

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

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**SAVE CIVITA BECAUSE SADBERRY WON'T**  
*Plaintiff and Appellant,*

*v.*

**CITY OF SAN DIEGO**  
*Defendant and Respondent,*

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APPEAL FROM A JUDGMENT OF THE  
SAN DIEGO SUPERIOR COURT  
THE HONORABLE JOEL R. WOHLFEIL, DEPT. C-73  
CASE NO. 37-2017-00045044-CU-MC-CTL

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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

This case is about a 460 foot north/south street connection that the Mission Valley Community Plan has identified in its Community Plan since 1985, but the Serra Mesa Community Plan has not. In 2008, when the City approved the Quarry Falls (QF) planned development project (later named “Civita”), whether to include this connection between these communities was widely studied and debated. The QF Environmental Impact Report (QF EIR) and attendant traffic studies analyzed every scenario imaginable, with and without the connector projected to 2030.

In the end, the QF project was approved in 2008 without the road but not without City Council also initiating an amendment to include the connector in the Serra Mesa Community Plan (SMCP) and directing staff to analyze proposals.

This Project is put forward by the City’s Planning Department. It provides multi-modal linkage between two communities that currently lack direct connectivity. It improves local transportation efficiency and is consistent with the Climate Action Plan’s overarching land use and transportation strategy.

No new trips would be added. Rather, vehicle trips would be redistributed onto other existing regional circulation infrastructure and navigational efficiency would increase. More direct routes lead to a reduction in regional vehicle miles traveled and associated greenhouse gas emissions. Finally, the connection

would add an additional evacuation route and increase emergency response times.

The City Council understood the need for this connection and approved the Project and certified the Final Environmental Impact Report (FEIR) after finding significant and unavoidable impacts in the areas of Transportation/Circulation and issuing a Statement of Overriding Considerations. AR36: 349-384.

Appellant, “Save Civita Because Sudberry Won’t”<sup>1</sup> (SCBSW) wants to disconnect this mobility project. SCBSW challenges the FEIR as inadequate claiming that the City should have selected the “No Build/Remove from MVCP Alternative” for further study. But CEQA does not require a detailed analysis of this alternative because it was inconsistent with the underlying fundamental purpose of the project and it failed to meet most of the basic project objectives.

SCBSW also alleges that traffic impacts and land use plan inconsistencies were not adequately analyzed in the FEIR. However, there is substantial evidence in the record to support City Council’s decisions on all these challenged topics. The record also reflects that the public received relevant information about these issues for years while this project moved through the administrative process. Accordingly, there was healthy and meaningful public participation resulting in volumes of commentary and analysis on the topics raised in this appeal.

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<sup>1</sup> Sudberry Properties, Inc. is the developer of the QF project. AR59: 6238.

There was no prejudicial abuse of discretion here. The City Council's decision should be upheld.

## II. FACTUAL STATEMENT

### The Project

The SMCP Amendment Roadway Connection Project (Project) consists of construction of a roadway connection (Connector or Connection) and an amendment to the SMCP 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 Pl. in Sera Mesa (SM) southward to Via Alta and Franklin Ridge Rd. in Mission Valley (MV). AR51: 3921,3941,3993 (Figure 5.2-1).

### The Quarry Falls Project

In 2008, the City approved of "Civita", the QF development that included Via Alta and Franklin Ridge Rd. AR51: 3921-3937,3997; AR45: 1557-1559,1662-1666. The QF EIR studied the potential environmental impacts of the QF project including an alternative analysis for the "the Road Connection to Phyllis Place." AR45: 1662-1666,1981-1997. The QF Traffic Study analyzed traffic impacts with and without the Connector through 2030. AR2360: 38909-39522.

On the same day that Council approved QF, it initiated an amendment to the SMCP to include the Connector and directed staff to proceed with the analysis of proposals and preparation of any necessary revisions to adopted documents. AR31: 318-319.

## The Administrative Process

In January of 2012, the City published a Notice of Preparation soliciting input on the scope of an EIR for the “Franklin Ridge Road Extension Project.” AR2353: 36563-36564.

In April of 2016, the Draft Programmatic EIR (PDEIR) for the “Serra Mesa Community Plan Amendment Street Connection” was published. AR2346: 35450.<sup>2</sup>

During the public review period for the PDEIR the City received comments indicating that sufficient information was available to analyze the project in greater detail to include construction of the road. AR51: 3110. Thus, the City determined that the level of environmental review should be increased from a high level programmatic analysis to a detailed project level analysis. AR51: 3110-3111; AR1821: 29190.

The PDEIR was significantly modified to include more information about the specifics of the Project and then it was re-circulated. The re-circulated project level DEIR is referred to as the RE-DEIR. The final EIR, with revisions underlined/stricken, will be referred to as the FEIR.

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<sup>2</sup> Between 2012 and 2016 the finalized several significant planning documents. In December of 2013 the Bicycle Master Plan was finalized. AR 2342. In June of 2015 the Mobility and Land Use Elements of the General Plan were amended. AR51: 3961; AR2355: 37198. In December of 2015 the Climate Action Plan and related EIR were adopted. AR51: 3965; AR2345: 35376-35449; AR2344: 34924-35375; AR2337.

Many interested groups participated heavily in this process including SCBSW. OB 17:3-4(“members repeatedly participated in the administrative process”).

In May of 2017, the SM Planning Group (SMPG) voted 11-0-0 to recommend denial of the Project and submitted a position statement prior to each hearing. AR1821: 29189,29195-29197; AR2352: 36559-36561 AR71: 6572-6607. The MV Planning Group (MVPG) heard the Project as an “informational item only”. AR1821: 29189.

City Staff recommended certification of the FEIR and approval of the amendment. AR1821: 29189; AR2352: 6531.

In August 2017, the Planning Commission held a three-hour public hearing and voted 6-0-1 to recommend approval of the Project and certification of the FEIR. AR35: 331; AR2350: 36357-36360.

In September 2017, City Council’s Smart Growth & Land Use Committee (SGLUC) held a public hearing and voted 4-0 to recommend approval to the full City Council. AR2351: 36393.

In October 2017, the City Council held over a two-hour public hearing regarding the Project. AR86:6859-60, 86.1:6857.1, 6962.1. After a full bodied discussion with maximum public participation, the City exercised is discretion and approved the Project and certified the FEIR. AR36:403. The vote was 8-0-1 in favor.

## The Statement of Overriding Considerations

The City Council made the required CEQA findings regarding impacts, mitigation and alternatives studied. AR36: 341-378. Council concluded that there would be significant and unmitigated impacts in the following categories: Year 2017 Transportation/Circulation-Roadway Segments and Intersections (Issue 1), Year 2035 Planned Transportation Systems (Issue 3) and Traffic Hazards (Issue 4). AR36: 369-374. Accordingly, it issued a Statement of Overriding Considerations identifying the Project benefits that outweighed the Project's significant and unavoidable impacts. AR36: 381-384.

### **III. PROCEDURAL STATEMENT**

SCBSW filed a CEQA Writ which was heard by the trial court in January of 2020. The trial court denied the Writ on all grounds. Vol. IV: Tab17, pp. 1390-1397.

### **IV. THE STANDARD OF REVIEW**

A court's inquiry in an action challenging an agency's decision under CEQA extends "only to whether there was a prejudicial abuse of discretion. Abuse of discretion 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." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d376, 392-393; Public Resources Code §21168.5. In applying the substantial evidence standard, the reviewing court "must resolve reasonable doubts in favor of the administrative finding and decision." *Id.* This is a

“highly deferential” standard requiring the court to draw all reasonable inferences from the evidence that would support the agency’s determinations and resolve all conflicts in the evidence in favor of the agency. *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 985.

Under the substantial evidence test, courts determine whether there is any evidence (or any reasonable inferences that can be deduced from the evidence), whether contradicted or uncontradicted, that, when viewed in the light most favorable to the agency, will support the administrative decision. *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1328–1329.

Where an EIR is challenged as being legally inadequate, a 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. In meeting this burden, a petitioner cannot selectively cite to portions of the record, but must “affirmatively show there was no substantial evidence in the record” to support the City’s decision. *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626; see also, *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.

Under CEQA there “is no presumption that error is prejudicial.” Public Resources Code §21005 (b). “A prejudicial abuse of discretion occurs if the failure to include relevant

information precludes informed decision making and informed public participation...” *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463

The ultimate inquiry is whether the EIR includes enough detail “to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 520. The court looks not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

## V. ARGUMENT

### A. THE FEIR’S ALTERNATIVES ANALYSIS COMPLIES WITH CEQA

SCBSW claims that the FEIR is defective because it did not adequately analyze the “No Build/Remove From MVCP Alternative” in the EIR. The FEIR was not required to include a detailed analysis of this alternative<sup>3</sup> because it was inconsistent with the underlying fundamental purpose of the Project and it failed to meet most of the basic Project objectives that were reasonably prepared by the agency acting within its discretion.

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<sup>3</sup> SCBSW refers to this alternative as the “Amend MVCP Alternative.” The City will refer to this alternative as either the “No Build/Remove From MVCP Alternative” utilized in the FEIR or “SCBSW’s Alternative”.



**1. The FEIR Was Not Required To Include A Full Analysis Of SCBSW's Alternative Because It Cannot Achieve The Project's Underlying Fundamental Purpose**

“[A]n EIR need not study in detail an alternative that... the lead agency has reasonably determined cannot achieve the project’s underlying fundamental purpose.” *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1165; see also, 1 Kostka & Zischke, Practice Under the California Environmental Quality Act, §15.8 (2019) (“An EIR need not, however, present alternatives that are incompatible with the project’s fundamental purpose.”)

