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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 COALITION FOR ADEQUATE REVIEW;
13 NINETY NINE PERCENT; and ROB
ANDERSON,
14 Petitioners,
15 vs.
16 CITY AND COUNTY OF SAN FRANCISCO
DOES 1 through 10, inclusive,
17 Respondents.

Case No. CPF 05-505-509
**RESPONDENT CITY AND COUNTY OF SAN
FRANCISCO'S OPPOSITION TO
PETITIONERS' OBJECTIONS TO CITY'S
RETURN**
Hearing Date: June 22, 2010
Hearing Judge: Hon. Peter Busch
Time: 9:30 a.m.
Place: Dept. 301
Date Action Filed: July 28, 2005
Trial Date: June 22, 2010
Attached Documents: Request for Judicial Notice

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INTRODUCTION

1
2 After three years of environmental review and an extraordinary amount of public outreach and
3 participation, the City and County of San Francisco (“City”) certified an environmental impact report
4 (“EIR”) analyzing the 2009 San Francisco Bicycle Plan, under the California Environmental Quality
5 Act, Public Resources Code sections 21000 *et seq.* (hereinafter “CEQA”). The EIR – a comprehensive
6 look at the environmental consequences of adopting the Bicycle Plan on the City’s entire transportation
7 network – is exactly what the Court required and what Petitioners requested. Petitioners, however,
8 remain unsatisfied, and have raised a number of objections to the comprehensive EIR. Those objections
9 mischaracterize the analysis performed by the City, the factual record supporting the conclusions in the
10 EIR and the legal standards by which this Court must measure the adequacy of the City’s efforts.

11 Petitioners take issue with virtually every aspect of the Bicycle Plan EIR. But substantial
12 evidence supports the City’s decision to certify the EIR as adequate, accurate and in compliance with
13 CEQA. The EIR accurately describes the Bicycle Plan and all of its components; thoroughly analyzes
14 potential impacts to transportation, air quality and noise, offers a reasonable range of alternatives; and
15 proposes feasible mitigation measures for significant impacts. In addition, the City’s lawful
16 determination to approve the project despite the remaining significant environmental impacts is
17 supported by substantial evidence in the record. Finally, the public, including the Petitioners, had ample
18 opportunity to comment on the EIR and the proposed Bicycle Plan.

19 Petitioners are clearly disappointed that, despite the disproportionate number of drivers over
20 bicyclists, City decisionmakers chose to implement improvements to the bicycle network that may
21 inconvenience some drivers and some transit riders on certain streets at certain times. But the CEQA
22 process does not approve or deny a projects; it merely requires that decisions be made with
23 environmental consequences in mind. By improving the City’s bicycle network, the decisionmakers
24 determined that the City would encourage more people to use a bicycle for everyday transportation.

25 The EIR adequately and accurately informed City decisionmakers and the public about the
26 environmental impacts from adoption of the Bicycle Plan and implementation of the projects contained
27 within it, and the City’s actions were supported by substantial evidence. Petitioners have failed to show
28 otherwise. The Court should discharge the Writ.

STATEMENT OF FACTS

1
2 In June 2005, the San Francisco Board of Supervisors adopted the 2005 San Francisco Bicycle
3 Plan, an update to the City's 1997 Bicycle Plan.¹ The City reviewed the Bicycle Plan update under the
4 CEQA, and found that there was no possibility that it would have significant impacts on the
5 environment. Petitioners Coalition for Adequate Review, Ninety-Nine Percent, and Rob Anderson
6 (collectively "Petitioners") successfully challenged the City's decision. The Court issued an Order
7 Granting Petitioners' Petition for Writ of Mandate ("Order"), and on June 18, 2007, issued a Peremptory
8 Writ of Mandate requiring the City to conduct environmental review on the 2005 Bicycle Plan.

9 A. Environmental Review

10 After the Court's Order, the City began the CEQA process on an updated Bicycle Plan again. On
11 June 5, 2007, the San Francisco Planning Department ("Department") issued a Notice of Preparation
12 ("NOP") of an EIR on the Bicycle Plan update project (the "Project") under 14 California Code of
13 Regulations ("Guidelines") Section 15082. (AR 10:4881.) As described in the NOP, and as required by
14 the Writ, the Project included four components: (1) the goals, objectives and recommended actions
15 contained in the updated Bicycle Plan; (2) proposed "long-term improvements" to the City's existing
16 bicycle route network, including anticipated but not-yet-designed bicycle route improvements that the
17 San Francisco Municipal Transportation Agency ("MTA") may add to that network in the future; (3)
18 minor improvements to the bicycle route network, including for example sharrows and bicycle racks;
19 and (4) 60 proposed "near-term improvements" to fill in gaps and otherwise improve upon the existing
20 network. The NOP noted that the EIR would provide "program-level" review of the Plan policies, long-
21 term and minor improvements, and "project-level" review of the near term improvements, which the
22 MTA anticipated would be implemented within the next five years.² These near-term improvements

23
24 ¹ The original Record of Proceedings ("ROP") certified and lodged in 2006, contained the Board
25 of Supervisors Resolution adopting the 1997 Bicycle Plan, but not the Plan itself. The City requested
26 that the Court take judicial notice of the 1997 Plan on August 21, 2006. The Court appears to have
27 taken judicial notice of the 1997 Plan, as it references the 1997 Plan in its Order Granting Petitioners
28 Petition for Writ of Mandate. (See Order at p.3.) To the extent necessary, the City seek Judicial Notice
of the 1997 Plan again.

² "Program-level" environmental review is appropriate when analyzing a series of actions that
can be characterized as one larger project related geographically, as logical parts in a chain of
contemplated actions, in connection with issuance of a plan, or program, or as individual activities
generally similar environmental effects that can be mitigated in similar ways. (Guidelines § 15168(a).)

1 included MTA's priority projects; individual bicycle route improvements that were already funded by
2 outside agencies but not yet built; and projects for which MTA had detailed designs, including those that
3 were designed and implemented after approval of the 2005 Bicycle Plan but before the Court's issuance
4 of an injunction in June 2006. (AR 10:4884.)

5 The Department held a public meeting on June 26, 2007 to solicit comments on what should be
6 included in the scope of the analysis in the Bicycle Plan EIR, and it accepted written comments on the
7 scope through July 6, 2007. (AR10:4881, 5070; Guidelines § 15082.) Then, on March 15, 2008, the
8 City published an Initial Study – a preliminary analysis used to identify the significant environmental
9 effects to be analyzed in an EIR. (AR 11:5217; Guidelines § 15365.) Through the Initial Study, the
10 Department narrowed the range of impacts to be studied in greater depth in the EIR to those relating to
11 traffic and circulation, traffic-related noise, and air quality. (*Id.*; AR 1:128.)

12 On November 26, 2008, the Department published a Draft EIR, and mailed notice of the
13 availability of the Draft to over 1,400 individuals and organizations, including the Petitioners. (AR
14 21:11764-12002; 11970 [letter to Petitioners' counsel].) The City also provided published notice in the
15 newspaper and to the Department's standing list of those requesting Draft EIR notice. (Guidelines
16 § 15087(a); AR 1:7-8.)

17 Not surprisingly, the bulk of the Draft EIR's analysis concerned impacts to transportation. The
18 Draft EIR included a detailed analysis of transportation impacts from the Project, particularly the
19 impacts of the 60 near-term improvements on 63 different intersections located throughout San
20 Francisco, 12 transit corridors (each of which is several linear blocks), 10 transit "spot studies" (either
21 short street segments or intersections), and 13 parking and loading corridors. (AR 1:310; 13:6236.) The
22 transportation analysis of these intersections and corridors included a description of four scenarios: (1)
23 existing conditions; (2) existing conditions with each near-term improvement, and, if an intersection was
24 common to more than one project, an analysis of impacts to the intersection with implementation of all
25 projects common to that intersection; (3) cumulative conditions projected in year 2025 without the
26

27
28 Approval of an activity programmatically reviewed in the EIR may later require project level review.
The EIR notes "where necessary, project-level review would be conducted." (AR 2:1076.)

1 Project; and (4) cumulative conditions projected for year 2025 with each near-term improvement, and
2 any overlapping near-term improvement. (AR 1:301-313.)

3 Many of the near-term improvements included two options for project design, and both were
4 analyzed in an equal level of detail. In addition to the alternative designs, the Draft EIR also analyzed a
5 range of other alternatives to the Project: first, a “no project” alternative; and second, two “grouped”
6 alternatives – adoption of all “Option 2” designs (or Option 1 if there was only one design) or adoption
7 of all “Option 1” designs. (AR 3:1175-1190; Guidelines § 15126.6(a) [EIR must analyze reasonable
8 range of alternatives to project or project location].) In addition, the Draft EIR analyzed alternatives to
9 the program-level minor improvements and long-term improvements. (AR 3:1187-1190.)

10 The EIR also identified mitigation measures to minimize or eliminate many of the significant
11 environmental impacts identified in the EIR, including measures such as adding or modifying traffic
12 signals at intersections (lengthening green light time or adding a green arrow), or modifying roadway
13 striping (changing shared lanes to exclusive turn lanes, narrowing travel lanes, or eliminating or
14 restricting on-street parking). (Guidelines § 15126.4 [EIR shall describe feasible mitigation measures
15 which could minimize significant adverse impacts]; see e.g. AR 3:548 [convert three-way stop sign to
16 signal]; 704 [change permitted green phase to protected green phase]; 712 [change parking zone to
17 loading zone].) However, for many impacts, no feasible mitigation measures could be identified, and
18 those impacts could not be mitigated to a level of insignificance.

