

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 21, 2020

EVENT DATE: 01/23/2020

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DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2017-00045044-CU-TT-CTL

CASE TITLE: SAVE CIVITA BECAUSE SUDBERRY WONT VS. CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Brief - Other, 09/13/2019

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The verified Petition (ROA # 1, 99) of Petitioner SAVE CIVITA BECAUSE SUDBERRY WONT ("Petitioner" or "SCBSW") for Writ of Mandate, is DENIED.

The objections (ROA # 80) of Defendant and Respondent CITY OF SAN DIEGO ("Respondent" or "City"), are OVERRULED / DENIED.

**A. Introduction**

This Petition involves a challenge to the Serra Mesa Community Plan Amendment Roadway Connection Project (Project), which consists of construction and operation of a connector roadway, and the necessary amendment to the community plan to reflect the roadway. The roadway itself would be 460 feet long and classified as a four lane major street, complete with bicycle lanes and pedestrian pathways, extending from Phyllis Place in Serra Mesa southward to Via Alta and Franklin Ridge Road in Mission Valley. As explained below, the environmental review process complies with CEQA (and, in one instance, the violation is not prejudicial), such that this Petition is DENIED.

**B. Applicable Standard of Review**

"Any action or proceeding to attack, review, set aside, void or annul a determination ... of a public agency, made as a result of a proceeding in which by law a hearing is required to be given ..., on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure." Pub. Resources Code 21168. In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the Court's inquiry "shall extend only to whether there was a prejudicial abuse of discretion." Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 426 (quoting Pub. Resources Code 21168.5). Such an abuse is established if the agency has not proceeded in a manner required by law, or if the determination or decision is not supported by substantial evidence. Id. Abuse of discretion is established if the County did not proceed as required by law, if its determination was not supported by its findings, or its findings were not supported by substantial evidence. Citizens To Preserve the Ojai v. County of Ventura (1985) 176 Cal. App. 3d 421, 428.

The EIR is the "heart of CEQA," and its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564. The EIR protects not only the environment, but also informed self-government. Id. An EIR should be prepared with a sufficient degree of analysis to provide

decision makers with information enabling them to make a decision which intelligently takes account of environmental consequences. 14 C.C.R. 15151 (CEQA "Guidelines"). An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Id. The Court looks not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. Id.

The Court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document. Citizens To Preserve the Ojai v. County of Ventura, *supra*. Certification of an EIR which is legally deficient because it fails to adequately address an issue constitutes a prejudicial abuse of discretion regardless of whether compliance would have resulted in a different outcome. Id. An omission in an EIR's significant impacts analysis is deemed prejudicial if it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts. Neighbors for Smart Rail v. Exposition Metro Line Const. Authority (2013) 57 Cal. 4th 439, 463. Although an agency's failure to disclose information called for by CEQA may be prejudicial regardless of whether a different outcome would have resulted if the public agency had complied with the law, under CEQA there is no presumption that error is prejudicial. Id. Insubstantial or merely technical omissions are not grounds for relief. Id. A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process. Id.

Where an EIR is challenged as being legally inadequate, the Court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise. Sierra Club v. City of Orange (2008) 163 Cal. App. 4th 523, 530. Petitioner is the moving party and therefore frames the issues to be litigated when the CEQA writ is filed. See Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal. App. 4th 866, 897.

### **C. Whether City Properly Recirculated Draft EIR ("DEIR")?**

The administrative record reflects that in 2008 the City approved the Quarry Falls project, along with the Programmatic EIR for this project. This PEIR included an in-depth discussion of the potential for a connector road extending from Phyllis Place in Serra Mesa southward into the Quarry Falls development. At the same time, the City initiated the process to amend the Serra Mesa Community Plan to include the new connector road. In April 2016, the draft Programmatic EIR was released for public review for the road connector project. This project was described as an "amendment ... to the Serra Mesa Community Plan to include a street connection from Phyllis Place, located in Serra Mesa, southward to the boundary of Serra Mesa and Mission Valley. The proposed amendment would revise all maps in the currently adopted Serra Mesa Community Plan to show a street connection south of Phyllis Place as a four lane collector road including bicycle and pedestrian facilities." (AR 2346:35450) The City received public comments suggesting that sufficient information was available to analyze the connector road project in greater detail. As a result, the City determined that the level of review should be revised to change from a programmatic analysis to a more detailed project level analysis. See 51:3110 (response to comments from counsel for the Serra Mesa Community Council). As stated by staff within the City's Planning Department in a report prepared for the Planning Commission:

"As a result of public comments on the Draft EIR, the City updated the project description to include construction of the roadway connection at a project level and recirculated the Draft EIR for public review. The project level analysis in the recirculated Draft EIR reflects the conceptual design for reasonably foreseeable construction of the roadway connection, and considers the potential environmental impacts with respect to construction of the roadway connection. In addition, the recirculated Draft EIR includes the results of traffic modeling conducted to provide an analysis of vehicle miles traveled (VMT), and a transportation analysis comparing Existing Conditions (2013), Near-Term (2017), and Long-Term (2035) traffic conditions both with and without the road connection. The Draft EIR was recirculated and made available for a subsequent 60-day public review from March 29, 2017 to May 30, 2017."

In May 2017 the Serra Mesa Planning Group voted to recommend denial of the project. In August 2017, the City Planning Commission recommend approval of the project and certification of the Final EIR. In September 2017, the City Council's Smart Growth & Land Use Council Committee voted to recommend approval of the project. In October 2017, the City Council voted to approve the project and to certify the final EIR.

"When significant new information is added to an environmental impact report after notice has been given ... and consultation has occurred ..., but prior to certification, the public agency shall give notice again ..., and consult again ... before certifying the environmental impact report." Pub. Resources Code 21092.1. A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review. Guidelines at § 15088.5(a). Recirculation is not required where new information added to an EIR "merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." *Id.* at (b). Regarding the new comment period, section 15088.5 states as follows: "When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and, in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either in the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR." *Id.* at (f)(1). The lead agency also must list the changes to the EIR: "When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR." *Id.* at (g). Failure to comply with the information disclosure requirements of CEQA constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal. App. 4th 889, 898. Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal. App. 4th 1184, 1197.

The recirculated draft EIR is set forth at tab 2349 of the Administrative Record. The first page of text contains an introduction stating that the City has "determined" that the draft EIR "should be revised and recirculated in accordance with Section 15088.5(a) ...." AR 2349:35785. This statement continues: "As a result, 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 connection is included." *Id.* This statement then references subsection (f)(1), noting that only comments provided in response to the recirculated draft EIR will be considered. *Id.*

The City's opposition references Section 11.4 (AR 2349:35849-50) of the recirculated draft EIR, which states: "... comments previously received on the prior Program EIR were considered, will be included as part of the administrative record, and are factored into the decision to revise and recirculate this DEIR." This section does not discuss or list any revisions in the document.

The City's opposition references Section 3.2.1 (AR 2349:35871-72) of the recirculated draft EIR, which states: "After considering the comments received during the public review period, the City decided to analyze the road connection with a project-level analysis. The additional description and analysis warranted revisions to the draft PEIR, which in turn led the City to decide to replace the PEIR with a project-level EIR and recirculate for a second public review." Again, this section does not discuss or list any revisions in the document.

Finally, the City's opposition references Section 4 (AR 2349:35897) of the recirculated draft EIR, which states:

"In light of the public comments received during public review of the Draft PEIR, the construction of the roadway connection was determined to be foreseeable; therefore, a project-level analysis was conducted and included within the recirculated Draft EIR. Further evaluation of the subsequent actions necessary to implement and construct the roadway connection was completed.

"This revised and recirculated Draft Environmental Impact Report (DEIR) analyzes impacts at a project level to ensure that all potential significant environmental effects associated with the project are disclosed. The revised Project Description is presented in Chapter 3 and includes construction and operation of a four-lane major street, with bicycle lanes and pedestrian pathways, extending from Phyllis Place in Serra Mesa southward to Via Alta and Franklin Ridge Road in Mission Valley. This revised DEIR has incorporated information and analysis from the Quarry Falls PEIR (July 2008) as it relates to conceptual design of the roadway, environmental setting, and the analysis of impacts, where applicable."

Section 4 essentially repeats the statements set forth above. It generally notes that changes have been made, but does not discuss or list any specific revisions in the document. The City generally argues that these statements within the draft EIR are "sufficient to apprise the reader that this is an entirely different level of analysis and revisions are throughout. Under these circumstances, to provide a strike out version of the originally circulated DEIR would be of limited value." Opposition Brief at p. 27, line 26 – p. 28, line 2.