An alternative that is inconsistent with achieving project objectives need not be analyzed. *Golden Door Properties, LLC v. Cty. of San Diego* (2020) 50 Cal.App.5th 467, 548.

“...[A] lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal. For example, if the purpose of the project is to build an oceanfront resort hotel ... or a waterfront aquarium..., a lead agency need not consider inland locations.”

*In re Bay-Delta*, 43 Cal.4th at 1166 (citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,561 and *Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc.* (1992) 10 Cal.App.4th 908, 924–925); see also, *Jones v. UC Regents* (2010) 183 Cal.App.4th 818, 827-28 (no need to consider off-site alternative that would not meet project’s

“primary objective of creating a more campus-like setting”); *Sierra Club v. Cnty of Napa* (2004) 121 Cal.App.4th 1490, 1509 (project objective was to include on-site vineyard that would be irrigated by wastewater from proposed winery, no need to evaluate an alternative that would dispose of wastewater through the sewer system).

Similarly, if an agency is tasked with “the study of a proposal to build a new shopping center” it need not “study a fruit stand as an alternative.” *Saltonstall v City of Sacramento* (2015) 234 Cal.App.4th 549,556-557 (no need to study alternative of remodeling existing basketball arena when city’s objective is to create an attraction to revitalize previously-blighted areas).

*In re Bay-Delta*, the Supreme Court held that the agency properly exercised its discretion in declining to carry a reduced water export alternative over for study into the final EIR. *In re Bay-Delta* at 1165-66. The project’s goal of water supply reliability could not be achieved by an alternative that only benefitted some groups of water users at the expense of others. *Id.* Thus, no further discussion in the EIR was warranted. *Id.*

The origin of this Project demonstrates that the underlying fundamental purpose of this Project has always been to connect the communities of SM and MV. AR51: 4249. In 2008, City Council considered amending the SMCP to include the Connector since “construction of the street connection and the associated land use plan amendments” were already analyzed in the QF

certified EIR. AR51: 318; AR58: 5926. Staff recommended approval of the Connector. AR58: 5924.

After consideration, Council issued “A RESOLUTION ...INITIATING AN AMENDMENT TO THE... SERRA MESA COMMUNITY PLAN TO INCLUDE A STREET CONNECTION BETWEEN PHYLLIS PLACE AND FRIARS ROAD.” AR51: 318. The initiation of the Amendment allowed “staff to proceed with the analysis of proposals.” AR51: 319. City Council then “direct[ed]” staff “to analyze the following issues” about the Connection: “Whether police and fire response times would be improved with **the road connection**; Whether **the road connection** could serve as an emergency evacuation route; Whether it is feasible to make **the road** available for emergency access only; and, Whether pedestrian and bicycle access would be improved **by the street connection.**” *Id.* (Emphasis added.)

Issues one, two and four focus on what benefits a Connector might add and three asks whether its use could be feasibly limited. These questions all presume inclusion of a Connector and are answered within the FEIR. (See Sections 5.3.8,7.4,7.7 and 9.5.2.) “The proposed project fulfills the direction provided by the City Council.” AR51: 2927.

Plainly, the focus of the study and the Resolution was not to determine whether the MVCP should be amended to remove the Connector reference, but whether to amend the SMCP to “include” the Connector. AR51: 318-319.

As the project marched forward it was appropriately referred to as the “Franklin Ridge **Road Extension**” in the 2012 Scoping Meeting Notice, as the “SMCP Amendment **Street Connection**” in the 2016 PDEIR and the “SMCP Amendment **Roadway Connection** Project” in the 2017 RE-DEIR. AR2353: 36563, AR2346: 35450-57; AR2349: 35783. The Project has always included a Connector between these communities. AR2346: 35480,35490; AR2349: 35873-35877.

With this background, the City reasonably determined that the “No Build/Remove From MVCP Alternative” would not achieve the Project’s underlying fundamental purpose to connect these two communities. AR51: 4249-50.

## **2. The City Properly Utilized Its Discretion In Preparing Project Objectives**

SCBSW argues that the City abused its discretion by creating artificially narrow project objectives in order to make sure that the “No-Build/Remove From MVCP Alternative” failed.

A governing body may properly delegate environmental review to agency staff including the preparation of project objectives. *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1,13-14. CEQA does not restrict an agency’s discretion to identify and pursue a particular project designed to meet a particular set of objectives. *Id.*; *California Oak Found. v. Regents of Univ. of California* (2010) 188 Cal.App.4th 227, 276–77.

In the *San Diego Citizenry Group* case, the Board directed staff to develop a tiered winery ordinance allowing “By-Right Boutique Wineries” and to prepare an EIR. The petitioner argued that the project objectives were given a narrow construction to manipulate outcomes in the EIR. *San Diego Citizenry* at 14. The court rejected the argument finding that the agency acted within its discretion in identifying nine specific objectives to streamline the winery approval process and structuring the alternatives and mitigation analyses around those objectives. *Id.* at 13-14.

Here, the City developed project objectives that contain the underlying purpose of the proposed project, which is to improve multi-modal mobility between the SM and MV communities, improve regional access and navigational efficiency, improve emergency access and evacuation routes and resolve the inconsistency between the two community plans. AR51: 2992,2997,3001,3422. The City acted within its discretion in creating the objectives that served the purpose of the project.

The objectives were slightly modified after the PDEIR but the primary goal of improving connectivity and linking these communities did not change. AR 51:4249. The objectives were updated in the RE-DEIR to better reflect the purpose of the project, to focus more on multi-modal mobility and to reduce redundancy among the objectives. AR51: 2992,3113. This effort aligned with the 2015 amendments to the General Plan and the

2015 Climate Action Plan. Modifications to the objectives were as follows:

1. Resolve the inconsistency between the MVCP and the SMCP ~~as it pertains to a connection~~ by providing a multi-modal linkage from Friars Road in MV to the Phyllis Place in SM;
  2. Improve ~~overall circulation network~~ local mobility in the SM and MV 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 SM and MV 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.~~
- Comparing AR2346: 35730 against AR2349: 35871.<sup>4</sup> Based on a comparison of the pre-revision and post-revision objectives, clearly resolving inconsistencies between the SMCP and the MVCP was never a stand-alone goal.

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<sup>4</sup> Importantly, SCBSW has not cited any legal authority for the proposition that the project objectives cannot be revised, particularly after changes in EIR scope.

SCBSW claims that objectives were designed to eliminate consideration of alternatives that did not include the Connector. This theory is belied by the analysis of the two alternatives that were selected for detailed review in the EIR that do not include a road. AR51: 4252-61. Moreover, SCBSW fails to provide substantial evidence that SCBSW's Alternative would have met most of the original or revised objectives.

The City used its discretion in creating objectives that fulfilled the primary goal and included the issues City Council directed staff to study. Alternatives that could potentially achieve the goal of significantly improving connections between these communities were studied in depth. AR51: 4252-4261.

SCBSW alleges that this case is like *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647 where the agency was found to have improperly characterized the objective as the “eradication” of moths when the real objective was the “protection” of crops from moths. *Id.* at 667-671. This characterization narrowed the range of alternatives examined to only those that “eradicated” moths and eliminated those that just “controlled” moths resulting in a lack of relevant information about potentially feasible alternatives.

There has been no mischaracterization of the objectives here and no lack of relevant information about potentially feasible alternatives. The fundamental purpose here was to improve connectivity between these communities and the objectives, the original and revised versions, support that goal.

Here, most of the basic Project objectives goal of improving connectivity would not be fully achieved without the Connector.

Staff did not improperly narrow the objectives, this was already a narrowly focused inquiry. City Council directed staff to analyze the environmental impact of *including* a Connector between these communities. Staff was not directed to conduct an environmental analysis of the impacts of amending the MVCP to *remove* the Connector.

In any case, the EIR was not inadequate as failing to include relevant information and precluding informed public participation and decision making. The record is replete with evidence that participants and decisionmakers had all the relevant information necessary to engage in meaningful discussions and determinations regarding the objectives, alternatives proposed or studied, street design, safety, evacuations and traffic impacts, among other issues. AR51: 2916-3069,3100-3122,3292-3313,3403-3439,3553-3769; AR86.1; AR:2352; OB pg.17; AR72: 6619-6650.

**3. The FEIR Was Not Required To Conduct A Detailed Analysis of SCBSW's Alternative Because It Failed To Meet Most Of The Basic Project Objectives**

CEQA creates a two-step scoping process to determine which alternatives an EIR should consider in detail. First, the agency identifies potentially feasible alternatives for discussion and then, in the second step, it culls them to assemble a range of reasonable alternatives for “detailed consideration” in the EIR.



14 Cal. Code Regs. (CEQA Guidelines) Guidelines

§15126.6(a)&(c). During the second step, CEQA alternatives may be eliminated from “detailed consideration” based on: “(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.”

Guidelines §15126.6(c).

The EIR need only “briefly describe the rationale for selecting the alternatives to be discussed.” *Id.* As to alternatives that were rejected as infeasible during the scoping process, the EIR should “briefly” explain the reasons for the determination. *Id.*

An alternative eliminated during the scoping process merits only a brief description in an EIR and explanation for the lack of an in-depth analysis is not required. *In re Bay-Delta* (2008) 43 Cal.4th 1143,1165; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App.4th 214,257-258.

