

1 BRIGGS LAW CORPORATION [FILE: 1918.00]  
Cory J. Briggs (State Bar no. 176284)  
2 Anthony N. Kim (State Bar no. 283353)  
99 East "C" Street, Suite 111  
3 Upland, CA 91786  
Telephone: 909-949-7115

4 Attorneys for Plaintiff and Petitioner Save Civita  
5 Because Sudberry Won't

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN DIEGO – HALL OF JUSTICE  
9

10  
11 SAVE CIVITA BECAUSE SUDBERRY WON'T,  
12 Plaintiff and Petitioner,  
13 vs.  
14 CITY OF SAN DIEGO; and DOES 1 through 100,  
15 Defendants and Respondents;  
16 DOES 101 through 1,000,  
17 Defendants and Real Parties in Interest.

Case No. 37-2017-00045044-CU-WM-CTL

**PLAINTIFF AND PETITIONER'S  
OPENING BRIEF IN SUPPORT OF  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND PETITION  
FOR WRIT OF MANDATE UNDER THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT AND OTHER LAWS;  
DECLARATION OF DEBORAH  
BOSSMEYER**

Action filed: November 27, 2017  
Department: C73 (Hon. Joel R. Wohlfeil)

Trial date: December 12, 2019  
Trial time: 1:30 p.m.

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21 Plaintiff and Petitioner Save Civita Because Sudberry Won't ("Petitioner") respectfully submits  
22 this opening brief in support of its operative pleading.

23 Date: September 13, 2019.

Respectfully submitted,

24 BRIGGS LAW CORPORATION

25  
26 By: Cory J. Briggs  
Cory J. Briggs

27 Attorneys for Plaintiff and Petitioner Save Civita  
28 Because Sudberry Won't

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## I. INTRODUCTION

What do concerned residents do when they move into a community touted as “perfectly walkable,” only to find out shortly thereafter that the City of San Diego (“City”) is going to increase traffic on their steep, curvy, narrow two-way streets more than 14 times over so the developer can save tens of millions on traffic mitigation elsewhere? What do these residents do when the City makes this change but refuses to install crosswalks or other traffic-calming devices to protect bicyclists and pedestrians – especially kids – when trying to get to the park or the school on the other side of the street? Facing that very situation, Plaintiff’s members implored the City’s staff and leadership at every turn, in person and in writing for well over a year, to do *something* to reduce the harm their neighborhood would face as the result of traffic going from 2,420 to 34,540 car trips per day.

Sadly, their pleas fell on deaf ears; as it turns out, they never had a chance. This lawsuit is thus motivated equally by residents’ concerns for public safety in their neighborhood and their concerns that the City’s decision-makers had made up their minds against the residents long before any of the evidence had been presented. The first set of concerns was generated during the time that the residents were participating in the City’s administrative process. The second set of concerns arose after the decision-makers voted, when the City started to turn over documents related to the decision. Whether it’s their safety or their due-process rights, the residents were mistreated. Something’s rotten at City Hall.

The first sentence in the Land Use and Community Planning Element of the San Diego General Plan states that its purpose is to “provide[] policies to guide the City of San Diego’s growth and implement the City of Villages strategy within the context of San Diego’s community planning program.” Admin. R. 2343:34875.<sup>1</sup> When the City approved a mixed-use project located in Mission Valley known as Civita back in 2008, it described the City of Villages concept as a new approach to *create walkable communities and get people out of their cars*. *Id.*, 59:6299. Almost 10 years later, the City approved the proposal that is the subject of this lawsuit: a roadway connector that cuts through the heart of the Civita community and is expected to increase daily car trips from 2,420 to 34,540

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<sup>1</sup> The citations to the administrative record identify the tab and sequential page number such that “Admin R. 59:6299” refers to administrative record tab 59, page 6299.

1 (“Project”). That’s a 14-fold increase in vehicle danger to what the City has marketed as a pedestrian-  
2 friendly community.

3 This roadway connector has a storied, controversial past. It was denied by the City’s Planning  
4 Commission twice in 2004. It was denied by the City Council in 2005 and again in 2008. Hundreds  
5 of the City’s residents have spoken out against it. In 2017, both the Serra Mesa Community Planning  
6 Group and the Mission Valley Community Planning Group – the two communities the roadway is  
7 supposed to connect – refused to lend their support to it. And for good reason. Not only will the  
8 roadway connector be used to draw enormous amounts of regional traffic through what is intended to  
9 be a pedestrian-friendly, walkable community, but the City has been less than honest in trying to push  
10 the Project through amidst extensive community opposition. In this regard, the City has failed to  
11 analyze a reasonable range of alternatives to the roadway, and it has failed to adequately analyze the  
12 Project’s traffic impacts and inconsistencies with the applicable land-use plans. Each of these failures  
13 is a violation of the California Environmental Quality Act (“CEQA”).

14 Perhaps worst of all, the public was denied a fair hearing on the Project. Approximately six  
15 months before the roadway connector came up for a vote at the City Council, one of its members, Scott  
16 Sherman, tasked his staff with mounting public support for the Project.<sup>2</sup> In other words, Mr. Sherman’s  
17 support for the Project was a foregone conclusion six months before he was ever scheduled to hear the  
18 evidence; indeed, he’s the one who made the motions in favor of the Project at both the Smart Growth  
19 and Land Use Committee hearing and at the City Council hearing. As recognized by the California  
20 Supreme Court, “due process requires fair adjudicators in courts *and administrative tribunals* alike.”  
21 *Haas v. County of San Bernardino*, 27 Cal. 4th 1017, 1024 (2002) (emphasis added). Fairness requires  
22 that an adjudicator consider all of the evidence presented before reaching a decision, not reach a  
23 decision six months before any of the evidence is presented.

24 For all these reasons, discussed in detail below, Petitioner asks the Court to grant all requested  
25 relief.

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28 \_\_\_\_\_  
<sup>2</sup> He was also the Chair of the Smart Growth and Land Use Committee when it heard the Project.  
Admin. R. 2351:36393.

1 **II. BACKGROUND**

2 **A. Quarry Falls/Civita Project**

3 Civita, formerly known as Quarry Falls, is a large mixed-use community in the Mission Valley  
4 Community Plan area, adjacent to the Serra Mesa Community Plan, that was approved back in 2008.  
5 At full build-out, it will consist of 4,780 residential units, a maximum of 900,000 square feet of  
6 combined commercial retail and office uses, and approximately 17.5 acres of public parks, civic uses,  
7 open space, and trails. Admin. R. 58:5924. Around the time of its approval, Civita was touted in this  
8 way:

9 **Transit, walkability, and healthy living** are thoughtfully integrated  
10 into Quarry Falls – making it a model, sustainable community that will  
11 provide a high quality of life for its residents and surrounding  
12 community members in Mission Valley. Quarry Falls will help meet  
13 Mission Valley’s planning needs for attainable homes, a new public  
14 park, a public charter school, and urgently needed traffic improvements,  
15 while reducing commuter traffic by offering jobs and recreation close to  
16 homes on the site of an aging quarry.

17 Admin. R. 59:6238 (bolded in original; underline added). Back then Civita was sold to the public as  
18 being consistent with the “City of Villages” concept outlined in the General Plan. *Id.*, 59:6246. “In  
19 2002, San Diego city planners created the City of Villages strategy as the guiding land use principle  
20 for updating the city’s general plan. A village was defined as an integrated mix of commercial,  
21 residential, employment, and civic uses, with parks and open space, and a place that . . . is *pedestrian*  
22 *friendly* and transit accessible.” *Id.*, 59:6299 (emphasis added). With respect to Civita, that meant  
23 “bringing jobs close to homes, providing new parks and public facilities, *creating walkable*  
24 *communities* that have a sense of place, and emphasizing convenient, multi-modal transportation that  
25 *keeps people out of cars.*” *Id.* (emphasis added). Consistent with this goal, Civita seeks to dedicate  
26 17 acres zoned for high-rise commercial for open-space purposes, *eliminating* 10,000 new car trips  
27 daily. *Id.*, 59:6273 (emphasis added).  
28

29 The two relevant community planning groups recommended approval of Civita, but for  
30 opposing reasons. The Mission Valley Community Planning Group recommended approval “based  
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1 upon the inclusion of a road connection to Phyllis Place. . . .”<sup>3</sup> *Id.*, 54:5652. The Serra Mesa  
2 Community Planning Group recommended approval “based upon prohibiting the road connection to  
3 Phyllis Place . . . and preserving neighborhood character by maintaining Murray Ridge Road with one  
4 travel lane in each direction.” *Id.* These contrasting positions are consistent with the groups’ respective  
5 community plans, with the Mission Valley Community Plan (“MVCP”) recommending inclusion of  
6 a street connection between Phyllis Place and Friars Road, and the Serra Mesa Community Plan  
7 (“SMCP”) not including such a connection. *Id.*, 31:318. Ultimately, the road connector was excised  
8 from Civita’s approval. Instead, concurrent with the approval, the City adopted a resolution initiating  
9 an amendment to the City’s General Plan and the SMCP to include a road connection between Phyllis  
10 Place and Friars Road. *Id.* However, as emphatically stated in the resolution, “the initiation of a  
11 community plan amendment *in no way* confers adoption of a plan amendment and City Council is *in*  
12 *no way* committed to adopt or deny the amendment once it goes forward for approval.” *Id.*, 31:319  
13 (emphasis added).

14 In consideration of the potential amendment, the City Council specifically directed staff to  
15 analyze the following issues: (1) whether police and fire response times would be improved with the  
16 road connection; (2) whether the road connection could serve as an emergency evacuation route; (3)  
17 whether it is feasible to make the road available for emergency access only; and (4) whether pedestrian  
18 and bicycle access would be improved by the street connection. *Id.*, 31:319-320. In other words, in  
19 considering approval of a potential road connection down the line, the City appeared to be primarily  
20 concerned with limiting the use of such a road for emergencies while maintaining the area’s pedestrian  
21 and bicycle access.

