

MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney
LYNN M. BEEKMAN, Deputy City Attorney
California State Bar No. 149325
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant and Respondent
CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

SAVE CIVITA BECAUSE SADBERRY
WONT,

Plaintiffs and Petitioners,

v.

CITY OF SAN DIEGO ,

Defendant and Respondent.

DOES 1 through 1,000

Defendants and
Real Parties-in-Interest

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

**CITY OF SAN DIEGO'S OPPOSITION
TO PLAINTIFFS/PETITIONERS'
PETITION FOR WRIT OF MANDATE**

IMAGED

I/C Judge:	Hon. Joel R. Wohlfeil
Dept.:	73
Trial:	December 12, 2019
Complaint filed:	November 27, 2017

TABLE OF CONTENTS

PAGE

I.	INTRODUCTION.....	1
II.	FACTUAL STATEMENT.....	1
	A. The Project.....	1
	B. The Quarry Falls Project.....	2
	C. The EIR Process.....	2
III.	STANDARD OF REVIEW.....	3
IV.	SCBSW FAILS TO CITE EVIDENCE MATERIAL TO THE CITY'S DECISIONS TO SHOW THAT THEY WERE NOT REASONABLY SUPPORTABLE.....	4
V.	THE CITY PROPERLY UTILIZED ITS DISCRETION IN PREPARING PROJECT OBJECTIVES THAT SUPPORT THE UNDERLYING PURPOSE OF THE PROJECT.....	5
	A. The City Properly Utilized Its Discretion in Preparing Project Objectives.....	6
VI.	THE ALTERNATIVES ANALYSIS COMPLIES WITH CEQA.....	7
	A. The FEIR Was Not Required To Include the No Build/Remove From MVCP Alternative Because It Cannot Achieve The Project's Underlying Fundamental Purpose.....	8
	B. The FEIR Was Not Required To Conduct A Detailed Analysis of the No Build/Remove From MVCP Alternative Because It Failed To Meet Most of the Basic Project Objectives.....	9
	C. Substantial Evidence In The Record Supports The City's Conclusion That The "No Build/Remove From MVCP Alternative" Did Not Meet Most Of The Basic Project Objectives.....	10
	No.1: To Provide Multi-Modal Linkage From Friars Rd. in MV to Phyllis Place in SM.....	10
	No.2: To Improve Local Mobility in the MV and SM Planning Areas.....	10
	No. 3: To Alleviate Traffic Congestion and Improve Navigational Efficiency To/From Local Freeway On/Off Ramps.....	11
	i. SCBSW Admits Its Preferred Alternative Could Not Meet Half Of This Objective.....	11
	ii. SCBSW Relies On The "No-Project Alternative" Traffic Impact Analysis	12
	iii. Traffic Congestion is a Known Significant Impact, So There Is No Prejudicial Error.....	12
	No. 4: To Improve Emergency Access and Evacuation Route Options between SM and MV.....	13
	i. The Kaplan Dr. and Aperture Cir. Access Option Was Repeatedly Addressed in the FEIR.....	14
	ii. Substantial Evidence Reflects That The Objective Would Not Be Met.....	14
	No.5: To Provide Safe and Efficient Multi-Modal Street Design That Minimizes Impacts	15
	No. 6 The CAP and the Bicycle Master Plan Include the Connector in Their Assumptions.....	15
	D. The Evidence Set Forth In The "No Project Alternative" Analysis Supports The Conclusions Made About SCBSW's Preferred Alternative.....	16

1	E. Studying The No Build/Remove From MVCP Alternative Further Would Not Have Added Substantially To The Alternative Analysis	17
2	VII. THE EIR ADEQUATELY ANALYZED THE PROJECT'S TRAFFIC IMPACTS	18
3	A. There is Substantial Evidence Supporting The Determination That Traffic Impacts On Freeway Mainline Segments Will be Less Than Significant.....	18
4	B. There Is Substantial Evidence In The Record Supporting Council's Determination Regarding Alleged Traffic Hazards	21
5	i. The Significance Determination Was Properly Limited To This Project.....	22
6	ii. Via Alta and Franklin Ridge Were Safely Designed and Constructed as Part of the QF Project.....	22
7	iii. The Connection Is Safely Designed	24
8	VIII. THE EIR ADEQUATELY ANALYZED THE PROJECT'S LAND USE PLAN CONSISTENCY	24
9	A. There is Substantial Evidence In The Record Supporting The Conclusion That The Project Is Consistent With The General Plan	25
10	IX. THE CITY COMPLIED WITH CEQA GUIDELINE SECTION 15088.5(g)	27
11	X. PETITIONER WAS NOT DENIED DUE PROCESS OR A FAIR HEARING	28
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

PAGE

Cases

<i>Bakersfield Citizens for Local Control v. City of Bakersfield</i> 124 Cal.App.4th 1184 (2004)	28
<i>Banning Ranch Conservancy v. City of Newport Beach</i> , 211 Cal.App.4th 1209 (2012)	4
<i>Breakzone Billiards v. City of Torrance</i> , 81 Cal. App. 4th 1205 (2000)	29
<i>Breneric Associates v. City of Del Mar</i> , 69 Cal. App. 4th 166(1998)	29
<i>California Native Plant Society v. City of Rancho Cordova</i> 172 Cal.App.4th 603 (2009)	4
<i>California Oak Fd. v. UC Regents</i> , 188 Cal. App. 4th 227(2010)	7
<i>Center for Biological Diversity v. County of Sam Bernardino</i> , 185 Cal.App.4th 866 (2010)	16
<i>Chico Advocates For A Resp. Economy v. City of Chino, Walmart</i> , 252 Cal.Rptr.3d 859 (2019)	21
<i>Citizens of Goleta Valley v. Bd. of Sup.</i> , 52 Cal. 3d 553 (1990)	7, 9
<i>City of Fairfield v. Superior Court</i> , 14 Cal. 3d 768 (1975)	29
<i>City of Maywood v. Los Angeles Unified School Dist.</i> , 208 Cal.App.4th 362 (2012)	8, 21
<i>Clark v. City of Hermosa Beach</i> , 48 Cal. App. 4th 1152 (1996)	29
<i>Covina Residents for Resp.Dev. v. City of Covina</i> , 21 Cal.App.5th 712 (2018)	25
<i>Ctr for Biological Div. v. DFW</i> , 234 Cal.App.4th 214 (2015)	10
<i>Defend the Bay v. City of Irvine</i> 119 Cal.App.4th 1261 (2004)	4
<i>Endangered Habitats League, Inc. v. County of Orange</i> , 131 Cal.App.4th 777 (2005)	25
<i>In re Bay-Delta, etc.</i> , 43 Cal.4th at pp. 1161–1162 (2008).	7, 8, 10

1	<i>Jones v. UC Regents,</i>	
2	183 Cal.App.4th 818 (2010)	8
3	<i>Latinos Unidos de Napa v. City of Napa,</i>	
4	221 Cal.App.4th 192 (2013)	5
5	<i>Laurel Heights Improvement Assn. v. UC Regents,</i>	
6	47 Cal.3d 376 (1988)	3
7	<i>Naraghi Lakes Neighborhood Preserv. Assn. v. City of Modesto,</i>	
8	1 Cal.App.5th 9 (2016)	25
9	<i>Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.</i>	
10	57 Cal.4th 439 (2013)	4
11	<i>Saltonstall v. City of Sac.,</i>	
12	234 Cal.App.4th 549 (2015)	11, 17, 21
13	<i>San Diego Citizenry Grp. v. Cty. of San Diego,</i>	
14	219 Cal. App. 4th 1 (2013)	7
15	<i>San Franciscans Upholding the Downtown Plan v. City & Cnty of San Fran.,</i>	
16	102 Cal.App.4th 656 (2002)	3
17	<i>Shakin v. Board of Medical Examiners,</i>	
18	254 Cal. App. 2d 102 (1967)	29
19	<i>Sierra Club v. City of Orange</i>	
20	163 Cal.App.4th 523 (2008)	4
21	<i>Sierra Club v. Cnty of Napa,</i>	
22	121 Cal.App.4th 1490 (2004)	3, 8
23	<i>Stubblefield Constr. Co. v. City of San Bernardino,</i>	
24	32 Cal. App. 4th 687	29
25	<i>Vineyard Area Citizens for Resp. Growth, Inc. v. City of Rancho Cordova</i>	
26	40 Cal.4th 412 (2007)	4
27	Statutes	
28	Gov.Code §§ 65000, 65454, 65700	26
	Other Authorities	
	California Street and Highways Code § 1806(a)	24
	Land Development Code § 144.0233	24
	CEQA Guidelines	
	CEQA Guidelines, Cal. Code Regs., tit. 14, § 15384	3, 28
	CEQA Guidelines §15121	4
	CEQA Guidelines § 15151	4
	CEQA Guidelines § 15126.6 (a) (f)	7, 8, 18
	Public Resources Code	
	Pub. Res. Code §21002.1(a), (c)	4
	Pub. Res. Code § 21005(b)	4
	Pub. Res. Code §§ 21080 (e) and 21082.2 (c)	27
	Pub. Res Code § 21168	3, 4

1 **I. INTRODUCTION**

2 This case is about a 460 foot north/south street connection that the Mission Valley
3 Community Plan has identified in its Community Plan since 1985, but the Serra Mesa
4 Community Plan has not. In 2008, when the City approved the Quarry Falls (QF) planned
5 development project (later named “Civita”), whether to include this connection between these
6 communities was widely studied and debated. The QF Programmatic Environmental Impact
7 Report (QF PEIR) and attendant traffic studies analyzed every scenario imaginable, with and
8 without the connector projected to 2030. A drawing of the connector from the QF PEIR is
9 attached hereto as Exhibit A.¹ In the end, the connector was disconnected but not without City
10 Council initiating an amendment to the SMCP to include the Connection. Still, Petitioners are
11 staunchly fighting this 460 foot Connector that has been deemed a “mobility project”.

12 Commissioner Whalen called it: “this is a textbook case of local opposition that is
13 standing in the way of implementation of a circulation plan.”(2350: 36318) This Project creates a
14 circulation roadway and provides a multi-modal connection between two communities that
15 currently lack connectivity. It would improve local transportation efficiency and is consistent
16 with the Climate Action Plan’s overarching land use and transportation strategy. No new trips
17 would be added by the Connection. Rather, vehicle trips would be redistributed onto other
18 existing regional circulation infrastructure and navigational efficiency would increase. The
19 Connection would provide commuters a more direct route to regional freeways, which would
20 lead to a reduction in regional vehicle miles traveled and associated emissions. Finally, it would
21 add an additional evacuation route and increase response times. The City Council understood
22 the need for this Connection and approved it the Project.