“The agency must make an initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not.” *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d at 569. In general, an EIR should set forth the alternatives that were considered by the lead agency and rejected as infeasible during the scoping process, and the reasons underlying the agency's determination. *Id.*

Only potential alternatives that can feasibly accomplish most of the basic objectives of the project and offer substantial environmental advantages over the project need be selected as

part of the reasonable range of alternatives. *Id.* at 565-66; Guidelines §15126.6.

“An EIR need not consider every conceivable alternative to a project.” *Id.* No ironclad rules can be imposed regarding “the nature or scope of the alternatives to be discussed other than the rule of reason.” *Id.* “Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.” *Id.*

When an agency has reasonably determined that an alternative cannot feasibly achieve the fundamental purpose of the project, it need not be studied in detail. *In re Bay-Delta*, 43 Cal.4th at 1166.

A court will uphold the selection of project alternatives unless the challenger demonstrates that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives. *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957,988.

The City met these standards here. During the first step of the scoping process, the FEIR identified four potentially feasible alternatives for discussion: the “Alternate Location Alternative”, the “No Build/Remove from MVCP Alternative”, the “Bicycle, Pedestrian, and Emergency Access Only Alternative” and the “No Project Alternative.” AR51: 4249-4262. In step two, the FEIR explained that the “No Build/Remove from MVCP Alternative” was not selected for full treatment in the EIR because it did not meet any of the Project objectives. AR51: 4247-4250.

The FEIR carried forward for full analysis the “Bicycle, Pedestrian, and Emergency Access Only Alternative” and the “No Project Analysis.” AR51: 4252-4262.

SCBSW has not demonstrated that the alternatives selected were manifestly unreasonable and that they did not contribute to a reasonable range of alternatives. The City was not required to include SCBSW’s Alternative in order to achieve a reasonable range of alternatives. The range it considered was sufficient to “foster informed decision making and public participation.” Guidelines §15126.6(a).

**4. Substantial Evidence In The Record Supports The City’s Conclusion That The SCBSW Alternative Did Not Meet Most Of The Basic Project Objectives**

The City reasonably determined that SCBSW’s Alternative did not meet most of the basic Project objectives.

**i. Objective 1: To Provide Multi-Modal Linkage From Friars Rd. In MV To Phyllis Place In SM**

The FEIR states that this objective would not be fully met because, without the Connection, “multi-modal options between these roadways” would be “limit[ed].” AR51: 4249.

SCBSW argues that it provided evidence that sufficient multi-modal linkage already exist but this information was ignored. But these comments were included, considered and responded to in the FEIR and support the City’s decision. AR51:

2995,2997,3032-3034,3010,3165,3310-3311,3426,3917,3929,  
3933,3965,3973,4049; AR2342: 34794; AR72: 6620-6622.

Fundamentally, SCBSW misunderstands the term “multi-modal” which means linkage that accommodates vehicles, bicyclists, and pedestrians. AR51: 3033,3973,4010; AR51: 3979. As of January 1, 2011, the California Complete Streets Act of 2008 mandates that cities plan balanced, multimodal transportation networks that meet the needs of all users, including, motorists, transit users, bicyclists and pedestrians. Gov’t. Code § 65302(b)(2). The Connector would simultaneously provide a new multi-modal route for *all users*.

Currently, the options are limited. The goal is to expand options. As explained in the Responses to Comments (“RTCs”), Mission Center Rd. is not a direct route and links Murray Ridge Rd. to Friars Rd., not Phyllis Pl. AR51: 3032,3913,3993. The project will close the gap between Friars Rd. in MV and Phyllis Pl. in SM by providing a multi-modal linkage that accommodates vehicles, bicyclists and pedestrians. AR51: 3973,3993. The project is a mobility project that would provide a multi-modal connection between two communities that currently lack multi-modal connectivity. AR51: 3010.

**ii. Objective 2: To Improve Local Mobility In  
The MV And SM Planning Areas**

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 “limit[ed].”

AR51: 4250. This just makes common sense. “Common sense ... is an important consideration at all levels of CEQA review.”

*Saltonstall v. City of Sac.* (2015) 234 Cal.App.4th 549, 583.

SCBSW’s argument is that more local mobility is not needed because widening improvements to Mission Center Rd. will be sufficient. But SCBSW misses the point. The goal is to “improve” local mobility. With or without the road widening, local mobility will improve with a connecting road.

SCBSW’s Alternative would not provide a direct connection from Phyllis Pl. to Friar’s Rd. for all modes of travel. AR51: 3033. The FEIR contained an analysis showing that traffic takes a circuitous route from SM and surrounding neighborhoods to MV and that a more direct connection to the commercial area in MV would reduce Vehicle Miles Traveled (VMT) and greenhouse gas emissions (GHG’s). AR51: 3009; AR1821: 29192-3; AR67: 6533.

The record reflects a full discussion of these issues and substantial evidence supporting the City’s decision. AR51: 3032-3033,3309-3311,3471-3477,3720.

**iii. Objective 3: To Alleviate Traffic Congestion And Improve Navigational Efficiency To/From Local Freeway On/Off Ramps**

The FEIR provides that the goal of alleviating traffic congestion and improving navigational efficiency to/from local freeway ramps would not be met by SCBSW’s Alternative because access options would be “limit[ed].” AR51: 4250.

SCBSW does not argue that its Alternative serves to “improve navigational efficiency from local freeway on/off ramps.” It concedes that this portion of this objective is not met and confines its analysis to alleviating traffic congestion.

**(a) SCBSW Relies On The “No-Project Alternative” Traffic Impact Analysis**

Citing Year 2035 projections in FEIR Tables 5.2-16 and 5.2-17<sup>5</sup> and the SMPG comment letter, SCBSW argues that SCBSW’s Alternative “i.e. not building the roadway” would be better for traffic congestion than the Project. OB:45. In doing so SCBSW acknowledges that the “No-Project Alternative” and the “No Build/Remove From MVCP Alternative” are similarly situated in regards to traffic congestion. This results in two logical conclusions by extension.

First, because the No-Project Alternative traffic analysis was fully studied, essentially, so was SCBSW’s Alternative. Second, because the City compared the impacts of the No-Project Alternative against the Project impacts and found less impacts

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<sup>5</sup> Table 5.2-16 reflects that in 2035 six roadway segments out of twenty-nine will have significant long-term cumulative impacts. AR51: 4027-4029. Table 5.2-17 reflects that in 2035 four intersections out of twenty-four will have significant long-term cumulative impacts. AR51: 4030-4033. Mitigation measures that pertain to these segments and intersection are reflected in Tables 5.2-20 and 5.2-21; AR51: 4043-4044. Notably, the impacts at the Via Alta/Franklin Ridge intersection are reduced to less than significant. AR51: 4042.

from the Project, it is likely the same result would have occurred with SCBSW's Alternative.

**(b) Traffic Congestion Is A Known  
Significant Impact**

Traffic impacts about this Connector have been repeatedly studied over the years and traffic congestion has always been at the forefront of the discussion. The QF Traffic Impact Study contains 614 pages and 500 Tables/Figures analyzing traffic impacts with and without the Phyllis Place Connection all the way to 2030. AR2360: 38909-39522.

The FEIR includes two Traffic Impact Studies analyzing data at Year 2017 and Year 2035 (AR51: 3852,3991-4052; AR1664: 28192-28500) and a Vehicle Miles Traveled Output and Summary (AR2348: 35775-82.) The FEIR analyzes Transportation and Circulation repeatedly. AR51: 3991-4051, 4186-4192,4201-4208,4241-4242,4253-4256.

After full review the City found that the Project would result in significant and unavoidable direct impacts in the areas of Transportation/Circulation (roadway network capacity, planned transportation systems). AR51: 3867,4013-48; AR36: 352,369-374,381-384. Still, Council found that the benefits of the Project outweighed the unavoidable significant impacts and adopted a Statement of Overriding Considerations and certified the FEIR. AR36: 381-384.

Whether or not the Project was built, the Council found that population and vehicular trips would increase as the MV

and SM communities were built out. AR36: 383-84. The updated circulation network demonstrated that without the Connection, vehicular circulation would result in greater congestion and failing levels of service. *Id.*; AR:86.1: 6904.1-8.1; AR67: 6534; AR51: 2997-99.

The Project was found to provide a more efficient, integrated multi-modal network that did not add new trips but redistributed trips onto other existing regional circulation infrastructure and created a more direct route to regional freeways, which would lead to a reduction in regional VMT and GHG's. *Id.* Therefore, it was approved.

There is no prejudicial error here because there is substantial evidence reflecting that the process resulted in a robust informational exchange about traffic congestion and met the requirements of CEQA. Traffic concerns were raised repeatedly during the public process. See, e.g. AR1821: 29189,29195-29197; AR2352: 36559-36561; AR69: 6551-6570; AR71: 6572-6607; AR86.1; AR2350; AR51: 2917,2929,2921,2926-2927,2937-2938,2946-2947,2959-2960,2962-2963,2986,2997, 2999,3010,3029,3033,3043-3044,3067-3068,3404-3407,3411-3412,3417,3420,3423-3428,3430,3438,3293-3294,3298,330-3301,3311,3568,3571-3572,3578-3579,3583,3585,3587,3588-3589,3590-3591,3594,3597,3600,3602,3604,3606,3608,3611-3612,3616,3619,3625-3630,3634-3635,3637,3642-3643.

The City responded and City Council made a decision after considering all the information provided. AR51: 2989,2930-



2931,2990,3777-3779; AR36: 346-347,381-384. The remainder of the traffic related discussion will be addressed in Section B.