22 **B. The Serra Mesa Community Plan Amendment**

23 On April 18, 2016, a draft EIR (“DEIR”) for the Serra Mesa Community Plan Amendment  
24 Street Connection was circulated for public review through July 5, 2016. Admin. R. 67:6535;  
25 2346:35450. The DEIR states that “[t]he proposed project is a community plan amendment (CPA) to  
26 the Serra Mesa Community Plan to include a street connection from Phyllis Place, located in Serra  
27 Mesa, southward to the boundary of Serra Mesa and Mission Valley.” *Id.*, 51:2855. After the public-

28 \_\_\_\_\_  
<sup>3</sup> As discussed below, the Mission Valley Community Planning Group has not lent its support to the roadway connector as it is being presented today and is the subject of this lawsuit.



1 comment period, “the City updated the project description to include construction of the roadway  
2 connection at a project level and recirculated the Draft EIR for public review.” *Id.*, 67:6535. The  
3 updated draft EIR was recirculated and made available for public review from March 29 through May  
4 30, 2017 (the “Recirculated DEIR”). *Id.*, 67:6535; 2349:35785 (showing comments due by May 15).  
5 The Recirculated DEIR updated the Project description to read that “[t]he proposed project consists of  
6 construction and operation of a *four-lane major street*, complete with bicycle lanes and pedestrian  
7 pathways, extending from Phyllis Place in Serra Mesa southward to Via Alta and Franklin Ridge Road  
8 in Mission Valley. The proposed project would also require an amendment to the Serra Mesa  
9 Community Plan.”<sup>4</sup> *Id.*, 2349:35815 (emphasis added).

10 To say the Project has been controversial would be an understatement. It was denied by the  
11 Planning Commission on May 6, 2004, and December 9, 2004. *Id.*, 2338:34567; 2339:34575. It was  
12 denied by the City Council on March 15, 2005. *Id.*, 2340:34608. As stated above, the Project was also  
13 denied in 2008 when it came up for consideration concurrently with the Civita Project. On June 1,  
14 2016, the Mission Valley Community Planning Group members – the same group that in 2008  
15 supported inclusion of a road connection to Phyllis Way – voted to *withhold* support for the Project.  
16 *Id.*, 2347:35769-35870. On May 3, 2017, the Mission Valley Community Planning Group again held  
17 a hearing on the Project and took no action on it. *Id.*, 69:6544. On May 18, 2017, the Serra Mesa  
18 Community Planning Group voted 11-0 to recommend denial of the Project. *Id.*, 67:6535. Indeed, the  
19 latest iteration of the Project drew the ire of the community, with literally hundreds of the City’s  
20 residents submitting written opposition to it. *See, e.g., id.*, 51:3040-37384.

21 Nevertheless, on August 24, 2017, the Planning Commission recommended approval of the  
22 Project. *Id.*, 67:6536. The day after the Planning Commission’s recommendation, City Council  
23 member Scott Sherman’s Director of Outreach sent out a mass email thanking supporters of the Project,  
24 stating that “[i]t is important to keep this momentum going, so please mark your calendar for the Smart  
25 Growth and Land Use [“SGLU”] Committee on September 21. . . . We have heard that after this latest  
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27 <sup>4</sup> Both Via Alta and Franklin Ridge are both steep, curvy roads. Admin. R. 69:6546-6547 (staff  
28 presentation showing curves and steep grades on two roads); 86.1:8 (staff noting “steep topography  
along the two roads”); 86.1:28-29 (testimony of Deborah Bossmeyer about steep grades and lack of  
mitigation); 86.1:93-94 (exchange between staff and Councilmember Bry admitting that both streets  
are steep and traffic-calming devices on them are not feasible)

1 vote, the opposition will be working to activate their coalition for an even bigger crowd on September  
2 21.” *Id.*, 1939:30580. The outreach director went on to write that “[i]tis [*sic*] imperative that we have  
3 a large vocal support at each of these public hearings” and then asked the email recipients to share the  
4 link to an online petition supporting the Project. *Id.* Since Mr. Sherman had his staff marshaling  
5 support for this Project months before the City Council or the SGLU Committee ever voted on it, and  
6 with him making the motions for approval, in hindsight it’s no surprise that his Committee and the City  
7 Council ended up approving the Project and certifying the final EIR on October 30, 2017. *See id.*,  
8 34:327-330. The City filed a notice of determination with the San Diego County Clerk on November  
9 13, 2017. *Id.*, 3:3. Petitioner promptly filed this lawsuit on November 27, 2017.

### 10 III. STANDING TO SUE

11 Petitioner doubts that there will be any dispute over its standing to maintain this lawsuit. Cases  
12 brought pursuant to CEQA have a liberal standing requirement. *See Bozung v. Local Agency*  
13 *Formation Comm’n*, 13 Cal. 3d 263, 272 (1975) (explaining that “strict rules of standing that might be  
14 appropriate in other contexts have no application where broad and long-term [environmental] effects  
15 are involved”); *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184,  
16 1198 (2004) (noting “CEQA’s liberal standing requirement”). In this regard, the Supreme Court has  
17 declared that “where the question is one of public right and the object of mandamus is to procure the  
18 enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in  
19 the result, since it is sufficient that he is interested as a citizen in having laws executed and the duty in  
20 question enforced.” *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155, 167  
21 (2011) (internal citations omitted). The Supreme Court determined that “corporate entities should be  
22 as free as natural persons to litigate in the public interest.” *Id.* at 168. The Court also reaffirmed its  
23 position that “strict rules of standing that might be appropriate in other contexts have no application  
24 where broad and long-term [environmental] effects are involved.” *Id.* at 170. Instead:

25 To have standing to apply for a writ of mandate a private citizen must be  
26 a “party beneficially interested.” \* \* \* . . . [W]here a public right is  
27 involved, and the object of the writ of mandate is to procure enforcement  
28 of a public duty, the plaintiff is not required to have any legal or special  
interest in the result; it is sufficient that as a citizen he is interested in  
having the public duty enforced. \* \* \* Accordingly, in a writ of mandate

1 against a municipal entity based on alleged violations of CEQA, a  
2 property owner, taxpayer, or elector who establishes a geographical nexus  
with the site of the challenged project has standing.

3 *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo*, 172 Cal. App. 3d 151, 158 (1985)  
4 (citations omitted). Therefore, Petitioner must demonstrate nothing more than (i) an interest in the  
5 enforcement of the public duty, (ii) an organizational purpose related to the upholding of CEQA, and  
6 (iii) a member with a geographical nexus to the project.

7 As stated in the verified petition for writ of mandate, Petitioner is a non-profit organization.  
8 Petition ¶ 1. As demonstrated through Petitioner's participation in the administrative proceedings,  
9 Petitioner has an organizational interest in CEQA being upheld and an interest in the enforcement of  
10 the City's public duties. At least one of Petitioner's members resides in the City of San Diego – and  
11 more specifically, within the Civita development – and will be adversely affected by the Project.  
12 Bossmeyer Decl., ¶¶ 1-4. Accordingly, Petitioner has standing.

#### 13 IV. ARGUMENT AND ANALYSIS

14 Petitioner's arguments fall into three categories: violations of CEQA, violations of the Planning  
15 and Zoning Law, and violations of the public's due-process rights. Each argument is discussed in detail  
16 in separate sections below.

##### 17 A. The City Violated the California Environmental Quality Act

18 Before addressing the merits of Petitioner's CEQA claims, the standard of review and  
19 exhaustion of administrative remedies will be addressed.

##### 20 1. Standard of Review

21 Challenges under CEQA are to be adjudicated in accordance with Section 1094.5 of the Code  
22 of Civil Procedure, and courts determine whether the challenged acts and decisions are supported by  
23 substantial evidence in light of the entire record. *See* PUB. RES. CODE § 21168. Under the Code of Civil  
24 Procedure, the central issue is whether the responding parties acted without or beyond their jurisdiction,  
25 failed to provide a fair trial, or prejudicially abused their discretion. CODE OF CIV. PROC. § 1094.5(b).  
26 An abuse of discretion exists when the responding parties have not proceeded in the manner required  
27 by law, their order or decision is not supported by the findings, or the findings are not supported by the  
28 evidence. *Id.*

1 In reviewing the adequacy of an environmental impact report challenged under CEQA, the  
2 Court should ascertain whether the report's conclusions are supported by substantial evidence<sup>5</sup> and  
3 whether the report itself is sufficient as an informational document, regardless of whether the project  
4 at issue is ultimately approved. *Bakersfield Citizens, supra*, 124 Cal. App. 4th at 1197 (citations and  
5 quotations omitted) (invalidating environmental impact report); *Friends of the Eel River v. Sonoma*  
6 *County Water Agency*, 108 Cal. App. 4th 859, 872 (2003) (ruling that approval of project is "nullity"  
7 if based on impact report that does not provide required information to decision-makers and public).  
8 The Court's review of factual determinations should be deferential, but there is no deference when  
9 considering whether there was a failure to act in the manner prescribed by law. *See Bakersfield*  
10 *Citizens, supra*, 124 Cal. App. 4th at 1207-1208. Abuse of discretion is a question of law for the courts  
11 to answer. *See Apple Computer v. Assessment Appeals Board*, 105 Cal. App. 4th 1355, 1370 (2003).

