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Clerk of the Superior Court
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

PACIFICANS FOR SCENIC COAST, an unincorporated association,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF TRANSPORTATION; and DOES 1 through 10,

Respondents.

v.

SAN MATEO COUNTY TRANSPORTATION AUTHORITY; CITY OF PACIFICA, and DOES 11 through 50,

Real Parties in Interest.

Case No. CIV 523973

RESPONDENT CALIFORNIA DEPARTMENT OF TRANSPORTATION'S OPPOSITION BRIEF

[CEQA]

Hearing Date:	August 22, 2014
Time:	2:00 p.m.
Dept.	2
Judge:	Hon. Marie Weiner

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I. Introduction

The State Route 1 / Calera Parkway / Highway 1 Widening Project represents the culmination of over a decade of collaborative public planning to address the long-standing challenges of congestion and operational deficiencies on a stretch of State Route 1 in the City of Pacifica. The Project, proposed by Caltrans in conjunction with the San Mateo County Transportation Authority and the City of Pacifica, will widen a 1.3-mile stretch from four lanes to six and improve peak-period travel times.

Petitioners strongly oppose the Project, and now challenge the EIR on a wide array of grounds. But none of those grounds have any merit. The Opening Brief, which raises countless scattershot issues regarding the EIR, is plagued by a number of fatal flaws – it consistently fails to provide any reasoned support or citation for its claims, fails to identify the substantial evidence in the record that supports the agency's decision and show why it is lacking, and mischaracterizes and inaccurately cites the administrative record and the EIR. A petitioner in a CEQA lawsuit carries certain burdens it must satisfy as a threshold matter, and the Petitioners in this lawsuit have failed to do so.

As it is, the EIR for the Project is a model of CEQA compliance. The document thoroughly analyzed a reasonable range of alternatives for the Project, analyzed potential project impacts, considered and incorporated numerous mitigation measures, and fully informed the public and the decision-makers in the process. The main purpose of CEQA is to inform the public and responsible officials of the environmental consequences of their decisions before they are made. The EIR is the heart of CEQA, and this one fulfilled that role well. This Court should deny the Petition in its entirety.

II. Factual and Procedural Background

In conjunction with the San Mateo County Transportation Authority ("SMCTA") and the City of Pacifica, the California Department of Transportation ("Caltrans") has proposed and approved the State Route 1 / Calera Parkway / Highway 1 Widening Project ("Project") to provide operational improvements and decrease congestion on a 1.3-mile stretch of roadway on State Route 1 ("SR 1")

within the City of Pacifica. AR 3, 7-10, 441. The Project would widen SR 1 from four lanes to six lanes from approximately 1,500 feet south of Fassler Avenue to approximately 2,300 feet north of Reina Del Mar Avenue, provide a barrier-protected, landscaped median between San Marlo Way and Reina Del Mar Avenue, make various improvements to the lane configurations of the two intersections within the Project area, and upgrade an existing bicycle / pedestrian path adjacent to SR 1. AR 7, 443, 548.

A. Project Development and Environmental Review

The Project was developed over the course of more than a decade to address congestion and peak period travel delays along a 1.3-mile segment of SR 1 in the City of Pacifica. SR 1, within the Project limits, currently consists of two lanes in each direction, separated by a concrete median barrier, except at two signalized intersection locations at Fassler Avenue/Rockaway Beach Avenue and Reina Del Mar Avenue. AR 10. Existing inside shoulders vary from 2' to 4' wide, while outside shoulders vary from 4' to 8' wide. AR 10. Congestion along this segment of SR 1 results in traffic queues extending up to two miles at peak travel times, and is expected to increase both in magnitude and duration if no improvements are made. AR 11, 441.

The Project would provide operational improvements to SR 1 and address congestion by widening SR 1, primarily on the west side of the roadway, to add one lane in each direction and standard 10-foot outside shoulders throughout the Project limits. AR 443. Approximately half the length of the widening would be constructed on new embankment contained by retaining walls to prevent encroachment into environmentally sensitive areas, and the Project would include curved alignments to avoid impacts to delineated wetlands. AR 8, 443. The preferred Project alternative, the Landscape Median Build Alternative, was selected in July 2012, and includes a 16-foot wide landscaped median between San Marlo Way and Reina Del Mar Avenue, which would enhance visual character within the Project area and protect coastal views. AR 443-44. The Project also proposes: various improvements to the lane configurations at the Fassler Avenue / Rockaway Beach Avenue and Reina Del Mar intersections with SR 1; upgrades to an existing bicycle / pedestrian path adjacent to the westerly edge of the highway; construction of a new sidewalk along the east side of

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Harvey Way; construction of storm water treatment facilities; crosswalk upgrades to meet current Americans with Disabilities Act standards; and conversion of Old County Road and San Marlo Way to one-way streets. AR 13-16.

The Project was initiated by the City of Pacifica and SMCTA, which have participated in and supported the planning and design of the Project through its development. AR 7-8, 4665-4936. The Project improvements fulfill a stated goal of the San Mateo County voter-approved Measure A, which is a half-cent sales tax measure approved in 1988 and reauthorized in 2004, to fund transportation projects throughout the County; Measure A specifically identifies improvements along Highway 1 in Pacifica as an essential priority. AR 7-8. The SMCTA, which was created to fund and administer the sales tax generated under Measure A, is the Project proponent. AR 7, 445. Caltrans is the lead agency for the Project under the California Environmental Quality Act ("CEQA") and National Environmental Policy Act ("NEPA"). AR 445, 7101. The City of Pacifica, as a Project sponsor, completed a Project Study Report for the Project, which Caltrans approved in July 1999. AR 531, 4200-83. In February 2007, the SMCTA approved funds to begin the Project Approval / Environmental Document phase of the Project. AR 8. The Project has been included in both the Metropolitan Transportation Commission's current Regional Transportation Plan for the San Francisco Bay Area, which was adopted on April 22, 2009, and in the Transportation Improvement Program for the San Francisco Bay Area, which was adopted in 2011. AR 531.

From the beginning of formal Project scoping in 2004 to final Project approval in 2013, the Project Development Team – consisting of representatives from Caltrans, SMCTA, the City of Pacifica, and technical and environmental consultants – met regularly internally, with various local, regional, state, and federal agencies, and with the public, to develop the Project. AR 4665-5114. During development of the Project, several other alternative solutions and designs, many of which were proposed by the public – including widening SR 1 for shorter segments, installation of roundabouts at intersections, signal timing improvements, and increased or modified transit service – were considered and evaluated, but were eventually determined to be infeasible or found not to meet the purpose and/or need of the Project. AR 568-602. A Notice of Preparation for the Draft

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Environmental Impact Report for the Project was circulated to local, regional, state, and federal agencies from February 12, 2010, through March 17, 2010. AR 1039, 6652-6656.

During preparation of the Draft Environmental Impact Report / Environmental Assessment ("DEIR" or "DEIR/EA") for the Project, Caltrans and its Project partners continued their coordination with, and outreach to, resource agencies and the public. An Environmental Scoping Meeting was held with members of the public on March 3, 2010, during which the Project Development Team discussed the Project alternatives and solicited input regarding the environmental analysis. AR 1039, 10436-86. A follow-up informational meeting was held on June 22, 2010, and Caltrans extended the public scoping comment period for four weeks afterward. AR 1039-40, 10487-549. In addition to meeting with the public, Caltrans consulted with staff from U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, the California Coastal Commission, and a number of additional state and federal entities, for a period spanning from 2005 through 2011. AR 1043.

On August 8, 2011, Caltrans completed the DEIR for the Project, and made it available for public review and comment for a period of two and a half months, longer than the period of time required under CEQA. AR 1044; Pub. Res. Code § 21091, subd. (a). The DEIR extensively evaluated the potential environmental impacts of a No Build Alternative, Narrow Median Build Alternative, and Landscaped Median Build Alternative. AR 543-545. A public hearing for the Project was held on September 22, 2011. AR 869-937, 1044-1045, 5041. Caltrans received comments both favoring and opposing the Project during the comment period, and considered and responded to each one. AR 1035-2566.[1]

On July 18, 2012, after fully considering the DEIR/EA, technical studies, and comments from outside agencies and the public, the Project Development Team formally identified the Landscape Median Build Alternative as the preferred Project alternative. AR 444. On August 1, 2013, Caltrans

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[1] In their Opening Brief, Petitioners allege that the City of Pacifica did not hold public hearings regarding the DEIR or Project alternatives. POB at 2:7-14. However, Caltrans is the lead agency responsible for Project approval under CEQA (Guidelines § 15367), and in that capacity, it held numerous public scoping and informational meetings and hearings as detailed above, in full compliance with CEQA. Petitioners' allegations regarding the City of Pacifica are irrelevant.

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certified the Final Environmental Impact Report / Environmental Assessment ("FEIR/EA" or "FEIR") for the Project—an environmental document consisting of more than 2,000 pages of discussion and analysis of potential Project impacts, as well as agency and public comments, and responses thereto. AR 138, 433-2566, 437. The FEIR/EA also incorporates more than 1,500 pages of technical studies, which informed and provide support for Caltrans' determinations. AR 2567-4199, 4443-4464. Like the DEIR/EA, the FEIR/EA is a joint document which considers the significance of Project impacts on the environment separately under CEQA and NEPA. AR 152, 445; *see also* Cal. Code Regs., tit. 14, § 15170 ("Guidelines"). Accordingly, some of the impact analyses and determinations made in the joint environmental document differ, depending on whether the determination was made for purposes of CEQA or for NEPA, and the various state and federal laws which apply with respect to each. AR 152, 445.

B. Project Approval

On August 2, 2013, Caltrans signed the Final Project Report approving the Project, and filed a Notice of Determination with the State Clearinghouse on August 8, 2013. AR 1, 3. In compliance with CEQA Guidelines § 15091, Caltrans made findings regarding significant effects, which disclosed adverse effects on potential foraging and dispersal habitat for the California red-legged frog and the San Francisco garter snake. AR 140-144. To avoid or reduce these effects, Caltrans adopted a number of mitigation measures set forth in detail in the EIR, Findings, and Biological Opinion issued by the United States Fish and Wildlife Service. AR 141-144, 775-778, 971-975, 1007-1013. These mitigation measures would avoid or substantially reduce the significant environmental effects to a less than significant level. AR 140, 515-517.

Petitioners filed this action on September 6, 2013.

III. Standard of Review

In a CEQA lawsuit, agency decisions are entitled to substantial deference and presumed correct. *State Water Res. Control Bd. Cases* (2006) 136 Cal.App.4th 674, 723. This deference stems from the separation of powers between the legislature and judiciary, and recognition of the legislative delegation of authority to agencies. *Western States Petroleum Assn. v. Superior Court*

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(1995) 9 Cal.4th 559, 572. To establish a CEQA violation, a petitioner must show a prejudicial abuse of discretion in that either (1) the agency failed to proceed in a manner required by law, or (2) its determinations are not supported by substantial evidence. Pub. Res. Code §§ 21168, 21168.5; Code Civ. Proc. § 1094.5(b); *In re Bay-Delta* (2008) 43 Cal.4th 1143, 1161. "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." Cal. Code Regs., tit. 14, § 15384(a) ("Guidelines"). This standard applies to conclusions, findings and determinations, as well as to the scope of analysis of a topic, the methodology used, and the reliability or accuracy of the data. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

In applying this standard, courts must resolve any reasonable doubts and conflicts in evidence in favor of the agency, and uphold an EIR if there is *any* substantial evidence in the record to support the agency's decision. *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26. As a result, an agency's approval of an EIR may not be set aside simply because an opposite conclusion would have been more reasonable. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393. Moreover, CEQA does not mandate perfection or exhaustive analyses; instead, it merely requires an EIR to reflect a good faith effort at full disclosure. Guidelines §§ 15003(i), 15151; *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 826, 836.

Significantly, the challenger bears the burden of proving that an EIR is legally inadequate. *State Water Resources Control Bd. Cases,* 136 Cal.App.4th at 723. As a result, it is not enough simply to set forth evidence supporting a different conclusion; rather, the petitioner must lay out the evidence favorable to the agency and then show why it is legally insufficient. *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266. The failure to do so is fatal. *Id.* Here, as explained in greater detail blow, Petitioners *repeatedly* fail to satisfy their burden in this regard in their Opening Brief.

IV. Argument

A. Petitioners' Opening Brief fails to discuss the standard of review, neglects to lay out evidence favorable to the agency's decisions, and fails to develop its arguments as required by law.

As noted above, Petitioners fail to discuss the applicable standard of review in their Opening Brief. But a petitioner may not obtain a more favorable standard of review by ignoring, or attempting to mischaracterize the applicable standard of review. *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986-87. For instance, the "failure to proceed in a manner required by law" standard will not apply simply because a petitioner argued that the EIR omitted certain data or failed to disclose certain evidence; instead, a petitioner must also show that the alleged error or omission precluded informed decision-making or public participation. *Id.* As demonstrated below, Petitioners consistently allege errors or omission, but fail to show in any way how the alleged errors or omissions precluded informed decision-making or public participation.