19 The official period for submission of written public comments on the Draft EIR ran from
20 November 26, 2008 until January 13, 2009, slightly longer than the statutorily required 45-day period.
21 (AR 21:11764; Pub. Resources Code § 21091(a).) The Planning Commission (“Commission”) held a
22 public hearing on the Draft EIR on January 8, 2009 to obtain oral comments. (AR 21:12006.) Only one
23 person commented at that hearing – a comment in support of the Draft EIR. (AR 21:12010-11.)

24 On June 11, 2009, the City published its “Comments and Responses” document, which
25 responded to all written and oral comments received on the Draft EIR, including comments received
26 after the official comment period had ended. (See AR 22:12251; Guidelines § 15088(a) [agency “shall”
27 respond to timely comments and “may” respond to late comments].)

1 **B. Approval of the 2009 Bicycle Plan and Bicycle Plan EIR**

2 On June 25, 2009, at a regularly noticed meeting, the Commission certified the EIR as accurate,
3 adequate and in compliance with CEQA. (AR 6:2785; Guidelines § 15090(a)(1)-(3).) The Commission
4 recommended that the Board of Supervisors approve two ordinances to rescind the adoption of the 2005
5 Bicycle Plan update, and amend the General Plan and Planning Code to implement several goals of the
6 Bicycle Plan. The Commission made findings required by CEQA regarding mitigation measures and
7 alternatives, as well as a statement of overriding considerations indicating the Commission’s reasons for
8 recommending the Ordinances despite the significant environmental impacts caused by the Bicycle Plan.
9 (AR 6:2978 [General Plan], 23:13042 [Planning Code] and 6:2792 [CEQA Findings].) Supporting
10 documents, such as staff reports and proposed CEQA findings, were publicly available a week before
11 the Commission hearing. (AR 24:13281 [EIR]; 13484 [General Plan/Planning Code].) Staff provided a
12 supplemental memo to the Commission, also made available to the public, on June 25, 2009, which
13 made minor revisions to the proposed findings. (AR 24:13591.)

14 On June 26, 2009, the MTA Board of Directors adopted the 2009 Bicycle Plan and approved the
15 traffic changes necessary to implement 45 of the 60 proposed near-term improvements. (AR 7:3341
16 ;7:3527.) The MTA Board also made findings required by CEQA. (AR 7:3341.)

17 On July 15, 2009, Petitioners and one other party appealed the Commission’s certification of the
18 EIR to the Board of Supervisors. (AR 25:13885, 13906 [Petitioners].) The Board consolidated the
19 appeals and heard them on August 4. (S.F. Admin. Code § 31.16(b) and (e) [multiple appeals to be
20 consolidated and determined within 30 days of receipt].) After careful consideration, the Board denied
21 the appeals.³ (AR 5:2381.) The Board then voted to adopt the Planning Code and General Plan
22 amendments recommended by the Planning Commission, and made findings required by CEQA.⁴

23

24 ³ Contrary to Petitioners’ suggestion that they were only given half the amount of time to
25 present their appeal, the Board *increased* the amount of time usually given to appellants from ten
26 minutes to twelve minutes, which the appellants were to split “as they wish.” (AR 5:2222) Appellants
27 split the time into 9 minutes for Petitioners, and 3 minutes for the other appellant. (AR 5:2223.)

28 ⁴ Petitioners imply, without argument, that the Commission inappropriately initiated the General
 Plan amendments on June 4, 2009, prior to the certification of the EIR. Initiation of General Plan
 amendments under Planning Code section 302(b) is not an approval of the amendments, and a certified
 EIR is thus not required prior to initiation. (Guidelines § 15025(c).) Petitioners also suggest, without
 elaboration, that there was something nefarious about the “footer” at the bottom of Ordinance 188-09,
 which reads “8/5/2009,” the day after the Board met on August 4, 2009. However, the ordinance

1 On August 11, 2009, the Board finally adopted Ordinances 187-09 and 188-09, rescinding the
2 approval of the 2005 Bicycle Plan, and amending the Planning Code and the General Plan. (AR 5:2260,
3 2286.) On August 12, 2009, the Mayor signed the ordinances. (*Id.*)

4 In approving the 2009 Bicycle Plan, the Ordinances, and 45 of the 60 individual near-term
5 improvements, the Commission, MTA Board of Directors and Board of Supervisors each adopted the
6 feasible mitigation measures identified and analyzed in the EIR as necessary to eliminate or reduce
7 significant impacts. (AR 6:2792 [Commission]; AR 5:2393 [SFMTA]); AR 5:2292[Board].) But as
8 noted above, for some impacts, no feasible mitigation measures were identified, and the impacts remain
9 significant and unavoidable. (*Id.*) The decisionmaker thus also adopted a statement of overriding
10 considerations as part of their findings, and determined, as CEQA permits, that the benefits of adopting
11 the Bicycle Plan and providing additional bicycle facilities throughout San Francisco outweighed the
12 burdens associated with the remaining significant impacts to traffic, transit and loading. (*Id.*) The
13 decisionmakers found that, among other benefits, the Project would help fulfill the City's Transit First
14 Policy set forth in San Francisco Charter section 8A.115, which requires the City to make bicycling an
15 attractive alternative to travel by private car; that the Project was consistent with the state, regional and
16 Citywide plans and policies to reduce greenhouse gas emissions by facilitating increased use of bicycles
17 and decreased use of private automobiles, a major source of these emissions; and that bicycling has
18 numerous health benefits. (See e.g. AR 5:2515-2528 [findings of SFMTA].)

19 On August 14, 2009, the City filed a Notice of Determination that the City had completed the
20 CEQA process and adopted the Bicycle Plan. (AR 25:13868; Pub. Resources Code § 21152(a).) On
21 September 18, 2009, the City filed a Return to the Writ of Mandate ("Return"), to which Petitioners
22 objected. (See Petitioners' Objections to Respondent's Return to Peremptory Writ of Mandate
23 ["Petitioners' Objections"].)

24 ARGUMENT

25 Petitioners take issue with virtually every aspect of the Bicycle Plan EIR and the City process for
26 approving it. But, as described below, substantial evidence supports the City's decision to certify the
27 recommended by the Planning Commission was amended by the Board at the August 4, 2009 hearing.
28 The "8/5/2009" draft incorporates these minor amendments. (AR 5:2239.)

1 EIR as adequate, accurate and in compliance with CEQA. The EIR accurately describes the Bicycle
2 Plan and all of its components, thoroughly analyzes potential impacts to transportation, air quality and
3 noise, offers a reasonable range of alternatives, and proposes feasible mitigation measures for significant
4 impacts. In addition, the City's lawful determination to approve the Bicycle Plan despite remaining
5 significant impacts is supported by substantial evidence. Finally, the public, particularly the Petitioners,
6 had every opportunity to comment on the EIR and the proposed Bicycle Plan.⁵

7 **I. STANDARD OF REVIEW**

8 The Court's review of an EIR under CEQA is well-settled. (*Laurel Heights Improvement Ass'n*
9 *v. Regents of the Univ. of Cal.* (1988) 47 Cal.3rd 376, 391 ("*Laurel Heights I*"); *Sierra Club v. City of*
10 *Orange* (2008) 163 Cal.App. 4th 523, 531.) Review is limited to the question whether the public agency
11 has abused its discretion by not proceeding as required by law, or by making a determination not
12 supported by substantial evidence. (Pub. Resource Code §§ 21668; 21668.5; *San Franciscans*
13 *Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 687.)
14 Contrary to Petitioners' claim, courts review de novo the legal question when enforcing *procedures*
15 required by CEQA, but afford deference to the lead agency's substantive *factual* conclusions under the
16 substantial evidence test. (*Ebbetts Pass Forest Watch v. California Dep't of Forestry* (2008) 43 Cal
17 App. 4th, 936, 944.) Thus, courts must identify the nature of the alleged defect and determine whether
18 the claim is one of improper procedure or a dispute over facts. (*Id.* at 949.)

19 For example, the substantial evidence test applies to challenges to the scope of an EIR's analysis
20 of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon
21 which an EIR relies, as these types of challenges involve factual questions. (Kostka & Zischke, Practice
22 Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2010) §11.38, p. 568.) Courts have also
23 applied the substantial evidence test to issues related to the adequacy of a project description (*Dry Creek*
24 *Citizens Coalition v. County of Tulare* (1999) 70 Cal. App.4th 20); the effectiveness of mitigation

25 ⁵ Petitioners attempt to evade the page limits on their opening brief by incorporating by
26 reference all previous arguments made during the administrative process and in the previously filed
27 Petitioners' Objections. Incorporation by reference of previous arguments is improper. (*Garrick Dev.*
28 *Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App. 4th 320, 334.) An argument not pursued is
abandoned. (*Golden v. Golden* (1969) 270 Cal.App. 2d 401, 407.) The City will not address arguments
not made in Petitioners' opening brief, and the Court should not consider any such arguments.