12 An environmental impact report must provide enough detail "to enable those who did not  
13 participate in its preparation to understand and to consider meaningfully the issues raised by the  
14 proposed project." *See Bakersfield Citizens, supra*, 124 Cal. App. 4th at 1198. However, emphasis  
15 should be on the process of the project's environmental review, not on the final outcome; a prejudicial  
16 abuse of discretion therefore exists "when omission of the relevant information has precluded informed  
17 decision[-]making and informed public participation." *See id.*

18 To prevent such information from being suppressed, the geographic scope of environmental  
19 review cannot be unduly restricted. Thus, a regional rather than a localized perspective is essential.  
20 *See, e.g., Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, 52 Cal. 3d 553,  
21 575 (1990) ("EIR may not ignore regional impacts . . . including those that occur outside [the project's]  
22 borders; . . . a regional perspective is required"); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County*  
23 *of Stanislaus*, 27 Cal. App. 4th 713, 740-741 (1994) (environmental impact report held inadequate  
24 because it failed to list and consider any other specific projects in region).

25  
26  
27 <sup>5</sup> The "substantial evidence" standard is codified in CEQA. *See* PUB. RES. CODE § 21168. In this  
28 context, "substantial evidence" includes "facts, reasonable assumptions predicated upon facts, and  
expert opinion supported by facts;" it excludes "[a]rgument, speculation, unsubstantiated opinion or  
narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts  
which do not contribute to, or are not caused by, physical impacts on the environment." *See* PUB. RES.  
CODE § 21082.2(c).

1 Overall, of course, CEQA must be applied in a manner that provides the “fullest possible  
2 protection to the environment within the reasonable scope of the statutory language.” *Friends of*  
3 *Mammoth v. Board of Supervisors*, 8 Cal. 3d 253, 259 (1972) (disapproved on other grounds in *Kowis*  
4 *v. Howard*, 3 Cal.4th 888, 896 (1993)). Moreover, CEQA’s dictates must be “strictly enforced.”  
5 *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, 197 Cal. App. 3d 1167,  
6 1176 (1993). “Only by requiring [Respondent] to fully comply with the letter of the law can a  
7 subversion of the important public purposes of CEQA be avoided.” *Id.* In this endeavor, reviewing  
8 courts must follow the “rule of reason.” *Id.* At the same time, there is no such thing as “harmless  
9 error” under CEQA; any violation is “necessarily prejudicial.” *Resource Def. Fund v. Local Agency*  
10 *Formation Comm’n of Santa Cruz County*, 191 Cal. App. 3d 886, 897-898 (1997).

11 **2. Petitioner Exhausted Administrative Remedies**

12 For Petitioner to maintain this action under CEQA, (i) all alleged grounds for non-compliance  
13 with CEQA must have been presented to the City before the EIR was certified and (ii) Petitioner must  
14 have objected to the EIR’s certification. *See* PUB. RES. CODE § 21177(a)-(c). First, the alleged grounds  
15 for non-compliance were asserted prior to the City’s approval of the Project; those assertions will be  
16 cited in the next part of this brief, as they become relevant to the discussion.<sup>6</sup> Second, Petitioner  
17 objected to the EIR prior to its certification. In this regard, Petitioner and its members submitted  
18 several comment letters opposing the Project. *See, e.g.*, Admin. R. 51:2919-2925. In addition to  
19 written comments, Petitioner’s members testified at the public hearings on the Project. *See id.*,  
20 86.1:6881.1-6885.1. The City was fully forewarned by Petitioner’s members and others about the  
21 CEQA violations, and thus Petitioner meets the Public Resources Code’s prerequisites for maintaining  
22 this lawsuit.

23 **3. The City Failed to Summarize the Revisions Made in the Recirculated**  
24 **Draft EIR**

25 CEQA Guidelines Section 15088.5(g) states (with Petitioner’s emphasis) that when a lead  
26 agency recirculates “a revised EIR, either in whole or in part, the lead agency *shall*, in the revised EIR  
27

28 \_\_\_\_\_  
<sup>6</sup> Petitioner was not required to raise every objection itself in order to maintain this action; it may seek relief based on objections raised by other participants in the proceeding before the City. *See Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.*, 60 Cal. App. 4th 1109, 1118-1119 (1997).

1 or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft  
2 EIR.” Here, the City circulated the DEIR for the Project from April 18 through July 5, 2016. Admin.  
3 R. 67:6535; 2346:35450. After the public-comment period, it revised and recirculated a new DEIR for  
4 public review from March 28, 2017, through May 30, 2017. *Id.*, 67:6535; 2349:35785. However,  
5 neither the Recirculated DEIR nor any attachment to it summarizes the revisions made.<sup>7</sup> *See generally*  
6 *id.*, 2349:35783-36214. In this regard, “[f]ailure to comply with the information disclosure  
7 requirements constitutes a prejudicial abuse of discretion when the omission of relevant information  
8 has precluded informed decisionmaking and informed public participation, *regardless of whether a*  
9 *different outcome would have resulted* if the public agency had complied with the disclosure  
10 requirements.” *City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 898  
11 (2009) (emphasis added). In *California Native Plant Society v. City of Santa Cruz*, 177 Cal. App. 4th  
12 957, 986 (2009), the Court stated that the test for prejudice was where (1) the EIR omits information  
13 required by CEQA, and (2) the information is necessary to an informed discussion.

14 Requiring members of the public to rifle through these two voluminous, technical documents  
15 to try and figure out the differences was an obstacle to informed discussion. For example, even the  
16 Serra Mesa Community Council and its highly experienced land-use attorney had a difficult time  
17 determining what specific changes were made in the revised, Recirculated DEIR. *See, e.g.*, Admin. R.  
18 51:3102 (asking whether voluminous appendices have changed and, if so, which ones). Surely,  
19 community members with no land-use or legal experience would have just as much – if not more –  
20 trouble identifying the many differences between the documents.

21 Accordingly, the City violated the informational requirements of CEQA.

22 4. **The EIR Failed to Adequately Analyze a Reasonable Range of Alternatives**

23 a. **Problems with the Original Draft EIR**

24 As stated by the California Supreme Court, “[t]he core of an EIR is the mitigation and  
25 alternatives sections.” *Citizens of Goleta Valley, supra*, 52 Cal. 3d at 564. “In determining the nature  
26 and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall  
27 be guided by the doctrine of ‘feasibility.’ “[I]t is the policy of the state that public agencies should not  
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<sup>7</sup> This issue was raised at the administrative level. Admin. R. 51:3101-3102.

1 approve projects as proposed if there are *feasible alternatives* . . . available which would substantially  
2 lessen the significant environmental effects of such projects . . .” *Id.* at 565 (italicized in original).  
3 “One of [an EIR’s] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects  
4 are thoroughly assessed by the responsible official.” *Id.* (citations omitted; italicized in original). In  
5 this regard, “an EIR shall describe a range of reasonable alternatives to the project, or location of the  
6 project, which would feasibly attain most of the basic objectives of the project but would avoid or  
7 substantially lessen any of the significant effects of the project, and evaluate the comparative merits  
8 of the alternatives.” CAL. CODE OF REGS., tit. 14, § 15126.6(a). In reviewing the sufficiency of the lead  
9 agency’s alternatives analysis, “a court may look at the administrative record as a whole to see whether  
10 an alternative deserved greater attention in the [EIR].” *Preservation Action Council v. City of San Jose*,  
11 141 Cal. App. 4th 1336, 1351 (2006).

12 The EIR fails to analyze a reasonable range of alternatives to the road connector.<sup>8</sup> In analyzing  
13 this issue, it’s important to remember the genesis of the Project. Back in 2008, the City Council tasked  
14 staff with initiating – that is, beginning to study but not approving – an amendment to the SMCP to  
15 include a road connection because “the Serra Mesa Community Plan does not include a street  
16 connection between Phyllis Place and Friars Road” while “the Mission Valley Community Plan  
17 recommends the inclusion of a street connection between Phyllis Place and Friars Road.” Admin. R.  
18 31:318. Thus, the City Council concluded, “an amendment to the Serra Mesa Community Plan to  
19 include a road connection would reconcile the conflict between the Mission Valley Community Plan  
20 and the Serra Mesa Community Plan. . . .” *Id.*, 31:319. If the primary purpose of considering an  
21 amendment to the SMCP was to reconcile its conflict with the MVCP, then a logical, feasible Project  
22 alternative to analyze would have been amending the MVCP to *remove* the road connector and bring  
23 the two plans into conformity. Such an analysis makes even more sense when we consider, as  
24 discussed above, that the road connector was previously denied by the Planning Commission twice in  
25 2004 and by the City Council in 2008, that literally hundreds of residents have opposed the connector,  
26 and that neither the Serra Mesa Community Planning Group nor the Mission Valley Community  
27 Planning Group supported the Project – not to mention all the traffic impacts discussed later in this  
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<sup>8</sup> This issue was raised at the administrative level. Admin. R. 51:3103-3104.

1 brief. Nevertheless, nowhere in the DEIR, the Recirculated DEIR, or the Final EIR was any serious  
2 consideration given to this common-sense alternative.

3 The DEIR sets out the Project's objectives as follows:

- 4 • Resolve the inconsistency between the Serra Mesa Community  
5 Plan and Mission Valley Community Plan as it pertains to a  
6 connection from Mission Valley to Phyllis Place in Serra Mesa.
- 6 • Amend the Serra Mesa Community Plan to include a street  
7 connection from the existing Phyllis Place Road into Mission  
8 Valley, that developed in the future, could:
  - 8 • Improve the overall circulation network in the Serra  
9 Mesa and Mission Valley planning areas.
  - 10 • Alleviate traffic congestion and improve navigational  
11 efficiency to and from local freeway on- and off-ramps  
12 for the surrounding areas.
  - 13 • Along the street connection, allow for safe travel  
14 conditions for motorists, cyclists, and pedestrians.
- 13 • Implement the General Plan and Bicycle Master Plan as they  
14 pertain to developing interconnectivity between communities.

15 Admin. R. 2346:35730. Then, in writing off the alternative to amend the MVCP to conform with the  
16 SMCP, the DEIR baldly concludes:

17 To resolve the conflict between the Mission Valley and Serra Mesa  
18 Community Plan, an alternative could be to amend the Mission Valley  
19 Community Plan to remove any reference to a street connection with  
20 Serra Mesa on Phyllis Place.