Similarly, where the substantial evidence standard of review applies, Petitioners repeatedly fail to lay out the evidence favorable to the agency and then show why it is legally insufficient, which is fatal to their arguments. *Defend the Bay, supra,* 119 Cal.App.4th at 1266. To satisfy their burden in a CEQA lawsuit, Petitioners are required to identify all material evidence on each issue, not merely their own evidence, and a failure to do so "is deemed a concession that the evidence supports the findings." *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112-13 (reviewing court will not independently review the record to make up for that failure). Throughout the Opening Brief, Petitioners simply declare that the EIR's analysis was insufficient, or that a conclusion is improper, but without any identification or discussion of the evidence that supports the agency's decision. Such an approach is fatal to Petitioners' burden in this lawsuit.

Petitioners also fail throughout the brief, regardless of the applicable of standard of review, to develop their arguments or support them with reasoned discussion or citations. Accordingly, those arguments have been waived. *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-85; *Uphold Our Heritage v. Town of Woodside* (2007) 147 bCal.App.4th 587, 595, n.4. Repeatedly, Petitioners make declarations or assertions in their Opening Brief that the EIR omitted information, or that analysis or conclusions were improper, but without explaining how or why. In many respects, the

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Opening Brief operates in the nature of a complaint, but points not properly developed or supported in an opening brief are waived. *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, n.8.

Moreover, Petitioners may not rectify these errors in their reply brief. *Id.* While Caltrans has been forced in its Respondents' Brief to address all the arguments and points opaquely raised in the Opening Brief, and to identify the substantial evidence Petitioners ignored, that does not entitle Petitioners to correct their errors on reply. *Id.*

B. Some of Petitioners' claims are barred by the failure to exhaust administrative remedies.

The doctrine of exhaustion of administrative remedies precludes judicial review of legal and factual issues that were not first presented to the administrative agency. *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197. The doctrine is "founded on the theory that the administrative tribunal is created by law to adjudicate the issue sought to be presented to the court, and the issue is within its special jurisdiction." *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589. Under CEQA, no action may be brought unless the alleged grounds for noncompliance, both factual and legal, were presented to the agency during the public comment period. Pub. Res. Code § 21177(a).

In fact, the exact issue must have been presented to the agency, with enough specificity for the agency to have the opportunity to evaluate and respond. *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535-36. Thus, general allusions to broad topics do not suffice. *Id.* Allowing judicial review of these issues without affording the agency an opportunity to consider specific objections would enable litigants to "narrow, obscure, or even omit their arguments" before the final agency decision. *Tahoe Vista Concerned Citizens*, 81 Cal.App.4th at 594. Moreover, a petitioner bears the burden of identifying evidence in the record to document that specific issues were raised and exhausted. *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1136.

Here, Petitioners advance a number of arguments which were never presented to Caltrans; as a result, Petitioners are now barred from challenging the EIR on those grounds. Specifically,

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Petitioners cite no evidence in the record that anyone timely raised the following issues: (1) that the EIR does not analyze traffic impacts of converting Old County Road into a cul-de-sac, or of converting Old County Road and San Marlo Way to one-way only streets, (Petitioners' Opening Brief ("POB") at 16:12-22), (2) that the EIR fails to address consistency with the Pacifica Tree Heritage Ordinance (POB at 20:3-13), (3) that the utilities baseline is insufficient (POB at 6:1-20), (4) the EIR violated CEQA when it failed to explain reasons for rejection of the "earlier proposed Narrow Media" alternative (POB at 26:2-8), and (5) that the cultural resources baseline or environmental setting is inadequate (POB at 9:17-11:3). Because exhaustion of administrative remedies is a jurisdictional prerequisite, judicial review of these arguments is precluded in their entirety. *Gilroy Citizens for Resp. Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 920.

C. The EIR's project description was accurate, stable and consistent.

Petitioners make a number of claims regarding the EIR's project description, none of which has any merit. POB at 2:26-5:16. A project description in an EIR "must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts," and must not omit integral components of the project. *Dry Creek Citizens Coalition v. County of Tulare* (1990) 70 Cal.App.4th 20. Notably, the description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact," and should include "the precise location and boundaries of the proposed project," and "a *general* description of the project's technical, economic, and environmental characteristics...." *Id.*; Guidelines § 15124 (emphasis added). The Project description at issue here fully satisfied these requirements.

Petitioners claim the Project description "failed to disclose the width of intersections at Fassler Avenue and at Reina del Mar." POB at 3:13-16. But there is no specific requirement that an EIR include every single minute detail about a project, but rather only a *general* description of the project's technical, economic, and environmental characteristics. Guidelines § 15124; *California Oak Foundation v. Regents of Univ. of California* (2010) 188 Cal.App.4th 227, 269. In any case, the EIR did include detailed maps showing the precise location and boundaries of the proposed Project,

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which included cross-sections and measurements showing the proposed width of the highway for each build alternative. AR 545, 547. Figure 1.5, for instance, shows both the existing and proposed roadway widths and profiles for the highway, including measurements for lanes, median and shoulders for the landscaped median alternative. AR 547. The EIR's description of the build alternatives also explains that the highway will be widened from approximately 64 feet to a maximum of approximately 132 feet. AR 549. Figure 1.5 also includes the location of existing wetlands, proposed roadway improvements, concrete barriers, sidewalk and bike paths, retaining walls, cut and fill lines, bridge structures, landscape median, existing Caltrans right-of-way, City right-of-way, and proposed Caltrans right-of-way. AR 547.

Petitioners contend, albeit without any discussion, that lack of information regarding intersection width precluded the public from intelligently commenting on traffic and public safety impacts and that the EIR failed to analyze impacts from Highway crossing time. POB at 3:20-23. But the EIR fully analyzed potential traffic and public safety impacts and impacts to pedestrian facilities, and concluded they would be less than significant. AR 504, 628-43, 801. Substantial evidence supports those conclusions – including the fact that signal timing would be adjusted in accordance with Caltrans guidelines and policy to account for the increased pedestrian cross time – and Petitioners do not address or challenge that evidence here. AR 4443-4552, 9130, 9251-58. Accordingly, any such challenge has been waived. *Defend the Bay, supra,* 119 Cal.App.4th at 1266. Moreover, Petitioners fail to show, in any way, *how* the alleged error or omission precluded informed decision-making or public participation. *California Native Plant Society, supra,* 177 Cal.App.4th at 986-87.

Second, Petitioners claim the EIR inconsistently stated the increase in width of Project alternatives, but base that claim on inaccurate citations to the EIR. POB at 3:24-25. The EIR explains that the amount of *new pavement* required to construct the Project would vary from 20 to 50 feet on the west edge of the existing pavement; nothing in that statement is inconsistent, as Petitioners allege, with the separate statement in the EIR that SR 1 would be widened from approximately 64 feet to a maximum of 132 feet. AR 443, 549. Petitioners also claim Figures 1.4 and 1.5 vary from

the 132-foot measurement, but the measurements in those figures for the lanes, shoulders and landscape median add up to 132 feet (6 lanes at 12 feet each (72 feet), 4 shoulders at 10 feet each (40 feet), and a landscape median at 20 feet). AR 547 (Figure 1.5 also includes measurements for the 10-foot planter and 6-foot sidewalk).

Third, Petitioners claim the Project description is inadequate because Figures 1.4 and 1.5 were labeled "preliminary assessments." POB at 4:6-11. As the EIR explained, though, the initial plans set forth in the environmental document are necessarily labeled "preliminary" because the Project has not been finalized, approved and fully designed at that stage. AR 1411, 1455. To pre-determine at that point that the plans were final would have been contrary to the entire purpose of CEQA to evaluate the environmental impacts of proposed projects prior to approval. As it was, the Draft EIR included an explanation of the environmental review, project approval, and subsequent design process under the header "what happens next." AR 149. Nothing about the preliminary nature of figures 1.4 and 1.5 alters the fact that the maps depict the "precise location and boundaries" of the Project. Guidelines § 15124; *see also, Dry Creek, supra*, 70 Cal.App.4th at 28 (general description of a project element can be provided earlier in the process than a detailed engineering plan and is more amenable to modification to reflect environmental concerns).

Fourth, Petitioners claim that Project characteristics are "not stable," citing to three isolated pieces of information they claim were added to the Final EIR regarding vertical separation, retaining walls, and excavation. POB at 4:16-1-23. This is the same information Petitioners claim necessitated recirculation of the EIR, but, as explained below in section IV.J.iii, recirculation was not required because the information either was already included in the Draft EIR, or did not constitute "significant new information." In any case, this information did not constitute a shift in the Project description or render it unstable in any way, either. The Final EIR noted that the vertical separation between north and south lanes is a design enhancement feature that would improve coastal views, a fact that does not undercut the Project description in any way. AR 567. Petitioners also cite information regarding retaining walls, but that information was included in the Draft EIR, and there was no "shift" in the Project description in violation of CEQA. POB at 4:18-20; AR 151, 175, 210-

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12, 244-45, 280-88, 289-90, 302, 339, 342, 359-60, 1114. Similarly, Petitioners claim information regarding excavation constituted a shift in the Project description, but in fact the excavation necessary to construct the Project was discussed at length throughout the Draft EIR in connection with numerous environmental resources. AR 162, 165-66, 170, 191, 281, 295, 297, 305, 309, 318, 371, 373, 383.

Again, Petitioners do not explain how any of this information, even if Petitioners had accurately characterized it, would render the Project description unstable in a way that violates CEQA. Instead, Petitioners simply identify the information and declare that it constitutes a shift in the Project description. Even the cases Petitioners cite in support of the general propositions regarding project descriptions provide stark contrasts to the Project description at issue here. For instance, Petitioners claim that Caltrans' approach is similar to *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818. POB at 5:9-10. In that case, an EIR for a sand and gravel mining operation was inadequate because the project description altogether omitted critical and integral components of the project such as construction of water delivery facilities. *Id.* at 829. By contrast, there has been no such substantive omission here. A project description "must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts." *Dry Creek*, 70 Cal.App.4th at 26; Guidelines § 15124. The Project description here was accurate, stable and consistent, included all components of the Project, and provided sufficient detail to allow for evaluation and review of environmental impacts. *See, e.g.,* Guidelines § 15124; *Dry Creek, supra,* 70 Cal.App.4th 20.

D. The EIR's environmental setting satisfied CEQA's requirements.

Petitioners claim the EIR does not describe the environmental setting for utilities, biological or cultural resources. POB at 5:19. But the EIR does describe those environmental settings in sufficient detail in full compliance with CEQA. An EIR must include a description of the physical environmental conditions in the vicinity of the project which constitute the baseline physical conditions for measuring environmental impacts. Guidelines § 15125(a). The description of the environmental setting "shall be no longer than is necessary" to understand significant effects of the

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proposed project and its alternatives. Id.; *see also, North Coast Rivers Alliance v. Marin Municipal Water District* (2013) 216 Cal.App.4th 614, 644. The question is whether the EIR contains a sufficient description of the environmental setting to make further analysis possible, not whether the description of the environmental setting includes analysis itself. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.

i. Utilities

Petitioners claim the EIR's environmental setting for utilities is insufficient, but fail to identify any way in which the described setting, or the allegedly omitted information, precludes understanding of significant effects of the Project. As a preliminary matter, Petitioners' arguments regarding the utilities environmental setting were not raised or presented to Caltrans prior to the close of the public comment period on the DEIR, and Petitioners are therefore barred from making these arguments in this lawsuit by the doctrine of exhaustion of administrative remedies. *Tahoe Vista Concerned Citizens*, 81 Cal.App.4th at 594.

In any case, the arguments have no merit. For instance, Petitioners cite a comment letter from the North Coast County Water District which identified various utilities in the Project area. POB at 6:6-13. But the EIR expressly noted that numerous utility lines, such as gas, electric, water, communications, sanitary sewer, and stormwater, *are* located within or cross under SR 1 in the Project area, and within the local streets near SR 1 in the Project vicinity. AR 627. The EIR further acknowledged and explained that existing utility lines would have to be relocated to construct the Project. AR 627. Most notably, the EIR stated that while "some utility lines would be relocated under either Build Alternative," the relocation "would not result in the disruption of utility services." AR 627, 1108. Nothing in the Water District's comment letter, or Petitioners' citation to it, explains how the environmental setting in the EIR is inadequate. AR 1108; POB at 6:1-20. Nor is there any explanation of how the description of the environmental setting precludes understanding of significant effects of the Project. *North Coast Rivers Alliance, supra,* 216 Cal.App.4th 614.

Petitioners also claim the EIR "excluded the existing storm drain system." POB at 6:13-14. But storm drains are addressed at great length throughout the EIR, primarily in the Hydrology and

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Floodplain sections, which stated explicitly that "the project would increase storm drain capacities so that local ponding associated with the one percent probability storm event would not differ significantly from ponding under the existing condition." AR 466, 508, 691-702. The EIR explained further that:

> This increase could, however, result in local ponding due to increases in local runoff to individual storm drain systems beyond their current conveyance capacity... During the final design phase, storm drain facilities would be improved as needed to meet hydraulic design standards. The final design would ensure that storm and floodwaters would not encroach on the traveled way. The project would upgrade highway storm drain systems to accommodate the increase in impervious area such the storm drain systems would avoid problematic flooding during a four percent (25-year) design storm per the criteria in the *Highway Design Manual.*

AR 695. Petitioners do not acknowledge or address this information.