1 measures (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626);
2 the feasibility of mitigation measures (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261);
3 and whether significant new information requires recirculation of an EIR (*Laurel Heights Improvement*
4 *Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112 [*“Laurel Heights II”*]). In applying the
5 substantial evidence standard, the reviewing court must resolve reasonable doubts in favor of the
6 administrative finding and decision. (*Id.*)

7 “Substantial evidence” is defined as enough relevant information and reasonable inferences from
8 this information that a fair argument can be made to support an agency’s conclusion, even though other
9 conclusions may also be reached. (*Id.*; Guidelines § 15384(a).) A court may not set aside an approval
10 of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. (*Id.*)

11 An EIR is presumed to be legally adequate, and a party challenging the legal adequacy of an EIR
12 bears the burden of establishing otherwise. (*Sierra Club, supra*, 163 Cal. App. 4th at p. 530.) In
13 examining an EIR certified pursuant to CEQA, “the court looks not for perfection but for adequacy,
14 completeness, and a good faith effort at full disclosure; the court’s role is not to decide whether the
15 agency acted wisely or unwisely, but simply to determine whether the EIR contained sufficient
16 information” about a proposed project to allow for an informed decision. (*Planning and Conservation*
17 *League v. Castaic Lake Water Agency* (2009) 180 CalApp.4th 210, 242.)

18 **II. THE EIR ADEQUATELY DESCRIBES THE PROJECT AND ITS COMPONENTS.**

19 As CEQA requires, the project description in the Bicycle Plan EIR provided a general
20 description of the project’s characteristics, including all the project’s integral components. (Guidelines
21 § 15124; *Dry Creek Citizens Coalition, supra*, 70 Cal.App.4th at p. 26; AR 1:125-214 [FEIR];
22 19:10312-10379 [DEIR].) The EIR describes each part of the project, both generally and specifically:
23 the policy goals to support improvement in bicycle movement and safety in San Francisco (AR 1:131;
24 195 [general]; 231-286 [specific]); the near-term improvements (AR 1:137-195 [general]; 319-504
25 [specific]); the minor improvements (AR 1:200 [general]; 2:1044-1055 [specific]); and the long-term
26 improvements (AR 1:196-200 [general]; 2:1076-1092 [specific]) to the bicycle route network.

27 Petitioners argue that the EIR’s project description is “not accurate, stable, finite, or legally
28 sufficient.” (Pet. Br. at p. 7.) Petitioners claim that (1) the description of near-term improvements as

1 "options" was inappropriate and misleading; (2) because staff ultimately recommended one option for
2 approval, the draft EIR required recirculation; (3) the description of some aspects of the project as
3 "minor" impermissibly exempts them from review; and (4) the description of some aspects of the project
4 as "long-term" improvements improperly defers analysis. Petitioners' claims fail.

5 First, Petitioners allege that the project description is inadequate because the near-term projects
6 identified in the EIR included "Options." Indeed, for many of the proposed 60 near-term improvements,
7 the EIR identified two specific designs by which a bicycle lane could be incorporated onto a particular
8 street. In each case, both designs, or "options," were analyzed at an equal level of detail. Without
9 explanation, Petitioners claim that including the analysis of two different designs for many of the
10 projects was misleading, but it was not. Instead, the Draft EIR specifically noted that both options were
11 alternatives that could be considered for adoption. (AR 20:11209.) By analyzing each design in an
12 equal level of detail, the EIR, in essence, included two potentially feasible alternatives to the
13 improvements at a more exhaustive level of detail than CEQA requires. (*Sierra Club, supra*, 163. Cal
14 App. 4th at 547. [discussion and analysis of alternatives need not be exhaustive].) Rather than violating
15 CEQA, the EIR met and even exceeded its requirements.

16 Second, Petitioners argue that because MTA staff ultimately recommended only one of the
17 options after publication of the Draft EIR, the project description "changed" and recirculation of the
18 Draft EIR was required. Petitioners are wrong. After input from neighbors, bicyclists and other City
19 agencies, MTA staff did recommend for approval their "preferred project." Some of the preferred
20 designs were exactly the same as one of the two designs analyzed in the EIR, and some were designs
21 that had been further refined. (See e.g. AR 22:12507; 12560; 12574.) But CEQA permits – indeed
22 promotes – the modification of a project design to accommodate "new and unforeseen insights" which
23 come to light during the CEQA review process. (*County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d
24 185, 199-200.) Thus, it is understood and expected that a project description may change:

25 The CEQA reporting process is not designed to freeze the ultimate proposal in the
26 precise mold of the initial project; indeed, new and unforeseen insights may
emerge during investigation, evoking revision of the original proposal.

27 (*Id.* at p. 197.) Courts have found that it is appropriate for an agency to approve a modified
28 project that has no greater environmental impacts than the one studied, or to approve only part of the

1 proposed project. (*E.g., Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1040-1 [CEQA
2 “should not handcuff” decisionmakers, but provide for flexibility to implement portions of a project.]

3 And CEQA does not require recirculation of a draft EIR based on such modifications unless
4 those modifications fall outside the scope of the draft EIR. Here, the modification of some of the
5 designs and the selection of a preferred project did not introduce new impacts or otherwise fall outside
6 the scope of the Draft EIR. Tellingly, Petitioners fail to provide any evidence of where a preferred or
7 modified option fell outside the analysis of the Draft EIR. Petitioners bear the burden of proving
8 substantial evidence does not support the City’s decision not to revise and recirculate the FEIR and
9 courts must presume that the City’s determination is correct. (*Sierra Club v. County of Napa* (2004) 121
10 Cal.App.4th 1490, 1497). Petitioners have failed to meet that burden here.

11 Third, Petitioners claim that the project description is inadequate because the EIR described
12 some of the improvements as “minor.” These minor improvements (a term used by the Bicycle Plan
13 itself, not coined by the EIR) which included treatments such as sharrows, on and off street bike parking,
14 colored pavement and signage changes, are treatments to the City’s roadway and sidewalk network and
15 infrastructure to improve conditions for bicycling throughout San Francisco. (AR 5:2638.) Petitioners’
16 claim that the City did not analyze these minor improvements fails not only because Petitioners cite to
17 no evidence to support it, but also because the claim is untrue. The EIR fully addressed the impacts of
18 the minor improvements at a programmatic level, and analyzed their potential impacts on transportation.
19 (See AR 2:1044-74; 20:11110-29.)⁶

20 Finally, Petitioners argue that the project description is inadequate because the EIR improperly
21 deferred analysis of the “long-term improvements.” Again, this argument must be rejected. The long-
22 term improvements set forth in the Bicycle Plan were fully and accurately described in the EIR as
23 projects that might happen at a later date. (AR 1:196-200; AR 2:1076.) Consistent with CEQA’s
24 mandate to analyze the “whole” of a project, the EIR included these foreseeable, but not-yet-designed
25 projects in the project description, and made it clear that they could happen at a later time. (*Id.*) CEQA

26
27 ⁶ Petitioners claim that some minor improvement proposals violate the Vehicle Code. This
28 claim fails because the MTA Board specifically found that all improvements would be done in
accordance with that code. (AR 5:2394; 22:12347-8.) Even if this claim were true any violation would
have no bearing on a claim that the EIR is inadequate. (AR 5:2394; 22:12347-8.)

1 explicitly permits the analysis at a programmatic level of projects that are planned for a longer-term
2 horizon. (Guidelines § 15168(a), (c); AR 1: 196; AR 2:1076 [EIR states long-term improvements
3 analyzed at programmatic level because details of the improvements not developed].) And the EIR fully
4 disclosed and did not minimize any potential impacts of the long-term improvements. (AR1094-1105.)
5 In fact, the analysis concluded that because details were unknown, it was possible that some of the long-
6 term improvements could have significant impacts that could not be mitigated. (See e.g., AR 2:1094-
7 95.) But, as appropriate for programmatic review of a project whose details are not yet worked out at
8 the time of certification of an EIR, the EIR notes that further environmental review would be required
9 when specific project designs were developed and any projects were ultimately approved. (AR 1:196.)

10 Contrary to Petitioners' claim, although MTA voted to adopt the 2009 Bicycle Plan including its
11 description of the proposed long-term improvements, the MTA Board did not "adopt" the improvements
12 without CEQA review. (AR 5:2394.) The MTA Board merely voted to "adopt" the long-term
13 improvements as *proposed* projects, as specifically described in the 2009 Bicycle Plan. (*Id.*) But, prior
14 to any explicit approval of any particular long-term improvement, City decision-makers would be
15 required to review the specific proposal under CEQA. (Guidelines § 15168(c).)

16 **III. THE BICYCLE PLAN EIR ACCURATELY DESCRIBES THE PROJECT'S BASELINE
AND EXISTING SETTING.**

17 Petitioners argue that the EIR's description of existing conditions, referred to as the "baseline," is
18 incomplete and inaccurate for two reasons: (1) the EIR contains no baseline data on traffic, bicycle, or
19 pedestrian volumes, and (2) the EIR does not make clear how it arrived at existing LOS conditions.
20 (Pet. Br. at p. 10.) Both arguments lack merit.

21 Under CEQA, an EIR must contain a description of existing conditions in the vicinity of the
22 project, usually measured from the time the notice of preparation for the project is published.
23 (Guidelines § 15125(a).) Here, contrary to Petitioners' assertions, the EIR correctly states the baseline
24 for traffic, bicycle and pedestrian volumes. For example, each project's description of the traffic setting
25 notes the existing level-of-service ("LOS") of the study intersection or intersections impacted by that
26 particular project. LOS is a qualitative description of the performance of an intersection based on the
27 average delay per vehicle. (AR 13:6237.) The EIR notes that figures showing the turning movements,
28

1 traffic volume and lane configurations – variables that influence the LOS calculation at a particular
2 intersection – were contained in the Transportation Impact Study, which was published as an appendix
3 to the EIR and was available for public review. CEQA Guidelines section 15147 permits an agency to
4 rely on evidence in appendices for technical detail and the courts have confirmed that citations to
5 external documents is an appropriate way to articulate the baseline. (*Sierra Club, supra*, 163
6 Cal.App.4th at p. 540 [upholding EIR against challenges to baseline for traffic conditions in part due to
7 evidence in appendices].)