20 This alternative is rejected because it would not promote  
intercommunity connectivity envisioned in the City's General Plan.

21 *Id.*, 2346:35731. Failure to review this alternative was non-compliant with CEQA. As noted above,  
22 "an EIR *shall* describe a range of reasonable alternatives to the project . . . which would feasibly attain  
23 *most of the basic objectives* of the project but would avoid or substantially lessen any of the significant  
24 effects of the project, and *evaluate the comparative merits of the alternatives.*" CAL. CODE OF REGS.,  
25 tit. 14, § 15126.6(a) (emphasis added). In evaluating the merits of an alternative, "all reasonable  
26 alternatives to proposed projects [must be] thoroughly assessed" by the lead agency. *Citizens of Goleta*  
27 *Valley, supra*, 52 Cal. 3d 553 at 565. The DEIR in this case lists five project objectives. Admin. R.  
28 2346:35730. The alternatives section of the DEIR admits that amending the MVCP was only rejected



1 because it did not help the City achieve the fifth goal. *Id.*, 2346:35731. In other words, the alternative  
2 meets all four of the Project's other objectives, including the objective to obtain conformity between  
3 the SMCP and the MVCP, which is the objective that necessitated the Project in the first place.  
4 Further, to the extent the DEIR stated that the alternative did not promote intercommunity connectivity  
5 as envisioned in the General Plan, that conclusion was not supported by substantial evidence because  
6 there was no reasoning of any kind explaining why the alternative conflicted with the General Plan;  
7 indeed, the record contains no evidence of such a conflict with the General Plan. *Id.*

8 **b. The Recirculated DEIR/Final EIR<sup>9</sup>**

9 After the public-comment period for the DEIR, the City revised the document and recirculated  
10 it for public review. The City – set on building the roadway connection and knowing that amending  
11 the MVCP instead would actually meet 80 percent of the Project's stated objectives – decided to grease  
12 the approval skids by changing the objectives.<sup>10</sup> As explained below, the City moved the proverbial  
13 goal posts closer.

14 Project Objective no. 1: The first objective of the DEIR was to “resolve the inconsistency  
15 between the Serra Mesa Community Plan and Mission Valley Community Plan *as it pertains to a*  
16 *connection from Mission Valley to Phyllis Place in Serra Mesa.*” Admin. R. 2346:35730 (emphasis  
17 added). Knowing that simply amending the MVCP would easily resolve this inconsistency, the  
18 Recirculated DEIR was created to change the Project objective to “[r]esolve the inconsistency between  
19 the Mission Valley Community Plan and the Serra Mesa Community Plan *by providing a multi-modal*  
20 *linkage from Friars Road in Mission Valley to Phyllis Place in Serra Mesa.*” *Id.*, 2349:35871  
21 (emphasis added). The Recirculated DEIR then concluded that amending the MVCP would not meet  
22 this objective because it “would not provide a multi-modal linkage from Friars Road in Mission Valley  
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24 <sup>9</sup> Petitioner makes reference to the Recirculated EIR and the Final EIR interchangeably here because  
25 the alternatives section relating to the MVCP amendment in both documents is the same. *Cf.* Admin.  
R. 2349:36189-36190; 52:5609.

26 <sup>10</sup> Petitioner notes again that when the City Council tasked staff to initiate the SMCP amendment in  
27 2008, staff was specifically ordered to study four issues: (1) whether police and fire response times  
28 would be improved with the road connection; (2) whether the road connection could serve as an  
emergency evacuation route; (3) whether it is feasible to make the road available for emergency access  
only; and (4) whether pedestrian and bicycle access would be improved by the street connection.  
Admin. R. 31:319-320. Inexplicably, none of these issues was identified as a Project objective.

1 to Phyllis Place in Serra Mesa, thereby limiting multi-modal options between the roadways.” *Id.*,  
2 2349:36189.

3           However, that conclusion ignored the following facts proving that multi-modal options *already*  
4 *existed*: (1) a pedestrian/bike trail between Civita and Phyllis Place was mandated by the Civita Project;  
5 (2) pedestrian, bike, and emergency access already existed from Civita to Mission Valley between  
6 Aperture Circle and Kaplan Drive; and (3) Mission Center Road already provided a multi-modal  
7 linkage from Murray Ridge in Serra Mesa to Friars Road in Mission Valley. Admin. R. 67:15649.  
8 Instead, the EIR rationalized its failure to include this information by stating that “[t]he trail to be  
9 constructed would not allow bike access.” *Id.*, 52:4454. That was a blatant fabrication. The Quarry  
10 Falls/Civita EIR clearly shows a bicycle path being built from Phyllis Place down to Friars Road. *Id.*,  
11 45:1701. The EIR then indirectly admits that pedestrian, bike, and emergency access from Civita to  
12 Mission Valley *does* exist, but that “[t]he access point at Kaplan Drive does not allow for passenger  
13 vehicles.” *Id.*, 52:4454. The EIR also admitted that Mission Center Road provides a multi-modal  
14 linkage from Serra Mesa to Mission Valley but stated that it doesn’t provide direct access from Phyllis  
15 Place to Friars Road. *Id.* Clearly, the EIR omitted key information in order to justify the City’s  
16 decision to reject the MVCP amendment as one of the selected alternatives to be analyzed.

17           As to the EIR’s finding that an MVCP amendment would be inconsistent with each of the  
18 remaining Project objectives – rendering the MVCP amendment not worthy of an alternatives analysis  
19 – that finding simply is not supported by the record. Just because the City had backed itself into a  
20 corner does not mean it can change the game’s rules *in media res*.

21           Project Objective no. 2: The second Project objective is to “[i]mprove local mobility in the  
22 Serra Mesa and Mission Valley planning areas.” Admin. R. 52:5315. In rejecting the MVCP  
23 amendment as a candidate for further analysis, the EIR concluded – *without any analysis* – that “[t]his  
24 alternative would not improve local mobility in the Serra Mesa and Mission Valley planning areas, as  
25 no roadway would be constructed, thereby limiting routes between these planning areas.” *Id.*, 52:5609.  
26 That cursory finding is unsupported by the record for three reasons.

27           First, it ignores the numerous linkages already existing between Serra Mesa and Mission  
28 Valley, discussed above. Second, it ignores the fact that if the Project is not approved, the

1 Civita/Quarry Falls Project is *already required to make an improvement* to Mission Center Road from  
2 I-805 to Murray Ridge Road. Admin. R. 915:15635 & 45:2002. The EIR baldly concludes that such  
3 a road improvement is irrelevant because the widening “would not occur.” *Id.*, 51:3013. It then directs  
4 the reader to Section 9.5.1 of the Recirculated DEIR for the reasoning: “It is unlikely that the segment  
5 of Mission Center Road . . . to Murray Ridge Road would be able to be widened as mitigation in that  
6 segment, as there are sensitive biological resources protected as Multi-Habitat Planning Area (MHPA)  
7 on both sides of the roadway. Impacts on the MHPA are generally discouraged by existing regulations  
8 or require mitigation for impacts on sensitive vegetation communities.” *Id.*, 2349:36194. However,  
9 the fact that an environmental impact may need to be mitigated for the widening to move forward is  
10 not evidence that the widening is unlikely to occur.<sup>11</sup> In fact, the Civita/Quarry Falls EIR recognized  
11 that adding a road connection to Phyllis Place, as opposed to not constructing one, would “result in  
12 greater impacts to biological resources, due to construction of the road through sensitive habitat.”  
13 Admin. R. 44:895. And indeed, the Project is imposing two mitigation measures to reduce impacts to  
14 sensitive wildlife and vegetation. *Id.*, 52:5489-5490 (MM BIO-1 & BIO-2). Thus, the fact that  
15 biological-resource impacts may need mitigation is not evidence that the Mission Center Road  
16 improvements are unlikely to occur. This very Project belies that argument and proves just the  
17 opposite. If the City can mitigate such impacts in one spot, at a minimum the EIR must analyze  
18 whether and explain why the City cannot mitigation similar impacts in a location *already studied and*  
19 *found suitable* for widening and mitigation.

20 Finally, it must be noted that the DEIR listed a similar Project objective of “[i]mprove the  
21 overall circulation network in the Serra Mesa and Mission Valley Planning areas.” Admin. R.  
22 2346:35730. Yet the only reason the DEIR rejected the MVCP amendment was because it allegedly  
23 failed to promote the amorphous goal of inter-community connectivity. *See id.*, 2346:35731. Yet the  
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26 <sup>11</sup> As a member of the public put it, the developer was already required, as part of the approval for the  
27 Quarry Falls development, to widen Mission Center Road as mitigation without also having to build  
28 the connector road (*i.e.*, this Project). Admin. R. 2217:32973. Furthermore, Mission Center Road has  
no homes. *Id.*, 2217:32978. Before the City can conclude that the widening will never happen, it  
should have studied the elimination of that mitigation with at least the same rigor that it applied to the  
Project.

1 DEIR never claimed – because of the mountains of contrary evidence – that amending the MVCP  
2 would not help improve the overall circulation network in Serra Mesa and Mission Valley.

3 Project Objective no. 3: The third Project objective is to “[a]lleviate traffic congestion and  
4 improve navigational efficiency to and from local freeway on- and off-ramps for the surrounding  
5 areas.” Admin. R. 52:5315. In rejecting the MVCP amendment as a candidate for further analysis, the  
6 EIR stated in a single sentence that “[t]his alternative would not help alleviate traffic congestion and  
7 improve navigational efficiency to and from local freeway on- and off-ramps for the surrounding areas,  
8 as no roadway would be constructed, thus limiting access options for those in the areas within the  
9 vicinity of the project site.” *Id.*, 52:5609. In essence, the EIR concluded – *again without any analysis*  
10 – that because the roadway wouldn’t be constructed, traffic congestion would be worse if the MVCP  
11 were amended. However, the record supports a contrary conclusion. First, the DEIR listed this same  
12 Project objective. *Id.*, 2346:35730. As noted above, the only reason the DEIR rejected the MVCP  
13 amendment was because it allegedly failed to promote intercommunity connectivity, not because it  
14 would somehow not help alleviate traffic congestion. *See id.*, 2346:35731.