23 **II. FACTUAL STATEMENT**

24 **A. The Project**

25 The SMCP Amendment Roadway Connection Project (Project) consists of construction
26 and operation of a roadway connection (Connector or Connection) and an amendment to the
27

28 ¹ This document is part of administrative record and can be found at tab 51, page 3927 (51:3927). Citations
to the administrative record identify the tab and sequential page number.

1 SMCP to reflect the roadway. The roadway itself would be 460 feet long and classified as a four-
2 lane major street, complete with bicycle lanes and pedestrian pathways, extending from Phyllis
3 Pl. in SM southward to Via Alta and Franklin Ridge Rd. in MV. (See attached Figure 5.2-1 AR
4 51:3993). The Project would require a revisions to figures and text in SMCP.

5 **B. The Quarry Falls Project**

6 As referenced above, in 2008, the City approved the QF project, along with the QF PEIR
7 and the QF Specific Plan, among other things. The QF PEIR studied the environmental impacts
8 of the Connection and the Traffic Study analyzed traffic impacts with and without the Connector
9 through build out of these communities. The results of the QF PEIR were available for review in
10 conjunction with the Recirculated DEIR for this Project. (51:3899, 3949)

11 On the same day that Council approved QF, it initiated an amendment to the SMCP to
12 include the Connector and directed staff to proceed with the analysis of proposals and preparation
13 of any necessary revisions to adopted documents. (31:318-319)

14 **C. The EIR Process**

15 In January of 2012, the City issued a Notice of Preparation soliciting input on the scope of
16 the EIR for the Project. (1821:29189). On April 18, 2016, the Draft Programmatic EIR was
17 released for public review. (2346:35450) During the public review period, the City received
18 comments indicating that sufficient information was available to analyze the Project in greater
19 detail. (51:3110) The City determined that the level of review should be revised to change the
20 analysis from a high level programmatic analysis to a detailed project level analysis. (51: 3110-
21 3111; 1821:29190).

22 On March 29, 2017, the Recirculated Draft EIR was published and the City provided a 60-
23 day public review. (1183:19526; 767:15068; 666:13608-10; 2349:35785). The Recirculated Draft
24 EIR included Appendix "C" which contained a Traffic Study and a Technical Report analyzing
25 traffic through 2035. In addition, Appendix "H" included the results of traffic modeling conducted
26 to provide an analysis of Vehicle Miles Traveled (VMT) and a transportation and circulation
27 analysis projected through 2035.

28 ///

1 In May of 2017, the MVPG heard the Project as an “informational item only” and no action
2 or vote was taken. That same month, the SMPG voted 11-0-0 to recommend denial of the Project.

3 On August 24, 2017, the Planning Commission held a three-hour public hearing and voted
4 6-0-1 to recommend approval of the Project and certification of the FEIR (35: 331; 2350:36357-
5 60). Both Staff Reports recommended approval of the Project. (1821: 29189; 67:6531)

6 On September 21, 2017, City Council’s Smart Growth & Land Use Council Committee
7 held a public hearing and voted 4-0 to recommend approval of the Project.

8 On October 30, 2017, the City Council held over a two-hour public hearing regarding FEIR
9 certification and the Amendment. (86:6859-60, 86.1:6857.1, 6962.1) After a full bodied
10 environmental review with maximum public participation, the City exercised its discretion and
11 approved the Project and certified the FEIR. (36:403) The vote was 8-0-1 in favor.

12 **III. STANDARD OF REVIEW**

13 SCBSW’s challenge to the City’s EIR is reviewed for prejudicial abuse of discretion.
14 Pub. Res. Code § 21168. “Abuse of discretion is established if the agency has not proceeded in a
15 manner required by law or if the determination or decision is not supported by substantial
16 evidence.” (*Laurel Heights Improvement Assn. v. UC Regents*, 47 Cal.3d 376, 392 (1988).)

17 Substantial evidence means “enough relevant information and reasonable inferences from
18 this information that a fair argument can be made to support a conclusion, even though other
19 conclusions might also be reached.” (*San Franciscans Upholding the Downtown Plan v. City &*
20 *Cnty of San Fran.*, 102 Cal.App.4th 656, 675 (2002), quoting CEQA Guidelines, Cal. Code
21 Regs., tit. 14, § 15384 [hereafter “Guidelines”].) Substantial evidence may include facts,
22 reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not
23 argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. *Id.*

24 Under the substantial evidence test, an EIR must be upheld as long as there is substantial
25 evidence – controverted or uncontroverted – supporting its findings or conclusions.

26 “A reviewing court may neither substitute its views for those of the agency whose
27 determination is being reviewed, nor reweigh conflicting evidence presented to that body.”
28 (*Sierra Club v. Cnty of Napa*, 121 Cal.App.4th 1490, 1497 (2004). A court’s task “is not to

1 determine who has the better argument.” *Vineyard Area Citizens for Resp. Growth, Inc. v. City of*
2 *Rancho Cordova* 40 Cal.4th 412, 435 (2007). Instead, “[t]he decision of the agency is given
3 substantial deference is presumed correct. The parties seeking mandamus bear the burden of
4 proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the
5 administrative findings and determination.” (*Sierra Club* at 1497.)

6 A CEQA determination can only be set aside with a showing of prejudicial error. Pub.
7 Res. Code §21168; *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* 57 Cal.4th
8 439, 463 (2013). There is no presumption of prejudicial error, it must be proven. *Id.*; Pub. Res.
9 Code section 21005(b); *Banning Ranch Conservancy v. City of Newport Beach*, 211 Cal.App.4th
10 1209, 1228 (2012). Insubstantial or merely technical omissions are not grounds for relief. *Id.* A
11 prejudicial abuse of discretion occurs if the failure to include relevant information precludes
12 informed decision making and informed public participation. *Id.* Upon reviewing an EIR,
13 “courts have looked not for perfection but for adequacy, completeness, and a good faith effort at
14 full disclosure.” Guidelines § 15151. CEQA does not dictate particular results; it requires
15 environmentally-informed decisions, not that decisions always favor environmental
16 considerations. Pub. Res. Code §21002.1(a), (c); Guidelines §15121.

17 **IV. SCBSW FAILS TO CITE EVIDENCE MATERIAL TO THE CITY’S DECISIONS**
18 **TO SHOW THAT THEY WERE NOT REASONABLY SUPPORTABLE**

19 The FEIR is presumed legally adequate, and SCBSW bears the burden of proving
20 otherwise. *Sierra Club v. City of Orange* 163 Cal.App.4th 523, 530 (2008). In meeting this
21 burden, SCBSW cannot selectively cite to portions of the record, but must “affirmatively show
22 there was no substantial evidence in the record” to support the City’s decision. *California Native*
23 *Plant Society v. City of Rancho Cordova* 172 Cal.App.4th 603, 626 (2009). SCBSW’s burden is
24 not met “by simply pointing to portions of the administrative record that favored its
25 position. . . . Rather, the [petitioner] needed to set forth in its challenge to the EIR all of the
26 evidence material to the City’s finding, then show that that evidence could not reasonably
27 support the finding.” *Id.* (citations omitted); accord *Defend the Bay v. City of Irvine* 119
28 Cal.App.4th 1261, 1266 (2004).

1 A challenger's failure to describe the evidence favorable to the agency and show why it is
2 lacking is a fatal flaw. *Latinos Unidos de Napa v. City of Napa*, 221 Cal.App.4th 192, 286
3 (2013). Throughout its OB SCBSW repeatedly fails to meet this burden and, therefore, many of
4 its claims are fortified. Specifically, OB IV. A. 3., 5 and 6 and IV. B.

5 V. **THE CITY PROPERLY UTILIZED ITS DISCRETION IN PREPARING**
6 **PROJECT OBJECTIVES THAT SUPPORT THE UNDERLYING PURPOSE OF**
7 **THE PROJECT**

8 In 2008, the City Council resolved to initiate "the amendment to the Serra Mesa
9 Community Plan..."*to include* the street connection between Phyllis Place and Friars Road."
10 (31:319; Emphasis added.) Council understood the conflict between the SMCP and the MVCP
11 but did not seek to initiate an amendment to the MVCP to remove reference to the Connection as
12 SCBSW now suggests. (31:318-319).² This initiation allowed staff to "proceed with the analysis
13 of proposals and preparation of any necessary revisions to adopted documents." (*Id.*) Council
14 "direct[ed] staff to analyze the following issues in relation to the forementioned street connection
15 and land use plan amendments: 1. Whether police and fire response times would be improved
16 with the road connection; 2. Whether the road connection could serve as an emergency
17 evacuation route; 3. Whether it is feasible to make the road available for emergency access only;
18 and, 4. Whether pedestrian and bicycle access would be improved by the street connection."
19 (*Id.*)³

20 This Resolution reflects that the underlying purpose of the Project is to amend the SMCP
21 to include the Road Connection to connect these two communities. (See also, 51:4249)

22 As the Project marched forward it was appropriately referred to as the "Franklin Ridge
23 Road Extension" in the 2012 Scoping Meeting Notice and in the DEIRs as the "Serra Mesa
24 Community Plan Amendment Street Connection" and the "Serra Mesa Community Plan
25 Amendment Roadway Connection Project." (2353:36563 2346:35450-7; 2349:35783). The

26 ² Indeed, an amendment was MVCPA for the QF project was being concurrently processed at that time.
27 (25:0262-0263).

28 ³ Petitioner believes these "issues" should have been the Objectives. But Council's direction was to analyze
these issues in connection with the proposed amendment. There are host of issues that require evaluation with a
community plan amendment and these were just a few. These issues were analyzed throughout the FEIR.

purpose of the Project has always been to amend the SMCP to include a street connection between these two communities and the Objectives were designed with that goal in mind.