Petitioners also claim the EIR "omits description of electric lines," citing only to a completely blank page of the EIR. POB at 6:15-16; AR 646. In any case, the environmental setting does note the existence of electrical lines. AR 627. Petitioners make no effort to explain what information is allegedly missing, how it renders the environmental setting inadequate, or how it precludes understanding of significant effects of the Project. POB at 6:15-16.

ii. Biological Resources

Petitioners claim the environmental setting for biological resources is improper for a variety of reasons, none of which has any merit. POB at 6-9. Essentially, Petitioners contend that the biological study area for the Project ("BSA") was improperly limited to the Project footprint and violates CEQA because it excluded adjacent wetlands that Petitioners think should have been included, although they do not identify any such wetlands in particular. POB at 6:23-7:8. But the BSA was not limited to the Project footprint, and nearby wetlands were considered and evaluated to determine whether the Project could impact them, and whether they warranted inclusion in the BSA. AR 739-47, 2931-3141 (Natural Environment Study, Preliminary Delineation of Wetlands, Draft Biological Assessment). Petitioners object to the BSA, but do not address the process that resulted in the BSA, nor explain how that process was inadequate in any way.

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As the EIR stated, the BSA consists of "the footprint of the project as well as all areas that may be affected directly or indirectly by the construction activity or action." AR 739. It encompasses the area of potential temporary and permanent construction effects of the Project, and all of the area within the current and potential future right of way, to assess Project effects on biological resources. AR 2979. The BSA is depicted in detail on the map in Figure 2.5, and extends from 1,700 feet south of Fassler Avenue to 2,300 feet north of Reina Del Mar Avenue. AR 741, 1117. A Preliminary Delineation of Wetlands, Other Waters and Coastal Zone Wetlands was completed for the Project, and legal access was provided with consent of adjacent landowners on all properties supporting wetlands and drainage features with the potential to be directly or indirectly affected by Project improvements, as determined by field studies conducted in 2004, 2005, 2006, 2007, 2008 and 2010. AR 1118.

Thus, Petitioners' claims that the environmental setting is improper because it "excludes adjacent wetlands," and "does not include private land on either side of SR 1" are baseless. POB at 6:23-28. Petitioners do not identify any specific wetlands that should have been included, nor attempt to explain how the omission of any particular wetlands renders the environmental setting inadequate and precluded analysis of environmental impacts. Id. Instead, Petitioners argue only that the exclusion of some wetlands from the environmental setting, regardless of whether the Project would affect them at all, necessarily violates CEQA. But there is no authority for such a proposition.

Petitioners rely on *San Joaquin Raptor / Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, a case readily distinguished from the facts at issue here. POB at 6:28-7:3. In that case, the environmental setting was inadequate because it "completely fail[ed] to mention and consider a nearby wetland wildlife preserve," and "understated the significance of the river located immediately next to the site, so that it was "impossible for the [FEIR] to accurately assess the impacts the project will have." *San Joaquin Raptor*, 27 Cal.App.4th at 725. As a result, the EIR "was so incomplete and misleading" that it "precluded serious inquiry into or consideration of wetland areas adjacent to the site or whether the site contained wetland areas." *Id.* at 723, 725. Here, though, the EIR here did study, consider and evaluate all wetlands in the area in establishing the

BSA, and there is no evidence of any kind that any wetlands were omitted that should have been included.

Petitioners' myriad other arguments regarding the inadequacy of the BSA fail for similar reasons. Petitioners claim the EIR does not identify the location and extent of adjacent habitat, and leaves the BSA "ill-defined." POB at 7:9-19. But Petitioners ignore the maps and studies cited above, which identify the BSA and its boundaries with particularity, as well as the explanations of how the BSA was defined and determined. AR 741, 2999.

Petitioners claim the EIR's conclusion that hydrology of aquatic habitats outside the BSA would not be altered by the Project is improper because the EIR allegedly did not consider areas outside the BSA. POB 7:25-8:8:3. But the EIR did consider areas outside the BSA when it determined what the BSA boundaries would be in the first place, as described above, and considered them again when determining that they would not be altered. AR 765, 804. Petitioners object to the conclusion in the EIR that aquatic habitat outside the BSA with frogs present would not be altered by the Project, but do not say why. POB at 7:27-8:1. Petitioners do not even address the analysis conducted in the EIR on this issue. Id.; AR 757-82, 2931-3141. These arguments are waived. *Badie v. Bank of America, supra*, 67 Cal.App.4th at 784-85 (failure to support point with reasoned argument and citations constitutes waiver).

Petitioners also claim the EIR does not disclose "how much of the wetland / aquatic habitat is inside the BSA and how much is outside," but again ignore the maps in the EIR and NES that indicate the acreage of aquatic habitat, both seasonal and perennial. POB at 8:2-3, 8:14-15; AR 741. Petitioners again rely on *San Joaquin Raptor* as support, but that case is distinct, as described above. POB at 8:5-12. The EIR here provided a clear and definite analysis of the location, extent and character of wetlands within and adjacent to the Project, which ensured that all environmental impacts of the Project were identified and analyzed in the EIR.

Petitioners then claim the EIR "cannot analyze direct and indirect impacts" to water quality because the BSA excludes downstream sections of three creeks and the Pacific Ocean. POB at 8:18-19. But the BSA constitutes the study area for the biological environment analyzed in the EIR. AR

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739. The environmental setting for water quality is discussed elsewhere in the EIR. AR 700; 3851-3920 (Water Quality Study Report), 3939-4022 (Stormwater Data Report). Petitioners appear to object to some aspect of the environmental setting or analysis in the water quality section, but do not say why. POB at 8:17-24. Those arguments are waived. *Badie v. Bank of America, supra*, 67 Cal.App.4th at 784-85.

Petitioners claim the EIR fails to disclose where habitats located west of SR 1 are, in which threatened frogs have been observed. POB at 8:25-9:2. But the very sentence in the EIR that Petitioners cite explains that the frogs have been located "between Mori Point Road and San Marlo Way," and "in a ditch that parallels SR 1 and the Pacifica water treatment ponds." AR 763. The EIR also explained that the frog breeding habitat closest to the proposed project disturbance areas are the City of Pacifica wastewater treatment ponds, which are over 250 feet away from construction areas and aquatic habitat in Calera Creek, which is 200 feet away from the future roadway. AR 765, 1119. More importantly, though, Petitioners again fail to explain why it matters in the broader context of the environmental setting as a whole for the frogs, and the analysis that was conducted and described in great detail in the EIR. AR 739-782, 2938-3190.

Lastly, Petitioners claim the biological baseline is internally contradictory regarding whether frogs migrate east of the Highway. POB at 9:3-15. But the EIR is not inconsistent, and makes clear that dispersal of frogs to the east of SR 1 is extremely unlikely. Petitioners simply select isolated portions of sentences from the EIR and present them out of context to try to create the appearance of inconsistency where none actually exists. For instance, Petitioners claim the Draft EIR inconsistently states that California red-legged frogs ("CLRF") are not known in Calera Creek east of SR 1, but also "vaguely refers to frogs dispersing across the Highway." POB at 9:4-7. In fact, though, the cited portion of the Draft EIR does not vaguely refer to frogs dispersing across the Highway, but rather explains in full that:

> California red-legged frogs are not known in Calera Creek east of SR 1. The existing box culvert under SR 1 is considered a barrier or obstacle to the dispersal of California red-legged frogs to the east due to its length and concrete floor with a five percent slope over the eastern half. It is expected that most or all red-legged frogs that attempt to cross SR 1 in the project area are killed by traffic, and that

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> virtually no east-west dispersal across SR 1 occurs in the BSA under existing conditions.

AR 764.

Similarly, Petitioners claim the Final EIR "further obscures the baseline by claiming that the Calera Creek culvert under the Highway provides 'some connectivity' in this location" and that Calera Creek provides habitat east of the Highway that "may support dispersing CRLF." POB at 9:7-12. But that portion of the EIR was explaining how and why "populations of these species *will not be able to establish* within the Calera Creek drainage and individuals that might disperse to the reach of Calera Creek east of State Route 1 would meet with many hazards and a high risk of mortality." AR 764 (emphasis added). Petitioners ignore that portion of the EIR, and also fail to explain how the analysis and conclusions are not supported by substantial evidence. Petitioners have waived any such arguments. *Badie v. Bank of America, supra*, 67 Cal.App.4th at 784-85.

iii. Cultural Resources

In claiming the cultural resources environmental setting is incomplete, Petitioners make a number of unclear and unsupported assertions that are in no way tethered to the standards under CEQA or analysis of environmental impacts. POB at 9:17-11:3. As a preliminary matter, Petitioners' arguments regarding the cultural resources environmental setting were not raised or presented to Caltrans prior to the close of the public comment period on the DEIR, and Petitioners are therefore barred from making these arguments in this lawsuit by the doctrine of exhaustion of administrative remedies. *Tahoe Vista Concerned Citizens*, 81 Cal.App.4th at 594.

In any case, the arguments have no merit. While it is difficult to make sense of Petitioners' arguments, the cultural resources baseline in the EIR fully satisfies the requirements set forth above, because it includes a description of the physical environmental conditions in the vicinity of the project which constituted the baseline physical conditions for measuring environmental impacts, and it enabled the decision-makers and the public to understand significant effects of the proposed project and its alternatives. *North Coast Rivers, supra*, 216 Cal.App.4th at 644. Petitioners have not demonstrated to the contrary.

The EIR explains that there are two recorded archeological sites – CA-SMa-162 and CA-

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SMa-268 – within or adjacent to the Project's Area of Potential Effects (APE). AR 684-90, 802.[2] Petitioners claim it is not clear if portions of the recorded sites are outside of the area affected. POB at 9:18-10:2. But the EIR stated that the sites are located within or adjacent to the APE, and the Archeological Survey Report plainly depicts the location of those sites on maps relative to the APE. AR 684, 3326 (map of archeological sites within the area of archeological effects).

Petitioners also claim the EIR is inadequate because it did not include certain information from the ASR regarding prior discoveries of Native American artifacts. POB at 10:3-11. But not every piece of information from underlying technical reports and studies must be included in an EIR. *El Morro Community Assn. v. California Dept. of Parks and Rec.* (2004) 122 Cal.App.4th 1341, 1354. Petitioners cite *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, for the proposition that data in an EIR "must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public." POB at 10:28-29. But Petitioners do not explain in any way how the data in the EIR was *insufficient* or did not adequately inform the public, or how the conclusions in the EIR are not supported by substantial evidence. Id. In *Vineyard Area Citizens*, the court found the EIR's analysis of water supply inadequate for including no evidence of competing water users in the EIR, and rejected arguments that relied entirely on data not found in the EIR to support the determination that sufficient water would be available for the project. *Vineyard Area Citizens, supra*, 40 Cal.4th at 442. Here, by contrast, Petitioners simply point to information in the ASR that was allegedly not re-stated verbatim in the EIR, but do not explain in any way why it needed to be included in the EIR. POB at 9:18-11:3.

The EIR did explain that site 268 was discovered during highway construction in the early 1960s, and was described as "nearly destroyed" at the time of its original inspection. AR 685. The EIR also explained that, following records search, literature review, a field reconnaissance survey,

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[2] The EIR and the underlying Archeological Survey Report discuss the two recorded sites at great length (AR 684-90, 3263-3375). The EIR also includes what appears to be one isolated typo where it refers to site CA-SMa-***238*** instead of CA-SMa-***268***. AR 684. It is clear, though, from the remainder of the discussion in the EIR and ASR that the two recorded sites are CA-SMa-162 and CA-SMa-268. Petitioners' argument that the EIR fails to describe site 238 as part of the baseline appears to be predicated on this typo, but has no merit, as there is no site 238. POB at 10:1-2.

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and a supplemental coring program to determine whether cultural resources associated with site 268 are present within the area most likely to be affected by the Project, no indications of buried archeological resources were found that could be affected by the Project. AR 684-85. That conclusion is supported by substantial evidence, which Petitioners do not challenge here. POB at 10.

Petitioners also claim the environmental setting is inadequate because it doesn't explain what constitutes the "areas directly adjacent" or where indirect effects could occur. POB at 10:13-14. Petitioners then cite *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216 for the proposition that the area affected by a project cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting. POB at 10:17-19. In that case, though, the court was discussing the requirement in Guidelines section 15130 that requires an agency to define the geographic scope of the area affected by a *cumulative* effect, and to give a reasonable explanation for the geographic limitation used. *Id.* at 1216. Petitioners are not challenging a cumulative impacts analysis here, and both section 15130 and the cited portion of *Bakersfield Citizens* are inapposite. The environmental setting for cultural resources satisfied the requirements of Guidelines section 15125(a) described above.

Petitioners also claim the EIR does not explain what constitutes "areas directly adjacent to," or "where indirect effects could occur," but the entire section of the EIR on cultural resources discusses precisely those things. POB at 10:12-19; AR 684-90. In addition, the ASR includes maps showing precisely where the APE is, and where both recorded sites are located. AR 741, 743, 745, 3326, 1459 (RTC explaining that archeology APE encompasses all areas that potentially would be directly and physically impacted by the project). As the EIR explains, the APE is defined as the area in which indirect effects may occur. AR 684.