**iv. Objective 4: To Improve Emergency Access and Evacuation Route Options Between SM And MV**

The FEIR provides that SCBSW's Alternative would not aid in improving emergency access and evacuation routes because without the Connection there would not be "additional" ingress/egress for emergency responders, nor would an "additional" evacuation route be created. AR51: 4250. There is no dispute that SCBSW's Alternative eliminates a possible emergency access route and evacuation route. Logically, an alternative that eliminates additional routes "would not improve emergency access and evacuation route options." An increase in emergency access and evacuation routes is an improvement for any community.

Substantial evidence in the record reflects that this objective would not be met by the "No Build/Remove From MVCP Alternative" and is met by the Project. The FEIR informs the reader that there currently is some emergency access from Aperture Circle in QF to SM via Kaplan Drive" but goes on to explain that this access is inadequate for evacuations because it is blocked by locked metal bollards that can only be accessed by authorized emergency personnel. AR41: 4048. The City addressed this in the FEIR multiple times. AR51: 2985,2990-2994,3029-3030,3032-3033, 3067,3165,3301,4236. As the Fire

Marshall explained at both public hearings, the Kaplan Dr. route does not qualify as official emergency access because it does not meet Fire Code standards and, therefore, it is not on their response or evacuation plan. AR2350: 36326-36331; AR86.1: 6939.1-6941.1; AR69: 6549.

Without the Connection, there is no way for the fire engines to “come from the north.” AR2350: 36329-36330. A fire doubles in size every minute so a thirty second increase in response times can make a critical difference. AR2350: 36331. The Fire Marshall put it best: “The entry 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 you give us that north access, the people will be safer.” AR86.1: 6864.1-65.1. He reflected on the lessons learned from the wildfires which caused him to urge for increased evacuation and emergency access options. *Id.*

The analysis regarding these issues can be found in the body of the FEIR and the RTCs. AR51: 3033,3115-3116,3918-3919,4048,4230,4236. A traffic study also evaluated effects that the Connection would have on emergency and evacuation access and found that accessibility would improve. AR51: 4047-4048; AR1664: 28314-28318. Emergency evacuation and routing options were also considered. AR51: 4047-4048. The Connection was found to provide an additional access point thereby improving emergency access and evacuation route options and police and fire response times. AR51: 4048,4230,4236-4237; AR36: 383.

The City Council found that the Connection would add an additional access point, inherently providing better emergency evacuation routing. AR36: 383. Specifically, the Council found that the Connection would provide a third point of evacuation for residents in Civita where two currently exist via Mission Center Rd. or Friars Rd. to the 1-805; and a second point of evacuation for the 200+/- homes at the western end of Phyllis Pl. in the Abbotshill neighborhood of the SMCP area where only one currently exists via Phyllis Pl. leading to 1-805. AR36: 383.

**v. Objective 5: To Provide Safe And Efficient Multi-Modal Street Design That Minimizes Impacts**

The FEIR concludes that SCBSW's Alternative would not be met because no street would be designed. AR51: 4250. This objective has always been focused on "street". AR2346: 35730. With any alternative where no street would be built, this objective would not be met. SCBSW argues the Connector is not safely designed but this is not substantial evidence that SCBSW's Alternative met this objective.

Substantial evidence supports the conclusion that the Connector did meet this objective. The Connection was conceptually designed to be consistent with the City's Street Design Manual. AR51:4046, 2928. The Manual contains guidelines for the physical design of streets and for the safe design of intersections. AR51: 2927-2929,4046. The Connection

provides for bicycle lanes, sidewalks and a signalized intersection. *Id.*; AR86.1: 6862.1-6863.1; AR69: 6545-6548.

All SCBSW's safety claims are further addressed in Section B, 2.

**vi. Objective 6: The CAP And The BMP**

**Include The Connector In Their Assumptions**

Although not technically 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 been adopted. As discussed in the FEIR and in the RTCs, the Bicycle Master Plan (BMP) includes the Connector as a Class II Bike Route. AR2342: 34794 (Figure 6-3); AR51: 3948, 3965,4049. In other words, the BMP assumes this Connector will be built. *Id.*

The Project is also consistent with the Climate Action Plan (CAP). AR51: 3034,3948,3965,4185-92. The CAP utilized traffic modeling from SANDAG which includes planned roadways. The Connector was included within this modeling. *Id.* The CAP uses population figures based on community plan build outs and this Connection was identified in the MVCP and part of inventory and projections. *Id.* Therefore, it was included in the assumptions used to develop the CAP. *Id.* The Connector is also consistent with SANDAG's Regional Transportation Plan and is included in long-term forecast models. AR51: 2990.

In contrast, SCBSW's Alternative would need to be fully analyzed for potential conflicts with the CAP and other land use and transportation plans. AR51: 4250.

SCBSW claims that amending the MVCP has been proposed since Project inception citing to 2005 City Council meeting minutes and SMPG's 2012 comment letter during the Notice of Preparation scoping meetings. But the City Council did not initiate an amendment to the MVCP so any environmental study of that project would have been beyond the scope of the City Council's direction.

As can be seen by the RTCs, the range of feasible alternatives was selected and discussed in a way that fostered meaningful public participation and informed decision making.

**5. The Evidence Identified In The “No Project Alternative” Analysis Supports The Conclusions Made About The “No Build/Remove From MVCP Alternative”**

SCBSW admits that the FEIR's “No Project Alternative”, referred to in the OB as “amending the MVCP”, is same alternative as “not building the Project”. (OB 16:15) Just like the “No Build/Remove From MVCP Alternative”, the “No Project Alternative” assumes that the Connection would not be built and the SMCP would not be amended. AR36: 375-376; AR51: 4250-4258. The significant impacts of the Project are summarized in Tables ES-1 and 9-1. AR51: 3870-3896,4248. A summary of the

impacts of alternatives relative to the Project is set forth in Table 9-2. AR51: 4252.

The City Council found that implementation of the “No Project Alternative” would increase impacts associated with land use, transportation and circulation, air quality, and GHG’s when compared to the Project due to the increase in regional and study area VMT. AR36: 376; AR51: 4016,4018,4253-4254. The “No Project Alternative” traffic would cause impacts to occur on the existing circulation network and cause failing levels of service to street segments and intersections, which would affect-emergency response and accessibility. *Id*; AR51: 4252-4258; AR67: 6534.

SCBSW’s Alternative would likely have suffered the same fate as the facts would not have changed. More importantly, the discussion of the No Project Alternative fostered informed decision-making and informed public participation on the very same topics contained in the “No Build /Remove From MVCP Alternative”. The SMPG submitted a 38 page letter commenting on the RE-DEIR with 16 pages of attachments covering every aspect mentioned in the OB. AR51: 2934-2987. The City responded to 212 points made by the SMPG. AR51: 2988-3039. SMPG’s comments and the City responses regarding these objectives can be found at AR 51:2963-2969,3032-3034.

RTCs about objectives from “Stop The Road” can be found at AR51: 3041-3044,3066-3067. One activist submitted a 79 page letter commenting on the RE-DEIR also covering every aspect discussed in the OB. AR51: 3566-3644. The City responded to

294 points made (AR51: 3715-69), including the objectives. AR 51:3718-3724. Alternatives were discussed at every level of environmental review. AR74: 6652. CEQA's intent was met.

**6. Studying The “No Build/Remove From MVCP Alternative” Further Would Not Have Added Substantially To The Alternative Analysis**

If an alternative analysis would not have added substantially to the alternative analysis, omission of that alternative is not a violation of CEQA. *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 578.

There is no prejudicial effect when there is no basis to believe that the omitted study “would have produced any substantially different information.” *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439,463 (analysis of existing traffic conditions omitted but detailed analysis of future traffic impacts included in EIR).

Where it is clear from the record that unexamined alternatives would suffer the same environmental impacts of alternatives already studied in the EIR, CEQA's intent has been met. *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477,491.

In *Saltonstall*, the City studied four alternatives: (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. *Id.* at 573.

Petitioner complained that the City did not study an alternative that remodeled the old arena.

The *Saltonstall* court rejected this argument finding that studying the remodeling alternative would not have added substantially to the alternative analysis. It reasoned that some of the impacts were the same for the remodeling alternative and the build in place alternative. *Id.* at 577-578. The EIR was found to have sufficiently studied alternatives.

SCBSW argues that the trial court erred in equating the “No Project Alternative” with the “No Build/Remove From MVCP Alternative”. This case is different from the *Planning & Conservation League v. Dept. of Water* (2000) 83 Cal.App.4th 892, 911-917-919. There the agency failed to include the required “No Project alternative” analysis and instead provided an alternative analysis regarding contract revisions reallocating water in the event of permanent water shortage. *Id.*; Guidelines § 15126.6(e). The failure caused a lack information about available water supplies. *Id.*

In contrast, here there was no lack of information about the “No Project Alternative” or SCBSW’s Alternative. While typically these two analyses serve different purposes, here they are more alike than different. A review of the “No Project Alternative” reflects that it was evaluative and non-evaluative and included an analysis about objectives. AR51:4252-4258. The only difference is that SCBSW seeks to amend the MVCP, despite that City Council did not initiate that action.



**B. THE EIR ADEQUATELY ANALYZED TRAFFIC IMPACTS**

SCBSW’s traffic impact challenge is narrow. It disputes the City’s determination that the Project will not cause a substantial increase in VMT for freeway mainline segments because it was allegedly based on a faulty forecasting model that misrepresented data. AR51: 4013(Issue 2); AR: 4021-4022.