A. The City Properly Utilized Its Discretion in Preparing Project Objectives

SCBSW complains that between the Programmatic DEIR and the Recirculated DEIR the City revised the Project objectives in order to narrow the analysis of alternatives. The DEIR was recirculated after the focus was changed from a programmatic analysis to a project level analysis. This gave the public another opportunity to review more information about the Project. The Project objectives were updated in the Recirculated DEIR to better reflect the purpose of the Project, to focus more on multi-modal mobility⁴ and to reduce redundancy among the Objectives. (51:2992) This effort aligned with the 2015 amendments to the General Plan and the 2015 Climate Action Plan. The modifications to the Objectives are:

1. Resolve the inconsistency between the Mission Valley Community Plan and the Serra Mesa Community Plan ~~as it pertains to a connection by providing a multi-modal linkage~~ from Friars Road in Mission to the Phyllis Place in Serra Mesa;
2. Improve ~~overall circulation network~~ local mobility in the Serra Mesa and Mission Valley planning areas;
3. Alleviate traffic congestion and improve navigational efficiency to and from the local freeway on-and off-ramps for the surrounding areas;
4. Improve emergency access and evacuation route options between the Serra Mesa and Mission Valley planning areas; and,
5. Provide a safe and efficient street design for motorists, cyclists and pedestrians that minimizes environmental and neighborhood impacts. ~~Along the street connection, allow for safe travel conditions for motorists, cyclists and pedestrians. Implement the General Plan and Bicycle Master Plan as they pertain to developing interconnectivity between communities.~~

(Compare 2346:35730 [Programmatic DEIR] and 2349:35871 [Recirculated DEIR])

Some concepts were combined and words were exchanged but the underlying goal of the Project was the same: to link these communities and create mobility. None of these slight modifications caused the objective to stray from the underlying purpose of the Project and all of them serve to meet the primary goal of connecting these two communities. (51:4249)

⁴ As of January 1, 2011, the California Complete Streets Act of 2008, requires circulation elements to accommodate the transportation system from a multimodal perspective to meet the needs of all users, auto drivers, transit users, bicyclists and pedestrians. (52: 4010 p. 5.2-14; see http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1351-1400/ab_1358_bill_20080930_chaptered.pdf; https://nacto.org/docs/usdg/nchrp_rpt_616_dowling.pdf)

1 SCBSW argues that the inclusion of “providing a multi-modal linkage” in Objective #1
2 was designed to eliminate the option of amending the MVCP to remove the Connection. But this
3 ignores the intent of the 2008 Resolution to “include” the Connection. Reconciliation between
4 the two community plans has never been a stand-alone objective. The Project has always been to
5 include the Connector.

6 Importantly, SCBSW has not cited any legal authority for the proposition that the project
7 objectives cannot be revised, particularly after changes in public policy, legislation or EIR scope.
8 A similar conspiracy theory argument was made in *San Diego Citizenry Grp. v. Cty. of San*
9 *Diego*, 219 Cal. App. 4th 1, 14 (2013). There, the petitioner argued that objectives were given
10 “an impermissibly narrow construction” to limit mitigation measures. The effort failed.

11 CEQA does not restrict an agency's discretion to identify and pursue a particular project
12 designed to meet a particular set of objectives. *Id.*; *California Oak Fd. v. UC Regents*, 188 Cal.
13 App. 4th 227, 276–77 (2010). The only requirement in the CEQA Guidelines is that the
14 objectives include the underlying purpose of the project. Guidelines § 15124 (b). An agency may
15 utilize its discretion in identifying basic project objectives and may structure its EIR alternative
16 analysis around a reasonable definition of the underlying purpose of the project. *Id.*; *In re Bay–*
17 *Delta, etc.*, 43 Cal.4th at pp. 1161–1162 (2008).

18 VI. THE ALTERNATIVES ANALYSIS COMPLIES WITH CEQA

19 An EIR’s range of alternatives need only comply with the “rule of reason,” include only
20 those alternatives necessary to permit the lead agency to make a reasoned choice, and examine in
21 detail only those alternatives that would feasibly attain most of the basic project objectives while
22 avoiding or substantially reducing any of the project’s significant effects. Guidelines
23 §15126.6(a), (f); *Citizen of Goleta*, 52 Cal.3d at 566. “CEQA establishes no categorical legal
24 imperative as to the scope of alternatives to be analyzed in an eir.” *Id.* no ironclad rules can be
25 imposed regarding the level of detail required in the consideration of alternatives. Guidelines
26 §15126.6(a). “An EIR need not consider every conceivable alternative to a project.” The “rule of
27 reason” governs all aspects of this effort. The essential inquiry is whether the alternatives
28 presented would “permit a reasoned choice” and will “foster meaningful public participation and

1 informed decision making.” *Id.* An agency’s selection must “be upheld, unless the challenger
2 demonstrates that the alternatives are manifestly unreasonable and that they do not contribute to
3 a reasonable range of alternatives.” *City of Maywood v. LAUSD*, 208 Cal.App.4th 362, 414
4 (2012).

5 **A. The FEIR Was Not Required To Include the No Build/Remove From MVCP**
6 **Alternative Because It Cannot Achieve The Project’s Underlying**
7 **Fundamental Purpose**

8 SCBSW claims that the EIR failed to adequately analyze a “reasonable range of
9 alternatives” because it did not further analyze amending the MVCP to remove the Connector,
10 the alternative referred to as the “No Build/Remove From MVCP Alternative” in the EIRs. It
11 argues that the FEIR should include a detailed evaluation of how to bring the two plans into
12 conformity by removing the Connector and amending the MVCP, instead of the reverse. But the
13 2008 Resolution initiated an amendment to the SMCP to include the Connector. The underlying
14 fundamental purpose of the Project has always been to include a road connection to connect
15 these two communities. (51:3897; 2346:35470).

16 “[A]n EIR need not study in detail an alternative . . . that the lead agency has reasonably
17 determined cannot achieve the project’s underlying fundamental purpose.” *In re Bay-Delta etc.*,
18 43 Cal.4th 1143, 1165 (2008); see also, *Jones v. UC Regents*, 183 Cal.App.4th 818, 827-28
19 (2010) (no need to consider alternative that would not meet project’s “primary objective of
20 creating a more campus-like setting”); *Sierra Club v. Cnty of Napa*, 121 Cal.App.4th 1490, 1509
21 (2004) (specific project objective was to include on-site vineyard that would be irrigated by
22 wastewater from proposed winery, EIR not required to evaluate an alternative that would dispose
23 of wastewater through the sewer system).

24 SCBSW’s claims fail as a matter of law because lead agencies are entitled to exercise
25 discretion to exclude consideration of alternatives that do not meet a project’s fundamental
26 purpose or are inconsistent with the basic nature of the project. Guidelines § 15126.6(f); *Citizens*
27 *of Goleta Valley v. Bd. of Sup.*, 52 Cal. 3d 553, 574 (1990); see also, 1 Kostka & Zischke,
28 *Practice Under the California Environmental Quality Act*, §15.8 (2019).

1 **B. The FEIR Was Not Required To Conduct A Detailed Analysis of the No**
2 **Build/Remove From MVCP Alternative Because It Failed To Meet Most of**
3 **the Basic Project Objectives**

4 SCBSW argues that the “No-Build/Remove Alternative” should have been selected for
5 full analysis because it meets most of the Project Objectives. CEQA creates a two-step scoping
6 process to determine which alternatives an EIR should consider in detail. In the first step, the
7 lead agency identifies potentially feasible alternatives for discussion and then culls them to
8 assemble a range to be considered for detailed evaluation in the EIR. Guidelines §15126.6(a). In
9 the second step, CEQA alternatives may be “eliminated from detailed consideration” in the EIR
10 based on: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability
11 to avoid significant environmental impacts.” *Id.*

12 The City met these requirements and properly exercised its discretion to select
13 alternatives for further study. During the first step of the scoping process, the FEIR identified
14 four potentially feasible alternatives for discussion: the “Alternate Location Alternative”, the
15 “No Build/Remove from MVCP Alternative”, the “Bicycle, Pedestrian, and Emergency Access
16 Only Alternative” and the “No Project Alternative.” (51:4249-4262) In step two, the FEIR
17 considered and then eliminated the SCBSW’s preferred alternative, the “No Build/Remove from
18 MVCP Alternative” because it did not meet any of the Project objectives. (51:4247-4250). The
19 FEIR carried forward for full analysis the “Bicycle, Pedestrian, and Emergency Access Only
20 Alternative” and the “No Project Analysis.” (51:4252-4262).

21 Guideline § 15126.6(c) provides the EIR written requirements as follows:

22 “The EIR should **briefly describe** the rationale for selecting the alternatives to be
23 discussed. The EIR should identify any alternatives that were considered by the lead
24 agency but were rejected as infeasible during the scoping process and briefly explain the
25 reasons underlying the lead agency’s determination. Additional information explaining
26 the choice of alternatives **may** be included in the administrative record.”

27 The City met these standards too. It “briefly” explained the reasons underlying the
28 rejection of the No Build/Remove from MVCP Alternative not selected for full treatment in the
29 EIR. (51:4249) An alternative eliminated during the scoping process merits only a brief
30 description in an EIR and explanation for the lack of an in-depth analysis is not required. *In re*

1 *Bay-Delta*, 43 Cal.4th at 1165; *Ctr for Biological Div. v. DFW*, 234 Cal.App.4th 214, 257
2 (2015).

3 **C. Substantial Evidence In The Record Supports The City's Conclusion That**
4 **The "No Build/Remove From MVCP Alternative" Did Not Meet Most Of**
5 **The Basic Project Objectives**

6 SCBSW contends that there is no substantial evidence in the record to support the
7 conclusion reached by the FEIR that this Alternative could not meet most Project objectives.

8 The City utilized its discretion in determining that SCBSW's Alternative did not meet
9 most of the basic Project Objectives. Each Objective will be discussed in turn below.

10 **No.1: To Provide Multi-Modal Linkage From Friars Rd. in MV to Phyllis Place in SM**

11 The FEIR stated that this Objective would not be fully met because, without the Connection,
12 "multi-modal options between these roadways" would be "limit[ed]." (51:4249)

13 SCBSW's argues that sufficient multi-modal linkage already exists and that evidence was
14 omitted from the FEIR. But these comments were included and considered in the FEIR and
15 support the City's decision. (51:2995, 2997, 3032, 3034, 3165, 3310-3311, 3426, 3917, 3929,
16 3933, 3965, 3973 and 4049; 2342:34794.)