15 Indeed, the record demonstrates that amending the MVCP – *i.e.*, not building the Project –  
16 would actually be better for traffic congestion than the Project. With the Project, morning traffic in  
17 Serra Mesa would improve for 14% of intersections, not change for 43% of intersections, and *worsen*  
18 *for 43% of intersections*. Admin. R. 52:5405-5407 & 915:15662. Morning traffic in Mission Valley  
19 would improve for 0% of intersections, not change for 94% of intersections, and *worsen for 6% of*  
20 *intersections*. *Id.* The afternoon numbers aren’t much different with the Project, yielding  
21 improvements to 14% of intersections in Serra Mesa, no change to 29% of intersections, and a  
22 *worsening of 57% of intersections*. *Id.*, 52:5405-5407 & 915:15663. Likewise, afternoon traffic in  
23 Mission Valley would improve for 18% of intersections, not change for 70% of intersections, and  
24 *worsen for 12% of intersections*. *Id.* Finally, as to Serra Mesa, the Project will improve 0% of  
25 roadway segments, result in no change at 67% of roadway segments, and *worsen 33% of roadway*  
26 *segments*; for Mission Valley, it will improve 25% of roadway segments, not change 55% of roadway  
27 segments, and *worsen 20% of roadway segments*. *Id.*, 52:5403-5404 & 915:15664-15665.

1           Considering the amount of roadways and intersections the Project will worsen, the EIR cannot  
2 logically conclude that the Project meets the objective of alleviating traffic congestion any more than  
3 simply amending the MVCP to exclude the road connector. Further, as to the roadway segment at  
4 Phyllis Place from Franklin Ridge to I-805, the EIR projected an increase in daily car trips from 2,420  
5 without the Project to 34,540 with it, changing the level of service there from A to F. Admin. R.  
6 52:5403. The roadway segment at Franklin Ridge Road from Via Alta to Civita Boulevard will have  
7 increased car trips from 10,457 without the Project to 20,919 with it, changing the level of service there  
8 from C to F. *Id.* Further, the EIR admits that the Project “would result in a significant impact at six  
9 freeway segments as the increase in V/C ratio would exceed the City’s significance criteria.” *Id.*,  
10 52:5410.

11           Accordingly, the EIR’s conclusion that amending the MVCP to exclude the road connector –  
12 as opposed to building the roadway connection – would not help meet the goal of alleviating traffic  
13 congestion is not supported – and in fact is flatly refuted – by the record.

14           Project Objective No. 4: The fourth Project objective is to “[i]mprove emergency access and  
15 evacuation route options between the Serra Mesa and Mission Valley planning areas.” Admin. R.  
16 52:5315. In rejecting the MVCP amendment as a candidate for further analysis, the EIR concluded –  
17 *once more without any analysis* – that “[t]his alternative would also not improve emergency access  
18 and evacuation route options between the Serra Mesa and Mission Valley planing areas, as it would  
19 not provide additional ingress/egress for emergency responders, nor would an additional emergency  
20 evacuation route be created.” *Id.*, 52:5609. However, the EIR failed to disclose that emergency access  
21 from Serra Mesa to Mission Valley already exists between Aperture Circle and Kaplan Drive, and  
22 equally failed to study whether the existing access met the goal. *See* Admin. R. 67:15649.

23           In short, the conclusion is unsupported by substantial evidence.

24           Project Objective No. 5: The fifth Project objective is to “[p]rovide a safe and efficient street  
25 design for motorists, cyclists, and pedestrians that minimizes environmental and neighborhood  
26 impacts.” Admin. R. 52:5315. In rejecting the MVCP amendment as a candidate for further analysis,  
27 the EIR concluded – *still without any analysis* – that “[f]inally, this alternative would not provide a  
28 safe and efficient street design for motorists, cyclists, and pedestrians, as no roadway would be

1 constructed.” *Id.*, 52:5609. Absent from the discussion is the fact that constructing the roadway  
2 connection at Phyllis Place – as opposed to leaving the Project site as is – will result in an increase of  
3 average daily trips from 2,420 to 34,540; that’s ***more than a 14-fold increase in new vehicle trips***. See  
4 Admin. R. 52:5403 (last line on page). Residents and pedestrians on Franklin Ridge will suffer ***20,919***  
5 ***new trips***; on Via Alta, they will suffer ***11,686 new trips***. *Id.*, 52:5403 (“Via Alta to Civita Blvd” line  
6 under “Franklin Ridge Rd” heading), 5404 (“Franklin Ridge Rd to Civita Blvd” line under “Via Alta”  
7 heading). In what universe does adding over 32,600 daily vehicle trips to a pair of short, steep, curvy  
8 two-lane roads provide greater safety than having a road with only a fraction of that traffic? Even  
9 worse, Phyllis Place will become a bottleneck in the event of a fire or other emergency evacuation  
10 because it will see a ***more than 14-fold increase in the number of vehicles***. *Id.*, 52:5403 (last line on  
11 page). It’s almost as if the City is trying to get people killed.

12           Considering that faulty reasoning, it’s no surprise that residents of this area, along with both  
13 the Serra Mesa Community Planning Group and the Mission Valley Community Planning Group,  
14 refused to extend their support for this Project. In fact, residents submitted numerous comments  
15 attesting to the fact that the Project would make the roads less walkable and less safe for pedestrians  
16 and cyclists. See Section IV-A-5, *infra*. Even worse, the EIR admitted that “[t]he proposed project  
17 would have the potential to result in a safety hazard for vehicles entering or exiting the City View  
18 Church, as sight distance from the driveway to the intersection would likely not be sufficient.” Admin.  
19 R. 52:5602. In the end, the EIR offered no explanation as to how building the connector will make  
20 motorists, pedestrians, and cyclists more safe than leaving the Project site as is.

21           The final alleged reason for not further studying the MVCP amendment is that “although this  
22 alternative would remove the language associated with the roadway connection, it would not resolve  
23 the inconsistency with other land use plans that have already been adopted. For example, the City’s  
24 Climate Action Plan and Bicycle Master Plan . . . include the proposed roadway in their assumptions.”  
25 *Id.*, 52:5609. As with the rest of its “analysis” of the MVCP amendment, the EIR failed to point out  
26 a single section of either the Climate Action Plan or the Bicycle Master Plan that the MVCP  
27 amendment would frustrate. The fact is: neither the Bicycle Master Plan, the Climate Action Plan, the  
28 Climate Action Plan EIR, nor the Climate Action Plan appendices discusses the connector that is the

1 subject of this Project. *See generally id.*, 2337:34468-34563; 2342:34688-34872; 2344:34924-35375;  
2 and 2345:35376-35449. Accordingly, there is no evidence that an MVCP amendment would be  
3 inconsistent with any of these land-use documents.

4 The case of *Center for Biological Diversity v. County of San Bernardino*, 185 Cal. App 4th 866  
5 (2010), is instructive here. There the developer was proposing to build an open-air facility that would  
6 compost biosolids derived from human waste and green material to produce agricultural grade compost.  
7 *Id.* at 874. The project's EIR rejected "the alternative of an enclosed facility as financially and  
8 technologically infeasible, and thus the alternative was not [– as in the case at bar –] 'evaluated in  
9 detail.'" *Id.* at 876. In support of that conclusion, the EIR cited to a memorandum from an  
10 environmental consultant, which found that "[c]apital costs for outdoor facilities are relatively modest,  
11 typically \$2-3 million for a facility to accommodate a 400,000 ton per year facility. Capital costs for  
12 indoor facilities are significantly larger." *Id.* For example, the consultant pointed out, an indoor  
13 facility in Rancho Cucamonga had "an estimated capital cost of \$62.5 million" while "the facility will  
14 have a capacity of 300,000 tons per year." *Id.* The memorandum went on at length about the different  
15 factors making an indoor facility economically infeasible. *Id.* at 876-877. The EIR then stated that an  
16 indoor facility was also technologically infeasible because the "Project site is not currently served by  
17 any electricity provider, and there are no electric lines within one mile of the site. Nor is other  
18 infrastructure necessary for construction of a large building currently present." *Id.* at 878.

19 The appellate court affirmed the trial court's assessment that "the FEIR's discussion of the  
20 infeasibility of an enclosed facility [was] insufficient to allow informed decisionmaking." *Id.* at 884.  
21 It reasoned that the consultant's memorandum contained "no facts or information to support the  
22 statement or to indicate [the consultant] has any expertise in matters of composting facility financing."  
23 *Id.* at 884. "Under the CEQA Guidelines, 'substantial evidence shall include facts, reasonable  
24 assumptions predicated upon facts, and expert opinion *supported by facts.*'" *Id.* (italicized in original).  
25 The consultant's opinion, the Court concluded, was "at best an irrelevant generalization, too vague and  
26 nonspecified to amount to substantial evidence of anything." *Id.* Further, "the FEIR contains no  
27 information that an enclosed facility is technologically infeasible, other than the observation that there  
28 is no electricity at the proposed site and there were no electric lines within one mile of the site." *Id.*

1 at 885. In sum, the appellate court agreed that “substantial evidence does not support the FEIR’s  
2 position that an enclosed facility alternative is infeasible and unworthy of more in-depth consideration.  
3 ‘The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful  
4 public participation and informed decision making.’” *Id.*

5 Here, the City’s decision to forego consideration of the MVCP amendment – and the anemic  
6 supporting “analysis” – is an even more egregious violation of CEQA than in *Center for Biological*  
7 *Diversity*. Whereas the agency in that case attempted to procure expert opinion to support its decision  
8 not to further analyze the indoor facility alternative here, the City has merely recited the Project’s  
9 objectives followed by a few sentences baldly concluding that the MVCP amendment would not meet  
10 those objectives. The City’s “analysis” does not cite to any data, expert opinion, or facts supporting  
11 the conclusion that the MVCP amendment would not meet the Project’s objectives. Similar to *Center*  
12 *for Biological Diversity*, the City’s cursory analysis was “insufficient to allow informed  
13 decisionmaking.” *Center for Biological Diversity, supra*, 185 Cal. App 4th at 884. Accordingly,  
14 substantial evidence does not support the EIR’s conclusion that an MVCP amendment alternative is  
15 unworthy of more in-depth consideration.

