See, e.g., AR 15:115 (Traffic Impact Analysis), AR 16:116 (Air Quality), AR 17: 117 (Noise), AR 18:117-119 (water supply and water management), AR 19:120-124 (biology, economic impact, geotechnical and hydrology).) In November 2010, the draft EIR was prepared and notice of its availability was published in January 2011. (AR 3:17:1823; AR 12:70:8566.) The draft EIR received

[1] Regulations guiding application of CEQA are found in Title 14 of the California Code of Regulations, section 15000 et seq. They are often, and hereafter will be, referred to as the Guidelines.

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numerous written comments, and responses were made thereto, all of which were provided in writing and incorporated within the Final EIR. (AR 1:15:248-575.) The draft EIR concluded that the Project, as proposed, would result in some unavoidable impacts on: regional air quality operational emissions; construction noise; and, cumulative traffic impacts. (AR 3:15:1853-1885.) All other impacts would be mitigated to below a level of significance. (*Id.*)

The Final EIR was first considered by the City of Victorville Planning Commission, as a recommending body, in December of 2011. (12:56:8070-8073.) Due to a technical deficiency in the posted agenda, however, that hearing was continued to January 11, 2012. (AR 12:56:8071.) In that interim period added to the staff report were modified conditions of approval, revised elevations and graphics, and additional comment that had been received. (AR12:58:8172.) On January 11, 2012, the Planning Commission sent the EIR and its related proposed resolutions onto the City Council for final Project consideration. (AR 1:2-7:3-44.)

Based on comments made before the Planning Commission, Wal-Mart decided to modify the storm water drainage system to fully resolve any possible concerns. This redesign captured all storm water runoff and lessened related environmental impacts to a level better than what existed at the undeveloped site. (AR 3:16:1472.) Such redesign and related hydrology analysis were incorporated into the Final EIR, after which the Final EIR and related resolutions were submitted to the City Council for action at its meeting of September 4, 2012. (AR16:60:8254.) However, given the number and detail of comments submitted, the City Council Hearing was continued until September 18, 2012, at which time the City Council approved the Project, and certified the Final EIR. (AR 16:60:8256, 1:8-13:45-99, 1:14:100-186.)

1. Solar Power Requirements Are Not Feasible for an Undeveloped Project

During the comment period, issue was raised with respect to the draft EIR's inadvertent failure to address recently added General Plan policies as they relate to air quality and renewable energy sources. In response, the final EIR amended the draft EIR by providing a section discussing the Project's consistency with these General Plan provisions. (AR 1:15:236-239.) However, this analysis was not good enough for Petitioner, because it submitted a letter asserting that the Project could only be found to comply with the General Plan if it provided for immediate

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on-site electricity generation. (AR 21:152:1429-1430.) Petitioner asserted that solar power was feasible because some other Wal-Mart stores utilize solar power. (*Id.*)

The City pointed out that numerous factors play into the City's determination of whether implementation is feasible, and that the Project was being developed as solar ready. (AR 21:155:15042.) In other words, the roof was being designed to permit future solar panel placement. (*Id.*) The City identified that the feasibility problem was the result of the uncertainty in the Project construction, which could still be significantly delayed (by litigation such as this). The cost to comply is at least $750,000, but there are several available tax credits and incentives available to bring the cost down so that there is a reasonable return on investment. (*Id.*) But those credits and incentives can only be locked in for a 12-18 month time period, and are always changing. (*Id.*) Thus, Wal-Mart cannot accurately predict or budget for such costs prior to construction completion. Considering that incentive tier levels and tax credits are constantly changing, the inability to lock in solar equipment cost prices long-term, and the uncertainty of construction completion, the City concluded that requiring solar power generation prior to the store actually opening was not feasible. (*Id.*)

2. The EIR Exhaustively Analyzed Environmental Impacts

Petitioner's main complaints regarding the EIR analysis pertain to traffic mitigation and green house gas emissions. With respect to the later, Petitioner takes issue with the methodology. But this methodology is specifically provided for in the CEQA Guidelines.

With respect to traffic mitigation, significant impacts were unavoidable. The Project Site is situated on Bear Valley Road between Tamarisk Road and Spring Valley Parkway. (AR 3:17:2011.) The Project site is bordered by several neighboring jurisdictions (Hesperia, Apple Valley and the County of San Bernardino). (AR 3:17:2001.) Road improvements require joint approval and funding not only by Victorville but also its neighbors. (*Id.*) Thus, some mitigation measures required roadway construction in other jurisdictions. (*Id.*) The difficulty associated with multiple jurisdiction oversight is readily apparent; the Level of Service ("LOS") in the Project vicinity is currently operating below standard. (AR 4:20:2740, 2016-2017.)

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The draft EIR identified unavoidable impacts at seven intersections, five of which are already operating below the LOS standards. (AR 3:17:2000-2002, 2060-2061.) It also extensively addressed mitigation measures (e.g., AR 3:17:2000-2076; AR 4:20:2871-2844.) and includes several mitigation measures designed to reduce vehicular trips.

