

Communication from Public

Name: Jordan R. Sisson
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Council File No: 14-0163-S3
Comments for Public Posting: See attached.



LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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April 4, 2023

VIA EMAIL & ONLINE: <https://cityclerk.lacity.org/publiccomment/?cfnumber=14-0163-S3>

City Council, City of Los Angeles
c/o City Clerk (cityclerk@lacity.org)

**RE: Sidewalk Repair Policy (Council File No. 14-0163-S3);
UNFLA v. City of Los Angeles (LASC Case No. 21STCP0241);**

Dear Honorable City Council:

On behalf of UNITE HERE Local 11 (“**Local 11**”), this office respectfully provides the following comments to the City of Los Angeles (“**City**”) concerning the above-referenced lawsuit involving the United Neighborhoods for Los Angeles and Angelenos for Trees (collectively “**Petitioners**”) challenging the City’s approval of its Sidewalk Repair Policy (“**Project**”) and associated Environmental Impact Report (SCH No. 2017071063) (“**EIR**”) in June 2021. As the litigants consider potential remedies in a forthcoming Writ of Mandamus in the lawsuit, *Local 11 urges the City to commit to meaningful actions that protect and preserve the City’s street trees.*

For *brief background*, the Project was pursued in response to a federal action against the City brought under the Americans With Disabilities Act (“**ADA**”), resulting in a 2016 settlement agreement (“**Willits Settlement**”) whereby the City committed itself to spend over \$1.3 billion over 30 years to repair City sidewalks to improve ADA pedestrian access. To satisfy the Willits Settlement, the City considered a new ordinance adopting the Project that included:

1. Ministerial approval of certain sidewalk repair projects without California Environmental Quality Act (“**CEQA**”) review;
2. Streamlined discretionary approval process for projects not eligible for ministerial review;
3. A revised Street Tree Retention, Removal, and Replacement Policy establishing a 2:1 street tree replacement to removal ratio for years one through ten, 3:1 for years 11 through 21, and 2:1 for years 22 through 30; and
4. Mandatory project design features generally including regulatory compliance measures and standard construction conditions and procedures.¹

The City Council approved the Final EIR in June 2021. The FEIR concluded the Project would result in significant and unavoidable impacts on aesthetics, cultural resources, noise, and tribal cultural resources. Subsequently, Petitioners challenged the City’s approval of the Project and EIR on CEQA grounds in *UNFLA v. City of Los Angeles*, which resulted in the trial court issuing an Order granting Petitioners a Writ of Mandate dated January 17, 2023 (“**Order**”) (attached hereto as *Exhibit A*). Therein, the court held that the EIR failed to adequately analyze the impacts caused by the removal of nearly 13,000 street trees (close to two percent of all street trees).

¹ <https://sidewalks.lacity.org/environmental-impact-report>.

As discussed further in the attached Order (Exhibit A), *the court found* the City's EIR failed to adequately analyze aesthetic and biological impacts involving birds, tree canopy, and tree habitat. (See Order, pp. 5-11.²) Additionally, the court found the EIR's biological analysis incomplete and fundamentally flawed due to a narrow interpretation of thresholds that ignored impacts on native trees not within a limited location. (Id. at pp. 11-13.) Furthermore, the court found that the EIR's aesthetic and biological cumulative analysis—mainly limited to generic references to other local/regional plans—failed to address the environmental impacts caused by the Project's removal of nearly 13,000 street trees or roughly two percent of all street trees. (Id. at pp. 19-25.) For example, some of the referenced plans did not even discuss trees or tree canopy or sidewalk repair; the EIR included no required summary of referenced material purported relevant to the cumulative analysis of the Project; and the EIR did not discuss any particular past, present or future projects much less analyze such projects in the context of the Sidewalk Repair Policy. (Id. at pp. 22-23, 25.)

Local 11 has a significant interest in protecting and preserving the City's flora and fauna. Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix—including *thousands* of members who live and/or work in the City. Many of Local 11's members live and/or work in urban, low-income communities where street trees provide critical bird habitat, pedestrian shade, and aesthetic value in an otherwise built-out environment. Given the Project's 30-year time horizon, even short-term impacts caused by the removal of mature trees will be significant for Local 11 members and their families—particularly young children who are acutely impacted by short-term impacts lasting years during their developmental stages.

For these reasons, Local 11 has a significant interest in the City's Sidewalk Repair Policy and respectfully urges the City to amend its Sidewalk Repair Policy to preserve and protect critical street trees by requiring that all reasonable actions be taken to preserve mature trees before consideration of removal – as a last resort. This should include consideration of alternatives including but not limited to meandering sidewalks around trees, building sidewalks out of more flexible materials, utilizing strategic root pruning, removing parking spaces to create parklets to provide additional root space and space for sidewalks, and building support structures to stabilize trees to allow sidewalk repair. These actions would address the CEQA deficiencies discussed in the attached Order and further numerous goals, objectives, and policies under the City's General Plan.³

² See e.g., Order, pp. 9-11 (“Accordingly, the court finds the City's threshold of significance [] is impermissibly narrow... the City's general evidence concerning tree canopy overlooks more specific evidence concerning short-term impacts. The record demonstrates in low-income communities nearly all feeding birds use street trees for foraging because of a lack of private yard vegetation.... the court finds the City failed to proceed as required by law when it omitted sufficient analysis of the Project's impacts on non-sensitive status species as well as all short-term impacts associated with the Project.”).