8 Moreover, even if the Transportation Impact Study had not been included as an appendix to the
9 EIR, a description of the LOS levels at a particular intersection in the EIR was sufficient, as traffic
10 impacts are routinely analyzed in terms of LOS: generally, if a proposed project will result in the
11 deterioration of a signalized intersection from LOS D or better to LOS E or F, or from LOS E to LOS F,
12 the impact is significant. (AR 13:6238.) Thus, the EIR notes the existing LOS for each intersection
13 studied, as well as LOS conditions with the projects and in future year 2025.

14 Baseline bicycle and pedestrian volumes were analyzed differently, and instead described as
15 “low” “medium” or “high.”⁷ Unlike traffic impacts, which are determined based on the amount of
16 deterioration in intersection LOS, the significance of impacts to bicyclists was determined by assessing
17 whether the improvement would “create potentially hazardous conditions for bicyclists or otherwise
18 substantially interfere with bicycle accessibility.” (AR 13:6239.) Similarly, the significance of impacts
19 to pedestrians was assessed based on whether the proposal “would result in substantial overcrowding on
20 public sidewalks, create potentially hazardous conditions for pedestrians or otherwise interfere with
21 pedestrian accessibility.” (*Id.*) Thus, contrary to Petitioners’ suggestions, the EIR was not required to
22 analyze bicycle and pedestrian impacts in exactly the same way as traffic impacts. The EIR did not have
23 to provide the *exact number* of bicyclists and pedestrians on a particular street in the project description;
24 a qualitative description of “low,” “medium” or “high” was all that was necessary to understand the
25 significant effects of the project and alternatives analyzed. (Guidelines § 15125(a) [project description
26

27 _____
28 ⁷ The Transportation Study consultants defined “high,” “medium” and “low” for both bicycles
and pedestrians. (AR 15:8019.)

1 no longer than necessary to understand significance of effect of the project and alternatives].)

2 Quantitative numbers in the EIR were not required.⁸

3 Contrary to Petitioners' claim, the EIR explains the methodology for arriving at existing level-of-
4 service conditions. "Both signalized and unsignalized intersections were evaluated using the 2000
5 *Highway Capacity Manual* (HCM) methodology. For signalized intersections, this methodology
6 determines the capacity for each lane group approaching the intersection. The LOS for each approach is
7 then based on the average delay per vehicle (measured in seconds per vehicle) for the various
8 movements within the intersection. A combined weighted average delay and LOS is presented for each
9 signalized study intersection." (AR 1:314.) The EIR further notes that the *HCM* methodology usually
10 requires adjustments to observed operating conditions, in order to account for various factors that reduce
11 the ability of the streets to accommodate vehicles (such as presence of pedestrians, vehicle types and
12 lane widths). (AR 13:6237.) Thus, existing condition LOS grades are calculated by a computer model
13 (called TRAFFIX), after inputting field observations (here, from 2007, 2008 and 2009), and making
14 manual adjustments where necessary. (AR 1:314; 14:6883-84; 25:14613-14; 14642; see also *Eureka*
15 *Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal. App.4th 357, 372 [use of an industry
16 standard approach for assessing an impact is appropriate][hereinafter "*Eureka Citizens*".]) Petitioners'
17 lack of understanding of the EIR's explanation of standard traffic impact methodology does not render
18 the EIR inadequate.

19 **IV. THE BICYCLE PLAN EIR IDENTIFIES AND ANALYZES THE PROJECT'S
20 SIGNIFICANT DIRECT, INDIRECT AND CUMULATIVE IMPACTS.**

21 **A. The EIR Adequately Analyzed Transit Impacts.**

22 Petitioners claim that the EIR did not adequately analyze impacts to transit. Again, Petitioners
23 are simply wrong. The EIR analyzed twelve transit corridors and ten transit "spot studies," which were
24 selected based on a review of near-term projects which overlapped with existing transit routes. (AR
25 13:6234-35.) Near-term improvements with design options that included removing a travel lane were

26 ⁸ To the extent Petitioners claim that exact numbers of bicyclists and pedestrians were necessary
27 in order to properly evaluate the benefits of project and adopt the statement of overriding consideration,
28 bicycle and pedestrian counts are contained in the administrative record at AR 15:8008-8045.
(Guidelines § 15093 [evidence supporting statement of overriding considerations supported by evidence
in EIR or record].)

1 selected for further review, as were projects on streets with known high volumes of bicycles and high
2 frequencies of transit service. (*Id.*) Projects with the greatest potential to impact transit operations along
3 several blocks were selected as “transit study corridors;” projects with potential to impact transit
4 operations in localized area were selected as “transit spot studies.” (*Id.*; AR 1:310.)

5 Petitioners imply that *only* those selected transit corridors and spot studies were analyzed, and
6 that the EIR did not analyze transit impacts from projects located outside those corridors or areas. But
7 that is not true. Each near-term project’s impact on transit was assessed, whether or not the project fell
8 along a “transit study corridor” or “transit spot study location.” For example, as can be seen from
9 Tables 3.0-3 and 3.0-4 in the Transportation Study and the DEIR (AR 13:6235 [TS]; AR 19:10474
10 [DEIR]) there were no transit study corridors or transit spot study locations in Cluster 7 – which
11 included projects in the northwestern part of the City. However, each near term improvement in Cluster
12 7 contains a description and analysis of the project’s impact on transit.⁹ Petitioners provide no evidence
13 to support their argument that transit impacts outside the study locations were ignored.

14 Petitioners claim that the EIR fails to analyze transit because the analysis notes that one aspect of
15 transit delay was “not quantifiable.” (Pet. Br. at p. 12.) Again, Petitioners are wrong. The EIR
16 determined that the Project would have a significant impact on the environment if it would create
17 unacceptable levels of transit delay. Transit delay was calculated as comprising “transit travel delay”
18 (the additional time experienced by a transit vehicle as it travels between stops due to increased
19 congestion), “transit re-entry delay” (the additional time representing the delay in reentering the travel
20 lane from a bus stop due to increased traffic flow), and “transit/bicycle delay” (the increased time caused
21 by the interaction between bicycles and buses as the buses pull into or out of transit stops). As the EIR
22 notes, although standard methodologies exist for calculating the first two components of transit delay, no
23 such standard methodologies exist for calculating the delay caused by the interaction with bicyclists.
24 Thus, the Transportation Study found this component “not quantifiable.” (AR 13:6246.) A lead agency
25

26 ⁹ For example, Project 7-3, which includes bicycle lanes on the Great Highway and Point Lobos
27 Avenue, analyzes impacts from the project on Muni line 18, which also travels on Point Lobos Avenue.
28 (AR 13:6790; 19:11071-72.) Project 7-6, signaling the intersection of Page and Stanyan Streets,
analyzes the impact from the signalization on Muni line 33, which also travels through that intersection.
(AR 13:6795; 19:11077.)

1 may appropriately conclude that a reliable method for assessing an impact is not available. (*Laurel*
2 *Heights II, supra*, 6 Cal.4th at p. 1138.) A lead agency may choose the most reliable analytical tool
3 available to analyze impacts, and the City did so here. Even though the experts determined that this
4 component of transit delay was not quantifiable – meaning that no specific number could be assigned to
5 the delay – impacts from bus and bicycle interactions were analyzed *qualitatively* and discussed in the
6 Transportation Study and EIR. (See e.g. AR 13:6496 [bus/bicycle interaction would not be significant
7 because of low volume of both buses and bicycles] 13:6501 [bicycle volumes low therefore very little
8 interaction between buses and bicyclists].) This approach is valid under CEQA.

9 Petitioners argue that the EIR’s threshold of significance for transit delay is invalid. As
10 explained in the Draft EIR and the Transportation Study, the EIR determined that delays to transit were
11 “significant” if the sum of the delay in both directions was more than 6 minutes on transit lines where
12 the headway (the scheduled time between buses) was more than six minutes, or, if the sum of the delay
13 in both directions was more than the bus headway, if the bus headway was less than six minutes. (AR
14 13:6239.) The Department determined that six minutes was an appropriate standard based on the
15 assumptions that the average headway for all Muni lines is approximately 12 minutes, and each transit
16 trip involved two bus lines. (AR 15:7744.) Thus, the average headway for each bus line per total trip
17 was 6 minutes – half the average headway for all lines. (*Id.*)

18 Contrary to Petitioners’ claims, this “6-minute” standard of significance was not required “to be
19 adopted by ordinance or other legislation.” (Pet. Br. at p.12.) Standards of significance can be
20 determined in many different ways, including development by experts preparing an EIR based on their
21 assessment of the technical evidence (*Napa Citizens for Honest Gov’t v. Napa County Bd. Of*
22 *Supervisors* (2001) 91 Cal App. 4th 342, 362); by use of ordinances, plans or other regulations adopted
23 by the lead agency (*National Park & Conserv. Assn v. County of Riverside* (1999) 71 Cal.App.4th 1341,
24 1358); or by use of performance standards adopted by regulatory agencies (*Tracy First v. City of Tracy*
25 (2009) 177 Cal.App.4th 912). CEQA Guidelines section 15064.7 encourages – but does not require –
26 lead agencies to adopt standard “thresholds of significance” that can normally be used to find impacts
27 significant or insignificant. An agency can formulate significance standards in other ways, or
28 specifically tailor a standard for the project under review. Here, the “6-minute” delay standard was

1 developed by the experts who prepared the Transportation Study based on their assessment of the
2 various factors that influence transit delays. (AR 15:7745.) An ordinance was not required.