In addition, SCBSW also claims that the Connector would result in an “increase in traffic hazards for motor vehicles, bicycles, or pedestrians” traveling on Via Alta or Franklin Ridge “due to a proposed, non-standard design feature.” AR51: 4013 (Issue 4); AR:4046-4047.

**1. There Is Substantial Evidence Supporting The Determination That Traffic Impacts On Freeway Mainline Segments Will Be Less Than Significant**

SCBSW claims that VMT figures generated using SANDAG’s computerized statistical modeling tool misrepresented impacts by not identifying a margin of error. This tool was created by SANDAG and has been used in other land use and transportation projection studies, including preparation of the City's CAP. The accuracy of VMT modeling is not clearly inadequate or unsupported and the City reasonably relied upon this methodology.

A public agency is entitled to rely on the methodology and conclusions it articulates in its EIR because it has the prerogative to resolve conflicting factual conclusions about the extent of

traffic congestion that will result from the project. *Saltonstall, supra*, 234 Cal.App.4th at 582-583. “Challenges to the scope of an EIR’s analysis, the methodology used, or the reliability or accuracy of data underlying an analysis must be rejected unless the agency’s reasons for proceeding as it did are clearly inadequate or unsupported.” *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 425-26. The issue for the court 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 that supports the [agency’s] finding[s].” *Id.* When an agency is faced with conflicting evidence on an issue, the agency is permitted to give more weight to some of the evidence and to favor the opinions of some experts over others. *Chico Advocates For A Resp. Economy v. City of Chino, Walmart* (2019) 40 Cal.App.5th 839, 851. Differences of opinion about an EIR’s methodology do not make it unreliable. *Id.* at 871.

**i. Traffic Impact Studies And VMT Modeling  
Were Reliable Sources Of Information**

The FEIR’s Appendix C is a January 2017 Traffic Impact Study that includes both a 2017 Technical Report (AR1664: 28192-28234) and a 2015 Traffic Impact Study (AR1664: 28236-28250). In addition, FEIR Appendix H is a 2017 Vehicle Miles Traveled Output and Summary (“VMT Output”). AR2348: 35775-82. The FEIR and these reports address impacts to freeway

mainline segments and provided sufficient information for public participation and decision. AR51:4007-4009,4013-4014,4021-4022,4189-4190; AR1664: 28200,28204-28205,28209,28215-28217,28246,28251,28254,28266,28272,28279,28285; AR2348: 35775-35782.

The 2017 Traffic Impact Study (“TIS”) analyzed reasonably foreseeable Near-Term Year 2017 conditions (with and without the Project) to determine direct impacts and Long-Term Year 2035 conditions (with and without the Project) to determine cumulative impacts. AR1664: 28198; AR51: 3991. All traffic analyses were completed in accordance with the SANTEC/ITE Guidelines for Preparing Traffic Impact Studies and the City’s Traffic Impact Study Manual. AR1664: 28200; AR51: 3429.

The traffic volumes included in the 2017 TIS were generated using regional modeling with SANDAG’s computerized travel demand forecast model, Series 12 (“Forecasting Model). AR1664: 28265-28266,28290,28378-28390; AR51: 3004-3007. This modeling requires inputting expected land development data, socioeconomic data and other information to predict growth and traffic volumes. Then the volumes are analyzed against Level of Service (LOS) and significance. *Id.* Significantly, SCBSW has not challenged the use of SANDAG’s forecasting model, just the VMT Output.

Senate Bill 743 mandated a change in CEQA for the evaluation of traffic impacts to freeway mainline segments away from a delay-based LOS analysis to a focus on the reduction of

VMT on the regional circulation network. AR51: 4007, 4010, 4013, 4021; AR1664: 28215. The goal is to provide new CEQA methodologies that promote the goals of reducing GHG's and traffic-related air pollution. AR51: 4010.

In order to comply, Caltrans is creating the CalTrans Transportation Analysis Guide and Transportation Impact Study Guidelines and published Interim Guidance. AR51: 4007. The Interim Guidance provides that “a significant impact would occur if the project would result in a substantial increase in VMT when compared to the baseline condition.” AR51: 4021.

In light of this shift, to analyze the potential effects on the regional roadway network the City worked with SANDAG using the Forecasting Model and VMT modeling to generate the VMT Output. AR51: 4021-22; AR1664: 28205,28215-28216; AR51: 4187; AR2348: 35775. Regarding freeway mainline segments, the FEIR concluded that the Project would reduce VMT within the project influence area by 1.8% in both 2017/2035 and reduce region wide VMT by .32% (2017) and .28% (2035). AR2348: 35778; AR51: 4021-4022, 4036-4037.

Using VMT calculations and impact analysis, the FEIR found that the Project would reduce VMT impacts associated with freeway mainline segments would be less than significant. *Id.*; AR51: 4007-4009,4013-4014. CalTrans concurred with the analysis in the FEIR. AR1821: 29359. The City Council adopted these findings. AR36: 347. Nonetheless, because other Transportation/Circulation issues were found to have significant

(mitigable and nonmitigable) impacts, a Statement of Overriding Considerations was adopted. AR36: 348-352,368-376,383-384.

**ii. The City Reasonably Relied On Accepted Methodology Utilized By Experts In The Field**

The VMT analysis was conducted consistent with the methodologies discussed in the technical white paper “Vehicle Miles Traveled Calculations Using the SANDAG Regional Travel Demand Model” (the White Paper) prepared by the San Diego Institute of Transportation Engineers Transportation Mobility Task Force (“ITE”). AR2348: 35778.

Notably, the City’s traffic engineers that attended public hearings, responded to comments about VMT/LOS and prepared EIR sections, are members of ITE. AR2341: 34623; AR2350: 36321-36324,36331-36338,36350; AR86.1: 6857.1. Another ITE member, also a licensed traffic engineer and a traffic operations engineer, testified about ADT/VMT/LOS at both hearings. AR86.1: 6904.1-6908.1; AR2350: 36231-36235. The State transportation commissioner reported that the VMT level is almost ten times greater without the Connection. AR2350: 36229-36230; AR86.1: 6898.1-6900.1.

VMT modeling was also a component of the GHG emissions analysis in the FEIR, but SCBSW has not challenged that analysis. AR51: 4187-4192; AR51: 3009-3010. This same VMT modeling was used to prepare the City’s CAP. AR86.1: 6937.1; AR2337: 34480.

SANDAG's Forecasting Model is used by policymakers throughout the region. SANDAG collects and maintains a wide range of traffic, land use and socioeconomic data to help planners and analysts better understand the region's current and future needs, including transportation. Local jurisdictions use SANDAG's forecasts for general plan updates and capital facilities planning, EIRs, GHG's analysis and local transportation planning.

Any VMT environmental analysis begins with utilization of the SANDAG Forecasting Model but then includes a second step that extracts and disaggregates the VMT using origin-destination methodology to best capture GHG emissions. AR2341: 34626-34632; AR2348: 35778. Once the modeling work is completed, the VMT output is applied to the significance findings to determine GHG impact. AR2341: 34648.

This methodology was developed by SANDAG staff. AR 2350: 36321-36322. The Forecasting Model is calibrated/verified with ground-toothed effort that relates forecast volumes to actual count volumes on the roadways.

The author of the White Paper explained that:

“We spend a lot of time calibrating and validating SANDAG's travel demand model. 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 adjustments to better replicate observed conditions, while validation includes statistical documentation of the performance. There are many guidelines and resources regarding modern calibration, and we try to

adhere to what the Federal Highway Administration has produced.”

AR2203: 32459.

**iii. The Margin Of Error Was Addressed**

SCBSW alleges that the public and decisionmakers were not aware there was a margin of error. The use of the terms “forecast”, “projection” and “modeling” put the public on notice that there was likely a margin of error. In any case, SCBSW’s theory was the subject of a memorandum presented to Council by SCBSW (AR2203: 32435-32436,32440-32441,32459-32460) and a power presentation (AR 69: 6552-6554), presented to SGLUC (AR72: 6611,6614,6640,6648; AR73: 6651; AR74: 6652), addressed in RTCs (AR51: 3410-3411,3429,3009-3010) and discussed during public hearings. AR2350: 36282; AR 86.1: 6875.1.

Council and the Commission heard from the City’s internal subject matter experts explaining the foundation for reliance on SANDAG’s Forecast Model and the VMT methodology. AR 2350: 36321-36324; AR 86.1: 6937.1-6938.1. City Council’s reliance on these experts and the SANDAG VMT methodology was reasonable and warranted. The methodology used and the reliability and accuracy of the data underlying the VMT analysis was not clearly inadequate or unsupported.

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**iv. The White Paper Included The VMT Output Margin Of Error**

The VMT Output analysis was conducted consistent with the White Paper methodologies. AR2348: 35778. The White Paper contained the correct margin of error for the VMT analysis.

“As shown in this paper, the methodology developed by SANDAG results in a 0.06% margin of error, which is well below the 0.1% margin of error threshold set by SANDAG.”

AR2341: 34649.

SCBSW’s entire argument hangs on Mr. Calandra’s “very general answer” referencing 10% margin of error. But this relates to the model calibration in the Base Year, not the .06% margin of error for the VMT disaggregation methodology developed by SANDAG. AR2341: 34649; AR2203: 32459.

**2. There Is Substantial Evidence In The Record Supporting City Council’s Determination Regarding Alleged Traffic Hazards**

SCBSW contends that the Project contained non-standard design features that created potential traffic hazards on Via Alta/Franklin Ridge that were not addressed in the FEIR. SCBSW ignores that these roads were designed and constructed pursuant to the QF project and impacts were studied in conjunction with that project. The City Council found that the only proposed non-standard Project design feature was the location of the church’s driveway in relation to the Connector



intersection but it determined that, on balance, the Project warranted approval anyway. AR36: 373-374,379-384.