17 Fundamentally, SCBSW misunderstands the term "multi-modal" which means linkage
18 that accommodates vehicles, bicyclists, and pedestrians. (51:3033, 3973) Having "at least one
19 trail for pedestrian and bike access" and "pedestrian, bike and emergency access" is not multi-
20 modal access. Moreover, Mission Center Rd. is not a direct route and links Murray Ridge Rd. to
21 Friars Rd., not Phyllis Pl. The Project will close the gap between Friars Rd. in MV and Phyllis
22 Pl. in SM by providing a multi-modal linkage that accommodates vehicles, bicyclists and
23 pedestrians. (51:3973) The Project is a mobility project that would provide a multi-modal
24 connection between two communities that currently lack connectivity. (51:3010)

25 The City in its discretion determined that multi-modal access between these communities
26 was a goal that the No Build/Remove From MVCP Alternative could not achieve.

27 **No.2: To Improve Local Mobility in the MV and SM Planning Areas**

28 The FEIR provides that the goal of improving local mobility in these planning areas
would not be met because, without the Connection, routes between these areas would be

1 “limit[ed].” (51:4250) This just makes common sense. “Common sense ... is an important
2 consideration at all levels of CEQA review.” *Saltonstall v. City of Sac.*, 234 Cal.App.4th 549,
3 583 (2015).

4 SCBSW’s argument is that more local mobility is not needed because widening
5 improvements to Mission Center Rd. will be sufficient. But SCBSW misses the point. The goal
6 is to “improve” local mobility. With or without the road widening, local mobility will improve
7 with a connecting road. SCBSW misinterprets “local mobility” which is generally defined as
8 balancing all modes of transportation within the circulation network. (51:3033)

9 SCBSW’s preferred Alternative would not provide a direct connection from Phyllis Pl. to
10 Friar’s Rd. for all modes of travel. (*Id.*) The FEIR contained an analysis showing that traffic
11 takes a circuitous route from SM and surrounding neighborhoods to MC and that a more direct
12 connection to the commercial area in MC would reduce Vehicle Miles Traveled and GHG’s.
13 (51:3009; 1821:29192-3; 67:6533)

14 The record reflects a full discussion of these issues and substantial evidence supporting
15 the City’s decision to not further study this Alternative because this Objective could not be
16 achieved. (51:3032-3, 3309-11, 3471-3477 & 3720).

17 **No. 3: To Alleviate Traffic Congestion and Improve Navigational Efficiency To/From**
18 **Local Freeway On/Off Ramps**

19 The FEIR provides that the goal of alleviating traffic congestion **and** improving
20 navigational efficiency to/from local freeway ramps would not be met by SCBSW’s preferred
21 Alternative because access options would be “limit[ed].” (51:4250; Emphasis added.)

22 i. **SCBSW Admits Its Preferred Alternative Could Not Meet Half Of This Objective**

23 This Objective is framed in the conjunctive and the OB only attacks the traffic congestion
24 conclusion. SCBSW does not claim that its Alternative would improve navigational efficiency
25 from local freeway on/off ramps. Rather, it only claims that its Alternative would alleviate traffic
26 congestion and, therefore, meets 50% of this Objective. The City was entitled in its discretion to
27 not further analyze this Alternative on that basis alone.

28 ///

1 ii. SCBSW Relies On The “No-Project Alternative” Traffic Impact Analysis

2 Citing Year 2035 projections in FEIR Table 5.2-16s and the SMPG comment letter,
3 SCBSW argues that “not building the Project” alleviates traffic congestion more than building
4 the Project. (OB: 16-17). SCBSW acknowledges that the “No-Project Alternative” and the “No
5 Build/Remove From MVCP Alternative” are similarly situated. (OB: 16:15) This results in two
6 logical conclusions by extension. First, because the No-Project Alternative traffic analysis was
7 fully studied⁵, so was SCBSW’s Alternative. Second, because the City compared the impacts of
8 the No-Project Alternative against the Project impacts and found less impacts from the Project, it
9 is likely the same result would have occurred with SCBSW’s Alternative.

10 iii. Traffic Congestion is a Known Significant Impact, So There Is No Prejudicial
11 Error

12 Traffic impacts about this Connector have been repeatedly studied over the years and
13 traffic congestion has always been at the forefront of the discussion. The QF Traffic Impact
14 Study contains 614 pages and 500 Tables/Figures analyzing traffic impacts **with and without**
15 the Phyllis Place Connection all the way to CP buildout year 2030. (45:866; 2008; 2360:38909-
16 39522). The FEIR (and the Recirculated DEIR) contain two Traffic Impact Studies analyzing
17 data at Year 2017 and Year 2035 (51:3852; 1664:28192-500) and a Vehicle Miles Traveled
18 Output and Summary (2348:35775-82). The FEIR analyzes Transportation and Circulation
19 repeatedly. (51:3991-4051, 4186-4192, 4201-4208, 4241-42, 4253-56)

20 After full review the City found that the Project would result in significant and
21 unavoidable direct impacts in the areas of Transportation/Circulation (roadway network capacity,

22 ⁵ This Table also reflects that Via Alta has a capacity of 16,667 ADT’s, but in 2035 without the Project will
23 only be serving 3,647 ADT’s and with the Project will still be underutilized at serving 11,686 ADTs. (51:4029) It
24 will go to a LOS of “C” / “No Significant Impact.” (*Id.*) Without the Project, even in 2035, Franklin Ridge and
Phyllis Pl. will not be utilized to full capacity. (Franklin:16,667 ADT v.10,457 ADT; Phyllis:10,000 ADT v. 2,420
ADT) (51:4028)

25 ⁶ Under the No-Project Alternative in Year 2017, there are three road segments that operate at a LOS “F”.
26 (51:4016, 4253-4) After mitigation, this is expected to be reduced to one road segment. (51:4254) Regarding
27 intersections under the No-Project analysis, one intersection would be operating at an unacceptable LOS. (51:4018,
28 4254) The No-Project analysis would not decrease VMT within the study area or the region and therefore would
result in significant impact on freeway mainline segments. (51:4254) In Year 2035 traffic scenario cumulative
impacts on the planned transportation system were analyzed. (51:4254) Six roadway segments would operate at an
unacceptable level creating significant and unavoidable impacts. (51:4028-9, 4254) Similar significant but
mitigable impacts would occur at intersections. (51:4030-33, 4037-45, 4256)

1 planned transportation systems). (51:3867; 4013-48; 36:352, 369-374, 381-384)⁷ Still, Council
2 found that the benefits of the Project outweighed the unavoidable significant impacts and
3 adopted a Statement of Overriding Considerations and certified the FEIR. (36:381-384) Whether
4 or not the Project was built, the Council found that population and vehicular trips would increase
5 as the MV and SM communities were built out. (36:383-4) The updated circulation network
6 demonstrated that without the Connection, vehicular circulation would result in greater
7 congestion and failing levels of service. (Id; 86.1:6904.1-8.1;67:6534; 51:2997-9) The Project
8 was found to provide a more efficient, integrated multi-modal network that did not add new trips
9 but redistributed trips onto other existing regional circulation infrastructure and created a more
10 direct route to regional freeways, which would lead to a reduction in regional VMT and GHG.
11 (*Id.*) Therefore, it was approved.

12 Given the outcome, traffic congestion goals aside, there is no prejudicial error here
13 because there is substantial evidence reflecting that the ultimate result would likely have been the
14 same. In any event, the process resulted in a robust informational exchange and met the
15 requirements of CEQA. The remainder of the traffic related discussion will be addressed in
16 Section V. B.

17 **No. 4: To Improve Emergency Access and Evacuation Route Options between SM and**
18 **MV**

19 The FEIR provides that SCBSW's Alternative would not aid in improving emergency
20 access and evacuation routes because without the Connection there would not be "additional"
21 ingress/egress for emergency responders, nor would an "additional" evacuation route be created.
22 (51:4250) There is no dispute that SCBSW's Alternative eliminates a possible emergency access
23 route and evacuation route. Logically, an alternative that eliminates an **additional** emergency
24 access route and an **additional** evacuation route "would not **improve** emergency access and
25 evacuation route options." Attempting to deflect its illogical argument, SCBSW claims that the
26 FEIR failed to disclose that "emergency access exists between Kaplan Dr. in Serra Mesa and

27 _____
28 ⁷ Even the QF EIR was concerned about congestion. "The intensity of development of the QF Project
would result in significant land use impacts associated with traffic circulation, including both direct and cumulative
traffic circulation impacts through Year 2030." (45:1915-1919)

1 Aperture Circle in Civita.” Not only is this inaccurate but it misses the point of the Objective: to
2 **improve** whatever options exist. An increase in emergency access and evacuation routes is an
3 improvement for any community.

4 i. The Kaplan Dr. and Aperture Cir. Access Option Was Repeatedly Addressed in
5 the FEIR

6 Section 5.2.7 of the FEIR informs the reader that “emergency access currently exists
7 from Aperture Circle in Quarry Falls to SM via Kaplan Drive” but goes on to explain that this
8 access is inadequate for evacuations because it is blocked by locked metal bollards that can only
9 be accessed by authorized emergency personnel. (41:4048) The City responded to this exact
10 argument in the FEIR multiple times. (51:2985, 2990-2994, 3029-30, 3032-3, 3067, 3165, 3301,
11 4236) As the Fire Marshall explained at both public hearings the Kaplan Dr. route does not
12 qualify as official emergency access because it does not meet Fire Code standards and, therefore,
13 it is not on their response or evacuation plan. (2350:36326-31; 86.1:6939.1-41.1; 69:6549)

14 ii. Substantial Evidence Reflects That The Objective Would Not Be Met

15 Without the Connection, there is no way for the fire engines to “come from the north.”
16 (2350:36329-30) A fire doubles in size every minute so a thirty second increase in response
17 times can make a critical difference. (2350:36331) The Fire Marshall put it best: “The entry
18 point for us on the north is essential for us to be able to do our job... that is a vital link for us...if
19 you give us that north access, the people will be safer.” (86.1:6864.1-65.1) He reflected on the
20 lessons learned from the wild fires which caused him to urge for increased evacuation and
21 emergency access options. (Id)

22 The analysis regarding these issues can be found in the body of the FEIR and the
23 responses to comments. (51:3033, 3115-6, 3918-19, 4048, 4230, 4236) A traffic study also
24 evaluated effects that the Connection would have on emergency and evacuation access and found
25 that accessibility would improve. (51:4047-8; 28192:28314-8) Emergency evacuation and
26 routing options were also considered. (51:4047-8) The Connection was found to provide an
27 additional access point thereby improving emergency access and evacuation route options.
28 (51:4048, 4230, 4236-4237) Additional access points are also generally known to improve police
and fire emergency response times. (51:4236; 36:383)

1 The City Council found that the Connection would add an additional access point,
2 inherently providing better emergency evacuation routing. (36:383) Specifically, the Council
3 found that the Connection would provide a third point of evacuation for residents in Civita where
4 two currently exist via Mission Center Rd. or Friars Rd. to the 1-805; and a second point of
5 evacuation for the 200 or so homes at the western end of Phyllis Pl. in the Abbotshill
6 neighborhood of the SMCP area where only one currently exists via Phyllis Pl. leading to 1-805.
7 (36:383)

8 **No.5: To Provide Safe and Efficient Multi-Modal Street Design That Minimizes**
9 **Impacts**

10 The FEIR concludes that SCBSW's Alternative, which does not include building the
11 Connector, would not be met because no street would be designed. (51:4250) Logically, this
12 makes sense. This Objective is directed towards street design and stems from the General Plan
13 Transportation Element. (51:3963) Since there is no street to be built in SCBSW's Alternative,
14 there is nothing to design. SCBSW twists this Objective into an argument that the Connector is
15 not safely designed, which is not substantial evidence of whether SCBSW's preferred
16 Alternative should have been further studied.