Attorney Craig A. Sherman was retained by the Serra Mesa Community Council. He states: "The recirculation and re-drafted decision of City, to essentially change the label of the draft CEQA document from a Community Plan Amendment and Program EIR (the "DPEIR") to a Community Plan Amendment for a Road Connection (with foreseeability of actually building the subject road connection) (now the "Rec-DEIR"), does not inform any reader what material differences have been made to the proposed project, project alternatives, mitigations measures and the like .... ¶ ... For example, this commenter questions which, if any, of the original (Appx. A-G) and recirculated (Appx. A-H) appendices have been changed. If it is just that the Appendix H has been added and is new, please explain how and why. If there were any changes or updates, or new or significant information added to prior Appendices A-G, please identify each and explain how they were changed and why – i.e., whether impacts are reduced, increased, or unchanged." This comment may reflect a certain amount of confusion as to the progression of the connector road project.

The City was required to reference, discuss or list in some logical, meaningful way the changes made between the draft PEIR and the recirculated draft EIR. Arguably, the City did not do this. The references cited by the City do not alert the reader as to the specific changes. On the other hand, this is not a situation where the re-circulation was driven by changes in the facts or conclusions reached within the EIR. The final EIR underwent a structural change, but maintained the same discussion regarding impacts and mitigation, and relied on the same data. Importantly, the City's failure was not prejudicial. There is no evidence suggesting the public was deprived of a meaningful opportunity to discuss and critique the project. Re-circulation was not used as an opportunity to insert new conclusions as to significant impacts on the community. Re-circulation did not prevent the relevant decision makers from reaching an informed final decision. There is no evidence that the City's failure to comply was done in bad faith. Therefore, any violation of Guidelines section 15088.5 was not prejudicial and does not constitute a basis on which to grant this Petition.

#### **D. Whether EIR Sufficiently Analyzes a Reasonable Range of Alternatives?**

Petitioner argues that the City failed to adequately analyze an alternative of amending the Mission Valley Community Plan to remove the connector road as a means to resolve the inconsistency as between the Mission Valley and Serra Mesa plans. Essentially, Petitioner argues that the City failed to adequately address a "no project" alternative.

Section 3.1 of the final EIR list the project objectives: (1) resolve the inconsistency between the Mission Valley Community Plan and the Serra Mesa Community Plan by providing multi-modal linkage from

Friars Road in Mission Valley to Phyllis Place in Serra Mesa; (2) improve local mobility in the Serra Mesa and Mission Valley planning areas; (3) alleviate traffic congestion and improve navigational efficiency to and from freeways; (4) improve emergency access and evacuation route options between the Serra Mesa and Mission Valley planning areas; and (5) provide safe and efficient street design for motorists, cyclists and pedestrians that minimizes environmental and neighborhood impacts. (AR 51:3921)

Public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. Pub. Resources Code 21002. The procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." *Id.* There is no ironclad rule governing the nature or scope of the alternatives to be discussed in an EIR, other than the rule of reason. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 576. Whether to approve a development project is a delicate task which requires a balancing of interests, and is necessarily left to the sound discretion of local officials. *Id.* Section 15126.6 of the CEQA Guidelines sets forth the manner in which an EIR must address "a range of reasonable alternatives to the project." In the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of such significant effects. *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1302. It is the agency's responsibility to provide an adequate discussion of alternatives, and an EIR should not exclude an alternative from detailed consideration merely because it would impede to some degree the attainment of the project objectives. *Id.* at 1303.

The specific alternative of "no project" must also be evaluated along with its impact. Guidelines at 15126.6(e). The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. *Id.* An EIR should not exclude an alternative from detailed consideration merely because it would impede to some degree the attainment of the project objectives. Guidelines at § 15126.6(b) and *In re Bay-Delta etc.* (2008) 43 Cal. 4th 1143, 1165. The EIR need examine in detail only those alternatives the lead agency determines could feasibly attain most of the basic objectives of the project. Guidelines at § 15126.6(f). "But an EIR need not study in detail an alternative that is infeasible or that the lead agency has reasonably determined cannot achieve the project's underlying fundamental purpose." *In re Bay-Delta etc.*, supra.