**i. The FEIR Analyzed The Connector's Only Proposed Non-Standard Design Feature**

Under CEQA's significance determination it must be determined whether a project would "result...in an increase in traffic hazards...due to a *proposed*, non-standard design feature." AR51: 4013 (Emphasis added.).

SCBSW argues that the steep and curvy roads, Via Alta/Franklin Ridge, "are non-standard design features the impacts of which will be significant" given the traffic volumes. OB 64. But these roads are not "proposed" in this Project. They were proposed, designed and constructed in connection with the QF Specific Plan.

SCBSW argues that these roads were in the "region" so *Citizens of Goleta Valley* requires that traffic hazards be studied. This expansive proposition is not supported. The *Goleta* court upheld an agency's decision to not study an alternative that was located outside its planning jurisdiction. That was a feasibility analysis not an impact analysis. *Goleta* at 575. While there may be instances where a regional perspective is warranted, this is not one of them. See, e.g. *Bozung v. LAFCO* (1975) 13 Cal.3d 263 (CEQA applies to approval of annexation proposals). Moreover, traffic volume impacts were studied here.

The only "non-standard design feature" proposed in this Project is that the City View church driveway will not align with

the Connector's intersection. AR51: 3942,4046-4047. This is because the Connection is "required to be farther west in order to provide adequate sight distance due to the slight curve along Phyllis Place from the I-805 ramps." *Id.*

The FEIR concluded that impacts related to traffic hazards caused by this non-standard design feature would be potentially significant and mitigation required. *Id.* City Council found that impacts were unavoidable and issued a Statement of Overriding Considerations. AR 36: 373-374,381-384. There are no other "non-standard design features" proposed in this Project.

**ii. Traffic Volume Impacts And Street Capacity Were All Analyzed In The FEIR**

SCBSW claims it was the intent of the Project to redistribute a significant amount of traffic from the freeway to these roads, so potential traffic hazards were required to be studied. The intent of the Project was not to move traffic from the freeway to these roads. Rather, the objectives provide that the intent of the Project is to give travelers more direct and efficient connections to/from SM and MV, including access to freeways.

SCBSW contends that the traffic volume along these curvy roads will be unsafe and drivers will speed. Traffic impacts on these roads were studied repeatedly. The FEIR contains two Traffic Impact Studies analyzing data at Year 2017 and Year 2035. AR51: 3852,3991-4052; AR1664: 28192-28500. These very

streets were analyzed in the Transportation/Circulation section. AR51: 3997-4001,4016-4019, 4027-4033,4037,4040,4042-4044.

These roads were designed to accommodate the amount of traffic contemplated in these studies. AR51: 2929; AR86.1: 6905.1-6908.1. The Franklin Ridge Road segment has a capacity of 16,667ADT's on the 2 lane section and 40,000ADT's on the 4 lane section. AR51: 4016,4028. In 2035 it is expected to be over capacity on one segment and under on another. *Id.* The Via Alta segment has a capacity of 16,667ADT's. AR51: 4017,4029. Even in 2035 Via Alta is not expected to be at capacity. AR51: 4029.

While it is true that by 2035 there will be 34,540ADT's on the Phyllis Place segment, the trips will be *split* down the two roads. Moving south from the 460 foot Connector, the traffic gets distributed downward in wishbone shaped fashion. AR2350: 36350.

SCBSW is silent about the speed limit on Via Alta and Franklin Ridge. The speed that will ultimately be posted for the Connection will not be decided until after the Project is complete and the City conducts road traffic surveys. AR 51:3941,4046. The speed will very likely be lower than the design speed because of the short length of the Connector. *Id.*

**iii. Via Alta/Franklin Ridge Were Safely  
Designed As Part Of The QF Project And All  
Traffic Impacts Studied**

Via Alta/Franklin Ridge Road were designed and constructed as part of the QF project. AR45: 1557-1559,1662-

1666; AR51: 3997. The QF EIR studied the potential environmental impacts of the QF project which included an alternative analysis for the “the Road Connection to Phyllis Place.” AR45: 1662-1666, 1981-1997. The QF Traffic Impact Study contains 601 pages and 500 Tables/Figures analyzing traffic impacts with and without the Phyllis Place Connection all the way to community plan buildout year 2030. AR2360: 38909-39522. The QF EIR was available for review in conjunction with the RE-DEIR. AR51: 3899,3949.

Regarding pedestrian safety, internal circulation within Civita was developed as part of the QF project, including the locations of signalized, designated pedestrian crosswalks and “streetside sidewalks, separated from the streets by landscaped parkways along...Via Alta and Franklin Ridge Road”, all in accord with the Street Design Manual. AR51: 2927-2929,3933; AR45: 1558; AR46: 2109-2110,2135. The QF project considered traffic calming measures including intersection pop-outs and mid-block crosswalks. AR 46:2111; AR2255: 33547.

Existing signalized or stop controlled intersections are located on Via Alta and Franklin Ridge. AR86.1: 6862.1; AR69:6545 (purple dots). There is an existing pedestrian tunnel running across Via Alta. AR2324: 34440-1; AR86.1: 6862.1; AR69: 6545-6. The crosswalks have curb ramps, enhanced paving, pedestrian refuges in medians and sidewalks with a landscape buffer. AR86.1: 6862.1-6863.1; AR69: 6545-6547; AR 2324:34436-

34439. The existing roadways are built to anticipate pedestrian, bike and vehicular traffic. AR86.1: 6865.

Moreover, Via Alta and Franklin Ridge are open for public use which is evidence that they were accepted by the City engineer and have been constructed pursuant to the City's safety standards set forth in, among other resources, the Street Design Manual and the Fire Code. See, Land Development Code § 144.0233; California Street and Highways Code § 1806(a); 19 CCR § 3.05.

At the Planning Commission hearing there was a robust discussion of safety concerns. AR2350: 36322-60. As a result, the City committed to reviewing QF project plans again and additional site visits. AR2350: 36354; AR2324: 34436-34437. Staff confirmed that safe pedestrian connections were developed within the constraints of the topography (grade and curved roadways) and the projected roadway volumes for buildout of Civita. AR2324: 34436-34437; AR86.1: 6861.1. As pointed out to City Council, the QF project included safe points of access. AR86.1: 6862.1-6863.1; AR69: 6545-6548; AR51: 2927-2928.

**C. THE FEIR ADEQUATELY ANALYZED THE PROJECT'S LAND USE PLAN CONSISTENCY**

The review of plan consistency is “highly deferential to the local agency.” *Naraghi Lakes Neighborhood Preserv. Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18. “[A] consistency determination 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 Resp. Dev. v. City of Covina* (2018) 21 Cal.App.5th 712, 732.

“Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion.” *Id.* Even if inconsistency is found, to be violative of CEQA it must result in a substantial adverse effect on the environment. AR51: 3968.

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 frustrate their attainment. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.

Perfect conformity is not required, “perfect conformity with each and every policy set forth in the applicable plan is nearly, if not absolutely, impossible.” *Covina Residents*, 21 Cal.App.5th at 732. “[T]he essential question is ‘whether the project is compatible with, and does not frustrate, the general plan’s goals and policies.’” *Naraghi Lakes*, 1 Cal.App.5th at 18.

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

FEIR Section 5.1.5 analyzes the Project’s consistency with pertinent environmental goals, policies, guidelines and recommendations found in the General Plan (“GP”) and the SMCP. AR51: 3961-3968,3973-3987,4169-4170,4198. For ease of

reference, Tables were created that compare the GP and SMCP policies, goals, recommendations and guidelines against the compatibility of the Project and its objectives. *Id.* These analyses demonstrate that the Project would implement and uphold the goals, policies, guidelines and recommendations of these Plans. *Id.* Finding no inconsistencies, impacts were found to be less than significant. AR51: 3987.

SCBSW points to alleged inconsistencies with the City of Villages/Walkable Community concepts, neighborhood character and traffic. But City staff have examined the specifics of the Project and determined it is in harmony with these policies.

The City of Villages strategy includes linking communities to the “regional transit system.” AR 2343: 34878. “Over time, villages will be increasingly connected to each other by an expanded regional transit system.” AR2343: 34879. In the view of the state transportation commissioner, the regional transportation system needs this Connection. AR2350: 36229. The I-805 Phyllis Place interchange is an underutilized state asset because it currently only serves a small hamlet of 220 homes when it was designed to relieve the traffic burden of so many more citizens. AR 2350: 36229-33.

“Implementation of the City of Villages growth strategy is dependent upon close coordination of land use and transportation planning. The strategy calls for redevelopment, infill, and new growth to be targeted into compact, mixed-use, and walkable villages that are connected to a regional transit system. Villages

should increase personal transportation choices and minimize transportation impacts through design that pays attention to the needs of people traveling by foot, bicycle, and transit, as well as the automobile.” AR2355: 37167. This Project implements these multimodal goals and increases mobility options within these communities. AR51: 3976,3979.

Guiding Principle No. 5 of the GP's Strategic Framework is to work toward “[a]n integrated regional transportation network of walkways, bikeways, transit, roadways, and freeways that efficiently link communities and villages to each other and to employment centers.” AR2355: 37170.

The Street and Freeway System goals set forth in the GP include: (1) an interconnected street system that provides multiple linkages within and between communities and (2) vehicle congestion relief. AR51: 3978. The goal of Mobility Element C.2 in the GP is to “provide adequate capacity and reduce congestion for all modes of transportation on the street and freeway system.” AR51: 3979. Some Urban Design elements are met here too because the Project eliminates closed-loop subdivisions and improves circulation. AR51: 3981-3982.