Specifically, Mitigation Measures 4.3.7 - 4.3.9 encourage transit use by customers and employees, and provide facilities and incentives for employees to carpool and use alternative forms of transportation. (AR: 3:17:1862.) In addition, the Project included bicycle racks to encourage non-automotive transportation to, and from, the Project site. (AR 1:14:126.) Where feasible, road improvements, such as the Spring Valley Parkway realignment, were incorporated into the mitigation measures. (AR 3:17:1859-1861; AR 4:20:2831 (Spring Valley Parkway realignment), 2836-2839 (Tamarisk Road and Bear Valley Road improvements), 2843-2844.) Additionally, fee based mitigation measures were also imposed. (AR 3:17:2018-2021, 2059-2060.) Without construction of the fee-based mitigation measures by the horizon year of 2035, the number of intersections operating below the LOS standards would increase to eleven. (AR 3:17:2000-2001.) Because certain improvements were outside the City's jurisdiction and no plans currently exist to complete those improvements, impacts were properly identified as significant and unavoidable. (AR 3:17:2001-2002.) Consequently, there were no feasible mitigation measures currently available to reduce the traffic impacts to a less than significant level. (AR 3:17:2002.).

III. THE PROJECT IS CONSISTENT WITH THE GENERAL PLAN

Petitioner's General Plan and zoning arguments are both predicated on the claim that the Project is inconsistent with the City's General Plan, but Petitioner has failed to demonstrate any such inconsistency. First, Petitioner's failure to discuss the evidence unfavorable to its position with respect to consistency, waives the inconsistency argument. Second, even if consistency were to be considered, Petitioner's argument fails on the merits, because, overall, the Project is consistent with the General Plan's objectives, land use policies, and programs.

A. An Arbitrary And Capricious Standard Of Review Applies

When reviewing a city's determination of a project's consistency with the city's own

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General Plan, the court applies an extremely deferential, standard, that only rejects a City's determination if it is arbitrary and capricious. (*California Native Plant Society v. City of Rancho Cordova,* (2009) 172 Cal.App.4th 603, 637 ["*Native Plant*"]; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674 ["The decisions of the agency are nevertheless given substantial deference and presumed correct...the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination."].) Under this standard, the court must defer to the agency's consistency finding, unless no reasonable person could have reached the same conclusion based upon all of the evidence. (*Native Plant*, 172 Cal.App.4th at 637.) After all, "the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." (*San Franciscans Upholding the Downtown Plan*, 102 Cal.App.4th at 677-78.) "Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether [the court] would have made that determination in the first instance." (*Native Plant*, 172 Cal.App.4th at 638.) It is the petitioner who bears the burden of proving that the determination was unreasonable. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.)

B. Petitioner Waived Its Inconsistency Argument

To meet its burden to demonstrate inconsistency, Petitioner was required to set forth in its brief ***all*** the evidence before the City pertaining to the City's consistency determination, and show that no reasonable person would have made that determination. (*Native Plant*, 172 Cal.App.4th at 637-39.) Failure to discuss ***all*** the evidence pertaining to the City's finding of consistency ***waives*** the point. For example, in *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, the plaintiff's failure to "set forth any statement of the Town's findings or the evidence used to support those findings" was held to waive the plaintiff's challenge to the town's denial of his development application. (*Id.*)

Similarly, here, Petitioner has waived its challenge to the General Plan consistency determination because it failed to discuss *any* of the evidence supporting the City's findings that were unrelated to Implementation Measure 7.1.1.4. Specifically, the record contains extensive

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findings of consistency, analyzing the project in relation to:

- The General Plan land use and zoning provisions; (AR 3:17:1968; AR 3:17:1971; AR 3:17:1973-1974; AR 3:17:1975; AR 3:17:1976; AR 3:17:1977.)
- The General Plan Circulation Element; (AR 4:20:2739; AR 3:17:2022-2023.)
- The General Plan Resource Element, including discussions of air quality and energy conservation (AR 3:17:2095, AR 1:15:236-230), water supply (AR 4:17:2275), hydrology (AR 4:17:2296-2297), water conservation (AR 4:17:2229), biology (AR 4:17:2315-2316), and cultural resources; (AR 4:17:2335-2336).
- The General Plan Noise Element; (AR 3:17:2178-2182.)
- The General Plan Safety Element, including fire and police protection, emergency services, water supply, and geology. (AR 4:17:2227-2229, 2353-2354.)

Within each of these topic areas, the EIR further analyzes the Project's consistency with numerous General Plan policies and provisions. Petitioner, however, discusses *none* of this substantial evidence in its Opening Brief. Accordingly, Petitioner waived this argument by failing to present *all facts in the record* pertinent to the City's determination of consistency. (See, *Pfeiffer,* 200 Cal.App.4th at 1566 ["Since appellants did not discuss all of the evidence in the record pertinent to the issue of general plan consistency, appellants failed to meet their burden to show that the determination of general plan consistency was unreasonable."].)

C. Substantial Evidence Supports The City's Conclusion That The Project Is Consistent With The General Plan

To be consistent with the general plan, the project must be "compatible with the objectives, policies, general land uses, and programs specified in" the plan. (Govt. Code, § 66473.5.) "General plans ordinarily do not state specific mandates or prohibitions. Rather, they state 'policies' and set forth 'goals.'" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.) Thus, "a subdivision map must be "in agreement or harmony with" the applicable plan." (*Sequoyah Hills Homowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717-18.) Perfect consistency or conformity with every portion of the general plan is not required for a proposed project to be found consistent with a general plan. (*Native Plant*, 172 Cal.App.4th at 678; *Friends of Lagoon Valley,* 154 Cal.App.4th at 817.)

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[I]t is beyond cavil that no project could completely satisfy every policy stated in the OCP, and that state law does not impose such a requirement. ... Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be "in harmony" with the policies stated in the plan. [citations]. It is, emphatically, *not* the role of the courts to micromanage these development decisions. (*Sequoyah Hills Homowners Assn.*, 23 Cal.App.4th at 719.)