Section 9.4.1.2 of the final EIR addresses the "No Build/Remove from Mission Valley Community Plan Alternative." (AR at 51:4249) Although this alternative removes the inconsistency, it does not fulfill the other objectives such that this alternative was not analyzed in detail. Section 9.5.1 of the final EIR addresses the no project alternative in detail. (AR at 51:4252-58) The analysis in both sections are complimentary and sufficient, and fostered informed decision making and informed public participation. Lead agencies are entitled to exercise discretion to exclude consideration of alternatives that do not meet a project's fundamental purpose or are inconsistent with the basic nature of the project. After a detailed analysis, the final EIR concludes that the goals of alleviating traffic congestion and improving navigational efficiency to and from local freeway ramps would best be met utilizing this connector road. Substantial evidence exists within the administrative record supporting the City's conclusion that the no build alternatives did not meet most of the basic project objectives. The record reflects a complete analysis regarding issues of mobility, traffic congestion, navigational efficiency, the City's Climate Action Plan, emergency access, air quality, noise, etc.

**E. Whether EIR Sufficiently Analyzes Impact On/Consistency with Land-Use Plans?**

"Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city." Gov. Code 65300. A general plan can be described as the "constitution" for all future developments within the city or county. *Citizens of Goleta Valley v. Board of Supervisors*, supra at 570. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable

general plan and its elements. Id. An agency's decision regarding project consistency with a general plan is entitled to deference as an extension of a planning agency's unique competence to interpret its policies when applying them in its adjudicatory capacity. Covina Residents for Responsible Development v. City of Covina (2018) 21 Cal. App. 5th 712, 731, 732. Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion. Id. at 732. A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. Id. State law does not require perfect conformity between a proposed project and the applicable general plan: perfect conformity with each and every policy set forth in the applicable plan is nearly, if not absolutely, impossible. Id. It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan. Id.

Petitioner notes the "City of Villages" policy within the General Plan, and the emphasis on creating "walkable" and "pedestrian friendly" communities within the City. Petitioner argues the EIR "gives short shrift to the policies in the City of Villages concept requiring pedestrian-friendly development intended to reduce car trips." Moving Brief at p. 21, lines 21-22.

Section 5.1.2.1 of the final EIR generally addresses the elements of the City's General Plan, as well as the Serra Mesa Community Plan, the Mission Valley Community Plan, the Climate Action Plan and the City's Bicycle Master Plan. (AR 51:3961-65) Section 5.1.5 analyzes the issue of consistency of the proposed project with the General Plan and associated community plans. (AR 51:3973-87) This analysis demonstrates that the road connector project is consistent with the goals, policies, guidelines and recommendations of these plans. Although the connector road may lead to additional vehicle trips through the Civita neighborhood, there is evidence within the administrative record that the project largely conforms to the general plan; i.e., mobility, linkage between compact and walkable "villages," access to transit, pedestrian and bicycle access, etc. Although Petitioner may disagree with the conclusions, the analysis is sufficient such that it fostered informed decision making and informed public participation.

#### **F. Whether EIR Sufficiently Analyzes Traffic Impacts?**

***Vehicles Miles Travelled; Appendix H.*** Petitioner argues that the administrative record does not contain "substantial evidence demonstrating that the Project's traffic impacts will be less than significant. The City has failed to properly examine impacts on regional circulation and never even bothered to examine traffic hazards on Via Alta or Franklin Ridge." Moving Brief at p. 24, lines 7-9. Essentially, Petitioner argues the EIR fails as an informative document because it does not disclose that the statistical traffic data contained within Appendix H ("Vehicle Miles Traveled Output and Summary") has a margin of error that could eclipse the small decreases in vehicle miles traveled set forth within Appendix H.

Transportation and circulation impacts are addressed within section 5.2, commencing at AR 51:3991. Section 5.2.3.1 lists five potential impacts that could be considered "significant." (AR 51:4013-14) As Petitioner points out, these include the addition of a substantial amount of traffic to a congested freeway interchange or ramp, or a substantial increase in vehicle miles traveled for freeway mainline segments. Appendix H is set forth at AD 2348:35775. This document explains: "The VMT analysis was conducted consistent with methodologies discussed in the technical white paper 'Vehicle Miles Traveled Calculations Using the SANDAG Regional Travel Demand Model' prepared by the San Diego Institute of Transportation Engineers (ITE)'s Transportation Capacity and Mobility Task Force in May of 2013 (ITE 2013)." (AR 2348:35778) Regarding results, Appendix H states: "As shown, the proposed project would reduce the VMT within the project influence area by 1.8% under both the Near-Term Year 2017 with Connection and the Cumulative Year 2035 with Connection scenarios. The proposed project would also reduce the region wide VMT by .32% under the Near-Term Year 2035 with Connection scenario and by .28% under the Cumulative Year 2035 with Connection scenario." (AR 2348:35778)