17 While not relevant, using 2035 ADTs, SCBSW claims that the increase in ADT's down
18 Via Alta and Franklin Ridge were "absent from discussion" in the FEIR. Not true. The FEIR
19 contains two Traffic Impact Studies analyzing data at Year 2017 and Year 2035 (51:3852;
20 1664:28192-500). The FEIR analyzes the impact on these very streets in the Transportation and
21 Circulation. (51:3991-4051) Finally, the QF Traffic Impact Study contains 601 pages and 500
22 Tables/Figures analyzing traffic impacts with and without the Phyllis Place Connection all the
23 way to CP buildout year 2030. (45:866; 2008; 2360:38909-39522). Via Alta and Franklin Ridge
24 were designed to accommodate the amount of vehicle traffic contemplated in these studies.
25 (51:2929) The City incorporates the discussion in section V.

26 **No. 6 The CAP and the Bicycle Master Plan Include the Connector in Their**
27 **Assumptions**

28 Although not an Objective, the FEIR explains that not building the Connector and
amending the MVCP would not resolve inconsistency with other land use plans that have already

1 been adopted. As discussed in the FEIR and in the RTCs, the Bicycle Master Plan includes the
2 Connector (2342:34794; Figure 6-3; 51:3948, 3965; 4049-10).

3 The Project is also consistent with the Climate Action Plan (CAP). (51:3034, 3948,
4 3965, 4185-92) The CAP utilized traffic modeling from SANDAG which includes planned
5 roadways. The Connector was included within this modeling. (*Id.*) The CAP uses population
6 figures based on community plan build outs and this Connection was identified in the MVCP and
7 part of inventory and projections. (*Id.*) The Connector is also consistent with SANDAG's
8 Regional Transportation Plan and is included in long-term forecast models. (51:2990)

9 In contrast, SCBSW's Alternative would need to be fully analyzed for potential conflicts
10 with the CAP and other land use and transportation plans. (*Id.*)

11 SCBSW tries to liken the City's analysis in support of eliminating SCBSW's Alternative
12 from further consideration to that of the agency in the *Center for Biological Diversity v. County*
13 *of San Bernardino*, 185 Cal.App.4th 866, 885-6 (2010) case. But there the consultant did not
14 demonstrate he was an expert in composting facility financing and provided no foundation for
15 his opinion. *Id.* In this case, SCBSW has provided to evidence that the team preparing the EIR
16 and RTCs lacked expertise or were not qualified to make the opinions expressed therein. On the
17 contrary, they were all development professionals (traffic engineers, planners, etc.) In addition,
18 the FEIR was supported by Technical Appendices. As can be seen by the RTCs, the range of
19 feasible alternatives was selected and discussed in a way that fostered meaningful public
20 participation and informed decision making. *Id.* at 885.

21 **D. The Evidence Set Forth In The "No Project Alternative" Analysis Supports**
22 **The Conclusions Made About SCBSW's Preferred Alternative.**

23 SCBSW admits that the FEIR's "No Project Alternative", referred to in the OB as
24 "amending the MVCP", is same alternative as "not building the Project". (OB 16:15) Just like
25 SCBSW's preferred alternative, the No Project Alternative assumes that the Connection would
26 not be built and the SMCP would not be amended. (36:375-376; 51:4250-4258). The significant
27 impacts of the Project are summarized in Tables ES-1 and 9-1. (51:3870-3896, 4248). A
28 summary of the impacts of alternatives relative to the Project is set forth in Table 9-2. (51:4252)

1 The City Council found that implementation of the “No Project Alternative” would
2 increase impacts associated with land use, transportation and circulation, air quality, and
3 greenhouse gas (GHG) emissions when compared to the Project due to the increase in regional
4 and study area VMT. (36:376; 51:4016, 4018, 4253-4) The “No Project Alternative” traffic
5 would cause impacts to occur on the existing circulation network and cause failing levels of
6 service to street segments and intersections, which would affect-emergency response and
7 accessibility. (Id; 51: 4252-4258; 67:6534).

8 SCBSW has not challenged these findings. Their proposal would have suffered the same
9 fate. Petitioners provide no argument that the actual findings are improper or not supported by
10 substantial evidence. Without such argument, Petitioner has waived any challenge to the
11 findings.

12 The discussion of the No Project Alternative fostered informed decision-making and
13 informed public participation on the very same topics contained in the No Build /Remove From
14 MVCP Alternative. The SM Planning Group (SMPG) submitted a 38 page letter commenting on
15 the Recirculated DEIR with 16 pages of attachments covering every aspect mentioned in the OB.
16 (51:2934-87). The City responded to 212 points made by the SMPG. (51:2988-3039) SMPG’s
17 comments and the City responses regarding these Objectives can be found at 51:2963-69, 3032-
18 3034. Comments about these Objectives from “Stop The Road” and the City’s responses can be
19 found at 51:3041-3044, 3066-3067. An activist submitted a 79 page letter commenting on the
20 Recirculated DEIR also covering every aspect discussed in the OB. (51:3566-3644). The City
21 responded to 294 points made. (51:3715-69) Comments about these Objectives and City
22 responses can be found at 51:3718-3724. CEQA’s intent was met.

23 **E. Studying The No Build/Remove From MVCP Alternative Further Would**
24 **Not Have Added Substantially To The Alternative Analysis**

25 If a petitioner’s preferred alternative would not have provided any additional information
26 required by CEQA for environmental review, no violation has occurred. *Saltonstall v. City of*
27 *Sacramento*, 234 Cal.App.4th 549, 578 (2015). In *Saltonstall*, the City studied four alternatives:
28 (1) the no project alternative of continuing to operate the old arena “as-is”, (2) build a new arena
at a different location, (3) build a new arena at the same location, and (4) a reduced scale arena.

1 *Id.* at 573. Petitioner complained that the City did not study an alternative that remodeled the old
2 arena. The *Saltonstall* Court rejected this argument finding that studying the remodeling
3 alternative would not have added substantially to the alternative analysis. It reasoned that some
4 of the impacts were the same for the remodeling alternative and the build in place alternative. *Id.*
5 at 577-578. The Court of Appeal held that the draft EIR sufficiently studied alternatives.

6 When an EIR discusses a reasonable range of alternatives sufficient to foster informed
7 decisionmaking, it is not required to discuss additional alternatives substantially similar to those
8 discussed. The City was not required to include SCBSW's Alternative in order to achieve a
9 reasonable range of alternatives. The range it considered was sufficient to "foster informed
10 decision making and public participation." Guidelines § 15126.6(a).

11 **VII. THE EIR ADEQUATELY ANALYZED THE PROJECT'S TRAFFIC IMPACTS**

12 The Petitioners contend that the EIR failed to properly examine traffic impacts in two
13 very narrow areas: regional circulation and alleged traffic hazards on Via Alta and Franklin
14 Ridge. (OB pgs. 24-28) Specifically, SCBSW challenges the City's determination that the
15 Project will not cause a "substantial increase in VMT for freeway mainline segments" (Issue 2)
16 or an "increase in traffic hazards for motor vehicles, bicycles, or pedestrians due to a proposed,
17 non-standard design feature" (Issue 4). (51:4014)

18 **A. There is Substantial Evidence Supporting The Determination That Traffic**
19 **Impacts On Freeway Mainline Segments Will be Less Than Significant**

20 The FEIR's Appendix C is a January 2017 Traffic Impact Study that includes both a 2017
21 Technical Report (1664:28192-234) and a 2015 Traffic Impact Study (1664:28236-500).⁸ In
22 addition, FEIR Appendix H is a 2017 Vehicle Miles Traveled Output and Summary. ("VMT
23 Summary") (2348:35775-82) The FEIR and these reports address impacts to freeway mainline
24 segments and provided sufficient information for the public and the decision makers to support
25 their determinations. (51:4007-9, 4013-4, 4021-2, 4189-90; 1664:28200, 28204-5, 28209, 28215-
26 7, 28246, 28251, 28254, 28266, 28272, 28279, 28285; 2348:35775-82).

27
28
⁸ Together these will be referred to hereafter as the "2017 TIS."

1 SCBSW's attack has only one theory: that impacts to freeway mainline segments were
2 "grossly misrepresented" due to the use of a faulty forecasting model for the VMT Summary.
3 Traffic Impact Studies and VMT Modeling

4 The 2017 TIS analyzed reasonably foreseeable Near-Term Year 2017 conditions (with
5 and without the Project) to determine direct impacts and Long-Term Year 2035 conditions (with
6 and without the Project) to determine cumulative impacts. (1664:28198; 51:3991) All traffic
7 analyses were completed in accordance with the SANTEC/ITE Guidelines for Preparing Traffic
8 Impact Studies and the City's Traffic Impact Study Manual. (1664:28200; 51:3429) The traffic
9 volumes relied upon in the 2017 TIS utilized regional modeling based on SANDAG's
10 computerized travel forecast model, Series 12. (1664:282265-6, 28290, 28378-90; 51:3004-7).
11 SCBSW has not challenged the use of this SANDAG forecast model.