For example, in *Friends of Lagoon Valley,* petitioners attacked a project as inconsistent with the general plan because the project approved more housing and less commercial square footage than set forth in the City's General-Plan. (*Friends of Lagoon Valley,* 154 Cal.App.4th at 821-22.) The court rejected petitioners' claim, holding that even though the actual approved land use may have differed from The General Plan's density standards, such difference did not make the project inconsistent overall with the general plan. (*Id.*)

Likewise, in *Sequoyah Hills Homowners Assn.* 23 Cal.App.4th 704, the court found that a proposed development was consistent with the city's general plan, even though the project was inconsistent with 3 of the 17 expressly identified general plan policies.

Here, the EIR prepared for the Project identified over 20 General Plan policies with which the Project was consistent. In contrast, Petitioner cites to only one provision in the City's General Plan, Implementation Measure 7.1.1.4, to claim inconsistency. That measure provides that new commercial construction should self generate electricity, <u>to the extent feasible</u>. (Petitioner's Opening Brief "POB", p. 6.) Petitioner failed to address, much less overcome, the degree to which the City addressed the Project's consistency with the goals, policies and objectives of the General Plan.

With respect to the Implementation Measure 7.1.1.4, the measure only requires electricity to be generated on site, <u>if feasible</u>.[2] The EIR provided that the Wal-Mart store's roof will accommodate the placement of solar panels; but, due to a number of cost and other considerations, concluded that it was not feasible to require solar panels be installed <u>during</u> Project construction. (AR 21:155:15042.) The EIR's responses to public comment discusses the lack of feasibility this early in the approval process of committing to solar panels at the site,

[2] Under Petitioner's argument, "feasibility" is meaningless, because, regardless of the cost effectiveness of electricity self-generation, it is feasible, technologically and monetarily (through loans, leases, etc.), to add self-generated electricity measures to all new construction.

including the cost of $750,000 to install rooftop solar at this location; the inability to lock in incentives and tax credits on new construction beyond a 12 to 18-month window; and unknown factors related to timing and financing due to impending litigation. (AR 21:155:15042; See, AR 21:155:15036-15037 [Wal-Mart commits to solar development at an existing store based on financial feasibility, taking into account tax credits and incentives].) Although the City concluded that feasibility issues rendered this implementation measure premature, it did require the Project to be developed as solar ready so that self-generation of electricity could be revisited.

Given the Project's overall consistency with the General Plan, its supposed "imperfect" consistency with Implementation Measure 7.1.1.4 is not, at all, fatal to the Project's approval; the City's finding of General Plan consistency; or, the City's approval of the zoning change.

D. Findings Under Government Code § 66474 Are Only Required When A Project Is Disapproved

Petitioner mistakenly claims that certain findings must be made under Government Code § 66474, when approving a tentative map or parcel map, by seemingly re-writing the statute and supposedly supporting its reformulation by relying on *Selinger v. City Council* (1989) 216 Cal.App.3d 259.

1. *Selinger* Is Unavailing

Petitioner's argument is founded upon language found in *Selinger v. City Council* (1989) 216 Cal.App.3d 259, 269. In *Selinger*, a developer prevailed at trial on its claim that its map had been approved by operation of law. The city challenged the constitutionality of this provision. (*Id.* at pp. 265–266, 273.) The Court of Appeal agreed holding that "the Permit Streamlining Act *was* unconstitutional insofar as it led to approval of applications for development without provision for notice and a hearing to affected landowners." (*Id.* at 274 [prior to the ruling, the legislature had amended the code to correct this issue].)

As an alternative argument, the city argued that the automatic approval provisions conflicted with the Subdivision Map Act ("SMA"). (*Id.* at 268.) The Court of Appeal rejected this secondary argument without conducting any analysis or discussion of Section 66474, or any of the other provisions. Instead, relying on *Woodland Hills Residents Assn., Inc. v. City Council*

(1975) 44 Cal.App.3d 825 and *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, the Court of Appeal, in dicta, stated that, "Under Section 66474, a city *must* deny a subdivision map application unless the city makes specified findings." (*Selinger*, 216 Cal.App.3d at 270.) Petitioner's reliance on this statement is wrong for two reasons: (1) the proposition is dicta; and, (2) this statement is not supported by either of the cases on which it relies.

a) The Language Upon Which Petitioner Relies is Dicta

As succinctly explained in *Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1005-06:

> Language in a judicial opinion is to be understood in accordance with the facts and issues before the court. An opinion is not authority for propositions not considered. An appellate decision is not authority for everything said in the court's opinion but only for the points actually involved and actually decided.

Here, the primary ruling in *Selinger* was the statute unconstitutionality of map approval by operation of law on due process grounds. As a secondary matter, wholly unnecessary to the court's holding, *Selinger* also briefly addressed, and rejected, the city's argument that conflicts the SMA's affirmative findings requirements, also invalidated the statute. No analysis of the various SMA finding requirements was conducted, nor was the specific provision in issue analyzed. Consequently, the court never addressed, substantively, the meaning or purpose of Government Code §66474. Therefore, its dicta on this issue is not binding. Furthermore, because the dicta directly contradicts the provisions of the statute, and conflicts with other cases, e.g., *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1198-99, 1201, it cannot be relied upon to re-write Section 66474 as Petitioner seeks to do.

b) The Cases Upon Which *Selinger* Relies Do Not Support the Stated Proposition of Law

In addition to the lack of precedential value of the dicta upon which Petitioner relies, the authority that *Selinger* cites: *Woodland Hills Residents Assn., Inc.* and *Topanga Assn. for a Scenic Community;* does not stand for the legal proposition stated.