"The City was entitled to rely on the methodology and conclusions it articulated in its draft EIR because it

had the prerogative to resolve conflicting factual conclusions about the extent of traffic congestion that would result from the downtown arena project." Saltonstall v. City of Sacramento (2015) 234 Cal. App. 4th 549, 582, 583. CEQA does not demand what is not realistically possible, given the limitation of time, energy and funds, and a "crystal ball" inquiry is not required. Id. at 583. Generally, challenges to the scope of the analysis, the methodology for studying an impact, and the reliability or accuracy of the data present factual issues. As a result, such challenges must be rejected if substantial evidence supports the agency's decision as to those matters and the EIR is not clearly inadequate or unsupported. City of Maywood v. Los Angeles Unified School Dist. (2012) 208 Cal. App. 4th 362, 425. The Court does not have the duty of passing on the validity of the conclusions expressed in the EIR, but only on the sufficiency of the report as an informative document. Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal. 3d 376, 409. "... [T]he issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence" supporting the agency's findings. Id. A party challenging a particular study must show that it is "clearly inadequate or unsupported." Id. at 409, fn. 12.

The subject statistical modeling was prepared by SANDAG, and has been used in other land use and transportation studies, including preparation of the City's Climate Action Plan. This appears to be the best and most accurate available data. Although the accuracy of the VMT modeling is subject to reasonable debate, it is not clearly inadequate or unsupported. Thus, the City could reasonably conclude the methodology utilized is sufficient. Importantly, the final EIR did not fail to disclose the margin of error for the statistical data utilized within Appendix H. This topic was the subject of detailed correspondence presented to the City by Deborah Bossmeyer on behalf of "Save Civita." (AR 2203:32435). This issue was addressed in the final EIR's response to comments. (AR 51:3410-11), as well as during both public hearings. (AR 2350:36282 and AR 86.1:6875) In response, a City traffic engineer and Planning Department staff explained the City's reliance on the SANDAG modeling. (AR 2350:36321-36324 and AR 86.1:6937-38) Therefore, the EIR served its purpose as an informative document. The EIR was prepared with a sufficient degree of analysis and detail to provide decision makers with information enabling them to make a decision which intelligently takes account of environmental consequences.

**Traffic Safety; Via Alta and Franklin Ridge Road.** Petitioner next argues the EIR did not adequately consider traffic safety impacts for Via Alta and Franklin Ridge Road. Petitioners argue: "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 and mitigate for residents, bicyclists, and pedestrians on Via Alta and Franklin Ridge. As the City's own graphics reveal, Franklin Ridge has the same overall curvature as Phyllis Place from the I-805 ramps while Via Alta has three curves that are all worse ...." Moving Brief at page 26, line 28 – page 27, line 3. Similarly, Petitioner argues the EIR is deficient because it failed to consider "the inability of emergency vehicles to pass if there is a car accident on Via Alta. The applicable fire policy requires roads to be at least 26 feet wide, but Via Alta is only 18 feet wide." Id. at page 28, lines 3-5.

The final EIR states: "The proposed project consists of construction and operation of a four-lane major street, complete with bicycle lanes and pedestrian pathways, extending from Phyllis Place in Serra Mesa southward to Via Alta and Franklin Ridge Road in Mission Valley ...." (AR 51:3921) "Impacts are considered significant if the project would result in any of the following .... ¶ ...An increase in traffic hazards for motor vehicles, bicycles, or pedestrians due to a proposed non-standard design feature (e.g., poor sight distance or driveway onto an access-restricted roadway)." (AR 51:4013)

Petitioner cites a discussion regarding the risk that cars utilizing Via Alta and Franklin Ridge Road will travel at speeds that could pose a danger for pedestrians and bicyclists, such that it was necessary to study the potential for "traffic calming measures." Petitioner also cites evidence within the record tending to demonstrate that these roads incorporate steep grades and curves. Petitioner seems to argue that the CEQA process was deficient because the EIR fails to address potential mitigation measures on Via Alta and Franklin Ridge Road (i.e., traffic calming measures). However, the record also contains evidence demonstrating that the design and traffic impacts associated with Via Alta and