Lastly, Petitioners note that a member of the Ohlone Indian Tribe commented that he wanted to know the location of human remains, the implication being that the comment renders the environmental setting inadequate, although Petitioners do not explain how, nor would there be any support for such a claim. POB at 11:1-3. As it was, the cited comment took place in the context of outreach to different Native American individuals and groups soliciting information regarding Native

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American sites within or adjacent to the Project. AR 3342. The commenter wanted to know who had the remains that had been discovered in the 1960s, and ultimately was "satisfied with the information provided." AR 3344. Nothing about the comment pertains in any way to the adequacy of the environmental setting in the EIR.

E. Substantial evidence supports the impact determinations in the EIR.

As discussed above, review of an agency's determinations under CEQA is governed by the substantial evidence standard of review. *See, e.g., Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 562; *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259. Challenges to the scope of the analysis, the methodology for studying an impact, and the reliability or accuracy of the data, must be rejected if substantial evidence supports the agency's decision as to those matters and the EIR is not clearly inadequate or unsupported. *Federation of Hillside and Canyon Assns., supra,* 83 Cal.App.4th at 1259. A petitioner challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. *See Defend the Bay v. City of Irvine, supra,* 119 Cal.App.4th at 1266. Failure to do so is fatal. *Id.*

Here, Petitioners' arguments consist of a series of mere allegations, many of which are based on citations to single pages of the Administrative Record without any explanation why they support Petitioners' claims, and without any consideration of the EIR's full analysis as to each environmental resource. Petitioners therefore entirely fail to meet their burden under the governing standard of review.

Moreover, contrary to Petitioners' allegations, the EIR explicitly discusses Caltrans' CEQA determinations with respect to each environmental resource, as summarized in the "Summary of CEQA Significance Findings" table at Administrative Record pages 503 through 521, and in the CEQA-specific Evaluation of the EIR at Administrative Record pages 799 through 821. Each of these determinations is supported with substantial evidence in the Administrative Record, as further discussed below.

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i. Substantial evidence supports the EIR'S analysis of temporary construction impacts.

Petitioners make a number of allegations regarding the EIR's analysis of temporary construction impacts of the Project, most of which constitute empty assertions that the EIR did not disclose whether various temporary Project impacts would be significant. These allegations are directly contradicted by the EIR, entire sections of which disclose Caltrans' significance determinations for each environmental resource under CEQA. AR 503-21, 799-821.

a. Construction traffic

First, Petitioners misconstrue the record when they allege that the EIR does not analyze traffic impacts related to excavation. AOB 12:5-6. The EIR explicitly considers short-term effects of construction on traffic (AR 785), and concludes that construction would cause a "Less than Significant Impact" on traffic and transportation. AR 518-519. This "Less than Significant Impact" determination is supported by substantial evidence as the traveling public would be able to use the same number of existing travel lanes and shoulders during construction (with the exception of temporary lane closures at off-peak night or weekend times for brief activities such as moving temporary concrete barriers, restriping, or repaving). AR 785, 1058, 1173, 4343. Because construction would occur in multiple stages, with each construction stage involving work on a separate side of the roadway, this allows traffic be shifted along the side of the roadway and median not subject to construction so that the existing amount of access on SR 1 – including two through lanes along each direction of SR 1, left turn lanes at the Fassler and Reina Del Mar intersections, and pedestrian and bicycle access – would be maintained during each stage. AR 562, 801, 1173, 4344-45. Also, no roadway or driveway access to businesses or residents is expected to be severed. AR 801. While temporary concrete barriers used in construction may narrow the existing lanes, any resulting slowdown of traffic would be nominal in relation to overall travel time through the Project area. AR 1174. Moreover, any temporary congestion due to unanticipated events would likely be resolved in the same day. Id. Petitioners' allegation that the EIR does not specifically analyze traffic impacts in excavation areas is baseless and contradicted, as the EIR's analysis applies to the entire length of the Project. POB at 12:5-6.

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Ignoring the above determination and substantial evidence, Petitioners then broadly argue that the EIR "defers any analysis" of traffic-related aspects of construction. AOB 12:7-8. Petitioners base their argument solely on their allegation that Caltrans' Transportation Management Plan ("TMP"), which will be prepared to address implementation of traffic handling during construction, constitutes a deferred analysis. AOB 12:8-11. This is a misconstrual of the EIR, however, as the purpose of the TMP is not to provide an analysis of traffic impacts as Petitioner alleges, but rather to address day-to-day details regarding Project implementation (e.g., traffic handling in each stage of construction, pedestrian and bicycle safety and access, and methods of public dissemination of construction-related information through notices to neighborhoods, press releases, and use of changeable message signs).[3] AR 785, 4344. Petitioners additionally allege traffic impacts from heavy equipment were not discussed, but ignore that temporary barriers would be placed to allow truck movements through the work zone. AOB at 12:11-12; AR 4345. Petitioners' failure to address Caltrans' substantial evidence and show why it is lacking is fatal to their claim regarding temporary construction traffic. *Defend the Bay v. City of Irvine, supra,* 119 Cal.App.4th at 1266.

b. Construction air quality

The record also contradicts Petitioner's bald assertion that the EIR does not disclose whether effects of construction emissions will be significant. AOB at 12:21-22. In fact, the EIR explicitly states that the impact of short-term construction on air quality would be "Less than Significant." AR 519. This determination is supported by substantial evidence, as Caltrans' standard construction practices for dust control and dust palliative application, which follow the Bay Area Air Quality Management District's CEQA guidelines, "are adequate to assure that associated air quality impacts will be minimal." AR 787, 804, 2593, 2606.

c. Construction noise

Petitioners also allege that the EIR does not disclose if construction noise impacts will be

3 Petitioners also inaccurately describe the EIR in arguing that the EIR considers the TMP as analysis of traffic impacts. POB at 12, fn. 9. The citations provided by Petitioners do not state any such thing. AR 451-52, 785, 804. While reference to the TMP is *included* in the State's analysis, the TMP is nowhere described as constituting the analysis itself.

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significant, but again fail to address Caltrans' substantial evidence and explicit determination under CEQA. POB 13:6-7. Instead, Petitioners mistakenly cite solely to the EIR's analysis of permanent noise impacts *under NEPA*, while ignoring the CEQA determination, and improperly attempt to equate *federal* noise abatement criteria with a threshold for a finding of significance under CEQA. POB at 13:3-6, citing AR 728, 733-34. As more fully described in section III.F.i below, federal noise abatement regulations and criteria promulgated pursuant to the Federal-Aid Highway Act of 1970, 23 United States Code section 101, *et seq.*, are independent of CEQA and do not govern the determination of the significance of noise impacts under CEQA.

Contrary to Petitioners' allegation, Caltrans explicitly determined that temporary noise impacts would be "Less than Significant" under CEQA. AR 520. This determination is supported by substantial evidence. Specifically, the EIR noted that construction noise would generally be of concern in areas where impulse-related construction noise would be concentrated for extended periods of time, where noise levels from individual pieces of equipment are substantially higher than ambient conditions, or when impulse-related noise levels occur during night-time hours. AR 789. However, Caltrans disclosed anticipated construction noise levels, and determined that: noise from construction activities would constitute only a "temporary annoyance" as highway construction activities do not typically stay in one location for long periods and "typically occur for relatively short periods of time"; residences in any given location would not be exposed to noise generated by construction for extended periods; except for some limited exceptions, maximum noise levels generated by construction "would generally be at or below existing maximum noise levels generated by traffic"; and construction of the project "is anticipated to occur primarily during daytime hours." AR 789-790, 805, 4132. Petitioners fail to cite to Caltrans' CEQA determination, or to the substantial evidence supporting it, in their Opening Brief.

d. Construction water quality impacts

As to water quality impacts, Petitioners make four allegations which, again, misconstrue the record and use the wrong legal standards. First, without providing any argument or evidentiary support, Petitioners make a one-sentence allegation that the EIR "entirely" fails to discuss water

quality impacts from Project excavations resulting in "non-storm water discharges." POB at 13:11. Petitioners fail to address the EIR's extensive water quality analysis, which includes construction-related activities that may affect storm water quality and water resources, potential impacts to groundwater, permanent Project impacts to storm water and storm water runoff, and permanent Project impacts to water resources. AR 3886-88. Petitioners fail to define "non-storm water discharges" in relation to the extensive water quality analysis that *is* included in the EIR, and fail to explain what additional analysis of such discharges is needed and why. This failure is fatal to their claim. *See Defend the Bay v. City of Irvine, supra,* 119 Cal.App.4th at 1266.

Moreover, as referenced above, the EIR comprehensively considers various water quality impacts which do not result from precipitation runoff. AR 3963, 3886-88. The EIR also finds that no permanent effects on ground water are expected because the water table in the Project area is relatively deep at six feet, and the nearby soils are primarily classified as impervious. AR 701, 3886. Moreover, there are no significant groundwater resources within the Project area. AR 700. Petitioners fail to address this substantial evidence.

Second, as to temporary storm water discharges, Petitioners mix their arguments by alleging that the *Draft* EIR did not make a significance determination as to construction water quality impacts, while conceding the Final EIR did make this determination. POB at 13:10-18. As a preliminary matter, the Draft EIR contains a full analysis and determination regarding the Project's impacts on water quality, and of impacts caused by temporary construction. AR 169-70, 191, 303-06, 371-76, 383, 385. There is no requirement in CEQA that an EIR contain a separate determination regarding the significance of construction impacts on water quality in particular, when these impacts have already been analyzed in the context of broader categories, and Petitioners cite no such requirement. *See* Guidelines section 15126.2, Appendix G (Environmental Checklist Form).

Moreover, the argument Petitioners make regarding the Draft EIR is irrelevant to the impacts analysis and determination that Petitioners admit was included in the Final EIR; it is actually an argument that the Draft EIR should have been recirculated. As discussed, *infra*, in section III.J of this brief, recirculation of the Draft EIR is governed by Public Resources Code section 21092.1 and

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Guidelines section 15088.5, and is called for only if "significant new information" is added to an EIR. No new significant impacts to water quality were identified in the Final EIR. AR 519 (determination of "Less Than Significant Impact" to water quality). Petitioners entirely fail to cite or address this governing law.

Third, without citing to or applying the governing substantial evidence standard of review, Petitioners indicate a mere disagreement with the EIR's analysis of water quality impacts, but again, do not even attempt to meet their burden to show why the analysis is inadequate. POB at 14. Here, substantial evidence supported the EIR's determination that water quality impacts would be less than significant. Specifically, Caltrans disclosed that while increase in impervious surfaces could cause increased storm water runoff, the Project would result in only a minimal increase in roadway and other impervious surfaces, "especially given the fact that most of the project site already consists of roadways (i.e., the existing freeway)." AR 802. Because the increase in impervious surfaces would be minimal, the Project would not result in significant impacts to water quality. Id. Petitioners cite this analysis but, rather than address it, misconstrue it as a conclusory claim that *impacts* would be "minimal," when in fact, the analysis specifically states that the *increase in impervious surfaces* would be minimal and that *therefore*, impacts on storm water runoff would not be significant. POB at 14:7-15.

Having misconstrued Caltrans' analysis, Petitioners then argue that the EIR should have quantified the amount of fuel and oil leaking and sedimentation runoff, and analyzed the effects of scheduling on runoff. Petitioners' opinions as to methodology, however, must be rejected under the substantial evidence standard of review, which requires Petitioners to address *Caltrans'* substantial evidence and show why it is lacking. *Federation of Hillside and Canyon Associates, supra,* 83 Cal.App.4th at p. 1259. Mere criticisms of Caltrans' methodology and scope of analysis are not sufficient to meet Petitioners' burden. *Id.* Moreover, Petitioners' argument that the EIR must include analysis of "how adverse" the Project's impacts would be, fails to address Caltrans' determination that the increase in paving, and consequently runoff, would be "minimal" and that impacts would therefore be less than significant. AR 221. Petitioners also ignore the EIR's discussion of

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construction scheduling, which notes that the beginning date of construction would be scheduled after a rainy season; the construction phase would include only two rainy seasons; and earth disturbing construction activities would be scheduled outside of a rainy season whenever possible. AR 3961.[4]

Lastly, despite Petitioners' argument to the contrary, the EIR explicitly makes a determination of "Less than Significant Impact" with respect to temporary water quality impacts irrespective of any so-called "mitigation." AR 519. Specifically, the EIR determines that in light of the standard best management practices incorporated into the Project pursuant to the federal and state statutes and regulations, applicable permits, and Caltrans guidelines, the Project would have a less than significant temporary impact on water quality. AR 496, 787-788, 804. These best management practices are components of the Project which are required by law and permit, and necessary in order for the Project to move forward. AR 696-700. The EIR's determination is therefore based on substantial evidence that the Project, including all of its required elements, would have a less than significant impact on water quality.

ii. The EIR properly analyzes traffic impacts and substantial evidence supports the conclusions.