Woodland Hills Residents Assn., Inc. v. City Council (1975) 44 Cal.App.3d 825 involved a question of whether a tie vote, that resulted in the approval of a tract map, could impliedly

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constitute findings that the map was consistent with the general plan, consistency that was required by Business & Professions Code §§ 11526(c), 11526.2(c), 11549.5, which have since been re-codified at Government Code §§ 66473.5 and 66474. The Court looked at these three code sections as a whole, concluding that a map cannot be approved without affirmative findings that it is consistent with the applicable general and specific plans. (*Id.* at 837-838.) This ruling comports with Government Code § 66473.5, not Section 66474.

Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, held that the findings in support of a variance were not supported by factual data. (*Id.* at 520.) The court also held that, when findings are necessary, they should be sufficient to enable parties to determine whether, and on what basis, to seek review. (*Id.* at 514.) There was absolutely no discussion of the requirements of Section 66474 or whether Section 66474 can be reverse engineered to make its provisions applicable to an approval of a map, rather than disapproval.

In sum, neither case supports *Selinger*'s statement that Section 66474 requires specified findings for map approval. Thus, Petitioner's reliance upon *Selinger* is misplaced.

2. Section 66474's Language Limits its Applicability to Disapprovals

A statute's words are to be given "their usual and ordinary meaning." (*DaFonte* v. *Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) When "statutory language is . . . clear and unambiguous there is no need for construction, and courts should not indulge in it." (*Rojo* v. *Kliger* (1990) 52 Cal.3d 65, 73.) The plain meaning of words in a statute may be disregarded only when that meaning is "'repugnant to the general purview of the act,' or for some other compelling reason." (*Tiernan* v. *Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 219.)

Government Code §66474 is part of the SMA. When a map is submitted and deemed complete, the local agency has the option to approve, conditionally approve or disapprove the map within specified time periods or risk approval by operation of law. (Govt. Code, §§ 65950, 65952, 65952.1, 66452.1, 66452.2, 66463, 66452.4.) If the agency approves the map, it must make findings that the map is consistent with the general plan. (Govt. Code §66473.5.) On the other hand, if the agency decides to disapprove the map, Section 66474 provides a list of factual findings, one or more of which must be made, to support that denial. (*Beck Development Co.*, 44

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Cal.App.4th at 1198-99, 1201.) The limitation of Section 66474 to denial decisions can be seen directly from that provision's text, which states:

> § 66474. **Findings justifying disapproval**
>
> A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:
> (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
> (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
> (c) That the site is not physically suitable for the type of development.
> (d) That the site is not physically suitable for the proposed density of development.
> (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
> (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
> (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.
> (Govt. Code §66474 [emphasis added].)

Thus, the factual findings that must be made under Section 66474, "preclude denial [of the map] except on sufficient evidence rather than upon speculation or conjecture." (*Beck Development Co.*, 44 Cal.App.4th 1160, 1201 [emphasis added].) The plain language of the statute renders it inapplicable to project approvals. Consequently, there was absolutely no requirement for the City to make any finding under Section 66474 when it approved the Project.

IV. THE CITY COMPLIED WITH CEQA

A. Standard of Review

The standard of review in CEQA actions "shall extend only to whether there was a prejudicial abuse of discretion." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 ["*Laurel Heights I*"], quoting § 21168.5.) An abuse of discretion is shown only where "the agency has not proceeded in the manner required by law or

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if the determination is not supported by substantial evidence in light of the whole record." (Pub. Res. Code § 21168; *Native Plant*, 172 Cal.App.4th at 613; see *Id.* at 392.)

Challenges to the scope of the analysis, the methodology utilized, the data's reliability or accuracy, and the decision not to recirculate an EIR present factual issues that the court must reject, if substantial evidence supports the agency's decision. (*Federation of Hillside & Canyon Assn. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132-1135 [*Laurel Heights II*]; *see also* Pub. Res. Code § 21168.5 ["the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established … if the determination or decision is not supported by substantial evidence"].) In any action to attack, review or set aside a public agency's project approval based on grounds of noncompliance with CEQA, the court does not exercise its independent judgment on the evidence, it only determines whether the decision is supported by substantial evidence in the whole record. (Pub. Res. Code § 21168.)

Under the CEQA Guidelines, "substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guideline § 15384(a).) Such evidence may include facts, reasonable assumptions predicated on facts, and factually supported expert opinion. (Guideline § 15384(b); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1498.)

"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." (*Gilroy Citizens v. City of Gilroy* (2006) 140 Cal.App.4th 911, 918; *Laurel Heights I*, 47 Cal.3d at 393 ["the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision"]; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317 ["if there are conflicts in the evidence, their resolution is for the agency"].) Thus, a reviewing court "may not 'substitute [its] judgment for that of the people and their local representatives.'" (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 369.) As explained in *Laurel Heights I,* 47 Cal.3d at 415, "[a] project

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opponent or reviewing court can always imagine some additional study or analysis that might provide some helpful information. It is not for them to design the EIR. That further study... might be helpful does not make it necessary." Furthermore, "a reviewing court is not to decide whether the studies are irrefutable or whether they could have been better." (*Laurel Heights I,* 47 Cal.3d at 409 [emphasis added].)