12 Regarding freeway mainline impacts, the FEIR informs that, if the LOS criteria were
13 utilized, the Project would result in a significant impact at six freeway segments. (51:4021;
14 1664:28217) It also informs the reader that under existing conditions, three segments already
15 operate at a LOS "F". (51:4008-9; 1664:28209)

16 Senate Bill 743 mandated a change in the way public agencies evaluate freeway mainline
17 segment impacts away from a delay-based LOS analysis to a focus on the reduction of VMT on
18 the regional circulation network. (51:4007, 4010, 4013, 4021; 1664:28215) The goal was to
19 provide new CEQA methodologies that promote the goals of reducing green-house gas emissions
20 and traffic-related air pollution. (51:4010) In order to align with state policy, Caltrans is creating
21 the CalTrans Transportation Analysis Guide and Transportation Impact Study Guidelines and
22 has published Interim Guidance. (51:4007)

23 To analyze the potential effects on the regional roadway network and traffic volumes,
24 VMT for the Project was modeled by SANDAG (Appendix H). (51:4021-22; 1664:28215-6;
25 4187; 2348: 35775). The VMT analysis was conducted consistent with the methodologies
26 discussed in the technical white paper "Vehicle Miles Traveled Calculations Using the
27 SANDAG Regional Travel Demand Model" prepared by the San Diego Institute of
28 Transportation Engineers (ITE)'s Transportation Mobility Task Force. (2348:35778) The VMT

1 analysis was also a component of the GHG emissions analysis in the FEIR, but SCBSW has not
2 challenged that analysis. (51:4187-4192; 3009-10). This same VMT modeling was used to
3 prepare the City's Climate Action Plan and SCBSW has not challenged the VMT model there
4 either. (86.1:6937.1). (2337:34480).

5 The FEIR concluded that the Project would reduce VMT within the project influence area
6 by 1.8% in both 2017/2035 and reduce region wide VMT by .32% (2017) and .28% (2035).
7 (2348:35778; 51:4021-2). It also found that the Project would not add trips to the regional
8 circulation network. (*Id.*) Rather, vehicle trips would be redistributed to other regional
9 circulation network infrastructure. (*Id.*, 3009) Therefore, using the Interim Guidance rather than
10 LOS, the FEIR found that the Project would reduce VMT impacts associated with freeway
11 mainline segments would be less than significant. (*Id.*, 4007-9, 4013-4) The City analyzed the
12 impacts consistent with Caltrans Interim Guidance. CalTrans concurred with the FEIR analysis.
13 (1821:29359)

14 The City Council adopted these findings. (36:347) Nonetheless, because other
15 Transportation and Circulation issues were found to have significant (mitigable and
16 nonmitigable) impacts, a Statement of Overriding Impacts was adopted that relied on the VMT
17 study. (36:348-352, 368-376, 383-384).

18 SCBSW claims that the VMT calculated by the SANDAG model was flawed because it
19 did not report the margin of error and that this flaw was hidden from the public. But, this very
20 topic was the subject of a detailed memo presented to Council by Deborah Bossmeyer
21 (2203:32435) and addressed in the RTCs (51:3410-11) The theory was also presented at both
22 public hearings. (2350: 36282; 86.1: 6875; 69:6552-4). In response, Council heard from the
23 City's senior traffic engineer and Planning professionals explaining the foundation for reliance
24 on SANDAG's model. (2350: 36321-36324; 86.1: 6937.1-8.1)

25 Finally, the email reportedly written by SANDAG's Senior Transportation Modeler, Michael
26 Calandra, demonstrates that:

27 "We spend a lot of time calibrating and validating SANDAG's travel demand model.
28 The process includes creating a base year model where the results can be compared to
real-world observed data (ADT, VMT, travel time, etc.) Calibration includes making

1 adjustments to better replicate observed conditions, while validation includes statistical
2 documentation of the performance. There are many guidelines and resources regarding
3 modern calibration, and we try to adhere to what the Federal Highway Administration has
4 produced.” (2203:32459)

5 All of this information was before the public and decisionmakers.

6 A public agency is entitled to rely on the methodology and conclusions it articulates in its
7 DEIR because it has the prerogative to resolve conflicting factual conclusions about the extent of
8 traffic congestion that will result from the project. *Saltonstall v. City of Sac.*, 234 Cal.App.4th
9 549, 583-4 (2015). “Challenges to the scope of an EIR’s analysis, the methodology used, or the
10 reliability or accuracy of data underlying an analysis must be rejected unless the agency’s
11 reasons for proceeding as it did are clearly inadequate or unsupported. *City of Maywood v. Los*
12 *Angeles Unified School Dist.*, 208 Cal.App.4th 362, 425-6 (2012). The issue for the court is “not
13 whether the studies are irrefutable or whether they could have been better. The relevant issue is
14 only whether the studies are sufficiently credible to be considered *as part of* the total evidence
15 that supports the [agency’s] finding[s].” *Id.* When an agency is faced with conflicting evidence
16 on an issue, the agency is permitted to give more weight to some of the evidence and to favor the
17 opinions of some experts over others. *Chico Advocates For A Resp. Economy v. City of Chino,*
18 *Walmart*, 252 Cal.Rptr.3d 859, 870 (2019) Differences of opinion about an EIR’s methodology
19 do not make it unreliable. *Id.* at 871.

20 Here, the accuracy of the VMT modeling is not clearly inadequate or unsupported. It is
21 prepared by SANDAG and used in a number of land use and transportation projection studies.
22 The City Council could have reasonably concluded that if the methodology is good enough for
23 SANDAG and the Federal Highway Administration, it is good enough for the City.

24 **B. There Is Substantial Evidence In The Record Supporting Council’s**
25 **Determination Regarding Alleged Traffic Hazards**

26 SCBSW complains that potential traffic hazards on Via Alta and Franklin Ridge should
27 have been addressed in the FEIR even though they are not part of this Project. SCBSW attempts
28 to expand the scope of this Project and this FEIR and ignores that these roads were designed and
developed pursuant to the QF Specific Plan and impacts were studied in the QF EIR and Traffic

1 Impact Study that included 500 Tables/Figures analyzing impacts with and without this
2 Connector all the way to Year 2030. (44:866; 44:860-1448; 2360:38909-39522).

3 i. The Significance Determination Was Properly Limited To This Project

4 Under CEQA's significance determination analysis the City must inquire whether "**the project**
5 would result...in an increase in traffic hazards for motor vehicles, bicycles, or pedestrians **due to**
6 a proposed, non-standard design feature..." (51:4013) The only "non-standard design feature" in
7 this Project is that the City View church ("Church") driveway would not align with the
8 Connection. (51:4046) The driveway would be 150 east of the new signalized intersection
9 potentially creating an unsafe condition for motorists entering or exiting the church parking lot.
10 (36:373-4; 51:3942, 4046). Therefore, the FEIR concluded that impacts related to traffic hazards
11 caused by this non-standard design feature would be potentially significant. (51:4046) A
12 potential mitigation measure exists if the church would agree to relocate its driveway. (51:4047)
13 But this requires the voluntary participation of the Church,⁹ so the environmental analysis
14 assumed no agreement and the potential impact remains significant and unavoidable. (51:4047;
15 36:373-4)

16 ii. Via Alta and Franklin Ridge Were Safely Designed and Constructed as Part of the
17 QF Project

18 SCBSW raises a panoply of safety concerns about Via Alta and Franklin Ridge. It
19 expresses concern that by Year 2035 there will be 34,540 new vehicle trips "racing down Via
20 Alta and Franklin Ridge". In truth, the 34,450 trips will be split down these two roads. Moving
21 south from the 460 foot Connector, the traffic gets distributed downward in wishbone shaped
22 fashion. (2350: 36350) The speed that will ultimately be posted for the Connection will not be
23 decided until after the Project is complete and the City conducts road traffic surveys. (51:3941,
24 4046) The speed will very likely be lower than the design speed because of the short length of
25

26
27 ⁹ Notably, the lead pastor of the Church spoke in support of the Project at the PC and CC hearings. (2350:
28 pgs.36259:5 - 36261:12; 86.1: pgs.6917.1:7 - 6919.1:19) He stated that the "future of our community" requires more
necessary to "to help each other with good traffic flow, access to goods and services, and ensuring adequate
emergency service access." (*Id.*)

1 the Connector transitioning into a residential area. (51:3941) SCBSW is silent about the speed
2 limit on Via Alta and Franklin Ridge.

3 Moreover, Via Alta and Franklin Ridge were designed to accommodate the amount of
4 vehicle traffic contemplated in these studies. (51:2929) They were designed and constructed as
5 part of the QF project and have an ADT capacity of at least 16,667. (45:1557-59,1662-6;
6 51:4016-7, 4029) The QF EIR studied the potential environmental impacts of that project which
7 also included an alternative analysis for the “the Road Connection to Phyllis Place.” (45:1662-
8 6;1981-93). The QF Traffic Impact Study contains a lengthy detailed analysis of projected
9 roadway volumes for buildout of the Civita community. (*Id.*; 2324:34436-7) It includes 500
10 Tables/Figures analyzing traffic with and without this Connector through 2030. (45:866;
11 2360:38909-39522).