Implementation of the City of Villages strategy is an important component of the City’s strategy to reduce local contributions to greenhouse gas emissions, because the strategy makes it possible for larger numbers of persons to make fewer and shorter trips....” AR2343: 34878. 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. AR2343: 34878.

City Staff recommended approval of this Project because it achieves the GP goal of providing an interconnected street system that provides multiple linkages within and between communities. AR67: 6534. The Project reduces 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. AR67: 6533-4; AR51: 4189,4192,4252; AR67: 6533; AR1821: 29193. The Project is consistent with State, Regional and Local Plans for reducing GHG’s. AR51: 4191-4192.

SCBSW claims that the “villages” concept is mentioned only twice and the “walkable community” only once. Not true. See, AR51: 3956, 3961,3975-3977,3980,4012,4137,4169,4198. In addition, this topic was addressed repeatedly in the RTCs.

SCBSW identifies one policy, ME-C.6, neighborhood character, that is not addressed in the FEIR. However, the Project’ is consistent with this policy. AR51: 2940,3000-3001. There is substantial evidence in the record addressing Project consistency with the General Plan and the SMCP. AR51: 2931,2938-2941,2989-2934,2994-2997,3105,3433,3597, 3600,3604,3719,3737,3741.

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. Moreover, SCBSW has not identified any substantial

adverse effect on the environment resulting from the alleged inconsistencies. AR51: 3968.

**D. THE ALLEGED VIOLATION OF PLANNING AND ZONING LAW WAS NOT RAISED DURING ADMINISTRATIVE PROCEEDINGS AND FAILS FOR THE SAME REASONS DISCUSSED IN SECTION C**

SCBSW has not cited to any evidence in the record that its claim for violation of Planning and Zoning Law (“PLZ”) was raised at the administrative level. This was SCBSW’s burden.

In its Petition SCBSW cites no code sections and generically states, “the Project authorizes land uses and activities that are in some way inconsistent with the general and specific plans and their components.” Vol. I: Tab1, p.5, ¶15B. Then Petitioner alleges that “the Project has no legal force or effect because it violates CEQA and/or one or more other applicable laws.” *Id.* ¶16. No other information about the purported statute violated was set forth in the Petition.

In SCBSW’s trial brief it alleged a “separate violation” of an unidentified statute falling somewhere within the range of Gov’t Code § 65000 et seq. Vol. I: Tab 6, pp. 28:11-14. No other Code sections were alleged. As a result, the City’s response was limited. Now, for the first time SCBSW alleges violations of Gov’t Code sections 65300, 65454 and 65460.8. OB These arguments have been waived as SCBSW did not raise them at the administrative level or the trial court level.

In any case, consistencies between the Project and the GP and the SMCP were discussed in the FEIR. AR51: 3961-68,3973-87,4169-70,4198. The City incorporates all the arguments it raised in Section C above. A governing body has determined that this Project is consistent with the General Plan and this conclusion carries a strong presumption of regularity. There has been no abuse of discretion here.

**E. THE CITY'S GENERAL SUMMARY DID NOT PRECLUDE INFORMED DISCUSSION OR PUBLIC PARTICIPATION**

During the public review period for the PDEIR, the City received comments indicating that sufficient information was available to analyze the project in greater detail. AR51: 3110-3111,3922; AR2349: 35849-35850. As a result, the City determined that the level of environmental review should be increased from a high level programmatic analysis to a detailed project level analysis. *Id.* (Compare Guidelines §§15161 and 15168.) The PDEIR was comprehensively and substantially “overhauled” to the point it no longer ceased to exist and was supplanted by the project-level DEIR analyzing new impacts and mitigation measures. AR51: 3900.

Right upfront the RE-DEIR informs the reader that “[t]he Draft EIR has been revised to analyze impacts at a project level” to include “construction of four-lane major street.” AR2349: 35785-35786. The Project description relates that the proposed project included both: (1) revising the SMCP to include the

Connection and (2) “construction of the roadway connection” necessitating a “project-level analysis”. *Id.*

The RE-DEIR summarized the scope of the revisions made by explaining that the PDEIR was completely “replaced” with the Re-DEIR which contained an entirely different scope of analysis throughout.<sup>6</sup> AR2349: 35872,35848-35851. Chapter 4 details the “History of Project Changes”. AR2349: 35897. As will be shown, these general summaries were sufficient to apprise readers that the PDEIR was not just significantly revised, it was effectively replaced by the project-level analysis contained in the RE-DEIR.

Petitioner has not cited to any case providing standards for the level of specificity required under CEQA Guideline section 15088.5(g). Nor has there been any case cited providing that when a Programmatic level EIR evolves into a project level EIR that failure to itemize each change violates section 15088.5(g). The re-circulation was driven by a desire to provide more information which serves the goal of informed decision making.

Moreover, “[i]nsubstantial or merely technical omissions” do not invalidate an EIR. *Neighbors for Smart Rail*, 57 Cal.4th at 463. CEQA does not mandate perfection. *Citizens for a Sustainable Treasure Island v. City & Cty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1046. The “determination of EIR adequacy is essentially pragmatic” with common sense always

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<sup>6</sup> Under these circumstances, to provide a strike out version of the originally circulated DEIR would be of limited value. AR51: 2988-2989,3111-3112.

playing a role. *Id*; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175.

There “is no presumption that error is prejudicial.” Public Resources Code § 21005 (b). A court can find a prejudicial abuse of discretion took place, “if the failure to include relevant information precludes informed decisionmaking and informed public participation...” *Neighbors for Smart Rail*, 57 Cal.4th at 463; see also, 2 *Kostka & Zischke*, *supra*, at §23.27. Here, there was no abuse of discretion because the public received more information about the details of the Project and its impacts and they acted on that information by engaging repeatedly in the administrative process. OB: pg.17.

### **1. The Public Had The Information Necessary For Informed Discussion And Participation**

SCBSW contends that the City’s summarization misled the public in two ways. SCBSW represents that readers had the mistaken belief that the RE-DEIR and the PDEIR involved the same four lane “new roadway” project causing them to submit comments on non-CEQA grounds. SCBSW also alleges that the City “buried” the Connector’s alleged “dramatic” shift from a four-lane collector road to a four-lane major road hiding a huge increase in ADTs (6,500 to 35,000) and design speeds (30 mph to 55 mph). OB pg.31. This is inaccurate on several levels.

First, the 6,500 ADT figure is for a “two lane collector”, not a “four lane collector” as represented. AR88: 6958. An actual comparison of the data for a “four lane collector” against a “four

lane major road” reflects that the LOS “D” ADTs are 25,000 versus 30,000 and the design speeds are 35 mph versus 45(urban)55(non-urban). AR88: 6964,6968,6970; AR51:3941.

Second, there has been no attempt to hide the nature of the Connector being proposed. As far back as 2008 the proposed Connection has been represented as a “four lane major street”. AR45: 1981-1982. In the 2011 SMCP Phyllis Place is classified as a four-lane major roadway, so it makes sense that an extension would be similar in nature. AR292: 8082,8089; AR2346: 35546; AR51: 3942.

In the 2012 Notice of Preparation the Project was described as including “a four lane major street” connecting Phyllis Place in SM with Franklin Ridge and Via Alta in MV. AR2353: 36563-64. The Notice indicated that the Project may result in significant environmental impacts in almost every area analyzed. AR2353: 36564. At the scoping meeting several participants provided comments about the inclusion of the four lane road and traffic impacts. AR2353: 36573-36576(SMPG),36577,36580-36583 (SM Council).

The 2016 PDEIR describes the Amendment as including a four lane collector road extending from Phyllis Place in SM southward and ultimately connecting to Franklin Ridge and Via Alta. AR2346: 35450-35452,35457,35482,35485,35490,35492. Within the initial pages the reader is informed that the project would have a significant environmental impact on

transportation/circulation and directed to an image of the road location. AR2346: 35452,35457.

Appendix C includes a 2015 TIS that analyzed roadway segments and intersections, including those involving Via Alta, Franklin Ridge and Phyllis Place. AR2346: 35539; AR1664: 28236-28500. The PDEIR contains an analysis of potential impacts on Transportation/Circulation with a summary of the TIS analysis. AR2346: 35539-35576.

Importantly, the PDEIR provides a Table informing the public about LOS thresholds for roadway segments. AR2346: 35544. The PDEIR then applies those standards to Franklin Ridge, Via Alta and Phyllis Place. For impact analysis purposes Franklin Ridge and Via Alta were classified as two-lane major streets and Phyllis Place was classified as a four-lane major roadway as it is in the SMCP. AR2346: 35546, 35555. They were treated the same in the RE-DEIR. AR2349: 35943.

Specific to intersections and road segments involving Franklin Ridge/Via Alta/Phyllis Place, the future LOS ratings and ADTs were disclosed in the text and in a Table. AR2346: 35556-35561. The City found significant cumulative impacts. AR2346: 35564, 35568.

The PDEIR even includes potential mitigation measures relating to these specific roads and states that “future project proposals would require a project-level environmental analysis to determine the individual impacts...” AR2346: 35565,35568.

Turning to the 2017 project-level RE-DEIR, in the initial pages the reader is informed that the analysis includes construction of a “four-lane major street.” AR 2349: 35785-35786. The fact that the project included a “four-lane major street” was repeatedly emphasized in the RE-DEIR. See, e.g. AR2349: 35786,35788,35815,35871,35889-35893,35896-35897,35890-35891.