> "CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. Therefore, noncompliance with CEQA's information disclosure requirements is not *per se* reversible; prejudice must be shown." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.)

A prejudicial abuse of discretion only occurs if the omission of information precluded informed decision making. (*Berkeley Keep Jets Over the Bay v. Port Commissioners* (2001) 91 Cal.App.4th 1344, 1355.)

B. The City Was Not Required To Recirculate The EIR

Petitioner alleges that the City failed to comply with CEQA because (1) it did not recirculate the EIR after changes were made in the final EIR and (2) the EIR failed as an information document with respect to general plan compliance, greenhouse gas and climate analysis and traffic mitigation measures. As discussed below, each of these arguments fails.

In enacting CEQA, "the Legislature did not intend to promote endless rounds of revision and recirculation of EIR's." (*Laurel Heights II,* 6 Cal.4th at 1132.) Normally, a draft EIR need be circulated for public comments only once. The draft EIR, subject to any augmentation or modifications warranted by public comments, then becomes, along with the public comments and the agency's responses, the final EIR. (Guideline §§ 15088, 15132.) The public comment and response process typically results in the addition of new or supplemental information to the EIR. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1273 ["the final EIR will almost always contain information not included in the draft EIR."].)

Recirculation of an EIR for additional public comment is required only when the final EIR contains "*significant* new information" concerning the environmental impacts of the project or alternatives or mitigation measures not addressed in the draft EIR. (*Laurel Heights II,* 6

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Cal.4th at 1126-1129; Guideline § 15088.5(a).) New information is not "significant" for this purpose, however, "unless the EIR is changed in a way that deprives 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 (including a feasible project alternative) that the project's proponents have declined to implement." (*Laurel Heights II* , 6 Cal.4th at 1129; see, Guideline § 15088.5) In contrast, "[r]ecirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Guideline § 15088.5(b).) Thus, where the changes reduce impacts or make modifications that do not increase impacts, recirculation will not be required.

For example, in *Laurel Heights II*, project opponents submitted over 5,000 pages of comments on the EIR. (*Laurel Heights II*, 6 Cal.4th at 1122.) In response, the lead agency prepared: (1) three new noise studies, (2) two new toxic air emissions studies, (3) a revision of the project description pertaining to the number of loading docks, (4) a previously-omitted discussion of night-lighting glare; and (5) an expanded discussion of a potential project alternative, but did not recirculate the document. (*Id.* at 1122; 1136-1142.) The Supreme Court upheld the decision not to recirculate the EIR. The Court determined the new noise studies did not constitute "significant new information" because they "supplie[d] additional noise data" that did not alter the agency's analysis or conclusion regarding the project's noise impacts, but "merely serve[d] to amplify... the information found in the draft EIR." (*Id.* at 1136-37.) Likewise, the new toxic emission studies were not significant, because they did not show any "new adverse environmental impact," but rather were included "in the interest of amplifying or clarifying the discussion of cumulative toxic air emissions contained in the draft EIR." (*Id.* at 1138.) Finally, the Court held that the project description modification, the completely new night-lighting glare analysis, and the expanded alternatives discussion did not require recirculation because the information merely "clarified" or "amplified" the analyses and conclusions already contained in the EIR. (*Id.* at 1138-43.)

Western Placer Citizens v. County of Placer (2006) 144 Cal.App.4th 890 is also instructive. There, an EIR for a quarry mine contained an analysis of several design alternatives,

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analyzed specified phasing plans, and also identified that certain areas could not be lawfully mined. (*Id.* at 894.) Following the close of the EIR comment period, the applicant met with the county and agreed to revise its project by implementing one of the design alternatives in the EIR, except that it would change the phasing to avoid unlawful mining issues and it also relocated the processing plant. (*Id.* at 894-895) Thereafter, the county released the final EIR without disclosing the applicant's decision to proceed with a revised project. The Court of Appeal rejected the claim that this was new information that required recirculation, finding that nothing in either CEQA or the Guidelines requires all changes made to a project after the final EIR is released, but prior to certification, to be included in the EIR. (*Western Placer Citizens,* 144 Cal.App.4th at 899.) The court went on to uphold the county's decision not to recirculate the EIR, even though the project phasing was changed and a plant site relocated, because the changes created no new environmental impacts. (*Id.* at 904, 906.)

Here, Petitioner identifies five changes between the draft EIR and the final EIR that it asserts warranted recirculation of the EIR: (1) The "wetlands" area was increased; (2) the biological reports were updated; (3) additional traffic impact analysis was conducted; (4) the storm water management system was modified; and (5) the General Plan consistency analysis was expanded. None of these modifications required recirculation.

1. The "Wetlands" Clarification Does Not Require Recirculation

Petitioner's "wetlands" argument fails for two reasons: (1) this issue was not raised during the administrative process; and (2) this argument lacks merit.

a) Petitioner Failed to Exhaust Administrative Remedies

Exhaustion of administrative remedies is a "jurisdictional prerequisite" to a CEQA action. (*Native Plant*, 172 Cal.App.4th at 615.) Thus, the alleged grounds for noncompliance must have been presented to the agency orally or in writing. (Pub. Resources Code § 21177(a).)

> The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. The decision making body is entitled to learn the contentions of interested parties before litigation is instituted. (*Native Plant,* 172 Cal.App.4th at 616 [citation omitted].)