12 Regarding pedestrian safety, internal circulation within Civita was developed as part of
13 the QF project, including the locations of signalized, designated pedestrian crosswalks and
14 “streetside sidewalks, separated from the streets by landscaped parkways along...Via Alta and
15 Franklin Ridge Road”, all in accord with the Street Design Manual. (51:2927-9, 3933; 45:1558,
16 1595; 46:2109-10, 2135). The QF project considered traffic calming measures. (45:1659-1664,
17 1689-90, 1916-7 & 1985; 46:2111; 2255: 33547) ¹⁰

18 At the Planning Commission hearing there was a robust discussion of these safety
19 concerns. (2350:36322-60). As a result, the City committed to taking another look at these
20 issues. (2350: 36354) Additional site visits were conducted and the QF project plans reviewed.
21 (2324:34436-7) Staff confirmed that safe pedestrian connections were developed within the
22 constraints of the topography (grade and curved roadways) and the projected roadway volumes
23 for buildout of the Civita community. (2324:34436-7; 86.1: 6861.1) As pointed out to City
24 Council, the QF project included safe points of access. (86.1: 6862.1-6863.1; 69:6545-8;
25 51:2927-28) Existing signalized or stop controlled intersections are located on Via Alta and
26 Franklin Ridge. (86.1:6862.1; 69:6545 (purple dots)) There is an existing pedestrian tunnel
27

28 ¹⁰ The public understands that it can pursue mid-block crossings based on real collected data through the
Traffic Engineering Operations Div. (2324:34437; 2350:36342-4, 36351; 2090:31656-8) The Street Design Manual
provides that all criteria in Council Policy 200-07 must be met for approval of mid-block crossings. (88:6996)

1 running across Via Alta. (2324: 34440-1; 86.1:6862.1; 69:6545-6) Pedestrians travel no more
2 than ½ mile on via Alta before encountering a cross-walk. (86.1:6863.1;69:6545) The
3 crosswalks have curb ramps, enhanced paving, pedestrian refuges in medians and sidewalks with
4 a landscape buffer. (86.1:6862.1-63.1; 69:6545-7; 2324:34439) The existing roadways are built
5 to anticipate pedestrian, bike and vehicular traffic. (86.1: 6865)

6 SCBSW also claims that Via Alta is only 18 feet wide and violates the Fire Code and is
7 another “public safety risk [that] went unexamined.” The width of Via Alta is 20 feet. (45:1557;
8 46:2103. Again, the design of this street was addressed in the 2008 QF Specific Plan and it was
9 designed to meet Street Design Manual requirements. (45:1557-9; 46:2103) Moreover, Via Alta
10 and Franklin Ridge are open for public use which is evidence that they were accepted by the City
11 engineer and have been constructed pursuant to the City’s safety standards set forth in, among
12 other resources, the Street Design Manual and the Fire Code. See, Land Development Code §
13 144.0233; California Street and Highways Code § 1806(a); 19 CCR § 3.05)

14 iii. The Connection Is Safely Designed

15 The Connection and access points were conceptually designed to be consistent with the
16 City’s Street Design Manual. (51:4046, 2928) The Manual contains guidelines for the physical
17 design of streets and for the safe design of intersections. (51:2927-9, 4046) The Connection
18 would include bicycle lanes and sidewalks and have a signalized intersection. (*Id.*; 86.1: 6862.1-
19 6863.1;69:6545-6548).

20 No specific engineering and design has been prepared for the Connection yet. At the
21 time of final design and construction, the City will conform with City engineering standards
22 including the Street Design Manual and, as is customary, consider further refinements to the
23 design of intersections and associated roadway improvements in line with City policies. (2324:
24 34436-7; 51:2997, 3981-3)

25 **VIII. THE EIR ADEQUATELY ANALYZED THE PROJECT’S LAND USE PLAN**
26 **CONSISTENCY**

27 The review of plan consistency is “highly deferential to the local agency.” *Naraghi Lakes*
28 *Neighborhood Preserv. Assn. v. City of Modesto*, 1 Cal.App.5th 9, 18 (2016). “[A] consistency

1 determination is entitled to deference as an extension of a planning agency's unique competence
2 to interpret [its] policies when applying them in its adjudicatory capacity." *Covina Residents for*
3 *Resp.Dev. v. City of Covina*, 21 Cal.App.5th 712, 732 (2018). "Reviewing courts must defer to a
4 procedurally proper consistency finding unless no reasonable person could have reached the
5 same conclusion." *Id*

6 A project is consistent with the general plan if, considering all its aspects, it will further
7 the objectives and policies of the general plan, and not obstruct their attainment. *Endangered*
8 *Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777, 782 (2005). "[T]he essential
9 question is 'whether the project is compatible with, and does not frustrate, the general plan's
10 goals and policies.'" *Naraghi Lakes* at 18. A project need not be in rigid conformity with every
11 detail of a general plan. *Id*. It is the province of elected city officials to examine the specifics of a
12 proposed project to determine whether it would be "in harmony" with the policies stated in the
13 plan. *Id*. "It is, emphatically, not the role of the courts to micromanage these development
14 decisions." *Id*. "Where, as here, a governing body has determined that a particular project is
15 consistent with the relevant general plan, that conclusion carries a strong presumption of
16 regularity that can be overcome only by a showing of abuse of discretion." *Id*.

17 **A. There is Substantial Evidence In The Record Supporting The Conclusion**
18 **That The Project Is Consistent With The General Plan**

19 FEIR Section 5.1.5 analyzes the Project's consistency with pertinent environmental
20 goals, policies, guidelines and recommendations found in the City of San Diego General Plan
21 ("GP") and the SMCP. (51:3961-68, 3973-87, 4169-70, 4198) For ease of reference, Tables were
22 created that compare the GP and SMCP policies, goals, recommendations and guidelines against
23 the compatibility of the Project and its objectives. (*Id.*). These analyses demonstrate that the
24 Project would implement and uphold the goals, policies, guidelines and recommendations of
25 these Plans. (*Id*).

26 SCBSW only points to one inconsistency it believes exists between the GP and the
27 Project: the City of Villages concept.¹¹ But there is no inconsistency. The City of Villages

28 ¹¹ SCBSW also claims a separate violation of Planning and Zoning Law on this same basis but does not
identify the Code section allegedly violated ("GOV'T CODE § 65000 et seq."). No Government Code sections are
21:001 identified in the Petition either. It generically states, "the Project authorizes land uses and activities that are in some

1 strategy includes linking communities to the “regional transit system.” (2343:34878). “Over
2 time, villages will be increasingly connected to each other by an expanded regional transit
3 system.” (2343:34879) In the view of the state transportation commissioner, the regional
4 transportation system needs this Connection. (2350:36229) The I-805 Phyllis Place interchange
5 is an underutilized state asset because it currently only serves a small hamlet of 220 homes when
6 it was designed to relieve the traffic burden of so many more citizens. (2350:36229-33)

7 SCBSW alleges that the FEIR added “density” to the village strategy, but it was already
8 there. “The village land use pattern and *densities* help make transit operate more efficiently...”
9 (2350:34879) “Implementation of the City of Villages *growth* strategy is dependent upon close
10 coordination of land use and transportation planning. The strategy calls for redevelopment, infill,
11 and new growth to be targeted into *compact*, mixed-use, and walkable villages that are connected
12 to a regional transit system. Villages should increase personal transportation choices and
13 minimize transportation impacts through design that pays attention to the needs of people
14 traveling by foot, bicycle, and transit, as well as the automobile.” (2355:37167) (emphasis
15 added). This Project implements these goals.

16 Guiding Principle No. 5 of the GP's Strategic Framework is to work toward “[a]n
17 integrated regional transportation network of walkways, bikeways, transit, roadways, and
18 freeways that efficiently link communities and villages to each other and to employment
19 centers.” (2355:37170). The Street and Freeway System goals set forth in the GP include : (1) an
20 interconnected street system that provides multiple linkages within and between communities
21 and (2) vehicle congestion relief. (51:3978) The goal of Mobility Element C.2 in the GP is to
22 “provide adequate capacity and reduce congestion for all modes of transportation on the street
23 and freeway system.” (51:3979)

24
25
26 way inconsistent with the general and specific plans and their components... Respondents have approved a project
27 that is inconsistent with the land-use rules designed to protect the public.” (pg. 5) Based thereon, the City reserves
28 all rights to respond when SCBSW discloses the basis for this argument, including the assertion of exemption as a
Charter City. (See, e.g., Gov.Code §§ 65454, 65700) In the meantime, in response to SCBSW’s argument in Section
IV.B., the City incorporates all arguments previously set forth herein.

Moreover, the Villages strategy and the City's CAP work together to "reduce local contributions to greenhouse gas emissions" so larger numbers of people can make fewer and shorter trips. (2350:34878) City Staff recommended approval of this Project because it achieves the GP goal of providing an interconnected street system that provide multiple linkages within and between communities. (67:6534) The Project would reduce VMT and associated emissions by providing direct linkage that is consistent with the mobility goals of the GP, and emissions reduction targets within the CAP. (67:6533-4; 51:4189, 4192, 4252; 67:6533; 1821:29193).

SCBSW quotes neighbors fears about 2035 traffic volumes and the deterioration of their Village. Argument, speculation and unsubstantiated opinions do not constitute substantial evidence. Pub. Res. Code §§ 21080(e) and 21082.2(c). These concerns were raised during the public process. Concerns were voiced, the City responded and City Council made a decision after considering all the information provided. (51:2989, 2930-2931, 2990, 3777-9; 36: 346-7, 381-384)

Because the evidence shows that the project furthers the goals of the General Plan policies and does not frustrate them, the City appropriately found that the project is consistent with the GP.

IX. THE CITY COMPLIED WITH CEQA GUIDELINE SECTION 15088.5(g)

The City summarized revisions made to the Programmatic DEIR in the Notice of Preparation for the Project level DEIR which provides that the "Draft EIR has been revised to analyze impacts at a project level to ensure that all potential significant environmental effects associated with the project are disclosed, and further evaluation of the subsequent actions necessary to implement and construct the roadway is included...Because construction of the roadway connection was determined to be foreseeable, a project-level analysis was conducted and is included as part of the proposed project." (2349:35785-6) Revisions were also summarized in the following sections: 1.4 Availability of this EIR, 3.2 Project Background, 4 History of Project Changes. (2349:35849, 35871-2, 35897) The summarization is sufficient to apprise the reader that this is an entirely different level of analysis and revisions are throughout.

1 Under these circumstances, to provide a strike out version of the originally circulated DEIR
2 would be of limited value. (51:2988-9, 3112-3)

3 Moreover, no case has interpreted CEQA Guideline section 15088.5(g) as SCBSW
4 argues - - - that when a Programmatic level EIR is turned into a Project level EIR, failure to
5 itemize each change results in evisceration of the entire EIR. SCBSW has not even cited a case
6 that identifies the scope of summarization required under any circumstance.

7 CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate
8 perfection, nor does it require an analysis to be exhaustive." Therefore, "[n]oncompliance with
9 CEQA's information disclosure requirements is not per se reversible; prejudice must be shown."
10 *Bakersfield Citizens for Local Control v. City of Bakersfield* 124 Cal.App.4th 1184, 1197 (2004).
11 No prejudice has been shown. In fact, public comment was vigorous. (51:2867-3843). Some
12 commenters were particularly healthy. The SM Community Council's comments about the
13 Recirculated DEIR and the City's responses can be found at 51:3101-3122. Save Civita
14 submitted Technical Comments to the Recirculated DEIR touching on issues of safety, traffic,
15 plan consistency, among others. (51:2923-32)

16 **X. PETITIONER WAS NOT DENIED DUE PROCESS OR A FAIR HEARING**

17 For the first time in Petitioner's Opening Brief, Petitioner appears to take the position that
18 Petitioner, and the public, were denied due process and a fair hearing because Councilmember
19 Scott Sherman was "biased" towards approval of the Project and allegedly decided to approve
20 the Project before the City Council hearing. Opening, 29-30. Petitioner did not raise this issue in
21 any of the administrative proceedings or in the Petition and failed to exhaust the administrative
22 remedies. For this reason alone, this claim should be summarily rejected.