Petitioners' arguments regarding direct and indirect traffic impacts also fail to meet Petitioners' burden under the substantial evidence standard of review. Specifically, Petitioners concede that Caltrans analyzed the Project's impacts to pedestrians. POB at 15:8-11. Petitioners merely disagree with Caltrans' analysis, by making assertions that it was not adequate, and by making an entirely unfounded claim that the EIR does not consider increased pedestrian crossing time. Id. In making these arguments, Petitioners fail to address Caltrans' analysis and substantial evidence as required under CEQA. POB at 15:8-22; *Defend the Bay, supra,* 119 Cal.App.4th at 1266.

Here, Caltrans determined the Project would have "No Impact" on pedestrian facilities. AR 504, 801. This determination is supported by Caltrans' analysis that the Project "would result in beneficial impacts to... pedestrian and bicycle facilities" because pedestrian sidewalks would be improved throughout the project reach and the existing two-way Class I bicycle/pedestrian path

[4] This citation refers to the July 2009 Storm Water Data Report, which has been incorporated into the EIR by reference. AR 700.

adjacent to the westerly edge of the highway north of Reina Del Mar Avenue would be upgraded as part of the project. AR 801. Crosswalks would be upgraded to meet current Americans with Disabilities Act standards; sidewalk bulb-outs would be constructed to provide better bus stop access and improved sight distance; and the path north of Reina Del Mar Avenue would be widened and separated from the highway by a fence. AR 551-52, 1485. To the contrary of Petitioners' assertions, as part of this analysis Caltrans considered that pedestrians may need an additional eight seconds to cross two widened intersections as a result of the Project, but concluded that the benefits of the Project for pedestrians outweighed any negative effects. AR 642. This is especially the case since signal timing would be adjusted in accordance with Caltrans guidelines and policy to account for the increased crossing time. AR 9128-30, 9251-58. Petitioners have not attempted to address any of this evidence and instead misconstrue it.

In light of the EIR's thorough analysis, Petitioners' argument that the EIR does not analyze impacts to pedestrians as a result of the increased crossing time is inexplicable, and is based solely on disregard for the Project traffic study, further misreading of the Administrative Record, and vague and unsupported appeals regarding the safety of schoolchildren. POB at 15:23-16:5. For example, while Petitioners argue that the EIR fails to analyze how increased crossing time for "schoolchildren" will affect traffic, they ignore that the Project's traffic study incorporates this increased crossing time into its model. POB at 15, fn. 10; AR 4462 (analysis assuming that minimum required pedestrian crossing time across State Route 1 would be increased by 8 seconds at each intersection).

Petitioners' next argument, that Caltrans failed to respond to the National Park Service's comment regarding safe pedestrian access, is based on a complete misreading of that comment. POB at 16:1-5. In fact, the comment Petitioners cite, regarding "community values where state highways serve as main streets," expresses an interest in the design and character of the roadway, and does not mention pedestrian safety. AR 1078-79.[5] Furthermore, Caltrans does discuss pedestrian safety on the preceding page, and provides specific details regarding Project upgrades to pedestrian facilities. POB at 16; AR 1078. Given the above substantial evidence, Petitioners' citation to *City of Maywood v.*

[5] This comment is addressed in Caltrans' response at Administrative Record page 1079.

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Los Angeles Unified (2012) 208 Cal.App.4th 362, 391-394, where an EIR entirely failed to analyze pedestrian impacts from adding an active roadway to the middle of a school campus, is irrelevant and inapplicable. POB at 16:7-11.

Lastly, Petitioners argue the EIR does not analyze the traffic impacts of converting Old County Road into a cul-de-sac, or of converting Old County Road and San Marlo Way to one-way only streets. POB at 16:12-15. Petitioners fail to show that this issue has been raised or administrative remedies exhausted in any of the public comments to the Project, as required under CEQA. *Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447. Generalized comments regarding the neighborhood are insufficient to meet the burden to exhaust Petitioners' specific claim regarding conversion of Old County Road and San Marlo Way to one-way streets. *Id.* at pp. 1447, 1450; AR 1358 (generalized comment that "entrance to the small coastal neighborhood will be dramatically changed"). Petitioners therefore cannot raise this issue for the first time here. *Id.* Moreover, mere speculation that traffic circulation might be affected by one-way conversion of streets within a small neighborhood adjacent to State Route 1 is insufficient to demonstrate any violation under CEQA. Guidelines, § 15064(d)(3); § 15064(f)(5). Lastly, substantial evidence supports the EIR's determination that the Project would have beneficial impacts on traffic (AR 504, 801); with respect to the conversion of Old County Road and San Marlo Way to one-way streets, the conversion would "improve operations and prevent dangerous conflicts between vehicle movements." AR 1358. Again, Petitioners fail to address this evidence.

iii. The EIR properly analyzed visual impacts and substantial evidence supports the conclusions.

The EIR extensively analyzes the visual impacts of the Project and this analysis is supported by a thorough Visual Impacts Analysis report and addendum. AR 644-83, 220, 4553-4603, 4604-84. Petitioners make two arguments regarding Caltrans' visual impacts analysis. First, Petitioners argue that Caltrans did not use its threshold of significance for visual impacts. POB at 16:25-27. This argument fails, however, as Caltrans does not establish or use a threshold of significance for visual impacts, nor is it required to do so under CEQA. Guidelines § 15064.7; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896. Petitioners have misconstrued a statement in

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Caltrans' visual impacts analysis as a threshold, when in fact it describes a methodology. Second, Petitioners argue that Caltrans failed to disclose whether impacts would be adverse or significant, but improperly ignore the substantial evidence in the record to the contrary. POB at 17:19.

(a) Petitioners mistake Caltrans' methodology as a "threshold of significance."

Petitioners misconstrue the EIR when they allege that the environmental document fails to utilize its own thresholds of significance in evaluating Project impacts. In fact, the EIR explicitly states that "Caltrans has not adopted thresholds of significance pursuant to CEQA nor is it required to." AR 1122; *see also* Guidelines § 15064.7. Petitioners' argument relies on confusion between a *threshold* and a *methodology*. The statement that Petitioners cite, disclosing that the level of visual impact is "determined by combining the severity of resource change with the degree to which people are likely to oppose the change" is, on its face, a *methodology* for determining impact, not a threshold for significance as Petitioners claim. POB at 17:9-11; AR 644, 1122-23. The EIR appropriately applies this methodology, determining the degree to which people are likely to oppose the visual change, by considering viewer exposure and sensitivity to visual changes (AR 644), as well as "identifying the vividness, intactness and unity present in the viewshed" in accordance with Federal Highway Administration ("FHWA") guidelines. AR 681, 1122-23. As noted in the EIR, the FHWA states that "this method should correlate with public judgments of visual quality well enough to predict those judgments." AR 1123. Ignoring this analysis, Petitioners attempt to equate the "degree to which people are likely to oppose the change" to public opposition raised in comments to the Project, when this element actually refers to the FHWA guidelines and methodology as stated above and as explicitly discussed in the EIR. POB at 17:12-16. Thus, contrary to Petitioners' allegation, Caltrans did not fail to apply any threshold of significance. Rather, Caltrans disclosed, and then appropriately applied, its methodology for determining the significance of visual impacts.

(b) The EIR explicitly discloses that visual changes would not be significant.

Petitioners then ignore the EIR's explicit findings by alleging that the EIR fails to disclose if

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visual changes will be adverse or significant. POB at 17:19. To the contrary, the EIR explicitly states that the Project would have a "Less than Significant Impact" on visual and aesthetic character. AR 505, 801. This determination is supported by substantial evidence, including that: (1) impacts would not constitute a substantial adverse effect on a scenic vista; (2) impacts would not substantially damage scenic resources, including, but not limited to trees; (3) the loss of vegetation would not substantially degrade the existing visual character or quality of the area; and (4) the Project would not introduce a new source of substantial light or glare into the area. AR 505, 801, 1122-23, 4577-98, 4629-59. While Petitioners argue that the EIR should have disclosed the number, location, and size of trees to be cut as part of its analysis on visual impacts, this is merely a disagreement regarding methodology which must be rejected under the substantial evidence standard of review. *See Federation of Hillside and Canyon Associates, supra,* 83 Cal.App.4th at 1259. The Visual Impacts Analysis clearly depicts and discusses the visual impacts resulting from tree removal in various locations (AR 4585-86, 4588-91); there is no requirement under CEQA that specific tree numbers or sizes be provided for individual trees as part of this analysis.

Petitioners also make an unsupported allegation, in a footnote, that the EIR does not state whether expected loss of white tailed kite would be significant. POB at 17 fn. 12. In fact, the EIR explicitly states that the Project will have a "Less than Significant Impact" on nesting migratory birds (AR 514) and finds, based on an extensive Natural Environment Study, that "only one pair of white-tailed kites could be disturbed by the project" and that "[l]oss of habitat for these species would not be substantial." AR 759, 1099, 1271. Again, Petitioners, citing to a NEPA summary table in support of their allegation, and ignoring Caltrans' findings under CEQA, have failed to meet their burden to address Caltrans' substantial evidence and demonstrate why it is lacking. POB at 17 fn. 12 (citing AR 480).

iv. The EIR properly analyzes impacts to the California red-legged frog and substantial evidence supports the conclusions.

(a) Substantial evidence supports the EIR's conclusions regarding the Project's direct and indirect impacts on California red-legged frogs.

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The EIR extensively analyzes the Project's impacts to red-legged frogs, and finds that though temporary construction impacts may be significant, they are reduced to "Less Than Significant Impact with Mitigation." AR 140, 515-16, 806-07. Specifically, while red-legged frogs were not observed within the biological study area during breeding season surveys, they possibly disperse or forage within the BSA; and the Project would result in temporary impacts to habitat in disclosed construction areas, as well as permanent impacts to 7.08 acres of potentially occupied habitat, and temporary impacts to 3.75 acres of potentially occupied habitat. AR 140. These impacts are studied and disclosed at length in the EIR and Administrative Record. AR 763-64, 804, 1136-37, 2864-78, 3047-53, 3182-82, 3192-93.

Instead of responding to Caltrans' substantial evidence with respect to red-legged frogs, Petitioners make various jumbled allegations in the same paragraph, which are unsupported by any explanation of the cited record pages. First, Petitioners make a conclusory and unsupported allegation that the analysis of indirect impacts to California red-legged frogs was improper, but fail to cite to Caltrans' evidence or explain why it is lacking. POB at 18:6-7. In the next sentence, Petitioners switch their argument and allege that the EIR does not analyze indirect impacts on frog *habitat*; but again, Petitioners fail to explain why Caltrans' discussion of red-legged frogs is inadequate. POB at 18:7-8. Petitioners then conclude their argument by switching back and emphasizing that discussion of indirect impacts to *frogs* is important. POB at 18:12-13. And in the middle of this paragraph, Petitioners make an entirely different allegation, implying that locations outside of the defined Biological Study Area for the Project, where frogs could be present, and impacts downstream and on the east side of Calera Creek, should have been studied. POB at 18:8-11.

Although the above arguments are unclear, it is apparent that Petitioners have again disregarded evidence in the record and are expressing a mere disagreement with the methodology and analysis, rather than considering Caltrans' substantial evidence under the appropriate standard of review. Given this substantial evidence and Petitioners' failure to address it, Petitioners' criticisms of Caltrans' methodology and geographical study area fail. *Federation of Hillside and Canyon*

Assns., supra, 83 Cal.App.4th at 1259.

Moreover, evidence in the record contradicts Petitioners' claims regarding the scope and substance of the EIR's analysis. While Petitioners claim the EIR does not consider potential indirect impacts on frogs and/or frog habitat, the EIR and Natural Environment Study in fact included areas where indirect impacts could occur in the biological study area for the Project, evaluates indirect impacts to wetlands and riparian habitat areas, and discusses potential impacts to water quality which may indirectly impact frogs and habitat areas. AR 747, 1076, 1117, 1126-29, 2989. Furthermore, Petitioners argue that the EIR does not consider impacts on the east side of Calera Creek, but fail to address the evidence that "California red-legged frogs are not known in Calera Creek east of SR 1" and the discussion in the EIR where it did consider such impacts. AR 763. And, Petitioners argue that locations outside of the BSA should have been studied, but ignore that the EIR did consider and evaluate wetlands outside of the BSA in order to determine whether the Project could impact them, and whether they should be included in the BSA. AR 739-47, 1118, 2931-3141. Again, by failing to support their allegations and address Caltrans' substantial evidence, Petitioners have failed to meet their burden under the substantial evidence standard of review.

(b) The location and magnitude of temporary impacts to red-legged frogs is specifically discussed and depicted in maps.

Petitioners again ignore evidence in the record, when they allege that the EIR does not disclose whether temporary impacts to frogs would be significant, and where such temporary impacts would occur. AOB at 18:18-19. To the contrary, the EIR explicitly states that construction activities "may significantly impact California red-legged frogs dispersing or foraging within the construction zone," that "an additional 3.75 acres of potentially occupied upland habitats would be temporarily impacted during construction," and that "construction activities would have short-term and temporary significant impacts on California red-legged frog habitat." AR 765, 806, 1134, 1462.