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Objections that are not sufficiently specific enough to allow the agency the opportunity to evaluate and respond to them do not satisfy the exhaustion requirement. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527 [bland or general comments are not sufficient]; *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 910 [general objections to approval or general references to environmental issues are not sufficient].) Instead, "the 'exact issue' must have been presented to the administrative agency ...." (*Sierra Club*, 163 Cal.App.4th at 535 [emphasis added].) The petitioner has the burden of proof to show exhaustion occurred. (*Porterville Citizens for Responsible Hillside Development,* 157 Cal.App.4th at 909.)

Here, Petitioner failed to identify any comments in the Administrative Record claiming that the EIR needed to be recirculated due to an identified increase in jurisdictional streambed areas (what Petitioner refers to as "wetlands"). The only reference to the need to recirculate the EIR is found in one paragraph in Petitioner's September 4, 2012 letter. (AR 21:150:14830.) That paragraph fails to make any mention about new jurisdictional streambed area data requiring recirculation. (*Id.*) Wetlands and jurisdictional streambed areas are not even mentioned in the comment. Perhaps Petitioner's counsel (the drafter) might wish to capture this issue through the catchall phrase "and others" at the end of its identification of specific issues requiring recirculation, but such a generic phrase fails to meet the specificity requirement for administrative exhaustion. Simply put, the City was not put on any notice that changes to the EIR in relation to jurisdictional streambed areas required recirculation. That lack of administrative exhaustion precludes Petitioner's "wetlands" argument.

b) Even if Petitioner Had Not Failed to Exhaust Its Administrative Remedies, Recirculation Is Not Needed

In order to support its claim that recirculation was required, Petitioner relies upon *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357. But *Mira Monte* is inapposite. In *Mira Monte*, early in the environmental review process it was discovered that part of a project would encroach into wetlands and the project was revised to eliminate all

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encroachment. Thus, the review was conducted on the assumption that the project would not physically invade the wetlands area. (*Id.* at 360.) Four days before certification of the final EIR, the county discovered that a proposed roadway in the project would bisect a vernal pool habitat that contained several rare plant species. The county then added a condition of approval requiring the developer to excavate an area next to the roadway with the hope of creating a new vernal pool. (*Id.* at 361.) The court concluded that this new impact rendered the EIR inadequate. (*Id.* at 365-366.) In other words, "discovery that a project encroached upon wetlands, when the text of the draft EIR indicated that the wetlands area would remain undeveloped, was a substantial change in circumstances requiring revision and recirculation of the EIR." (*Laurel Heights II*, 6 Cal.4th 1112, 1131 [explaining *Mira Monte*].)

Here, there is no new significant environmental impact; the potential impact was already analyzed and mitigated in the draft EIR. For example, in *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, the petitioner alleged that the expansion of a wilderness park to completely surround a project site was a substantial change requiring supplemental review. (*Id.* at 1550.) The Court rejected the argument because, as is the case here, "the record clearly demonstrates the change raises no new adverse effects that were not raised, analyzed and discussed in the original EIR." (*Id.* at 1550.)

Here, the draft EIR identified .33 acres of un-vegetated, sand wash over which the California Department of Fish and Game ("CDFG") had jurisdiction on the Project site, and analyzed potential impacts and imposed mitigation measures. (AR 4:17:2331-2330) The final EIR clarified that the CDFG jurisdictional areas would also include an additional .43 acres of un-vegetated, sand wash because two ephemeral drainages[3] (unconnected to downstream waters) that could potentially be affected by the Project were located in the off-site survey area. (AR 1:15:242-243.) The final EIR specifically addressed the fact that this clarification did not change the mitigation measure already required by the draft EIR, which rendered any potential impacts to be less than significant, and did not result in any new or unanalyzed potential impact. (AR 1:15:242-243.) In other words, as in *Laurel Heights II* and *Fund for Environmental Defense*, this

[3] Ephemeral drainages contain running water only seasonally and not necessarily every year.

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information did not change the City's analysis or conclusions regarding the Project's impacts and did not identify a new adverse impact, it merely amplified and clarified the information in the draft EIR. Thus, no recirculation was necessary.

2. Updated Biological Reports Do Not Require Recirculation

Recirculation was only required if there were a significant new impact, or a substantial increase in the severity of an impact. (*Laurel Heights II*, 6 Cal.4th at 1126-1129; Guideline § 15088.5(a).) Here, the identification of potential special status plants was not a new significant environmental impact or an increase in the severity of an impact. The updated biological report did not actually identify any of the additionally listed plant species on the Project site. (AR 1:15:244.) Rather, it identified that the sensitive plant species had a "low" "potential to occur in the survey area." (AR 1:15:244.) The same finding and analysis already existed in the draft EIR as to another plant species and the draft EIR provided mitigation measures dealing with sensitive plants species, should any such species be actually located on the Project site. Thus, as in *Fund for Environmental Defense*, the potential impact was already analyzed and mitigated in the draft EIR. (*Fund for Environmental Defense*, 204 Cal.App.3d at 1550.)

3. The General Plan Consistency Analysis Does Not Require Recirculation

The additional General Plan consistency analysis in the final EIR does not identify a significant new impact or create a substantial increase in the severity of an impact. Rather, as in *Laurel Heights II*, it merely amplified and clarified the consistency information in the draft EIR. (*Laurel Heights II*, 6 Cal.4th at 1136-38 [clarification or amplification of information does not require recirculation].) Thus, no recirculation was necessary.