23 Further, Petitioner's claim is unsupported by the record and Petitioner cannot
24 demonstrate any actual bias in the approval of the Project. "To prevail on a claim of bias
25 violating fair hearing requirements, [petitioner] must establish 'an unacceptable probability of
26 actual bias on the part of those who have actual decision-making power over their claims.'
27 [Citation.] A mere suggestion of bias is not sufficient to overcome the presumption of integrity
28 and honesty." *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1236 (2000).

1 “Bias and prejudice are never implied and must be established by clear averments.” *Shakin v.*
2 *Board of Medical Examiners*, 254 Cal. App. 2d 102, 117 (1967).

3 “A government official’s motive for voting on a land use issue is . . . irrelevant to
4 assessing the validity of the action.” *Breneric Associates v. City of Del Mar*, 69 Cal. App. 4th
5 166, 186 (1998) (citation omitted). In explaining that a councilmember’s motivation for opposing
6 a project is irrelevant, the court in *Stubblefield Constr. Co. v. City of San Bernardino*, 32 Cal.
7 App. 4th 687 explained:

8 We find nothing arbitrary or irrational in [councilmember’s] opposition to the project.
9 Thus the fact that the city council had a meeting on the project . . . or that [the
10 councilmember] mailed out letters to his constituents opposing the project are
11 constitutionally insignificant, even if the city council had not previously held such a
12 meeting, and even if [the councilmember] had never sent out letters opposing any other
13 project. Such activities merely represent the democratic process at work.

14 *Id.* at 714 fn. 19.

15 Here, the Petition contains no factual allegations or causes of action to support its
16 purported claim of a violation of its alleged right to due process or a fair hearing. Petitioner has
17 not identified any actions by Mr. Sherman that approach establishing an “unacceptable
18 probability of actual bias”. *See Breakzone*, 81 Cal. App. 4th at 1236. To support the claim of
19 bias, Petitioner does not identify any concrete facts showing actual bias on the part of Mr.
20 Sherman but only identifies several emails sent, not by Mr. Sherman, but by his district office
21 staff generally seeking support for the Project. This cannot meet the exacting standard to prove
22 actual bias.

23 Mr. Sherman’s motives for voting for the Project are irrelevant to assessing the validity
24 of the Project approval. *See City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 780 (1975) (“A
25 councilman has not only a right but an obligation to discuss issues of vital concern with his
26 constituents and to state his views on matters of public importance.”). Expressing support for a
27 project does not deprive the Petitioner of a fair hearing or invalidate the environmental review
28 process required by CEQA and carried out by the City. *See Clark v. City of Hermosa Beach*, 48
Cal. App. 4th 1152, 1173 (1996) (“[A] public official may express opinions on subjects of
community concern . . . without tainting his vote on such matters should they come before
him.”).

1 Finally, it is significant that the Project was approved by the full City Council by a vote
2 of 8-1. AR 34:329. Mr. Sherman's vote, either for or against the Project, would not have affected
3 the approval of the Project by City Council, which would have been approved even if Mr.
4 Sherman had not voted. Accordingly, Petitioner was not impacted or prejudiced by Mr.
5 Sherman's vote and Petitioner and the public were not denied a fair hearing.

6 Dated: October 28, 2019

MARA W. ELLIOTT, City Attorney

7
8
9 By


Lynn M. Beekman
Deputy City Attorney

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11 Attorneys for Defendant and Respondent
12 CITY OF SAN DIEGO
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EXHIBIT A

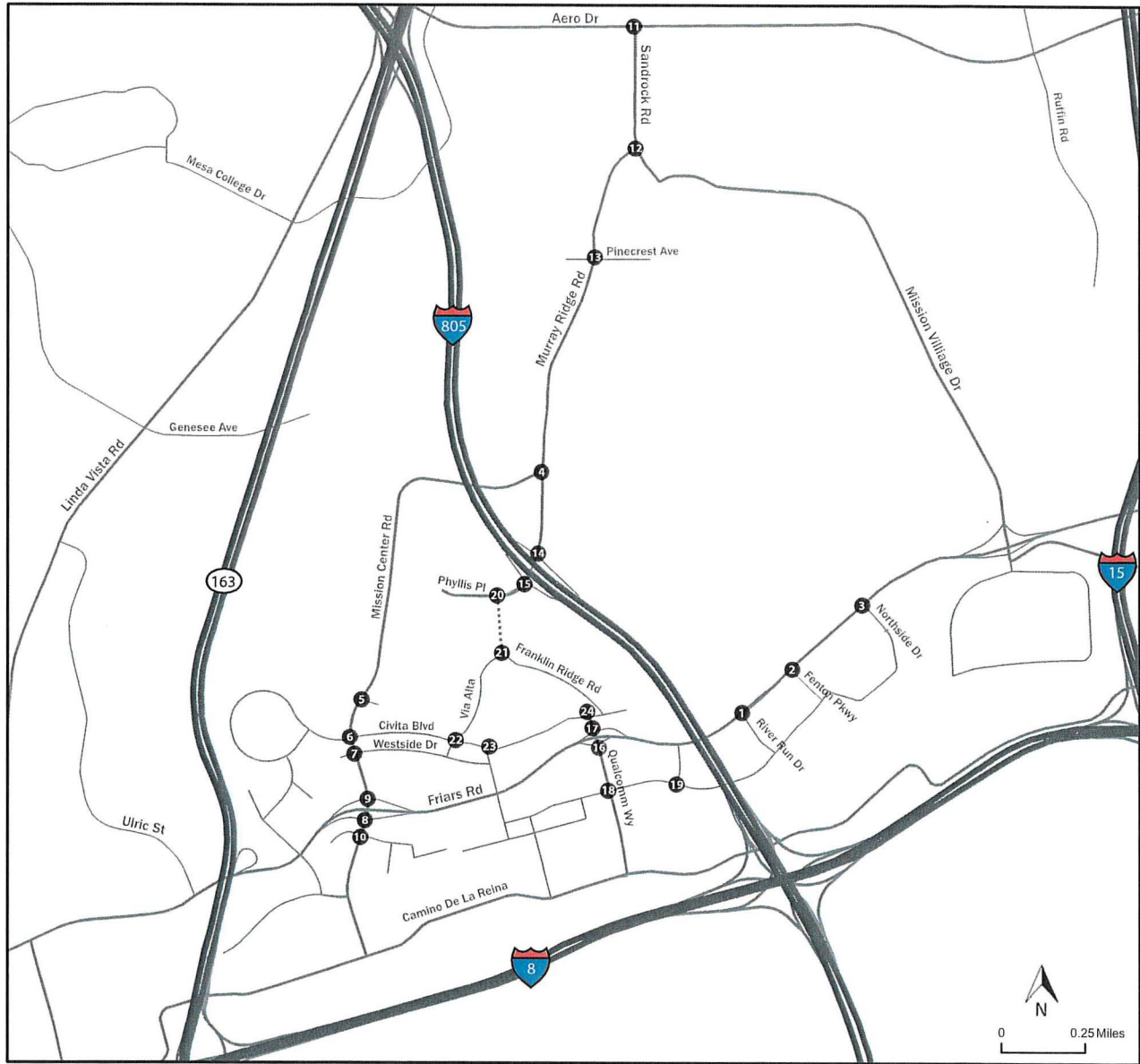


Source: Quarry Falls PEIR, 2008

Figure 3-3
Road Connection to Phyllis Place, Alternative 4 (as depicted in Quarry Falls PEIR)

ADMIN.R.003927

EXHIBIT B



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Source: KOA Corporation, 2015.

Figure 5.2-1
Traffic Impact Study Area

ADMIN.R.003993

MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney
LYNN M. BEEKMAN, Deputy City Attorney
California State Bar No. 149325
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant and Respondent City of San Diego

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DECLARATION OF SERVICE

Case Name: *Save Civita Because Sudberry Won't*
v. City of San Diego
Case No. 37-2017-00045044-CU-TT-CTL
Judge: Joel R. Wohlfeil / Dept. C-73
[IMAGED FILE]

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the following document(s):

**CITY OF SAN DIEGO'S OPPOSITION TO PLAINTIFFS/PETITIONERS'
PETITION FOR WRIT OF MANDATE**

on the following interested parties in this action:

Cory J. Briggs, Esq.
Anthony N. Kim, Esq.
BRIGGS LAW CORPORATION
99 East "C" Street, Suite 111
Upland, CA 91786
Tel: (619) 221-9280
Fax: (619) 515-6410
E-mail: cory@briggslawcorp.com

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

[] **(BY U.S. MAIL)** I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

PROOF OF SERVICE

1 I further declare that I am readily familiar with the business' practice for collection and
2 processing of correspondence for mailing with the United States Postal Service; and that
3 the correspondence shall be deposited with the United States Postal Service this same day
4 in the ordinary course of business.

5 ☐ **(BY FAX)** On _____, I transmitted the above-described documents by
6 facsimile machine to the fax number(s) set forth above or as stated on the attached
7 service list. The transmission originated from facsimile phone number (619) 533-5856
and was reported as complete and without error. The facsimile machine properly issued a
transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC Rule 2008]

8 ☐ **(BY E-MAIL)** I caused to be served by electronically mailing a true and correct copy
9 through electronic mail system to the e-mail addressee(s) set forth above, or as stated on
10 the attached service list per agreement in accordance with Code of Civil Procedure
section 1010.6. [CCP § 1010.6]

11 ☒ **(BY ELECTRONIC SERVICE)** By submitting an electronic version of the
12 document(s) to One Legal, LLC through the user interface at www.onelegal.com.

13 ☒ **(BY OVERNIGHT DELIVERY)** I served the individual(s) named by placing a true
14 and correct copy of the documents in a sealed envelope(s) to be delivered overnight via
an overnight delivery service in lieu of delivery by mail to the addressee(s) listed above,
or as stated on the attached service list: [CCP § 1013]

15 ☐ **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal
16 service on this date, _____, as to the law office of _____ at the
17 address indicated above. A certificate of service signed by DLS will be filed with the
Court upon request. [CCP § 1011]

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed this 28th day of **October 2019**, at San Diego, California.

20 
21 JANINE NACAR
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