3 Further, substantial evidence supports the City's analysis of transit delay. Here, transit delays
4 were appropriately calculated by analyzing the twenty two transit corridors and transit hot spot
5 locations. As noted above, these locations were selected because they were the areas in which near-term
6 projects overlapped with existing transit routes, and where the near-term project included a design
7 option that would remove a travel lane along the transit route or otherwise cause transit delays. (AR
8 13:6234-35.) Transit delay was determined using the sum of the delay at each intersection along the
9 transit corridor or hot spot location. (AR 13:6243; 6900 [summary of total transit travel delay
10 calculation].) Other areas where transit and bicycle improvements overlapped were studied
11 qualitatively, as noted above, and additional quantification of transit delay was not required based on the
12 fact that those streets had excess traffic capacity or the bicycle improvement did not change traffic
13 configurations. Petitioners have failed to meet their burden to show that this analysis was inadequate.
14 (*Eureka Citizens, supra*, 147 Cal.App.4th at p. 372 [court upholds use of methodology supported by
15 substantial evidence].)

16 Where feasible mitigation measures were identified to mitigate impacts to transit, they were
17 noted in the EIR. (See e.g. AR 19:10979 [adjustments to signal timing mitigation to transit impact to
18 Muni line].) In some cases however, no feasible mitigation measures were identified by the
19 transportation experts evaluating the impacts. Those impacts were found significant and unavoidable.
20 (See e.g. AR 19:10870.) An EIR need not identify or discuss mitigation measures that are infeasible.
21 (Guidelines § 15126.4 [EIR shall describe feasible mitigation measures]; *Napa Citizens, supra*, 91
22 Cal.App.4th at p. 365.)

23 Finally, contrary to Petitioners unsupported allegations, the EIR analyzes the impacts to allowing
24 bicycles on transit vehicles, (AR 19:10420 [finding impacts not significant]), and the transit significance
25 threshold assumes that each transit trip included a transfer of bus lines. (AR 15:7745.) Petitioners'
26 arguments to the contrary are without merit.¹⁰

27
28 ¹⁰ The EIR need not, as Petitioners suggest it should, determine the impacts on the weekly delay
on any one person commuting to work using a bus impacted by the Project. (*Eureka Citizens, supra*,

B. The EIR Adequately Analyzed Impacts To Parking.

Petitioners argue that the EIR is inadequate because it did not find parking deficits to be an environmental impact. However, the EIR correctly noted that lack of parking is not an environmental impact. (*San Franciscans Upholding the Downtown Plan, supra*, 102 Cal App.4th at p. 697 [“Parking shortfalls relative to demand are not considered significant environmental impacts in the urban context of San Francisco.”].) Although parking deficits are an inconvenience to drivers, they are not “a significant physical impact on the environment.” (*Id.*) In contrast, the secondary effects of a lack of parking, such as increased congestion or air quality impacts, could have an environmental impact, and thus those secondary impacts are included in the transportation analysis. (AR 13:6239.)

Petitioners’ reliance on inapposite cases is unavailing, as none consider the “urban context of San Francisco.” (*San Franciscans Upholding the Downtown Plan, supra*, 102 Cal.App.4th at 697.) Instead, Petitioners’ cases discuss parking, in dicta, as it relates to decidedly less transit-rich and less urban areas. (See *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [Hayward] and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011 [Sacramento].) Moreover, to the extent those cases, when they were decided, did support the proposition that parking is an environmental impact, those cases do not reflect recent amendments to the CEQA Guidelines which support the conclusions in the EIR: the California Natural Resources Agency, the State of California department tasked with providing guidance on implementing CEQA, specifically removed parking from Appendix G, the sample form that can be used for evaluating projects for environmental impacts under CEQA. (RJN at Ex. B at p. 51.)

Nevertheless, the EIR discusses parking at length. The description of each near-term improvement notes the type of available parking in the vicinity of the project as well as a description of its utilization. (See e.g. AR 1:330 [metered parking is 90% occupied]; 487 [angled parking with low occupancy on weekdays, high occupancy on weekends].) Most of the 60 individual near-term improvements analyzed two designs, one of which usually removed more parking than the other. (AR 1:220.) In addition, the EIR studies 13 “parking and loading corridors” chosen for additional analysis

147 Cal App.4th at 357.) Such impacts would be social impacts, which are not environmental impacts under CEQA. (*Id.*; Guidelines § 15131.)

1 where near-term improvements would remove substantial amounts of parking. (AR 13:6236.) Where
2 warranted and possible, many near-term projects create additional parking on surrounding to minimize
3 any shortfalls created by the removal of parking to add a bicycle lane. (See e.g. AR 2:622.)

4 Substantial evidence supports the EIR's conclusion that parking is not an environmental impact
5 in an urban context like San Francisco. The EIR notes that in the experience of San Francisco
6 transportation planners, when parking supply is scarce, would-be drivers make adjustments to their
7 behavior, either by parking farther away, or by not driving and reaching their destination using other
8 modes, such as transit, or walking. (See e.g. AR 2:637.) For example, due to constrained parking
9 conditions near AT&T Park, scores of would-be drivers opt to take transit, walk or bicycle to games
10 played there. (AR 16:8589-8602.) While the shift from one mode (vehicles) to another mode (bicycles,
11 walking or transit) was found "not quantifiable" – meaning no precise numbers can be assigned to it –
12 substantial evidence supports the EIR's conclusion that indeed it occurs. (*Id.* [compare 96% auto use for
13 fans attending Giants games at Candlestick Park with approximately 50% auto use at AT&T Park].)

14 **C. The EIR Adequately Analyzed Impacts From the Project on Air Quality.**

15 The EIR properly analyzes impacts to air quality due to implementation of the Project. (AR
16 3:1135-1158.) The air quality analysis selected an intersection within each cluster which would
17 represent a worst case scenario on air impacts, due to low traffic speeds from congestion, nearby
18 sensitive receptors (such as residences, schools and hospitals) and because implementation of the Plan
19 would worsen congestion at the intersections. The EIR estimated carbon monoxide levels and mobile
20 sources air toxics levels using standard models developed by air quality experts and commonly used in
21 environmental analysis, per the guidelines prepared by the Bay Area Air Quality Management District
22 (BAAQMD), and which provide standard direction on evaluating air quality impacts consistently
23 throughout the Bay Area. (AR 3:1217.) The *BAAQMD CEQA Guidelines* set forth standards of
24 significance for air quality, which are determined based on the impacts to human health. Air quality
25 impacts were analyzed for both existing plus project and cumulative 2025 emissions. (AR 3:1149-52.)

26 Without support, Petitioners claim that the year 2025 cumulative condition impact analysis was
27 flawed because the standard air quality computer model takes into consideration the fact that emission
28 controls on vehicles will be increasingly more stringent in the future. The methodologies for calculating

1 future air quality emissions were defined by BAAQMD, and they account for overall improvements in
2 pollution control technologies. (AR 22:12471-72; 25:14669.) Use of an industry standard approach for
3 assessing an impact is appropriate. (*Eureka Citizens, supra*, 147 Cal. App.4th at p. 372.)

4 The EIR presents a “worst case scenario” in presenting the air quality impacts of the project on
5 bicyclists, as bicyclists are reasonably assumed to be the receptors closest to the source of air polluters
6 (i.e. cars). However, no violations of carbon monoxide ambient air quality standards were predicted.
7 (AR 3:1151) Even where mobile source air toxics were expected to increase, they were still lower than
8 current significance thresholds, and were expected to be considerably lower in the future because of the
9 more stringent emission standards on vehicles. (AR 3:1153; see also 22:12470.) Thus, the EIR
10 accurately found the impacts to air quality from the Project would be less than significant.

11 The EIR also adequately analyzes impacts from greenhouse gas (GHG) emissions. (AR 3:1138,
12 1153). The EIR notes that impacts from the Project on GHGs would be significant if the project would
13 conflict with state or local goals of reducing GHGs. (AR 3:1149.) The analysis notes that GHGs mainly
14 consist of vehicle emissions, and that because the objective of the Bicycle Plan and implementation of
15 its projects is designed to accommodate a mode shift from cars to bicycles, GHGs with the project are
16 likely to be lower. Nevertheless, because the mode shift cannot be quantified – in that an exact number
17 cannot be assigned to it – the potential reduction in GHGs from the project was not assumed in the EIR
18 analysis. The EIR determined only that the Project would not interfere with state or local goals of
19 reducing GHGs and the impact was less than significant.

20 The EIR also estimated and analyzed the amount of carbon dioxide equivalents (the greenhouse
21 gas “reference gas”) that would be expected over the course of the 5 year construction period of the near
22 term improvements, and concluded that construction impacts also would be less-than-significant. (AR
23 3:1157.) Petitioners fail to explain how the GHG analysis is deficient.

24 Finally, contrary to Petitioners’ argument, the Comments and Responses document adequately
25 responds to the so-called “criticisms” of the air quality analysis in the Draft EIR. (Pet. Br. at 17.) The
26 purportedly inadequate response (which is truncated in Petitioners’ brief) – that most air quality analysis
27 was discussed in the initial study and scoped out of the Draft EIR – was offered in response to the so-
28 called “criticism” proffered by Petitioners, which, *in its entirety*, consisted of the sentence: “[The Bike

1 Plan] proposals will certainly have significant impacts on . . . air quality.” General responses to general
2 comments on a Draft EIR are sufficient. (*Eureka Citizens, supra*, at p. 378.)