4. The Modified Traffic Analysis Did Not Require Recirculation

The traffic analysis in the final EIR was modified to reflect a delay in the City's implementation of its portion of Spring Valley Parkway realignment project. (AR 1:15:225.) Thus, although Spring Valley Parkway is still being realigned under the Project, the realignment is not exactly the same configuration. However, this small modification does not result in any significant new impact. In the draft EIR, as in the final EIR, the City concluded that traffic impacts will be significant, cannot be mitigated to an insignificant level, and a statement of

overriding considerations would be necessary. (AR 3:17:2000-2002.) This change, like the phasing changes and processing plant relocations in *Western Placer Citizens*, does not require recirculation. (*Western Placer Citizens,* 144 Cal.App.4th at 904, 906.)

5. The Redesigned Storm Water Management System Lessens Potential Impacts

The Project site is undeveloped land that has three natural drainage channels running across it. (AR 3:16:1467.) During significant rain events, these channels can see substantial flows of water, silt and debris. The drainage channels flow into a concrete-lined channel on Lindero Road that ultimately discharges into Spring Valley Lake. (AR 2:16:1294; AR 3:16:1467-1468.) Current peak flow rates in the Lindero Road channel are between 678 cfs[4] (at its start) and 691cfs (at the juncture of Spring Valley Parkway). (AR 2:16:1296; AR 3:16:1473.) The project site itself generates approximately 46 cfs during peak flows. (AR 3:16:1472.) The capacity of the culvert is only 424 cfs and during severe storm events the excess water spills over onto Bear Valley Road. (AR 3:16:1471.) Petitioner asserted that this causes strain on, and damage to, the Spring Valley Lake drainage system, and that such flows caused or contributed to flooding that occurred in 2004. (AR 4:18:2546; see, AR 13:74:8868-8871.)

The draft EIR implemented a storm water management system. (AR 4:17:2287-2289.) Under that system, an underground storm drain system would be created. (AR 8:24:5205.) The drain pipe system would discharge into four above-ground retention basins. (AR 8:25206.) Those basins would discharge into the Lindero Road channel and a storm drain system on Spring Valley Parkway. (*Id.*) The alternate site plan also included collection of storm water runoff and discharge into an earthen culvert on Francesca Road. (*Id.*, AR 8:24:5209.) The retention basins were incorporated to mitigate downstream impacts by moderating the increased runoff from the Project (i.e. the basins slowed the water down). (AR 8:24:5209.) By utilizing the basins, the peak flow rate would be unchanged from existing site conditions. (AR 8:24:5211.) As with the undeveloped site, some of the runoff would end up at Spring Valley Lake, but at approximately the same flow as the undeveloped land. (AR 8:24:5212.) Thus, there was no significant impact.

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[4] cubic feet per second

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Even though the measures implemented in the draft EIR resulted in the Project having no significant impact with respect to storm water runoff, in response to the later comments received, the storm water management system was redesigned and additional hydrology analysis performed. (AR 2-3:16:1293-1643.) As redesigned, storm water flows would be directed into catch basins via the creation or improvement of storm drains, pipes and culverts. (AR 3:16:1471-1472.) As a result, there will be full retention of water from 100-year storm events and no post-development contribution to the regional storm drain system. (AR 3:16:1472.) After the improvements are constructed, peak flow rates in the Lindero Roach channel will be reduced to between 672 cfs (at its start) and 686 cfs (at the juncture of Spring Valley Parkway). (AR 3:16:1472-1473; see, 3:16:1475-1642.) This design, like the *Western Placer Citizens*' project changes, actually results in an improvement from the prior design discussed in the draft EIR. (*Western Placer Citizens*, 144 Cal.App.4th at 904, 906.)

C. The EIR's Analysis is Adequate

CEQA challenges concerning the amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology are factual determinations and must be reviewed for substantial evidence. (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546.)

A review of the EIR demonstrates that the document does, indeed, provide ample information regarding compliance with the General Plan, greenhouse gas and climate analysis, and feasible traffic mitigation measures.

1. General Plan Compliance

As discussed *supra*, the EIR contains extensive analysis of the Project's consistency with the General Plan. Each section of the environmental analysis addressed compliance with the relevant General Plan provisions. Petitioner's disagreement with the City Council regarding compliance, because of Petitioner's interpretation of one implementation measure, does not render the EIR inadequate as an informational document.

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2. Greenhouse Gas ("GHG") and Climate Analysis

Petitioner's primary complaint regarding the greenhouse gas and climate analysis is that it disagrees with the methodology utilized. In *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 267-268, the First District Court of Appeals held that the absence of specific analysis or data recommended by the petitioner did not render the EIR inadequate, stating: "However, even if we assume further investigation of the project site would have yielded new information, 'CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required.' " (*Id.* (citing Guideline § 15204(a).) This was reiterated in *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1125, where the Court found that every recommended biological study was not necessary for an adequate EIR.

Here, the EIR utilizes a qualitative approach to determining Project consistency with state-mandated GHG reduction targets. (AR 3:17:2115-2119, 2140-2161.) This approach is consistent with CEQA Guidelines, which authorizes a lead agency to rely on a qualitative analysis when determining GHG emission impacts. (Guideline § 15064.4; AR 21:155:15038.) Furthermore, neither the City nor the Mojave Desert Air Quality Management District have formally adopted a numerical threshold for a potentially significant impact from quantified GHG emissions. (AR 21: 155: 15037, 15039.) The City chose to rely upon a qualitative threshold, and the Draft EIR utilizes a qualitative analysis to evaluate compliance with the goals and objectives of Assembly Bill 32 ("AB 32") and Executive Order S-3-05, and the reduction requirements therein. (AR 3:17:2115-2119, 2140-2161; AR 21:155:15037.)