Moreover, Petitioners mistakenly allege that the EIR does not disclose where temporary impacts to frog habitat would occur. POB at 18:18-19. In fact, as Petitioners concede, the EIR explicitly states that these impacts would occur in "the area between the proposed future edge of

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pavement and the outer limits of cut and/ or fill." POB at 18:19-22; AR 765. Furthermore, contrary to Petitioners' allegations, this "area between" is not obscured, but is clearly shown in the color-coded map at Figures 2.7 and 2.9 of the EIR, which specifically depicts the areas of "Permanent Impact" and "Temporary Impact" to habitat for threatened species, including the red-legged frog. AR 745, 769. The map at Figure 1.5 also depicts the edge of pavement and the outer limits of cut and/or fill lines, and the area that exists between these lines is readily apparent. AR 547. Petitioners' arguments regarding red-legged frogs are therefore entirely unsupported and fail to meet Petitioners' burden under CEQA.

v. The EIR properly analyzed greenhouse gas emissions impacts, and substantial evidence supports the conclusions.

The EIR and record include a full analysis of the Project's potential impacts on climate change and greenhouse gas (GHG) emissions. This analysis provides substantial evidence for the determination that the Project's impacts on emissions would be "Less Than Significant." AR 511. Specifically, the EIR discloses that based on the best available modeling data, this Project is expected to result in a decrease in GHG emissions because it will relieve traffic congestion. AR 812-14, 1465, 1475, 8025-36. Moreover, the EIR explicitly discusses potential impacts from construction by noting potential sources of construction GHG emissions. AR 814.

In asserting that the EIR fails to "properly" analyze climate change or GHG emissions, Petitioners again make various allegations followed by citations to single pages and isolated statements in the record, without any explanation as to why these citations are relevant, and fails to address both Caltrans' determination and the substantial evidence supporting it. POB at 19:12-15. For example, to support its conclusory statement that the EIR fails to "properly" analyze climate change or GHG emissions, Petitioners cite to a single page in the record which refers to an irrelevant discussion of GHG emissions analysis at the federal level, under NEPA, and which states that "Climate change is analyzed in Chapter 3." POB at 19:13-14; AR 726. Petitioners then cite to isolated statements in the EIR which candidly disclose the speculative nature of determining a project's direct or cumulative impact on climate change, but ignore the EIR's determination and

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substantial evidence based on the best available modeling data, that this Project is expected to result in a reduction of GHG emissions. POB at 19:19-24; AR 812-814, 1465. Contrary to Petitioners' allegation that the EIR confuses Project impacts with cumulative impacts and fails to provide a GHG analysis for project based impacts (POB 19:15-16, 19:25), the EIR explicitly analyzes potential GHG emissions *for this Project*. AR 813.

Petitioners then argue that the analysis provided by the EIR is based on modeling factors that would occur without project implementation, but provide no evidence of this besides an unexplained citation to the EIR's discussions of the regulatory and policy background for addressing climate change. POB at 19:26-20:1. Again, Petitioners ignore the EIR's explicit statement, reflected by modeling data, that this particular Project would cause a reduction in travel time and congestion, and therefore an expected decrease in GHG emissions. AR 813. Petitioners cite no evidence that the GHG emissions model includes any improper factors.

Lastly, Petitioners allege the EIR fails to consider opinions that adding new highway lanes may increase carbon dioxide emissions. POB at 20, fn. 13. Contrary to this allegation, however, the EIR provides a direct response to the opinion cited by Petitioners. The EIR acknowledges that in some cases, highway widening may lead to increased GHG emissions, "where current and future diverted traffic will return to the highway from parallel routes and there is also some growth induced by the project." AR 1418. However, with respect to this Project, "there are no parallel routes for the traffic to divert back to the highway and the projected future growth rate is the same with or without the project." Id. Increased GHG emissions are therefore not expected as a result of this Project. AR 813, 1419. Petitioners do not cite to or discuss this response in their Opening Brief.

vi. The EIR properly and adequately analyzed land use consistency.

The EIR describes the Project's consistency with the Regional Transportation Plan, City of Pacifica Local Coastal Land Use Plan, Rockaway Beach Redevelopment Plan, Pacifica Bicycle Plan, and Pacifica General Plan. AR 607-09. It appropriately concludes, based on substantial evidence, that the Project is consistent with relevant policies in these plans for a number of reasons, including that the Project would increase the safety of existing intersections, would enhance vehicular and

pedestrian circulation, would upgrade an existing bicycle and pedestrian path, and would increase capacity within the project segment without opening any new areas to development. Id. Moreover, the Project is specifically listed in, and therefore consistent with, the Metropolitan Transportation Commission's *Transportation 2035*, which is the Regional Transportation Plan, and is included in the adopted 2011 Transportation Improvement Program for the San Francisco Bay Area. AR 607.

Petitioners allege that the EIR fails to discuss various inconsistencies with some of the plans. However, Petitioners' allegations have a number of procedural and substantive flaws, and do not meet Petitioners' burden under CEQA. First, Petitioners fail to establish that these issues were raised in public comments to the Project, or that Caltrans was otherwise given the opportunity to receive and respond to the specific factual issues and legal theories that Petitioners now allege. *See Park Area Neighbors, supra*, 29 Cal.App.4th at 1447. Petitioners are barred from raising unexhausted issues for the first time here.

Second, Petitioners allege that the Project is inconsistent with the City of Pacifica's Heritage Tree Ordinance, but without providing any citation to the ordinance itself. POB at 20:6-8. Under the CEQA Guidelines, an EIR must discuss inconsistencies between the proposed project and "applicable" general plans, specific plans, and regional plans. Guidelines § 15125(d). Petitioners fail to establish that the City tree ordinance is an applicable plan or otherwise relevant to Caltrans' analysis of the Project under CEQA.[6]

Third, Petitioners vaguely allege that the removal of trees affects consistency with Pacifica's General Plan Conservation Element and Scenic Highways Element, but fail to explain how. POB at 20:8-11. Moreover, to the extent there are minor inconsistencies between the Project and general plan policies to conserve trees, this does not negate the EIR's determination that the Project is consistent with the general plan overall. Under CEQA, a project is not required to precisely conform with an applicable general plan; a finding of consistency requires only that the proposed project be

[6] To the extent Petitioners argue that State projects are required to comply with local ordinances regardless of whether they have been incorporated into applicable general, specific, or regional plans, Petitioners have provided no support for such a proposition. As stated above, the CEQA Guidelines require only discussion of inconsistencies with "applicable general plans, specific plans and regional plans," and not local ordinances. Guidelines § 15125(d)

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"compatible" with the objectives, policies, general land uses, and programs in the applicable plan, not in "rigid conformity" with every detail of the plan. *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 678; *see also* AR 658, 4591 (while trees would be removed, the Project would enhance highway traveler views of scenic resources overall). Petitioners fail to address Caltrans' substantial evidence of the Project's overall consistency with Pacifica's general plan, and Petitioners' vague and unexplained references to other plan policies or elements do not cure this deficiency.

Fourth, Petitioners allege that the EIR does not consider the loss of trees in concluding that Project impacts would not affect designation of Highway 1 as a State Scenic Highway. POB at 20:11-13. Petitioners fail to explain this argument, however, in light of the fact that Highway 1 is currently "not an officially designated State scenic highway within project limits." AR 12.

Lastly, Petitioners make several allegations about plan inconsistencies from converting local connector streets into one-way only streets, and from modifications to the area appearance. POB at 20:14-19. However, Petitioners do not identify precisely what provisions of the plans they are referring to and/or do not provide any citation to the applicable plan at all. In addition to the fact that Petitioners failed to exhaust administrative remedies, and failed to address Caltrans' substantial evidence of consistency with general, specific, and regional plans, it is impossible to respond to Petitioners' unsupported one-sentence allegations when they have not been clearly explained. Generally, however, with respect to conversion of local connector streets into one-way only streets, this aspect of the Project is consistent with the Pacifica General Plan Circulation Element, which emphasizes "safety" and "safe" access; as discussed above, the conversion would help prevent dangerous vehicle conflicts. AR 1358, 5136. With respect to modifications to the area's appearance, as discussed above, the Visual Impacts Analysis found that the Project's visual impacts would be less than significant. AR 505. Additionally, the EIR states that while the Project would require removal of landscaping and trees along the highway, it "would include new landscape planting and would protect and/or improve coastal views." AR 619. Again, Petitioners fail to address this substantial evidence or meet their burden under CEQA.

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F. Mitigation

i. There are no significant operational noise impacts under CEQA, therefore no mitigation is required.

Petitioners claim the EIR violates CEQA because no mitigation is discussed for noise that exceeds the Noise Abatement Criteria. POB at 20:23-21:3. But Petitioners improperly try to equate the federal noise abatement criteria into a finding of significance under CEQA, when they are two separate concepts. AR 727.

As the EIR explains, the requirements for noise analysis and consideration of noise abatement and mitigation differ between NEPA and CEQA. AR 727. CEQA requires a baseline versus build analysis to assess whether a proposed project will have a noise impact; if a proposed project is determined to have a significant noise impact under CEQA, mitigation measures must be incorporated into the project unless they are not feasible. AR 727; Guidelines § 15125.

Under NEPA, however, for highway transportation projects with Federal Highway Administration involvement, such as this one, the Federal-Aid Highway Act of 1970 and its implementing regulations govern the analysis and abatement of traffic noise impacts. AR 727; 23 C.F.R. § 772. The regulations contain noise abatement criteria that are used to determine when a noise impact would occur. AR 727-28. This CEQA/NEPA distinction was explained in the EIR: "the rest of this section will focus on the NEPA-23 CFR 772 noise analysis; please see Chapter 3 of this document for further information on noise analysis under CEQA." AR 727. Petitioners are not challenging the NEPA determinations in this lawsuit, and the federal standards and determinations are not at issue.

For CEQA purposes, as the EIR explained, Caltrans' Traffic Noise Analysis Protocol provides that a traffic noise impact may be considered significant under CEQA if the project is expected to result in a substantial increase in traffic noise, defined as an increase of 12 dBA Leq(h) above existing conditions. AR 511; AR 4115-16 (Noise Study Report). Operating under that standard, the EIR determined that "traffic noise impacts of the proposed project are considered less than significant under CEQA" because the Project will result in a maximum increase of only two dBA Leq(h), which would be an imperceptible increase well below 12 dBA Leq(h). AR 803; see also AR 511 (Table S-

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2, Summary of CEQA impacts). Accordingly, no mitigation was required here, because CEQA does not require mitigation for insignificant impacts. Pub. Res. Code §§ 21100(b)(3), 21002.1(a); Guidelines § 15126.4(a)(3); *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1989) Cal.App.3d 1502, 1517.

ii. The EIR did not improperly analyze or defer mitigation for the California red-legged frog and San Francisco Garter Snake.

Petitioners contend the EIR improperly defers formulation of a Habitat Mitigation and Monitoring Plan without performance criteria. POB at 21:24-22:9. But that plan, proposed as one of nine separately identified mitigation measures to avoid or offset impacts to the California Red-legged Frog, does not improperly defer formulation because Caltrans has committed to the mitigation, including obtaining a Biological Opinion and Incidental Take Statement from the U.S. Fish and Wildlife Service, has evaluated and analyzed alternatives within the plan, and has specified performance criteria. In some instances, it is not practical to finalize the details of a plan to mitigate an impact at the time the EIR is prepared; in those circumstances, deferral of the specifics of mitigation is nonetheless permissible where the lead agency "commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan." *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 (citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-30). Notably, compliance with a regulatory scheme provides adequate assurance that impacts will be mitigated, even where final design is deferred to a later date. *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 912.

Here, as one of nine separate mitigation measures, the Project proposes MM T&E-1.8 for compensatory mitigation for habitat impacts to the red-legged frog. AR 775-78. The measure proposes a mitigation package in cooperation with the Golden Gate National Recreation Area ("GGNRA"), which will offset impacts to habitat by enhancing a 5.14-acre parcel owned by the City of Pacifica, as well as a 5.46-acre GGNRA parcel. As the EIR explains, while the GGNRA has agreed to the proposal, the details could not be finalized in the EIR because the National Park Service, which owns and manages the GGNRA, must still approve them. AR 775. The EIR also proposed an alternate contingency plan for compensatory habitat mitigation, including a habitat

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mitigation and monitoring plan ("HMMP") that would be developed to "to manage the property and monitor the effects of management on the CRLF." AR 777-78. The mitigation would be provided "via the protection, enhancement and management of habitat that currently supports, or can support, this species at a minimum 2:1 (mitigation:impact) ration, on an acreage basis." AR 777.

While some specific details of the GGNRA proposal and the HMMP had not been finalized in the EIR, Caltrans has committed to the mitigation. As explained below in section IV.H regarding Petitioners' arguments that the mitigation measures are not enforceable, the Project Report identified this measure and provided that it will be implemented. AR 53-55. Also, both the EIR and the Findings explain that this measure is "included in the Project" and "has been adopted." AR 140-41, 144, 773. Moreover, the Biological Opinion provides that this measure is "non-discretionary, and must be implemented by Caltrans." AR 1007.