16 **5. The EIR Failed to Adequately Analyze the Project’s Impact on and**  
17 **Inconsistency with Relevant Land-Use Plans**

18 There is no substantial evidence supporting the EIR’s conclusion that “the proposed project  
19 would implement and uphold the goals, policies, guidelines, and recommendations contained within  
20 the existing City of San Diego General Plan and the Serra Mesa Community Plan.”<sup>12</sup> Admin. R.  
21 52:5352. The Legislature has required every county and city to adopt a “comprehensive, long term  
22 general plan for the physical development of the county or city. . . .” GOV’T CODE § 65300. The  
23 general plan sits “at the top of the hierarchy of local government law regulating land use.” *DeVita v.*  
24 *County of Napa*, 9 Cal. 4th 763, 773 (1995) (internal quotation omitted). The general plan has been  
25 described as the “constitution for all future developments” within a city or county. *See Citizens of*  
26 *Goleta Valley, supra*, 52 Cal. 3d 553. Accordingly, “the propriety of virtually any local decision  
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<sup>12</sup> This issue was raised at the administrative level. Admin. R. 2202:32437-32438.



1 affecting land use and development depends on consistency with the applicable general plan and its  
2 elements.” *Id.* (internal citations omitted).

3 The City’s General Plan is no different. Its Land Use and Community Planning Element begins  
4 by “provid[ing] policies to guide the City of San Diego’s growth and implement the *City of Villages*  
5 strategy within the context of San Diego’s community planning program.” Admin. R. 2343:34875  
6 (emphasis added). “The City of Villages strategy is to focus growth into mixed-use activity centers that  
7 are *pedestrian-friendly*, centers of community, and linked to the regional transit system. *Id.*,  
8 2343:34878 (emphasis added). Further, “[i]mplementation of the City of Villages strategy is an  
9 important component of the City’s strategy to reduce local contributions to greenhouse gas emissions,  
10 because the strategy makes it possible for large numbers of people to make fewer and shorter auto  
11 trips.” *Id.* In defining a village, the General Plan goes on to state: “*All villages will be pedestrian-*  
12 *friendly* and characterized by inviting, accessible, and attractive streets and public spaces.” *Id.*  
13 (emphasis added). When the Civita Project was approved in 2008, the City described the City of  
14 Villages concept as “bringing jobs close to homes, providing new parks and public facilities, *creating*  
15 *walkable communities* that have a sense of place, and emphasizing convenient, multi-modal  
16 transportation that *keeps people out of cars.*” Admin. R. 59:6299 (emphasis added).

17 Here, the EIR admitted that projects are “required to demonstrate consistency with the guiding  
18 vision of the general plan, which sets forth a ‘city of villages’ strategy,” but it defined that strategy as  
19 one “that aims to concentrate density in parts of the city that are considered appropriate, such as  
20 community areas like those within Mission Valley that are adjacent to existing transit and jobs.”  
21 Admin. R. 52:5561. The City gives short shrift to the policies in the City of Villages concept requiring  
22 pedestrian-friendly development intended to reduce car trips. Indeed, the land-use section of the EIR  
23 offered just two sentences for why the Project is consistent with the concept:

24 The proposed project, if implemented, would increase circulation  
25 options for the Serra Mesa and Mission Valley communities,  
26 particularly linking the community of Serra Mesa to the Quarry Falls  
27 site, which upon build-out would provide a mix of local goods and  
services to both communities. The Quarry Falls site incorporates access  
points to high-quality transit services, which would become more  
readily/easily available to those living in the community of Serra Mesa.

28 *Id.*, 52:5355. What the EIR ignored is the fact that the road at Phyllis Place would have an increase in  
daily trips from 2,420 to 34,540, changing the level of service there from A to F. *Id.*, 52:5403. Thus,

1 not only is the road not an efficient means of access to transit, it actually conflicts with the General  
2 Plan's City of Villages concept. That much is clear from the outpouring of opposition to the Project  
3 from the actual residents who live near the Project site and are affected by it:

4 We purchased our townhouse with the clear expectation that it would be  
5 and remain a "walkable" community as it had been advertised by the  
6 developer . . . . The [recirculated DEIR] indicate[s] that traffic volume  
7 within Civita on Via Alta and soon Franklin Ridge will be more than  
8 doubled. Projecting 34,117 ADT (Average Daily Trips) of regional  
9 traffic through Civita's residential district. If the Draft EIR proposal  
10 were solely intended to connect the divided communities of Mission  
11 Valley and Serra Mesa, the residents of Civita would warmly invite the  
12 connector. The reality is this is designed to alleviate regional traffic  
13 congestion within Mission Valley by introducing new freeway  
14 interchange collector streets to the I-805 . . . City leaders, planners and  
15 future thinkers have indicated to accommodate future growth, residents  
16 need to live in highly dense communities. Civita was designed for  
17 exactly that purpose and the residents bought into the concept. But the  
18 City is also pushing to turn the streets in Civita into high volume  
19 freeway connectors. This community cannot successfully serve two  
20 opposite purposes. It cannot be a safe walkable dense urban village and  
21 a conduit for freeway traffic at the same time. Admin. R. 844:15232.

22 The addition of this road would completely destroy the brand new  
23 community of Civita. This is the newest master planned community that  
24 the City of San Diego has been talking about for years. A walkable  
25 community, a village community within the city, a safe place for  
26 families to raise and educate their children . . . . The roadway has been  
27 proposed multiple times and has been rejected every single time. Now  
28 that there is a beautiful new community in the old quarry, this roadway  
makes even less sense. *Id.*, 842:15221.

At what cost? At the degradation of Civita, an Urban Land Institute  
award winning planned walkable village with 4,500 dwelling units and  
1.2M sf of retail and office. Civita will be impacted by heavy volumes  
of non-stop regional traffic diminishing the community's walkability,  
pedestrian safety, village character, and environmental quality. *Id.*,  
842:15222.

My family and I live in the newly developed community of Frame and  
Focus within . . . Civita . . . . We live so close to our work places, we no  
longer use the freeways to commute to work! My wife can actually  
walk to work now. I'm writing this letter to voice my concerns of the  
proposed plan to connect Via Alta/Franklin Ridge Road to Phyllis Place.  
I've read that this will bring in up to 35,000 cars a day through our slow,  
quiet, and safe neighborhood. In fact, Via Alta and Franklin Ridge Road  
are residential roads, with children, joggers, and pets among others who  
enjoy the quiet, slow pace of a walking community. There is a new dog  
park right at the top of Via Alta that is complete for everyone to enjoy  
and a proposed elementary school at the bottom. The plan to open up  
the community to a connector off the 805 freeway, one of the busiest  
freeways in San Diego, will have detrimental impacts to the  
environment and the families who call Civita their new home. *Id.*,  
867:15282.

1 There are no pedestrian crossings along Via Alta other than at Civita  
2 Blvd and the top of the ridge at Franklin Ridge. Continuous traffic will  
3 make it dangerous for residents to cross the street safely. Cutting off  
4 access for over 1,000 residents to Civita Park, Rec Center and future  
5 elementary school. *Id.*, 868:15285.

6 Our home is no more than thirty feet from Via Alta, one of the two  
7 streets that you guys are considering as a freeway access and egress. I  
8 am vehemently opposed to this proposal, and hope you guys have the  
9 wisdom to reject this outdated proposal, prepared years before the Civita  
10 Community was ever envisioned. Civita was designed to be a  
11 pedestrian friendly community, where young children would be safe  
12 from vehicular traffic . . . There is an elementary school planned for the  
13 corner of Via Alta and Civita Blvd. With a freeway access and egress  
14 rolling right past this new school. Don't you realize that there will be  
15 gridlock at that intersection? . . . The Planning Department, the Mayor,  
16 the City Council all have spoken on building a San Diego that is  
17 pedestrian friendly. Why are you proceeding with a proposal that is the  
18 direct opposite of your long term vision for the City? *Id.*, 875:15310-  
19 15311.

20 While hundreds of other residents opposed this Project, Petitioner has only cited a fraction of the  
21 comments for the sake of brevity. *See, e.g.*, Admin. R. 51:3040-37384. Testimony from residents  
22 based on personal experience and observation about a Project's impacts may constitute substantial  
23 evidence. *See Desmond v. County of Contra Costa*, 21 Cal. App. 4th 330, 337 (1993) ("It is  
24 appropriate and even necessary for the [public agency] to consider the interests of neighboring property  
25 owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of  
26 neighbors may constitute substantial evidence on that issue").

27 The public's reliance on promises of safe, easy pedestrian access along Via Alta and Franklin  
28 Ridge is perfectly understandable because the City made those promises from the start. The Quarry  
Falls Specific Plan explained that the Project's streetscape will be perceived at three levels, the first  
being "from the street as a pedestrian." Admin. R. 46:2135. The streetscape design included  
crosswalks. *Id.* The Plan even showed a drawing of "Walkway to Residential" that would allow  
people to cross Via Alta and Franklin Ridge in order to get from their homes to the parks on the other  
side of the road. *Id.*, 46:2132.

Unfortunately, the City chose to completely ignore not only the evidence showing that the  
Project would result in nearly 35,000 new average daily trips, but also the testimony from its residents  
expressing that the Project is completely at odds with the City of Villages policy of the General Plan.