3 **D. The EIR Adequately Analyzes Impacts To Traffic.**

4 Petitioners’ allegations regarding the EIR’s traffic impacts are unclear. As discussed above, the
5 EIR thoroughly reviewed the impacts to traffic from the Project, including impacts from each near-term
6 improvement option individually, and each improvement in connection with any other improvement at a
7 common intersection. The analysis covered existing conditions, existing plus project conditions, and
8 cumulative (2025) conditions with and without the project (or projects, if projects overlapped a
9 particular intersection). (AR 1:311-12; 13:6240.)

10 Substantial evidence supports the EIR’s discussion of “spillover traffic.” Spillover traffic
11 impacts (also called “traffic diversion”) are impacts caused by the possibility of some motor vehicles
12 being diverted to other streets after implementation of a given near-term improvements. Here, the traffic
13 analysis conservatively assumed that no cars would be diverted to other streets, thus providing
14 concentrated, rather than dispersed, impacts on a particular intersection. At the same time, the traffic
15 consultant also looked at the potential for spillover traffic, where parallel routes existed in the vicinity of
16 the project. (AR 15:7758-7763.) After determining appropriate intersections with the potential for
17 spillover traffic, the traffic consultant concluded that the only intersections sufficiently impacted such
18 that a diversion analysis was appropriate were intersections in the south of Market area that offer access
19 to regional freeways. Because alternative access to the freeways did not exist, the intersections were not
20 in fact candidates for traffic diversion analysis. (AR 15:7758-7763.) Petitioners provide no support for
21 the argument that the EIR’s conclusions regarding traffic diversion were inadequate.

22 **E. The EIR Adequately Analyzes Impacts of the Project on Noise.**

23 Petitioners claim that the EIR’s analysis of noise is inadequate because the conclusions are
24 unsupported, but that is not true. The EIR analyzes impacts related to increased noise due to increased
25 traffic congestion, using standard and accepted methodologies. (AR 3:1164.) The EIR analyzed noise
26 levels at seven representative “worst case” intersections where traffic noises were high, existing nearby
27 land uses included sensitive receptors, and project related physical improvements to the intersection or
28 street could move traffic closer to or further from adjacent noise sensitive land uses thereby worsening

1 or improving noise levels. The analysis calculated existing and future vehicular noise levels using the
2 standard Federal Highway Administration Traffic Noise Model, which calculates the noise level at
3 specific locations based on traffic volumes, average speeds, roadway geometry and site conditions. (*Id.*)

4 The EIR concluded that the future noise levels at the representative worst case intersections
5 would be slightly reduced after implementation of the proposed project. (AR 3:1164-5.) This was
6 because when a bicycle lane is introduced to a street, vehicular traffic flow – the source of noise impacts
7 – is moved to the parts of the street farther from residences or other receptors. Moreover, because
8 bicycle lanes would not increase the *number* of vehicles to a given intersection, bicycle improvement
9 projects would not cause an increase in traffic related noise levels, the main source of noise in the areas
10 studied. (AR 3:1161.) Petitioners have provided no evidence that other impacts could result, or that this
11 analysis is flawed.

12 **F. The EIR Adequately Analyzes Cumulative Impacts.**

13 Without evidentiary support, Petitioners claim that the EIR failed to analyze cumulative impacts
14 because it does not identify past, present and future projects. (Pet. Br. at p. 19.) CEQA requires that an
15 EIR describe and analyze cumulative impacts if the cumulative impact is significant and the projects
16 incremental effect is cumulatively considerable. (Guidelines § 15130.) Cumulative impacts are defined
17 as “two or more individual effects which, when considered together, are considerable or which
18 compound or increase other environmental impacts.” (Guidelines § 15355.)

19 For each area of potential impacts, the Bicycle Plan EIR analyzes the cumulative impacts from
20 the Project as well as projected future conditions. (See e.g. AR 1:312-313 [traffic generally]; see also
21 AR 3:1157 [air quality]; 1165-66 [noise].) Future traffic conditions, which formulate the basis for
22 traffic related air quality as well as traffic related noise, were analyzed for future conditions in Year
23 2025. Future Year 2025 traffic volumes forecasts were estimated based on cumulative development and
24 growth identified by the San Francisco County Transportation Authority’s travel demand forecasting
25 model (called the SF-CHAMP Model), which predicts all person travel for a full day based on
26 assumptions of growth in population, housing units and employment, including proposed or adopted
27 area plans. (AR 13:6237; 14:6880-90.) In any event, Petitioners fail to explain how the cumulative
28 analysis in the EIR, or the evidence supporting it is lacking. This failure is fatal to Petitioners’ claim.

1 **V. THE EIR ANALYZED A REASONABLE RANGE OF ALTERNATIVES**

2 Petitioners argue that the City did not analyze a “full” range of alternatives. (Pet. Br. at pp. 19,
3 21.) Under CEQA, however, an EIR must present a “reasonable” range of “potentially feasible”
4 alternatives. (Guidelines §15126.6(a).) The nature and scope of the alternatives to be studied in an EIR
5 is governed by the rule of reason and must be considered in light of the nature of the project, the
6 project's impacts, relevant agency policies, and other material facts. (Guidelines § 15126.6(a); *Mira*
7 *Mar Mobile Comm. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 487 [*“Mira Mar”*].) An EIR must
8 analyze alternatives that could substantially reduce or avoid one or more significant impacts while still
9 serving the project's fundamental objectives. (*Citizens of Goleta Valley v. Board of Supervisors* (2000)
10 52 Cal.3d 553, 566.) The agency's discretion to choose alternatives for study will be upheld as long as
11 there is a reasonable basis for the choices it has made and shall be upheld unless the choices made are
12 “manifestly unreasonable.” (*Federation of Hillside & Canyon Assn. v. City of L.A.* (2000) 83
13 Cal.App.4th 1252, 1265 [general plan EIR evaluated five alternatives and petitioners cited no evidence
14 to support their claim that city did not evaluate reasonable range of alternatives].)

15 Petitioners suggest that the EIR should have analyzed an “off-site” alternative. (Pet. Br. at p.
16 21.) But CEQA does not require “off-site” alternatives. CEQA requires that an EIR include a
17 reasonable range of alternatives to the project *or* to the location of the project. (Guidelines § 15126.6(a);
18 *Mira Mar, supra*, 119 Cal.App.4th at p. 491.) As the Court noted in *Mira Mar*, the Guideline's use of
19 the disjunctive “or” implies that the lead agency has discretion, depending on the nature of the project,
20 to evaluate on-site or off-site alternatives or both but is not required to look at off-site alternatives. (See
21 *Mira Mar, supra*, at p. 491.)

22 Here, based on the nature of the near-term improvements, the Bicycle Plan EIR did not need to
23 evaluate an “off-site” alternative to each of the near term improvements. The Bicycle Plan EIR
24 evaluated improvements to an already existing bicycle network – the improvements fill in “gaps” in that
25 network. Petitioners ignore that the 2009 Plan is an *update* to the previous version – the 1997 Bicycle
26 Plan, which vetted and evaluated appropriate streets for the City’s bicycle network. The 1997 Bicycle
27 Plan contained the City’s selected bicycle routes – preferred for their ease of use by both novice and
28 experienced bicyclists, for their connectivity to major neighborhoods and major attractions, as well as

1 their freedom from deterrents that make bicycling on a particular street unsafe, difficult or unpleasant.
2 (See 1997 Bicycle Plan, at p. 3-2 to 3-3.) For example, McAllister Street (improved in Project 3-3) was
3 chosen in the 1997 Bicycle Plan as the “flattest street through the Western Addition.” (1997 Plan at p.
4 3-11.) Similarly, Howard Street and Folsom Streets (Projects 2-7, 2-8 and 2-9) were chosen as the link
5 from the Mission to the Embarcadero rather than Harrison Street because of the fewer conflicts with
6 freeway on ramps. (1997 Plan at 3-12.) Under these circumstances, an “off-site” alternative to each
7 near-term improvement was not required.

8 As required by CEQA, the EIR discusses the “no-project” alternative. (Guidelines
9 § 15126.6(e)(1)). The purpose of discussing the no-project alternative is to allow a comparison of the
10 environmental impacts of approving the proposed project with the effects of not approving it.
11 (Guidelines Section 15126.6(e)(1); *Mira Mar, supra*, 119 Cal.App.4th at 488-489.) Petitioners’
12 argument that the EIR does not consider a “no-project alternative for *each* of the Project’s significant
13 impacts,” is unclear. (Pet. Br. at p. 21 [emphasis added].) There can only be one “no-project”
14 alternative, and that alternative was appropriately analyzed in the EIR. (See AR 3:1177-78.)

15 Petitioners suggest that the EIR was required to contain an alternative that avoided every
16 significant impact identified. This is not true. Alternatives need be environmentally superior to the
17 project in only *some* respects. (*Sierra Club, supra*, 163 Cal.App.4th at p. 547; Guidelines § 15126.6(a)
18 [alternatives should be capable of substantially reducing or avoiding “any” significant project impacts.]
19 “For complex projects, it is practically impossible to imagine an alternative that would provide
20 substantial environmental advantages in all respects.” (*Sierra Club, supra*, 163 Cal.App. 4th at p. 546.)
21 In fact, agencies may include alternatives that reduce impacts in some areas, but increase them in others.
22 (Guidelines § 15126.6(d).)