As in *Defend the Bay, supra*, Caltrans has committed to the mitigation, and listed the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. 119 Cal.App.4th at 1275. In addition, Caltrans has specified criteria to be met (e.g., 2:1 ratio), has committed itself to eventually devising measures that will satisfy those criteria, and is required to comply with the conditions in the biological opinion. *Id.* at 1276. Similarly, in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, the EIR had set out the possibilities of on-site or off-site preservation of similar habitat at a ratio of at least 2:1, or one of several possible habitat loss permits from various agencies. *Id.* at 794. The court found that was not impermissible deferral of mitigation because the EIR enumerated the alternative mitigation measures. *Id.*; *see also, Sacramento Old City Assn., supra*, 229 Cal.App.3d at 1028 (options proposed as components of mitigation plan to meet performance criteria was not improper deferral); *Oakland Heritage Alliance, supra,* 195 Cal.App.4th at 912 (compliance with regulatory scheme was not improper deferral).

The facts at issue here are distinct from the authority cited by Petitioners. POB at 21:21-23. In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, the EIR had improperly deferred formulation of mitigation measures for emissions impacts because it had merely proposed a generalized goal, and set out a "handful of cursorily described" measures for

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future consideration that "might serve" to mitigate the emissions. *Id.* at 93. No effort was made to calculate reductions in emissions, and the perfunctory list of possible measures was "nonexclusive, undefined, untested and of unknown efficacy." *Id.* Similarly, in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, the vague mitigation measure at issue – a management plan to be prepared by a qualified biologist "to maintain the integrity and mosaic of the vernal pool habitat" – was deficient because it merely included "a generalized goal of maintaining the integrity of the vernal pool habitats... leaving the public in the dark about what land management steps will be taken or what specific criteria or performance standard will be met." *Id.* at 669-70. As described above, the EIR at issue here did not improperly defer formulation of mitigation.

Petitioners also contend that Caltrans has not "completed its feasibility analysis for wetlands impacts" and "compensation of impacts to frogs and snakes," but do not explain what that means, nor cite to any portion of the EIR. POB at 23:1-5. Similarly, Petitioners claim that Caltrans has not completed its "feasibility analysis" for compensation of impacts to frogs and snakes, again without explanation or citation to any portion of the EIR. Id.

Petitioners also claim the EIR fails to discuss *how* potential enhancement of habitat adequately compensates for habitat impacts. POB at 23:8-9. That is incorrect. As the EIR explains, enhancements would primarily consist of removal and management of invasive plants, replacement with grassland/shrub habitat, as well as enhancements of portions of the parcel with micro-depressions and rock and woody debris, and seasonal or ephemeral ponds. AR 775-76. Depressions to collect water and downed woody debris and rocks will enhance the habitat by preserving moisture and providing cover for the frogs. AR 775-76. The enhancements will improve dispersal habitat over the ridgeline by providing protection and moisture and allowing connectivity of aquatic habitat. AR 776.

Petitioners also note that NPS commented that the EIR "poorly explains what is meant by habitat enhancement or preservation," but Petitioners fail to explain how a comment could establish that an EIR improperly deferred mitigation – it does not – and also ignore the response to the comment and the portions of the Final EIR that describe the enhancement and preservation in detail.

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POB at 22:26-30; AR 775-76, 1077-78. Petitioners also claim the EIR fails to address compensating net loss of habitat acreage, values and functions for threatened species, wetlands and wetlands buffers. POB at 23:9-12. But there are entire sections of the EIR devoted entirely to these and other biological environment issues, as discussed herein. See, e.g., AR 739-84.

Petitioners claim the GGNRA parcel is already included in a Restoration and Trail Plan, and that the City's 5.14-acre parcel has a previous mitigation commitment that was not disclosed in the EIR, so that the species will have the benefit of enhancement and preservation even if the Project does not proceed. POB at 23:13-20. But Petitioners cite no evidence in support of that proposition; instead, they cite only to a letter from ecological consultants stating that the 5.14-acre parcel has a conservation easement on it, but has limited habitat value. Thus, as the letter explains, without the enhancement measures proposed in the letter and analyzed in the EIR, the species would not receive the benefits. AR 9133-34.

Petitioners claim the EIR does not address that the San Francisco Garter Snake is a "fully protected species." POB at 23:22-23. But the EIR does discuss the garter snake at great length, analyzes potential impacts, and identifies numerous mitigation measures, including fully completed consultation with the U.S. Fish and Wildlife Service. AR 771-82; 981-1026. Petitioners have not addressed any aspect of that analysis or the conclusions that follow. POB at 23-24. Instead, Petitioners cite a comment from a biological consultant regarding the California Fish and Game Code, which is not at issue in this lawsuit. POB at 23:24-24:1; AR 9272. Petitioners fail to explain in any way how that comment undercuts the analysis in the EIR or the substantial evidence supporting the conclusions contained therein. POB at 24:1-7. Petitioners' claim that the EIR fails to "consider a mitigation to avoid illegal take of this species" is baseless. POB at 24:1-2.

Lastly, Petitioners claim that Caltrans "choose to stage all Project construction activities on endangered species habitat, instead of avoiding or minimizing these adverse impacts by locating construction staging elsewhere," but provide no citation for that claim and identify no CEQA violation. POB at 24:3-4. Petitioners have identified no evidence in the record, and the argument is waived. *Defend the Bay, supra,* 119 Cal.App.4th at 1266.

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G. Caltrans adopted an adequate MMRP.

Petitioners claim there is no Mitigation Monitoring or Reporting Plan ("MMRP"), but their argument is strictly one of form over substance, because Caltrans developed binding and enforceable commitments to ensure implementation of mitigation measures, as required by CEQA. POB at 24:8-25:3. Caltrans adopted a program to ensure that mitigation measures to reduce significant effects will be implemented, as reflected in Appendix I to the Final EIR, and further memorialized in the Project Report that constitutes the Project approval, the Findings adopted pursuant to Public Resources Code section 21081, and the Notice of Determination filed with the State Clearinghouse. AR 957-78, 1, 3-139. These measures satisfy the requirements under CEQA. Pub. Res. Code § 21081.6.

CEQA requires that a lead agency ensure that mitigation measures to reduce *significant* environmental effects be fully enforceable through permit conditions, agreements or other measures, but does not require any specific format or procedure for doing so. Pub. Res. Code § 21081.6; *see, e.g., Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1356 (compliance with monitoring requirements pursuant to other environmental laws and permits is sufficient); Kostka & Zischke, *Practice Under the Environmental Quality Act* (2d ed. Cal CEB 2013 Update) ("Kostka") at p. 858. Ultimately, as long as the agency takes steps to ensure compliance during project implementation and that the mitigation measures are fully enforceable, the format does not matter. See, e.g., Kostka at p. 858 (variety of formats can suffice, such as including monitoring steps in findings). Thus, "agencies have substantial discretion to determine the most appropriate program." Id.; *see also, Rio Vista Farm Bureau v. County of Solano* (1992) 5 Cal.App.4th 351 (adequacy of monitoring assessed through "rule of reason"; no exhaustive program is required).

Here, Appendix I provides a detailed description of mitigation measures for the Project, including monitoring and reporting steps that will be taken to ensure implementation and compliance, as well as identifying the party responsible for implementation. AR 957-78. For instance, with respect to mitigating significant impacts to red-legged frogs, Appendix I explains that "a qualified biologist shall *monitor* the installation of the [wildlife exclusion fencing]," and "a post-installation survey shall be conducted." AR 972. The Findings adopted for the Project include these measures as conditions as well. AR 141. Also, prior to the start of work each day, a Biological Monitor "shall

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inspect the integrity of the WEF" and the construction zone. AR 973, 141. In addition, specific monitoring and reporting steps will be taken if any frog is encountered during construction:

> (1) The Resident Engineer will be notified; 2) the Resident Engineer will ensure that all work that could result in direct injury, disturbance, or harassment of the individual animal must immediately cease; and 3) The approved-biologist, who will be on site monitoring construction, will identify the species and may remove the individual to a preapproved safe location nearby, if necessary.

AR 973, 142. Appendix I also notes that "take" of CRLF is only permitted through section 7 consultation with the U.S. Fish and Wildlife Service, which has taken place and is documented in the Biological Opinion at Appendix J, which itself includes detailed conditions and monitoring and reporting requirements. AR 975, 980, 1008-12; *Leonoff, supra,* 222 Cal.App.3d at 1356 (compliance with monitoring requirements pursuant to other environmental laws or permits is sufficient).

These steps, and others outlined in Appendix I, fit squarely within the definition of "monitoring" under the Guidelines: "Monitoring is generally an ongoing or periodic process of project oversight." Guidelines § 15097(c), AR 973-76. This section adds that "there is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both." Id. In addition, "monitoring is suited to projects with complex mitigation measures, such as wetlands restoration...." Id. As even Petitioners concede, Appendix I includes numerous monitoring and reporting steps that will take place to ensure implementation of mitigation measures. POB at 24:20-25. Although there is no requirement for such monitoring or reporting for measures implemented for effects which are not significant, Appendix I discusses them at great length nonetheless. Pub. Res. Code § 21081.6(a)(1); see, e.g., AR 961-64 (cultural resources), 965-66 (paleontological resources), 968 (hazardous materials), 976 (invasive species), 976-78 (construction impacts). Thus, Petitioners' argument that the Project approvals do not include any program for monitoring or reporting of mitigation measures for various impacts such as hazardous materials, invasive species and construction impacts, is incorrect and legally immaterial. POB at 24:15-20. Notably, Petitioners do not challenge the adequacy or sufficiency of any of these measures, and may not do so on reply. POB at 24-25; *Badie v. Bank of America, supra,* 67 Cal.App.4th at 784-85.

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Rather than address the substance, Petitioners simply declare that Appendix I is insufficient because it is "largely a cut and paste from the mitigation sections of the EIR." POB at 24:14. But it is immaterial whether the steps outlined in Appendix I to ensure compliance were also stated elsewhere in the EIR, and in fact it reflects consistency between the measures evaluated in the EIR and the steps the agency adopts to ensure the measures are properly implemented and monitored. Petitioners essentially contend that Caltrans should be penalized for having disclosed in the Draft EIR steps that would be taken to ensure implementation and compliance. But there is no support for that proposition, and it runs counter to CEQA's policy in favor of disclosure to the public.

H. Mitigation measures are appropriately enforceable.

Petitioners claim that various biological mitigation measures were not made enforceable, but Caltrans approved the Project with commitments to implement such mitigation measures as conditions of approval, and made findings that mitigation measures to reduce significant impacts had been required in, and incorporated into, the Project, and adopted. POB at 25:10-27; *see, e.g., Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029. Substantial evidence supports those findings, and Petitioners have not argued to the contrary. *Defend the Bay, supra,* 119 Cal.App.4th at 1266.

While CEQA requires that a lead agency provide that mitigation measures to reduce significant environmental effects be enforceable, it also provides flexibility as to how they are made enforceable: "through permit conditions, agreements, or other measures." Pub. Res. Code § 21081.6(b); *Sacramento Old City, supra*, 229 Cal.App.3d at 1029. Also, conditions of project approval may be set forth by incorporating the mitigation measures into the project. Pub. Res. Code § 21081.6(b).

Petitioners claim that Caltrans "failed to make mitigation measures enforceable in the Final Project Report or elsewhere," and that "there is no condition of approval adopted for this mitigation measure." POB at 25:8-14. But the Project Report, which constituted the Project approval, identified mitigation measures for biological impacts, and ensured that they will be implemented. AR 53-55. The EIR also stated that these mitigation measures "are included in the Project." AR 773. By also

identifying these measures in the Project approval itself, they are conditions of approval, which is sufficient to demonstrate that they are enforceable. *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116; Kostka at p. 709. The Findings also state that "changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the EIR," and described the mitigation measures that "have been adopted." AR 140-41, 144.

At the same time, the EIR, the Project Report and the Findings all reference the consultation with the U.S. Fish and Wildlife Service that was conducted pursuant to the Endangered Species Act, and the Biological Opinion issued by the Service. AR 778-79, 49, 54, 143. The Biological Opinion itself, attached as Appendix J to the Final EIR, includes numerous conditions of approval, including the specific ones Petitioners object to regarding habitat compensation. POB at 25:11-18; AR 993-95, 1005, 1008-13. CEQA expressly provides that conditions of project approval may be set forth in referenced documents which address required mitigation measures. Pub. Res. Code § 21081.6(b). The Biological Opinion describes the conditions of approval as follows:

> The measures described below are non-discretionary, and must be implemented by Caltrans so that they become binding conditions of any grant or permit issued to Caltrans, as appropriate, in order for the exemption in section 7(o)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If Caltrans (1) fails to require its contractors to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

AR 1007. Thus, Petitioners' claim that various biological mitigation measures, such as installation of wildlife exclusion fencing and construction surveys, do not have conditions of approval is incorrect. POB at 25:19-24. The Biological Opinion includes all of these as conditions of approval. See, e.g., AR 994 (wildlife exclusion fencing), 1005 (preconstruction surveys, habitat compensation).