The EIR identifies how the Project Design Features will reduce GHG emissions, and will assist in achievement of the AB 32 GHG reduction targets. (AR 3:17:2146-2156.) Because a qualitative analysis was applied to determine the significance of potential GHG impacts, an estimate of total Project GHG emissions was included in the EIR for informational purposes only, and had no impact on the ultimate determination of significance. (AR 3:17:2145.) The EIR concludes that the Project incorporates and reflects the attributes and operational programs

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aimed at reducing GHG emissions, and supports the State's goals of reducing GHG emissions. (AR 3:17:2140-2161.) The EIR further concludes the Project's contribution of GHG emissions and the potential impact on climate change resulting from the Project would not represent a significant environmental impact. (AR 3:17: 2140-2161; AR 4:17:2385.) Through such a discussion and evaluation, the EIR meets the requirement of a "good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." (Guideline § 15064.4)

Petitioner also argues that the analysis is inaccurate since it compares GHG emissions based on development pursuant to the current land use designations as opposed to existing onsite conditions as the environmental baseline. While the Draft EIR discusses the likelihood that stationary or area source GHG emissions would likely equal or exceed GHG emissions generated by the Project based upon the existing land use designations for the site, this is included for additional discussion and illustration purposes only as part of the qualitative discussion of potential GHG emission impacts, and is not relied upon as a sole determinant of the potential significance of the impact. (AR 3:17:2096-2117, 2140-2161.) The values provided within the EIR illustrate the total increase of annual Project-generated GHG emissions from the existing baseline of zero emissions from the currently vacant parcel, and does not base its finding of a less than significant impact on a comparison of the site as it could be potentially developed under existing allowable land uses. (AR 3:17:2115-2117, 2140-2161.)

Finally, Petitioner argues that additional mitigation measures should have been incorporated into the Project. But no additional mitigation was required in order to reduce GHGs, because, as demonstrated by the analysis, the impact was already determined to be less than significant. (AR 3:17:2140-2161; AR 21:155:15039.)

In sum, Petitioner's chief complaint is that the City did not utilize the methodology that the Petitioner believes would be best for analyzing greenhouse gas issues. Although the City may not have utilized Petitioner's preferred analytical model, it did use a model specifically permitted the CEQA Guidelines. Thus, since the methodology falls within the CEQA

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Guidelines, substantial evidence supports the City's decision to utilize that methodology and resulting analysis. (*Federation of Hillside & Canyon Assn.*, 83 Cal.App.4th at 1259.)

3. Traffic Mitigation Measures

As set forth above, in evaluating the sufficiency of an EIR as to whether a proposed project will have a significant impact on the environment, the court must determine whether the information contained therein allowed informed decision-making and informed public participation. (*Berkeley Keep Jets Over the Bay Committee*, 91 Cal.App.4th at 1355.)

The EIR need not be exhaustive and the absence of any information from the EIR does not constitute, per se, a prejudicial abuse of discretion. Perfection is not required of an EIR. (*Berkeley Keep Jets Over the Bay Committee*, 91 Cal.App.4th at 1355; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 749.) Instead, "Guidelines section 15151 requires an EIR to be prepared 'with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.... The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.'" (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 219, citing *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594.) Contrary to Petitioner's assertion, every potential or conceivable mitigation measure need not be addressed for the EIR to be an adequate informational document.

Traffic mitigation measures were extensively addressed in the EIR, and several mitigation measures designed to reduce vehicular trips are included. (e.g., AR 3:17:2000-2076; AR 4:20:2871-2844.) Specifically, Mitigation Measures 4.3.7 - 4.3.9 encourage transit use by customers and employees, and provide facilities and incentives for employees to carpool and use alternative forms of transportation. (AR 3:17:2128; AR 3:17:2153.) In addition, the Project includes bicycle racks to encourage non-automotive transportation to and from the Project site. (AR 1:14:126.) Impacts are also mitigated through current roadway improvements and fees to offset the cost of future mitigation.

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CEQA recognizes the use of fair share fee payments as mitigation for a project's "cumulatively considerable" contribution to significant cumulative impacts and the City's General Plan allows for mitigation to be accomplished in this manner. (Guideline § 15130(a)(3); *Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140; AR 4:20:2739.) Furthermore, CEQA does not require that an EIR set forth a time-specific schedule for completion of specified improvements, but simply that a reasonable plan for mitigation is included. (*Save our Peninsula Committee*, 87 Cal.App.4th at 141.) It is presumed that an agency will comply with its own ordinances, and spend the fees it collects on the appropriate improvements to the affected road segments. (*Id.*) Accordingly, Petitioner's argument that fee-based mitigation is insufficient to mitigate the Project's traffic impacts fails.

V. CONCLUSION

Six and a half years have now been spent on intense environmental review and further improvement of this Project even though lesser measures would certainly have sufficed. Petitioner, though, still objects. Why? Not because it really wants Project changes, it just plain does not want this Project, regardless of how it is proposed.

Nevertheless, as was fully discussed above, the Project was properly reviewed and in compliance with all applicable laws. Petitioner cannot demand absolute 100% precision in every tiny aspect of the procedure or mitigation of every impact to less than significant.

The fact is that this Project was appropriately analyzed and should, now, at long, long last, be allowed to move ahead.

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Respectfully submitted,

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