1 In fact, the EIR's land-use section makes only passing reference to this concept, which is supposed to  
2 be a centerpiece of development in the City. *Id.*, 52:5350-5368.

3 Accordingly, the City violated CEQA because there is no substantial evidence demonstrating  
4 that the Project is consistent with the General Plan,<sup>13</sup> and because of the litany of inconsistencies that  
5 should have been but were not fully disclosed, analyzed, and mitigated in the EIR.

6 **6. The EIR Failed to Adequately Analyze the Project's Traffic Impacts**

7 There is no substantial evidence demonstrating that the Project's traffic impacts will be less than  
8 significant.<sup>14</sup> The City has failed to properly examine impacts on regional circulation and never even  
9 bothered to examine traffic hazards on Via Alta or Franklin Ridge.

10 **a. Regional Circulation Impacts Were Grossly Misrepresented**

11 The EIR stated that a traffic impact is considered significant if, among other things, the Project  
12 results in "[t]he addition of a substantial amount of traffic to a congested freeway interchange or ramp,  
13 or in a substantial increase in [Vehicle Miles Traveled ("VMT")] for freeway mainline segments."  
14 Admin. R. 52:5388. In making this determination, the EIR claimed to "refocus the attention of analysis  
15 to reducing VMT on the regional circulation network." *Id.* As such, "a significant impact would occur  
16 if the project would result in a substantial increase in VMT when compared to the baseline condition."  
17 *Id.* In this regard, the EIR directed the reader to Appendix H, which allegedly demonstrated that the  
18 Project would result in "a 1.8 percent decrease of VMT within the study area" and "a decrease of .32  
19 percent" on a region-wide basis, for the near-term year 2017. *Id.*, 52:5397; 2348:35778. Further,  
20 Appendix H stated that the Project would result in the same 1.8 percent decrease in the study area in  
21 the year 2035, with a .28 percent decrease on a region-wide basis for that same year. *Id.*, 2348:35778.  
22 It turns out that the conclusion was derived from the City's knowing misuse of a forecasting model.

23 Per Appendix H, "[t]he VMT analysis was conducted consistent with methodologies discussed  
24 in the technical white paper, 'Vehicle Miles Traveled Calculations Using the SANDAG Regional  
25 Travel Demand Model,' prepared by the San Diego Institute of Transportation Engineers. . . ." *Id.* One  
26 of the two principal authors of the white paper, Michael Calandra, was an engineer with SANDAG.

27  
28 <sup>13</sup> This inconsistency also violates the Planning and Zoning Law as discussed in Section VI-B, *infra*.

<sup>14</sup> This issue was raised at the administrative level. *See, e.g.*, Admin. R. 2203:32440-32442.

1 *Id.*, 2341:34623. The evidence shared with the City showed that when asked what the margin of error  
2 for VMT calculated by the SANDAG model, Mr. Calandra answered that the margin of error is “+/-  
3 10% of observed conditions for the region as a whole” and that “observed data from Caltrans’ freeway  
4 Performance Monitoring System confirms that travel on the freeways and highways can vary +/- 7%  
5 from day-to-day.” Admin. R. 2203:32459-32460. Further, Mr. Calandra concluded that “[e]ven a well  
6 calibrated and validated travel demand model will have a larger margin of error the further out into the  
7 future you go.” *Id.* In other words, the EIR’s conclusion in 2017 that the Project will decrease VMT  
8 within the study area by 1.8 percent, and in the region by .32 percent, was subject to a 10 percent  
9 margin of error. Furthermore, the predicted 1.8 percent decrease in the study area, and .28 percent  
10 decrease in the region, for the year 2035, was subject to an even greater margin of error. Nowhere in  
11 the EIR was this margin of error – acknowledged by the very expert who authored the model –  
12 mentioned or discussed. And given the possibility of a 10-point swing at minimum, the Project could  
13 actually *increase* VMT by 10 percent now and by an even higher percent years from now – if not both  
14 – all of this potential should have been disclosed, analyzed, and mitigated. Unfortunately, none of that  
15 happened.

16 Consequently, the EIR’s conclusion that there will be no increase in VMT is not supported by  
17 substantial evidence.

18 **b. Traffic Hazards on Via Alta and Franklin Ridge Were Ignored**

19 Also within its discussion of traffic impacts, the EIR described the following as a significant  
20 impact: “An increase in traffic hazards for motor vehicles, *bicycles*, or *pedestrians* due to a proposed  
21 non-standard design feature (e.g., *poor sight distance* or driveway onto an access-restricted roadway).”  
22 Admin. R. 52:5388 (emphasis added). However, the “Impact Discussion” for traffic hazards looked  
23 only at the road connector itself and *not* at Via Alta or Franklin Ridge. *Id.*, 52:5420 (not mentioning  
24 either street segment). This omission is confirmed by the EIR’s mitigation discussion, which likewise  
25 makes no mention of Via Alta or Franklin Ridge; it only discusses a driveway to a church along the  
26 connector, acknowledging that the mitigation is required “in order to provide adequate sight distance  
27 due to the slight curve along Phyllis Place from the I-805 ramps.” *Id.*, 52:5421 (emphasis added).

28 At the Planning Commission hearing, the City’s planning staff told Commissioners that there  
would be “localized impacts” caused by the connector road.

1 So I think again it's important to understand that this project doesn't  
2 create any trips. It redistributes them. *So with the proposed project*  
3 *[sic] would cause localized impacts* but on the – on the, kind of, double  
4 – the dual community scale, it would – it would decrease the congestion.  
5 *But localized to the road connection, there are more impacts than if*  
6 *the road wasn't there, if the connection wasn't there.*

7 *Id.*, 2350:36334 (testimony from staff member Tanner French; emphasis added). Those localized  
8 impacts include “grades [that] will *encourage people to drive faster than the speed limit*. It's  
9 unfortunate but it's human behavior.” *Id.*, 2350:36360 (comments of chairperson; emphasis added).

10 Planning Commissioner Peerson was greatly concerned by what she heard, both from staff and  
11 from the public. Her prophecy should have worried everyone at the City:

12 I live in Point Loma, between two major streets, Catalina and  
13 Chatsworth. There's a middle school on one end of my block, a long  
14 block, and there's an elementary school. *What's been happening is*  
15 *what's going to happen in your community where your elementary*  
16 *school is when there's no crossing. There will be an accident.*

17 *Id.*, 2350:36347 (emphasis added). She thus made this plea: “Can we, please, look at a condition that  
18 would put in some of these traffic calming measures, striping, signage?” *Id.*, 2350:36348.

19 The Commissioner's concern was hardly speculative. Indeed, the EIR pointed out that Civita  
20 will soon host a new public school. Admin. R. 59:6238; *see also id.*, 2090:31651 (showing proposed  
21 school at base of Via Alta). The EIR also confirmed that residents and pedestrians on Franklin Ridge  
22 will suffer *20,919 new trips*; on Via Alta, they will suffer *11,686 new trips*. *Id.*, 52:5403 (“Via Alta  
23 to Civita Blvd” line under “Franklin Ridge Rd” heading), 5404 (“Franklin Ridge Rd to Civita Blvd”  
24 line under “Via Alta” heading). Other evidence in the record confirms that Via Alta and Franklin  
25 Ridge are *steep and curvy*, meaning they have poor sight distance and allow for high vehicle speeds.  
26 *See, e.g., id.*, 69:6546-6547 (staff presentation showing curves and steep grades on two roads); 86.1:8  
27 (staff noting “steep topography along the two roads”); 86.1:28-29 (testimony of Deborah Bossmeyer  
28 about steep grades and lack of mitigation); 86.1:93-94 (exchange between staff and Councilmember  
Bry admitting that both streets are steep and traffic-calming devices on them are not feasible).

As noted above, mitigation was required along the connector “in order *to provide adequate*  
*sight distance due to the slight curve* along Phyllis Place from the I-805 ramps.” *Id.*, 52:5421  
(emphasis added). If adequate sight distance due to a slight road curvature was important enough to  
mitigate for the church affected by the connector, then it should have been important enough to study

1 and mitigate for residents, bicyclists, and pedestrians on Via Alta and Franklin Ridge. As the City's  
2 own graphics reveal, Franklin Ridge has the same overall curvature as Phyllis Place from the I-805  
3 ramps while Via Alta has three curves that are all worse. *See, e.g., id.*, 69:6545.

4 The City's staff tried to rationalize not looking at traffic hazards along Via Alta and Franklin  
5 Ridge by myopically insisting that only the road connector was up for consideration and the rest of  
6 Civita was already a done deal. *Id.*, 2350:36341 (Muto testimony). Commissioner Granowitz was  
7 incredulous: ". . . if we're going to approve something that's going to affect these people, there need  
8 to be some *assurances* that there's going to be *some safe – ability for them to cross.*" *Id.* (emphasis  
9 added). At that point feeling the heat, staff flat-out lied to the Commissioner: "So *in our traffic*  
10 *analysis*, you know, you do analyze if there are impacts related to circulation, to *any pedestrian and*  
11 *bike* access. And *that analysis was completed* and no impacts related to bike or pedestrian access,  
12 active transportation were identified." *Id.*, 2350:36342 (emphasis added). In truth, there was no study  
13 of pedestrian access on Via Alta or Franklin Ridge; the only study was within the artificially narrow  
14 "Project" footprint. There were no bike- or pedestrian-safety issues identified because the City did not  
15 look at those impacts on either of the adjacent roadway segments.