23 Finally, as required by CEQA, in approving the Bicycle Plan, City decisionmakers determined
24 that each of the alternatives to the Bicycle Plan and preferred near-term improvements were not, in fact,
25 feasible. (AR 7:3413-3462.) Agencies may reject an alternative as infeasible on grounds that it is
26 impractical or undesirable from a policy standpoint. (*California Native Plant Society v. City of Santa*
27 *Cruz* (2009) 177 Cal.App.4th 957, 1001.) Likewise, an agency may reject an alternative as infeasible if
28 it is inconsistent with the project objectives (*Association of Irrigated Residents v. County of Madera*

1 (2003) 107 Cal.App.4th 1383, 1401.) Here, the City determined that the alternatives to the Bicycle Plan
2 and the preferred near-term improvements were infeasible because the alternatives would not meet the
3 Project's objectives to increase bicycle use in the City, or meet the objectives of the City's Transit First
4 Policy, or the Climate Action Plan, both of which encourage bicycling as an alternative to use of the
5 private automobile. (AR 7:3414-15.) Similarly, the City determined that group Alternative A (all
6 Option 2 designs or Option 1 if only one Option) and group Alternative B (all Option 1 designs) were
7 infeasible because they would not improve bicycle network functioning and safety to the same extent as
8 would the preferred project, which included refinements of some options which reduced or avoided
9 many of the impact associated with other Alternatives. (AR 7:3415-3417.) The City also determined
10 that the options for the near term improvements not chosen were infeasible for reasons of policy and
11 consistency with objectives, as set forth in the findings. (AR 7:3644-3687.)

12 **VI. THE BICYCLE PLAN EIR IDENTIFIED FEASIBLE MITIGATION MEASURES.**

13 Petitioners argue that the EIR is inadequate because many of the projects had significant impacts,
14 for which no feasible mitigation was identified. Yet CEQA specifically recognizes this possibility and
15 provides a method for disclosing it. Petitioners' allegations otherwise are simply wrong.

16 CEQA requires that an EIR discuss feasible mitigation measures that can minimize the project's
17 significant environmental impacts. (Pub. Resources Code §§ 21002; 21002.1(a).) However, an EIR
18 need not identify or discuss mitigation measures that are infeasible. (*Napa Citizens for Honest Gov't*,
19 *supra*, 91 Cal.App.4th at p. 365; *Concerned Citizens of S. Cent. Los Angeles v. City of L.A.* (1994) 24
20 Cal.App.4th 826, 841.) Here, some of the significant impacts identified were either not amenable to
21 mitigation due to the constrained roadway geometry, or in some instances, the impacts from one design
22 option were not found (and thus "mitigated") in the second option. (AR 25:14605.) For example,
23 "mitigation" of impacts to intersection level-of-service due to the removal of a traffic lane is sometimes
24 the removal of on-street parking. Petitioners' allegation that project planners simply ignored feasible
25 mitigation for significant impacts is mistaken. Tellingly, Petitioners do not suggest any measures either.
26 (*Los Angeles Unified School Dist. v. City of L.A.* (1997) 58 Cal.App.4th 1019, 1029 [EIR must respond
27 to suggested facially feasible mitigation measures].)

1 The decision-makers adopted all feasible mitigations measures contained in the Final EIR which
2 were to be implemented through the approved the Mitigation Monitoring and Reporting Program. (See
3 AR 7:3348 [Board of Directors’ adopts the mitigation and improvement measures as specified in the
4 FEIR that are within the Board’s jurisdiction.”].)

5 **VII. THE FINDINGS OF INFEASIBILITY ARE SUPPORTED BY SUBSTANTIAL
6 EVIDENCE.**

7 Petitioners also claim that the City’s findings of infeasibility were not supported by substantial
8 evidence. Under CEQA, if an EIR identifies potentially feasible mitigation measures or alternatives, the
9 Project sponsor must either adopt the measures or alternatives, or find that the measures or alternatives
10 are, in fact, not feasible. (Pub. Resources Code § 21102, 21081(a).) As noted above, however, nothing
11 in CEQA requires that an EIR discuss or include mitigation measures that are not potentially feasible.
12 (*Napa Citizens*, at p. 365; *Concerned Citizens of S. Cent. Los Angeles*, at p. 841.)

13 Petitioners appear confused by this issue, and seem to suggest that the City was required to
14 specifically find infeasible mitigation measures that were not identified in the EIR. However, CEQA
15 findings must only find infeasible those mitigation measures or alternatives that were identified in the
16 EIR. (Pub. Resources Code § 21081(a) [no approval unless public agency finds infeasible the mitigation
17 measures *identified* in EIR][emphasis added].) If no feasible mitigation measures were identified in the
18 EIR, the decisionmaker need not make findings of infeasibility. \

19 At the same time, the EIR identified alternatives to the project that were potentially feasible, as
20 discussed above, and for most near-term improvements, analyzed two potentially feasible alternatives to
21 design. (Guidelines § 15126.6(a).) However, the City found that these potentially feasible alternatives
22 were, in fact, infeasible based on several factors, including the failure to meet the project objectives or to
23 comply with City policies. (AR 7:3413-3462.) As noted above, findings of infeasibility on policy
24 grounds is proper. (*Cal. Native Plant Society*, *supra*, 177 Cal.App.4th at p. 1001.)

25 **VIII. SUBSTANTIAL EVIDENCE SUPPORTS THE STATEMENT OF OVERRIDING
26 CONSIDERATIONS**

27 The City found that, despite the significant impacts from approval of the Bicycle Plan and the
28 near term improvements that could not be mitigated, the benefits of approving the Plan outweighed the
unavoidable impacts it created. (AR 7:3463-3476.) The City’s reasons for adopting the Bicycle Plan

1 were contained in the Statement of Overriding Considerations. While statements of overriding
2 consideration must be supported by substantial evidence, courts defer to the policy judgments reflected
3 in the statement, recognizing that determining a project's benefits and the weight to be given them, when
4 balanced against the project's environmental impacts, is highly discretionary. (*City of Marina v. Bd. of*
5 *Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 368; see also *Kostka & Zischke, supra*, §17.34,
6 p. 830.) CEQA allows agencies to rely on economic, legal, social, technological, or other project
7 benefits as a basis for a statement of overriding considerations. (Guidelines § 15093.)

8 Substantial evidence in the record supports the City's Statement, and Petitioners fail to show
9 otherwise. For example, the City determined that by implementing the Bicycle Plan, more people would
10 chose to ride a bicycle than currently do – the idea of “mode shift.” Indeed, several people supporting
11 the Bicycle Plan noted that they would chose to ride their bicycles more often if there were more bicycle
12 lanes. (AR 7:3217 [“if you make bicycling safer, more people will bicycle”]; 3250 [“I would be on my
13 bike more if there were bike lanes.”]; see also PJR 15550 [2008 State of Cycling Report – nearly two-
14 thirds of those polled would bike more if there were more bike lanes].) The MTA Bicycle Program also
15 conducted a survey that found that the most common reason for not riding a bicycle in the City was that
16 respondents were not comfortable biking with cars and a lack of bicycle lanes. (PJR 15547.)

17 Substantial evidence, and common sense, supports the other reasons given for adopting the
18 Project despite its significant impacts. Speakers testified about the notion that bicycling has health
19 benefits (see AR 3192-93 [testimony of Dr. Mitch Katz, director of the City's Department of Public
20 Health]; 3272 [bicycling “keeps me fit”]; see also PJR 15545 [most San Franciscans ride bicycles for
21 exercise]). Business owners testified that increasing the number of bicyclists on a commercial corridor
22 could stimulate economic growth. (AR 7:3217 [“No one goes shopping on the freeway.”]; 3249 [from
23 owner of Design Within Reach: “more people biking, more people biking means much better business
24 for us retailers”]; PJR 16711, 16712, 16716, 16720, 16724 [bicycle rack requests from business
25 owners].) Moreover, common sense supports the City's determination that adding bicycle lanes benefits
26 bicyclists, including those who bicycle because they cannot afford a car. (See PJR 15545 [bicycling is
27 cheaper than driving].) Statements by the public constitute substantial evidence, if they are based on
28 relevant personal observations on “non-technical subjects” where special expertise is not required.

1 (*Ocean View Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402
2 [testimony by neighbors regarding aesthetics].)

3 Most importantly, substantial evidence also supports the City's determination that adoption of
4 the Bicycle Plan is consistent with other adopted plans and policies, such as the City's "Transit First"
5 policy which mandates promotion of bicycling by promoting safe streets for riding, and the Metropolitan
6 Transportation Commission's Regional Bicycle Plan. (See S.F. Charter § 8A.115 [Transit First policy];
7 AR 33:18473 [MTC RBP focuses regional bicycle-related funding on high-priority bicycle facilities that
8 serve regional trips].) Similarly, substantial evidence supports the City's determination that the Bicycle
9 Plan is consistent with the Climate Action Plan, which outlines actions to reduce greenhouse gas
10 emissions, as well as the Department of the Environment's Strategic Plan for 2009-2011, which among
11 other things, outlines goals and actions to promote bicycle use to reduce greenhouse gas emissions from
12 transportation. (AR 33:18676-77 [Climate Action Plan]; 33:18763-64 [Strategic Plan].) Public agencies
13 are entitled to rely on a project's consistency and promotion of other plans and policies in adopting a
14 statement of overriding considerations.¹¹ (*Markley v. City of L.A.* (1982) 131 Cal.App.3d 656, 674).