There is an Executive Summary that points out that this project is to construct a “four-lane major street” that would result in significant and unavoidable direct impacts in the areas of transportation/circulation. AR2349: 35787-35789,35815-35817. The Summary contains a Table that summarizes those significant impacts and potential mitigation measures. AR2349: 35820-35846. It specifically provides information about the impacts on Via Alta, Franklin Ridge and Phyllis Place and includes potential mitigation measures regarding the LOS degrades. AR2349: 35820-24(TRAF-17); see also 35820-35823(TRAF-3,4,8,11,12,17,19).

In addition, the RE-DEIR contains a Table that summarizes the organization of the RE-DEIR and identifies what is contained in each section. AR 2349: 35851-35852.

The conceptual design of the “major street” was the subject of two full page diagrams in the Roadway Design section. AR2349: 35889-35893. The existing and future configuration of the major street and its intersection with Franklin Ridge/Via



Alta were detailed in several sections. AR2349: 35862,35889-35895, 35943.

Section 5.2 of the RE-DEIR contains a full analysis of project impacts on Transportation/Circulation and includes twenty-three Tables for ease of comparison. AR2349: 35805-35806,35937-35994. The RE-DEIR also includes the Technical Report evaluating traffic impacts and the VMT Output analysis. AR2349: 35804,35954; AR1664: 28192-28234; AR2348. The RE-DEIR summarized the Technical Report and informs the reader of the specific impacts to Via Alta/Franklin Ridge/Phyllis Place. AR2349: 35944,35947-35950, 35962-35963,35965,35968-35976,35982,35987-35988,36182. Potential mitigation measures were also outlined. AR2349: 35982-35986,35991(TRAF-3,4,8,11,12,17,19). Cumulative traffic impacts and potential mitigation measures were summarized again in Section 6. AR2349: 36141-36348.

From this record it appears that the public had all the information necessary about the Connector's characteristics and impacts, including ADTs, LOS, classification and design speed.

## **2. There Was Robust Public Discussion And Participation**

Public discussion about this project has been vigorous from inception. AR51: 2867-3784. The SMPG has been actively opposing "any proposal that includes a road connection" whether major or not since 2008. AR43: 640,643,649. Throughout the process, opposition groups have participated with enthusiasm, as

have area residents, the SM Council and the SMPG, among others. SCBSW admits that “its members repeatedly participated in the administrative process”. OB17:3-4.

The SM Council’s RTCs can be found at AR51: 3101-3122(Letter K). “Save Civita” submitted detailed “Technical Comments” touching on a full range of environmental issues. AR51: 2919-2932(Letter F). “Stop The Franklin Ridge Road Connection” submitted RTCs as well. AR51: 3041-3070(Letter H). The SMPG’s poignant RTCs can be found at AR 51: 2933-3039(Letter G). Some residents submitted sophisticated comments. See, e.g. AR51: 3403-3439(Gabriela Surpi), 3566-3644 (Bryce Nicewanger). Comment letters in general ranged from A through DI. AR51: 2867-2870.

Comments/Responses regarding ADTs, “major” street classification and speed were abundant. 51:2986,2997,3001,3014, 3017-3020,3024-3027,3035,3126-29,3144,3155,3156,3168,3170, 3223,3294-3296,3302,3318-3319,3323,3329,3335-3336,3391-3393, 3406,3411,3413-3415,3418,3422,3425,3448,3456,3458,3464,3466, 3502,3506,3508-3513,3572,3595,3601,3608-3609,3733,3743,3782. The record reflects a lack of prejudice.

At the August 2017 Planning Commission hearing more than thirty persons, entities and organizations participated, including members of SCBSW. AR2350: 36226-36317,36294-36296-36302. In advance of the hearing the City received many communications opposing/supporting the project. See, AR692 thru 1938(intermittently).

The SGLUC held a public hearing about the Connector. AR2351: 36391-36393. SMPG submitted an analysis in support of project denial. AR71: 6572-6607. “Concerned SerraMesans” also submitted an analysis in support of their recommendation to deny the Project. AR72: 6608-6650. Other charts, summaries and maps were also submitted in opposition. AR73: 6651; AR74: 6652.

At the City Council hearing on the project about thirty persons, entities and organizations participated. AR86.1:6866.1-6936.1,6881.1-6888.1. In advance of the hearing the City received many communications opposing/supporting the project. See, AR:1974–2247,2295-2328(intermittently).

The record reflects fully informed public participation and informed decisionmaking.

**F. SCBSW WAS NOT DENIED DUE PROCESS OR A FAIR HEARING**

**1. SCBSW Cannot Demonstrate “Concrete Facts” Of An “Unacceptable Probability Of Actual Bias”**

SCBSW’s claim of a denial of due process and a fair hearing is unsupported by the record and SCBSW cannot demonstrate any actual bias in the approval of the Project. “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 over their claims.’ [Citation.] A mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty.” *Breakzone*

*Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205,1236. “A government official’s motive for voting on a land use issue is . . . irrelevant to assessing the validity of the action.” *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166,184 (citation omitted).

In explaining that a councilmember’s motivation for opposing a project is irrelevant, the court in *Stubblefield Constr. Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687 stated:

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

*Id.* at 714, fn.19. Expressing support for a project does not deprive the public of a fair hearing or invalidate the environmental review process required by CEQA and carried out by the City. *See Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152,1172 (“[A] public official may express opinions on subjects of community concern . . . without tainting his vote on such matters should they come before him.”).

Here, SCBSW has not identified any actions by Mr. Sherman that approach establishing an “unacceptable probability of actual bias”. *See Breakzone*, 81 Cal.App.4th at 1236. SCBSW relies heavily on *Petrovich Development Company LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963. However, *Petrovich* can

be distinguished and does not support the claim that the City violated the public's right to due process and a fair hearing.

As an initial matter, the *Petrovich* court found an unacceptable probability of bias where a councilmember actively advocated *against* the issuance of a conditional use permit for a gas station. Here, SCBSW was not a project applicant that had a project approval denied by the City, but was instead a community group that opposed the Project. Further, the *Petrovich* court recognized that a councilmember may express his views on matters of concern for the local community, such as the Project, and that this does not disqualify him from voting on the project or constitute evidence of an unacceptable probability of bias. *See id.* at 974.

In *Petrovich*, there was also evidence that the councilmember personally took actions to secure votes against the gas station permit from fellow councilmembers, provided the mayor and his advisor with “talking points” to assist in the advocacy against the gas station, and “coached” others on how to prosecute an appeal of the permit. *See id.* at 974-975. Similar evidence is entirely lacking here.

SCBSW does not provide any evidence that Mr. Sherman attempted to influence or sway the mayor or other councilmembers voting on the Project. Instead, SCBSW identifies several emails and letters sent, not by Mr. Sherman, but by his district office staff generally seeking support for the Project from members of the public. *See Stubblefield Constr. Co.*,

32 Cal.App.4th at 714 fn. 19 (letters sent by councilmember to constituents are constitutionally insignificant). Noticeably absent are any “concrete facts” that Mr. Sherman himself took any action that evidences any advocacy or bias towards the Project.

SCBSW points to Mr. Sherman making motions to approve the Project at the SGLU and City Council meetings as evidence of unacceptable advocacy and bias by Mr. Sherman. However, unlike in *Petrovich*, the motions made by Mr. Sherman were made after the Planning Commission had already recommended *approval* of the Project. AR67: 6536; *see Petrovich*, 48 Cal.App.5th at 976. (councilmember made motion to *reverse* Planning Commission’s decision to approve CUP). Clearly, a councilmember making a motion to approve a project cannot constitute concrete facts of actual bias that rises to the level of depriving the public of due process or a fair hearing.

SCBSW has not cited any “concrete facts” of an “unacceptable probability of actual bias” by Mr. Sherman and cannot meet the exacting standard to prove that the public’s right to due process and a fair hearing were violated.

## **2. Mr. Sherman’s Vote Had No Impact On The Approval Of The Project**

It is also significant that the Project was approved by the full City Council by a vote of 8-1 after it had been approved by the Planning Commission. AR34: 329. Mr. Sherman’s vote,


either for or against the Project, would not have affected the approval of the Project by City Council, which would have been approved even if Mr. Sherman had not voted. Accordingly, SCBSW was not impacted or prejudiced by Mr. Sherman's vote and SCBSW and the public were not denied due process or a fair hearing.

## VI. CONCLUSION

For all the foregoing reasons, the City respectfully requests that SCBSW's appeal be denied.

Dated: April 9, 2021

MARA W. ELLIOTT,  
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CITY OF SAN DIEGO


**CERTIFICATE OF COMPLIANCE**  
**[CRC 8.204(c)]**

Pursuant to Rule 8.204(c) of the California Rules of Court, I

hereby certify that this brief contains 13,286 words, including footnotes, and is printed in a 13-point typeface. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: April 9, 2021

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**COURT OF APPEAL, STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT, DIVISION ONE**  
**PROOF OF SERVICE**

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*Save Civita Because Sudberry Won't v. City of San Diego*

Appeal No. D077591  
Superior Court Case No. 37-2017-00045044-CU-TT-CTL

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On April 9, 2021, I served true copies of the following document(s) described as:

**RESPONDENT'S BRIEF**

on the interested parties in this action as follows:

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**[XX] (BY ELECTRONIC SERVICE)** By transmitting via TrueFiling to the above parties at the email addresses listed above.

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

Executed on this 9th day of April 2021, at San Diego, California.

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Janine L. Nacar