16 Nonetheless, the City's Street Design Manual plainly recommends crosswalks as a traffic-  
17 calming measure under circumstances just like those present here, providing further evidence of the  
18 need to study the Project's potential traffic hazards and to mitigate them if significant. Under "Issues  
19 to Consider" for mid-block crosswalks, the Manual notes: "Mid-block crosswalks provide convenient  
20 crossing locations for pedestrians when other crossing opportunities are distant or where there is a  
21 presence of concentrated midblock pedestrian crossing demand." *Id.*, 88:6996. "As may be the case  
22 for crosswalks at intersections, mid-block crosswalks help to concentrate pedestrian crossing activity  
23 and alert drivers to the possible presence of pedestrians." *Id.* Especially pertinent here is the Manual's  
24 recommendation that "[o]n streets that experience excessive vehicle speeds, enhanced pedestrian  
25 crossings should be combined with traffic calming measures, such as raised crosswalks or curb  
26  
27  
28

1 extensions.” Due to the EIR’s failure to look at traffic hazards on Via Alta and Franklin Ridge, that  
2 recommendation never made it into the Project’s mitigation measures.<sup>15</sup>

3 Also missing from the EIR’s analysis is the inability of emergency vehicles to pass if there is  
4 a car accident on Via Alta. The applicable fire policy requires roads to be at least 26 feet wide, but Via  
5 Alta is only 18 feet wide. *Id.*, 2217:32981. This public-safety risk went unexamined.

6 With more than a 14-fold increase in vehicles racing down Via Alta and Franklin Ridge – from  
7 2,420 to 34,540 new vehicle trips – the City was obligated to look at the potential traffic hazards and  
8 public-safety impacts due to poor sight distance, high speeds, and narrow streets. Because it failed to  
9 do so, the City failed to consider all potential adverse impacts and equally failed to support its  
10 conclusion about the absence of such impacts with substantial evidence.

11 **B. The City Violated the Planning and Zoning Law**

12 Petitioner will not repeat its arguments from Section IV-A-5 and IV-A-6, *supra*, and instead  
13 summarizes it here briefly to prove the City’s separate violation of the Planning and Zoning Law,  
14 GOV’T CODE § 65000 *et seq.*<sup>16</sup>

15 As noted in earlier, the City’s general plan represents the “constitution for all future  
16 developments” within its jurisdiction. *Citizens of Goleta Valley, supra*, 52 Cal. 3d at 553.  
17 Accordingly, “the propriety of virtually any local decision affecting land use and development  
18 depends on consistency with the applicable general plan and its elements.” *Id.*

19 The City of Villages strategy adopted by the City’s General Plan “focus[es] growth into mixed-  
20 use activity centers that are *pedestrian-friendly*. . . .” Admin. R. 2343:34878 (emphasis added). The  
21 strategy will also help the City to reduce “local contributions to greenhouse gas emissions” by making  
22 it possible for people “to make *fewer and shorter auto trips*.” *Id.* (emphasis added). In defining a  
23 “village,” the General Plan goes on to state: “*All villages will be pedestrian-friendly* and characterized  
24 by inviting, accessible, and attractive streets and public spaces.” *Id.* (emphasis added). When Civita  
25 was approved in 2008, the City described the strategy as “bringing jobs close to homes, providing new  
26

27 <sup>15</sup> The public submitted an extensive PowerPoint presentation about the lack of mid-block pedestrian  
28 crossings that cut off residents from safe, easy access to the parks and school, tediously showing how  
the Project met all the various City criteria for such measures. *See* Admin. R. 2090:31648-31669.

<sup>16</sup> Petitioner incorporates the earlier arguments by reference.



1 parks and public facilities, *creating walkable communities* that have a sense of place, and emphasizing  
2 convenient, multi-modal transportation that *keeps people out of cars.*” Admin. R. 59:6299 (emphasis  
3 added).

4 The Project is neither pedestrian-friendly nor likely to reduce greenhouse-gas emissions from  
5 vehicles. The evidence discussed earlier in this brief shows that the increased number of vehicles on  
6 the steep, curvy, narrow Via Alta and Franklin Ridge will make them *less* pedestrian-friendly. What’s  
7 more, the model used to estimate VMT is susceptible to a 10% margin of error today and worse the  
8 farther in the future one looks, meaning that the Project could just as easily increase vehicle trips – and  
9 thus carbon emissions – as it might reduce them.

10 Consequently, the Project is not consistent with the General Plan and thereby violates the  
11 Planning and Zoning Law. The evidence does not support the City’s consistency findings.

12 **C. The City Violated the Public’s Right to Due Process and Fair Hearings**

13 The inquiry in cases brought under Code of Civil Procedure Section 1094.5(b) is “whether the  
14 respondent has proceeded without, or in excess of, jurisdiction; *whether there was a fair trial*; and  
15 whether there was any prejudicial abuse of discretion.” CODE CIV. PROC. § 1094.5(b) (emphasis  
16 added). In this regard, due process and principles of fairness required that the City’s administrative  
17 decision-makers not be biased in their decision-making on the Project. As stated by the Supreme  
18 Court, “due process requires fair adjudicators in courts *and administrative tribunals* alike.” *Haas*,  
19 *supra*, 27 Cal.4th at 1024 (emphasis added). Emphasizing the point further, the High Court stated, with  
20 respect to the “procedural requirements ‘demanded by rudimentary due process’ in [the administrative]  
21 setting, . . . ‘of course, an impartial decision maker is essential.’” *Id.* at 1025.

22 Here, Petitioner and other members of the public were denied fair hearings because at least one  
23 City Council member had become a cheerleader for the Project decided he was going to approve the  
24 Project long before any evidence was presented to the City Council. Specifically, after the Recirculated  
25 DEIR was released for public review, and long before the Project was scheduled for any public  
26 hearings, Mr. Sherman tasked his staff with finding people who would submit favorable letters and  
27 speak in support of the Project when it finally came up for public hearing. For example, on May 23,  
28 2017, Mr. Sherman’s Director of Outreach wrote an email to the Escala Homeowners Association  
stating: “I wanted to reach out to you because the City has recirculated the [Project] and public hearings

1 are scheduled to start in July. Would you like Barrett and I to come back to your HOA Board to brief  
2 you on this subject? *We are hoping we can get a letter of support as well from Escala for the*  
3 *Planning Commission and City Council.*” Admin. R. 958:16722 (emphasis added). Numerous other  
4 similar letters were sent out by Mr. Sherman’s staff. *See, e.g., id., 948:16536; 965:16739-16741.* In  
5 fact, as far back as May 2017, on at least one occasion, *Mr. Sherman’s staff was offering to write the*  
6 *support letter for a group willing to support the Project.* *See id., 837:15212-15213.*

7 Even worse, the day after the Planning Commission recommended approval of the Project on  
8 August 24, 2017, Mr. Sherman’s staff sent out an e-mail stating “[t]hank you to everyone who came  
9 to the Planning Commission Hearing yesterday and sent in letters of support! With your support we  
10 had over 40 speakers in attendance and turned in over 50 letters in support of this Community Plan  
11 Amendment.” *Id., 1939:30580-30581.* Mr. Sherman’s staff then urged supporters to attend future  
12 public hearings and sign an online petition in support of the Project. *Id.*

13 In light of the foregoing, it is clear that by the time of the City Council’s public hearing on  
14 October 30, 2017, Mr. Sherman’s motion and vote in favor of the Project were a foregone conclusion.<sup>17</sup>  
15 That his vote was already counted means the hearing failed to comport with the fair-hearing aspect of  
16 due process. Due process requires that all hearing judges be impartial. *American Isuzu Motors, Inc.*  
17 *v. New Motor Vehicle Bd.,* 186 Cal. App. 3d 464, 472-473 (1990). As stated by the U.S. Supreme  
18 Court, the right to “a fair tribunal is a basic requirement of due process” and that principle “applies to  
19 administrative agencies which adjudicate as well as to courts.” *Withrow v. Larkin,* 421 U.S. 35, 46-47  
20 (1975). In this regard, “[n]ot only is a biased decisionmaker constitutionally unacceptable but ‘our  
21 system of law has always endeavored to prevent *even the probability of unfairness.*’” *Id.* at 47  
22 (emphasis added).

23 In light of the foregoing, Petitioner and members of the public were denied the fair hearing to  
24 which they were entitled under Code of Civil Procedure Section 1094.5(b).

#### 25 V. CONCLUSION

26 For all these reasons, Petitioner respectfully asks the Court grant all of the relief requested in  
27 the operative pleading.  
28

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<sup>17</sup> Mr. Sherman made the motion at the SGLU Committee hearing and at the City Council hearing.  
Admin. R. 86:6859 (making motion at City Council); 2351:36393 (making motion at Committee).

**PLAINTIFF AND PETITIONER'S OPENING BRIEF IN SUPPORT OF COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF  
MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND  
OTHER LAWS**

Declaration of Deborah Bossmeyer



**PROOF OF SERVICE**

1. My name is Monica Manriquez. I am over the age of eighteen. I am employed in the State of California, County of San Diego.
  
2. My  business \_\_\_\_\_ residence address is Briggs Law Corporation, 4891 Pacific Highway, Suite 104, San Diego, CA 92110.
  
3. On September 13, 2019, I served \_\_\_\_\_ an original copy  a true and correct copy of the following documents: Plaintiff and Petitioner's Opening Brief in Support of Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate Under the California Environmental Quality Act and Other Laws; Declaration of Deborah Bossmeyer
  
4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

*by personal service.* I personally delivered the documents to the person(s) at the address(es) indicated on the list.

*by U.S. mail.* I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of San Diego, California.

*by overnight delivery.* I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

*by facsimile transmission.* Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

*by e-mail delivery.* Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws \_\_\_\_\_ of the United States  of the State of California that the foregoing is true and correct.

Date: September 13, 2019

Signature: 

**SERVICE LIST**

*Save Civita Because Sudberry Won't v. City of San Diego*  
San Diego County Superior Court Case No. 37-2017-00045044-CU-WM-CTL

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Mara W. Elliot, City Attorney  
George F. Schaefer, Assistant City Attorney  
Lynn Marie Beeckman, Deputy City Attorney  
Office of the City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, California, 92101-4178

*Attorney for Defendant, City of San Diego*