15 Petitioners' reliance on *Woodward Park Homeowners Association v. City of Fresno* (2007) 150
16 CalApp.683 for the proposition that the City's Statement was inadequate is misplaced. In *Woodward*
17 *Park*, the City of Fresno inappropriately based its statement of overriding considerations on a
18 comparison of the proposed project to alternatives considered in the EIR and not the existing
19 environment in Fresno.

20 In contrast, the City compared the impacts from the Bicycle Plan against the existing
21 environment, and found that many of the projects would have significant and unavoidable impacts.
22 Impacts to traffic and transit were adequately disclosed, and decision-makers were aware of the relative
23 number of drivers, transit riders and bicyclists. (AR 1:130; 8:4063; PJR 15906-07; PJR 15910.)
24 Nothing in the Statement downplays the number or magnitude of traffic or transit impacts, or overstates
25

26
27 ¹¹ Petitioners dismiss the Statement as inappropriate "proselytizing." (Pet. Br. at pp. 26, 27.)
28 Yet CEQA directs agencies to establish their policy choices in the statement of overrides as the basis for
approving the project in spite of impacts. Petitioners merely disagrees with City's choices.

1 the number of bicyclists, the primary beneficiaries of the Project's benefits. In short, both the EIR and
2 the City's Statement are consistent in their treatment of impacts and benefits.

3 **IX. THE PUBLIC ACTIVELY PARTICIPATED IN THE CEQA PROCESS.**

4 Petitioners make the outlandish claim that the public was not able to participate adequately in the
5 environmental review process. In fact, public participation in the Bicycle Plan EIR process was
6 extraordinary. The Notice of Preparation was mailed to thousands of addresses. (AR 10:4935; also
7 10:4942 -5008 [distribution list].) The Notice of Availability of the Initial Study was mailed to 1400
8 addresses. (AR 25:14625). Between July and November 2008, City staff gave monthly updates on the
9 status of the EIR to the MTA Board of Directors and Planning Commission. (*Id.*) The Notice of
10 Availability of the Draft EIR was also widely distributed, and garnered a front page story in the San
11 Francisco Chronicle's Bay Area section.¹² (*Id.*) The official public comment period began on
12 November 26, 2008 and continued through January 13, 2009. The Planning Department continued to
13 accept and respond to late comments, either in the Comments and Responses document itself, or in
14 writing to the Planning Commission and Board of Supervisors. (See, e.g. AR 22:12795 [letter received
15 January 21, 2009]; AR 25:14543 [responses to late comments].)

16 The EIR was appropriately sized for a project of the Bicycle Plan's complexity. CEQA
17 encourages, but does not require, that EIRs be limited to less than 300 pages; it imposes no mandatory
18 upper limit on length, and such a limit could place a lead agency in a position of not producing an EIR
19 that was adequate or that analyzed all impacts. Although longer than 300 pages, the Bicycle Plan EIR
20 contained an executive summary, and provided easy-to-use tables of both impacts and mitigation
21 measures. (AR 1:41-114.) Near-term improvements were grouped geographically in clusters, which
22 allowed readers to easily navigate how proposed projects would impact a specific area of the City. (AR
23 1:304; AR 19:10469.) And instead of repeating overlapping analyses, some of the EIR discussion
24 contained references to previously discussed analyses. (See e.g. AR 1:360 [discussion of traffic LOS].)

25 Petitioners allege that the Draft EIR review period did not begin until December 1, 2008, thereby
26 allowing only a 43 day comment period, when 45 days is required. (Pet. Br. at p. 4.) However, the 45

27 _____
28 ¹² See "S.F. Releases Draft Study On City's Bike Plan," November 27, 2008, S.F. Chronicle, p.
B-1, found at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/27/BA3814D67R.DTL>.

1 day comment period begins on the date that the State Clearinghouse distributes the document to state
2 agencies. (Guidelines § 15105(c).) The Draft EIR was released to the public on November 26, 2008,
3 and received by the State Clearinghouse the same day. (AR 21:11839.) Even the Clearinghouse noted
4 that the review period began on November 26. (AR 21:11758.) As a project of “regional and statewide
5 significance,” the Department held a scoping meeting and submitted the Draft EIR to the State
6 Clearinghouse for review, but no further processes were required. (Guidelines § 15082(c)(1);
7 15206(a)(1); AR 10:4881; 21:11839.)

8 The Comments and Responses document was published on June 11, 2009, more than the 10 days
9 prior to certification required in CEQA. (Guidelines § 15088(b); AR 22:12251.) Petitioners claim that
10 based on the revisions made to the Project since the publication of the Draft EIR, the EIR was required
11 to be recirculated. However, none of the circumstances that can mandate recirculation were present
12 here: none of the new information was “significant” and changed the EIR “in a way that deprived the
13 public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the
14 project or a feasible way to mitigate or avoid such an effect that the project’s proponents have declined
15 to implement.” (Guidelines § 15088.5(a).) Tellingly, Petitioners provide no examples or evidence of
16 any additions or deletions that met the criteria for recirculation set forth in Guidelines § 15088.5(a).

17 On June 18, 2009, Planning staff released to the public the proposed CEQA findings for City
18 decision-makers, including a summary of MTA’s preferred near-term improvements, a list of the
19 unavoidable significant impacts from the Project, and a proposed mitigation and monitoring and
20 reporting program (“MMRP”). (AR 24:13281- 483.) Neither CEQA nor San Francisco Administrative
21 Code Chapter 31 (the City’s local laws governing CEQA) require that proposed findings be provided at
22 a particular time in advance of a certification hearing. Staff later discovered that the proposed written
23 findings did not accurately reflect what was contained in the MMRP; staff revised the findings, and
24 issued a supplemental memo on June 25, 2009 which clearly explained the differences in the two sets of
25 findings. (AR 24:13591-853.) Members of the Planning Commission discussed the timing of this
26 submittal, but stated that they had read it and were comfortable moving forward, and chose not to, as
27 they could have, continue the hearing. (AR 8:2991 [“we sat with these documents for months . . . I’m
28 ready to move forward with it.”].) In any event, the size of the June 25 memo reflected merely the fact

1 that the revised findings were shown in "redline," and included copies of the MMRP (which did not
2 change), several late comment letters (including one from Petitioners), as well as the Department's
3 response to those late comments. (AR 24:13801-53.) The summary of the differences in the CEQA
4 findings was only three pages. (AR 24:13594-96.)

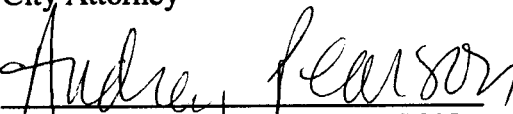
5 Petitioners claim that the Board of Supervisors did not conduct a *de novo* hearing of the
6 certification of the EIR because they did not adopt their "own" findings, and instead incorporated by
7 reference the CEQA finding of the Commission and MTA Board of Directors. This claim has no merit.
8 Consistent with the San Francisco Administrative Code § 31.16(c), the Board of Supervisors considered
9 "anew all facts evidence and/or issues" related to the EIR. (S.F. Admin. Code 31.16 (c).) The Board
10 specifically found that they had "reviewed and considered the FEIR, the appeal letters, [and] the
11 responses to concerns document that the Planning Department prepared." (AR 5:2383.) This finding is
12 evidence that they actually did review and consider the FEIR. (*Greenebaum v. City of L.A.* (1984) 153
13 Cal.App.3d 391, 403.) Moreover, the Draft EIR, the comments and responses document, appeal letters,
14 and Department response were all submitted to the Board prior to the Board hearing. (See AR 23:14332
15 [summary of Board submittal].) Petitioners' reliance on *Vedanta Society of Southern California v.*
16 *California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, for the proposition that the Board did not conduct a
17 *de novo* hearing is misplaced. The Court in *Vedanta* specifically stated that "there is no reason that an
18 elected body cannot adopt the detailed findings and explanations made by the lower unelected body."
19 (*Vedanta, supra*, at p. 526.) The Board used the appropriate standard of review.

20 CONCLUSION

21 The City has complied with CEQA and the Court's orders to conduct environmental review on
22 the Bicycle Plan, including its policies and goals and individual improvement projects. Petitioners have
23 failed to carry their burden to show otherwise. The Court should discharge the Writ.

24 Dated: May 25, 2010

25 DENNIS J. HERRERA
City Attorney

26
27 By: 
28 AUDREY WILLIAMS PEARSON
Deputy City Attorney

1 **PROOF OF SERVICE**

2 I, REYNA LOPEZ, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the
4 above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall,
5 Room 234, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

6 On May 25, 2010, I served the following document(s):

7 **RESPONDENT CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO
8 PETITIONERS' OBJECTIONS TO CITY'S RETURN**

9 on the following persons at the locations specified:

10 Mary Miles, Esq.
11 364 Page Street, No. 36
12 San Francisco, CA 94102

13 in the manner indicated below:

14 **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies
15 of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing
16 with the United States Postal Service. I am readily familiar with the practices of the San Francisco City
17 Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s)
18 that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same
19 day.

20 **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed
21 envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional
22 messenger service. A declaration from the messenger who made the delivery is attached or will
23 be filed separately with the court.

24 **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed
25 envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am
26 readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries.
27 In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a
28 courier the same day.

BY FACSIMILE: Based on a written agreement of the parties to accept service by fax, I transmitted true
and correct copies of the above document(s) via a facsimile machine at telephone number Fax #' to the persons
and the fax numbers listed above. The fax transmission was reported as complete and without error. The
transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission
report is attached or will be filed separately with the court.

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

Executed On May 25, 2010, at San Francisco, California.


REYNA LOPEZ