Lastly, Petitioners note that the National Park Service has not yet approved the specific details of the habitat mitigation package that the Golden Gate National Recreation Area has agreed to. POB at 25:15-18; AR 142. This is the same argument Petitioners make regarding alleged deferral of mitigation measures, which is addressed and rebutted above in section IV.F.ii. With respect to

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enforceability, though, habitat compensation is an express condition of approval in the Biological Opinion: "if the proposed compensation scheme is not fully implemented, Caltrans shall provide an alternative compensation scheme to be reviewed and approved by the Service/CDFG." AR 1009. Under CEQA, where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated. *Sacramento Old City, supra,* 229 Cal.App.3d at 1029.

I. The EIR adequately analyzed alternatives.

Petitioners claim the EIR violated CEQA because it "failed to explain in meaningful detail the reasons and facts supporting the rejection of... the earlier proposed 'Narrow Median' alternative." POB at 26:5-8, 26:26-30. As a preliminary matter, Petitioners' arguments on this point were not raised or presented to Caltrans prior to the close of the public comment period on the DEIR, and Petitioners are therefore barred from making these arguments in this lawsuit. *Tahoe Vista Concerned Citizens*, 81 Cal.App.4th at 594.

In any case, Petitioners' arguments have no merit. First, it is not clear which rejected alternative Petitioners are referring to, in large part because Petitioners do not cite to any portion of the EIR. POB at 26-27. Moreover, Petitioners do not explain in any way how the EIR allegedly failed in this regard, and once again neglect to identify the evidence supporting the agency's determination and explain why it is lacking. *Defend the Bay, supra,* 119 Cal.App.4th 1261, 1266. It is not enough simply to set forth evidence supporting a different conclusion than the agency's; rather, the petitioner must lay out the evidence favorable to the agency and then show why it is legally insufficient, and the failure to do so is fatal. *Id.* Here, Petitioners neither set forth evidence supporting a different conclusion, nor lay out the evidence favorable to the agency and shows why it is insufficient. POB at 26. Petitioners' argument fails for that reason alone.

In any case, the EIR does explain in meaningful detail, over more than 30 pages, the reasons and facts supporting rejection of all alternatives that were "considered but eliminated from further discussion" prior to circulation of the Draft EIR. AR 568-602. Section 1.4.8 of the EIR is devoted entirely to a lengthy discussion of these 11 different alternatives that were considered and studied,

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including those identified by the Project Development Team and by the public. AR 568-99. The section includes detailed maps showing the various considered-but-rejected alternatives, as well as a matrix in table 1.7 that summarizes the reasons each alternative was eliminated from further consideration. AR 599-602. Petitioners do not address any of this. POB at 26-27.

Petitioners separately imply that the EIR violated CEQA because it failed to adopt a no-build or reduced-project alternative suggested by the California Coastal Commission ("CCC"). POB at 26:16-20. However, the CCC did not propose any specific alternative in the portion of the EIR Petitioners cite. AR 1095-96. Instead, the CCC simply suggested that Caltrans consider "some combination of the rejected alternatives." AR 1096. Petitioners do not demonstrate or even attempt to explain how such a combination of alternatives would achieve the Project's objectives and reduce significant environmental impacts, nor provide any actual details about this hypothetical alternative. POB at 26:16-20. In fact, the CCC's general suggestion was that the EIR consider a *no-build or reduced-project alternative*, which would not achieve the Project's objectives of reducing congestion during peak period travel times. AR 1096, 539.

And, as a practical matter, in discussing the numerous rejected alternatives, the EIR did consider various combinations of them and explained why they would not achieve the Project objectives, reduce significant environmental impacts, or be feasible. AR 568-602; 4443-4524 (Traffic Operations Report); 4527-42 (Additional Transit Analysis); 4543-45 (Supplemental Transit Analysis). Petitioners fail to address any of this evidence. POB at 26-27. An EIR need not consider in detail every conceivable variation of the alternatives stated; instead, as with the range of alternatives which need discussion, the level of analysis is subject to a rule of reason. Guidelines § 15126.6; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 403. The EIR satisfied that standard here.

Lastly, Petitioners claim the EIR "prematurely dismissed" the Grade Separation at Reina del Mar Avenue alternative from consideration, and improperly found the cost to be a basis for rejection. POB at 26:22-27:8. As the EIR explained, though, while this alternative would have provided marginally better congestion relief than the preferred alternative, it was rejected because the

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construction cost would have been "substantially higher" than the build alternatives, *and* because it would have resulted in *increased* environmental impacts, specifically to coastal resources. AR 579-85; *Laurel Heights, supra,* 47 Cal.3d 376 (purpose of an EIR's alternatives analysis is to identify ways to avoid or reduce significant environmental impacts). Petitioners claim the cost for this alternative was "in the same range" as the preferred alternative. POB at 27:4-5. However, the estimated the construction cost alone for this rejected alternative was $50-65 million, compared to an estimated construction cost of only $25 million for the preferred alternative. AR 78, 580. The EIR did not need to discuss the infeasibility of this rejected alternative. Guidelines § 15126.6(a); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1504, n5.

Petitioners cite *In re Bay-Delta, supra,* for the proposition that an EIR should not exclude an alternative from detailed consideration merely because it would impede to some degree the attainment of the project objectives or be more costly. POB at 27:5-8. But as the Court pointed out in that case, an EIR need not evaluate an alternative that is infeasible or that would not avoid or reduce significant environmental effects. *In re Bay-Delta*, 43 Cal.4th at 1165.

J. Substantial evidence supports the decision not to recirculate the EIR.

If significant new information is added to an EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR, or the relevant portions thereof, for comments and consultation. Pub. Res. Code § 21092.1; Guidelines § 15088.5; *Vineyard Area Citizens for Resp. Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447. New information added to an EIR is "significant" only if "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." *Vineyard Area Citizens, supra*, 40 Cal.4th at 447; Guidelines § 15088.5(a) (emphasis added). Agency decisions regarding whether to recirculate are upheld if supported by substantial evidence, and reasonable doubts are resolved in favor of the agency's decision. *Laurel Heights Improvement Assn. v. UC Regents* (1993) 6 Cal.4th 1112, 1135; *Vineyard Area Citizens, supra*, 40 Cal.4th at 447; Guidelines § 15088.5(e).

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Here, Plaintiffs claim that recirculation was required, but base their claim on information added to the Final EIR that was not "significant" under this standard. POB at 27:18-28:14. The information added to the EIR did not include or identify any new significant environmental impact or a substantial increase in the severity of an environmental impact, and substantial evidence supports the determinations made in the EIR. Guidelines § 15088.5(a).

i. No new significant impacts were identified in the FEIR.

Plaintiffs claim the Final EIR disclosed a significant new impact because the Paleontological Identification Report ("PIR") prepared after the public comment period determined that planned ground-disturbing activities within the project footprint "could potentially impact paleontological resources." POB at 28:16-12.[7] But that is not a determination that the Project will result in a significant impact on paleontological resources. In fact, the Final EIR concluded that the Project would *not* result in significant environmental impacts, a conclusion Petitioners have not challenged. AR 802-03, 509. And while the Final EIR added two mitigation measures, those measures were not necessary to reduce the impact to less than significant. AR 706-07. Instead, as the EIR explained, while the Project area "is considered to have a high potential of paleontological sensitivity," and the Project "may potentially impact paleontological resources," that impact is not expected to be significant because, for instance, microfossils are very abundant and found in numerous areas in the Bay Area. AR 706. In addition, no paleontological resources will be affected in the middle portion of the Project, which is the location where the geological deposits are the most sensitive, because the widening will be constructed on new embankment to prevent encroachment into environmentally sensitive areas and because excavation in this area would be into existing, man-made embankments.

[7] The PIR was prepared in response to a comment submitted on the Draft EIR, which provided a link to an article regarding the discovery of mammoth bones in the project vicinity. AR 705, 1221-22. The PIR and the response to the comment noted that the paleontologist who identified the fossils found in Pacifica determined that "there is no telling at this point where the bones were originally from [and] the people who have collected that stuff are not very clear about where they find things." AR 1221-22, 4188. In addition, the paleontologist for the University of California Museum of Paleontology completed a search of records and "found no record of prior finds within [the] project area or the entire town of Pacifica." AR 4188. Thus, the determination in the Draft EIR that there "are no known paleontological resources located in the project area" remained true for the Final EIR as well. AR 243.

AR 706. That conclusion is supported by substantial evidence in the PIR as well. AR 4179-99. Petitioners do not challenge any of this evidence, nor cite to any evidence to the contrary, but rather declare that the PIR itself concluded the impacts would be significant. POB at 28:3-14. It did not, and recirculation was not required. Pub. Res. Code § 21092.1; Guidelines § 15088.5.

ii. No new mitigation measures were added, or were required to be added, to the FEIR.

Petitioners claim that "feasible noise mitigation" that would have lessened project impacts was considered but not adopted in the Final EIR, but fail to identify any CEQA violation or cite to any applicable CEQA provision. POB at 28:16-17:9. As it is, there was no requirement under CEQA that any mitigation measure be adopted for noise impacts because those impacts were determined to be less than significant, as described in sections IV.F.i and IV.E.i.c, above. AR 803; see also AR 511 (Table S-2, Summary of CEQA impacts). CEQA requires that an EIR describe feasible mitigation measures that can minimize the project's *significant* environmental impacts. Guidelines §§ 15121(a), 15126.4(a). But an EIR is not required to include or discuss mitigation measures for insignificant impacts. Pub. Res. Code § 21100(b)(3); *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1517.

Thus, Petitioners' discussion regarding the feasibility and cost of soundwalls is irrelevant on this point. POB at 28:17. Because the noise impacts will not be significant, no mitigation was required under CEQA. AR 803; *San Franciscans for Reasonable Growth*, 209 Cal.App.3d at 1517.

iii. The DEIR was not fundamentally inadequate and conclusory.

Petitioners claim the Draft EIR was "fundamentally inadequate and conclusory" based on a handful of vaguely described facts, none of which required that the document be recirculated. POB at 29:15-25. For instance, Petitioners argue the Final EIR disclosed for the first time that "numerous admitted adverse impacts would, in fact, be only insignificant." POB at 29:25. However, Petitioners offer no citation in support, no explanation of what impacts they are referring to, and no discussion of why that would require recirculation. Petitioners also claim the Final EIR disclosed for the first time that the highway would be widened from 64 feet to a maximum of 132 feet, but that fact *was*

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disclosed in the Draft EIR. POB at 29:15-16; AR 211 (Figure 1.5).

Similarly, Petitioners claim the Final EIR disclosed for the first time a "complete list of the number, size and location of retaining walls," but they ignore the extensive information about retaining walls that was included in the Draft EIR, and fail to explain how the inclusion of a list in the Final EIR rendered the Draft EIR "fundamentally inadequate and conclusory" in a manner that necessitated recirculation. AR 151, 175, 210-12, 244-45, 280-88, 289-90, 302, 339, 342, 359-60, 1114 (detailing in a response to comment where in the DEIR retaining walls were discussed and depicted).

Petitioners cite *Mountain Lion Coalition v. Fish & Game Commission* (1989) 214 Cal.App.3d 1043, in support of their argument, but in that case the draft EIR had altogether omitted consideration of critical issues such as cumulative impacts, before adding them to the final EIR. POB at 30:4-8. Here, by contrast, retaining walls were discussed at great length in the Draft EIR, including consideration of resulting environmental impacts and a discussion of how the retaining walls were being included in some locations to reduce or avoid impacts. AR 151, 175, 210-12, 244-45, 289-90, 302, 339, 342, 1114; *cf, Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 131 (fundamental and critical water rights information and analysis omitted from draft EIR). Petitioners make no effort to analogize the facts at issue here to those in *Mountain Lion*.

Petitioners also claim the Draft EIR was fundamentally inadequate because it did not disclose that the Landscape Median Alternative would vertically separate the two sides of SR1." POB at 29:19. Again, though, Petitioners fail to explain in any way why that information required recirculation, or why the Draft EIR was inadequate for not including it. Id. A draft EIR is not rendered "fundamentally inadequate" simply because new information is contained in the final EIR, and recirculation is not required when the new information added to the EIR makes insignificant modifications to an adequate EIR or merely clarifies or amplifies. Guidelines § 15088.5(b); *Laurel Heights II, supra,* 6 Cal.4th at 1129. As it was, the Final EIR explained that the vertical separation is a design enhancement feature that would improve coastal views. AR 567.

Lastly, Petitioners claim that information regarding excavation required recirculation, but

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again fail to explain in any way how or why that information is significant. POB at 29:20-24. Moreover, the excavation necessary to construct the Project was discussed at length throughout the Draft EIR in connection with numerous environmental resources. AR 191, 281, 295, 297, 305, 309, 318, 371, 373, 383. For instance, the Draft EIR disclosed that the Project will involve "typical highway excavation," will implement "standard engineering practices to ensure that geotechnical and soil hazards do not result from its construction," and further that no excavation would take place within the environmentally sensitive area. AR 162, 165-66, 170. Petitioners make no effort to explain how the precise depths and lengths of various cuts impact the environment in a manner that the Draft EIR did not analyze, or how they constitute significant new information that required recirculation. Recirculation was not required.

V. Conclusion

The Petition for Writ of Mandate should be denied.

Dated: 6-30-14

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