Franklin Ridge Road were extensively analyzed in the prior Quarry Falls Programmatic EIR. (See, e.g., AR 2360-38933) The previous PEIR addressed these roads, both with and without the connector road. "... [I]nternal circulation within Civita was developed as part of the Quarry Falls project, including the locations of signalized, designated pedestrian crosswalks. Existing signalized, designated pedestrian crosswalks are located at the intersection of Via Alta and Franklin Ridge Road and the intersection of Via Alta and Civita Boulevard. The proposed road connection would include bicycle lanes and a sidewalk for pedestrians, which would be consistent with the City's Street Design Manual. The City's Street Design Manual contains guidelines for the physical design of streets that consider the needs of all users of the public right-of-way and for the safe design of intersections." (AR 51:2927) Petitioner fails to cite legal authority for the proposition that impacts from the design of these roads must be re-evaluated within this project specific EIR.

In addition, there is no evidence within the administrative record demonstrating that a "non-standard design feature" exists within the connector roadway that, in turn, results in traffic hazards for motorists, pedestrians or bicyclists utilizing Via Alta or Franklin Ridge Road. The only non-standard design feature is the offset church driveway where the proposed connector road meets Phyllis Place. (AR 51:4046-47) Thus, there is no evidence of the existence of a significant impact, as defined within the EIR. Given this absence, it was not necessary for the EIR to further address this topic. Despite the lack of a significant impact, the administrative record contains multiple references demonstrating that a robust discussion did take place regarding safety issues related to vehicles utilizing Via Alta, Franklin Ridge Road, and the proposed connector road. See Opposition Brief at pages 23-24. Decision makers were well aware of this issue before approval of the project took place. Petitioner's contentions in this regard lack merit.

**G. Whether the City Violated Planning and Zoning Law?**

Petitioner argues that the proposed project is not consistent with the general plan because it is not pedestrian friendly and is not likely to reduce greenhouse gas emissions. Moving Brief at p. 29, lines 4-11. This argument is addressed above, within part E. As discussed above, there is evidence within the administrative record that the project largely conforms to the general plan. The analysis within the EIR is sufficient such that it fostered informed decision making and informed public participation.

**H. Whether the City Violated Public Right to Due Process and Fair Hearing?**

Petitioner argues: "Here, Petitioner and other members of the public were denied fair hearings because at least one City Council member had become a cheerleader for the Project decided he was going to approve the Project long before any evidence was presented to the City Council." Moving Brief at page 29, lines 22-24. This argument lacks merit.

A biased decision maker is constitutionally unacceptable. Breakzone Billiards v. City of Torrance (2000) 81 Cal. App. 4th 1205, 1235. However, a contention of impermissible bias must overcome a presumption of honesty and integrity in those serving as adjudicators. Id. To prevail on a claim of bias violating fair hearing requirements, Petitioner must establish an unacceptable probability of actual bias on the part of those who have actual decision making power. Id. at 1236. A mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty. Id. A party seeking to show bias or prejudice on the part of an administrative decision maker must present "concrete facts": bias and prejudice are never implied. Id. at 1237. "Although plaintiffs alleged that the city's design review board and city council members were hostile to plaintiffs and sought to prevent them from engaging in development and sales activities, a government official's or agency's motive for voting on a land use issue is irrelevant to assessing the validity of the action. Instead the court examines the objective facts to determine whether there was a sufficient connection between the land use decision and a legitimate governmental purpose so that the former could be said to substantially advance the latter." Breneric Associates v. City of Del Mar (1998) 69 Cal. App. 4th 166, 169, 170. "A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance." City of Fairfield v. Superior Court (1975) 14 Cal. 3d 768, 780.



Petitioner has not identified actions by Councilperson Sherman that establish a probability of actual bias. Petitioner does not identify any concrete facts showing actual bias. Mr. Sherman's office was entitled to communicate with constituents and take a position regarding approval of the connector road. Mr. Sherman's motives are irrelevant when assessing the validity of the project approval. Finally, the project was approved by the full City Council by a vote of 8-1. Thus, Mr. Sherman's vote ultimately did not affect approval.

**I. Conclusion**

Petitioner's Petition is DENIED. As set forth above, the CEQA process was sufficient such that the City and the public were reasonably able to analyze the costs and benefits of the connector road project. Every project must comply with the procedures set forth within CEQA as a means to foster good governance and public participation in the process of environmental review. See Guidelines, § 1503 (and cases cited therein). The subject project represents a balancing of various competing factors. The City undertook this balancing through a lawful and transparent process.