³ See e.g., Framework-Open Space & Conservation (Objectives 6.1, 6.4 and Policies 6.1.2(b), 6.1.36.1.6, 6.4.7, 6.4.8), <https://planning.lacity.org/cwd/framwkw/chapters/06/06.htm>; Conservation Element, pp. II-13 – II-14 (endangered species policies), II-23 (forest policies), II-35 – II-35 & II-42 – II-43 (habitat and scenic areas outside the City), https://planning.lacity.org/odocument/28af7e21-ffdd-4f26-84e6-dfa967b2a1ee/Conservation_Element.pdf; Open Space Element, pp. 9, https://planning.lacity.org/odocument/01ea5f66-3281-488a-930b-f523712fef07/Open_Space_Element.pdf; Housing Element (e.g., Policies 3.1.5), [https://planning.lacity.org/odocument/6fbfbbd0-a273-4bad-a3ad-9a75878c8ce3/Chapter_6_-_Housing_Goals,_Objectives,_Policies,_and_Programs_\(Adopted\).pdf](https://planning.lacity.org/odocument/6fbfbbd0-a273-4bad-a3ad-9a75878c8ce3/Chapter_6_-_Housing_Goals,_Objectives,_Policies,_and_Programs_(Adopted).pdf); Mobility Plan, pp. 32, 61, 87, 157 (using street trees to encourage multi-modal mobility), https://planning.lacity.org/odocument/523f2a95-9d72-41d7-aba5-1972f84c1d36/Mobility_Plan_2035.pdf.

RE: Sidewalk Repair Policy

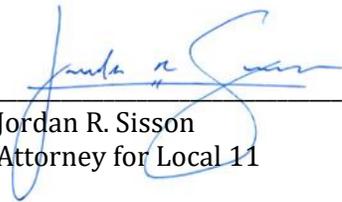
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Thank you for consideration of these comments.

Sincerely,

LAW OFFICE OF GIDEON KRACOV



Jordan R. Sisson
Attorney for Local 11

ATTACHMENTS

Exhibit A: *UNFLA v. City of Los Angeles* (LASC Case No. 21STCP0241) Order (1/17/23)

EXHIBIT A

JAN 17 2023

UNITED NEIGHBORHOODS FOR LOS ANGELES v. CITY OF LOS ANGELES

Case Number: 21STCP02401

Hearing Date: October 12 and 19, 2022

Sherril R. Carter, Executive Officer/Clerk of Court

By  Deputy
Marquis Becker-Mays

ORDER GRANTING PETITION FOR WRIT OF MANDATE

This proceeding arises under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq*. Petitioners, United Neighborhoods for Los Angeles (UNFLA) and Angelenos for Trees (collectively, Petitioners), challenge the certification of a final environmental impact report (EIR) by Respondent, the City of Los Angeles. Petitioners seek an order compelling the City to set aside its approval of the EIR.

The City opposes the petition.

The City's request for judicial notice (City RJN) of Exhibits A through E is granted.

Petitioners' request for judicial notice submitted in support of the reply papers (Reply RJN) of Exhibit 1 is granted. (The court recognizes it may not judicially notice disputable facts in the document, only the document's existence.)

The City's objections to Petitioners' errata reply brief are overruled. The brief is not oversized and is consistent with the parties' stipulation. The court also finds the City has suffered no prejudice based on Petitioners' failure to comply (by a single day) with the court-ordered briefing schedule. The joint appendix contains the City's highlighted material.

The petition is granted.

STATEMENT OF THE CASE¹

Willits Settlement Agreement

This project at issue in the EIR arises out of a settlement agreement reached in a federal action brought against the City by a class of disabled persons under the Americans With Disabilities Act of 1990. (42 U.S.C. § 12101, *et seq.*)

In a settlement agreement approved by the federal district court in 2016 (*Willits v. City of Los Angeles*, U.S. Dist. Court Case No. CV10-05782 CBM) (the Willits Settlement), the City committed to spending \$1.36 billion over 30 years to repair the City's sidewalks for improved pedestrian access for persons with disabilities. (AR 4631-4742, 6944-6951.)

¹ AR refers to the administrative record. SAR refers to the supplemental administrative record.

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A primary component of the Willits Settlement is the “[r]epair of damage caused by tree roots to sidewalk or walkway surfaces.” The Willits Settlement also provides the City’s removal of trees would occur pursuant to applicable law. (AR 4653, 4657-4659.) The Willits Settlement provides flexibility to avoid tree removal, including allowances for the City to delay sidewalk repairs in areas with “site constraints,” to preserve trees “to the extent feasible,” and to remove trees only consistent with “all applicable City and State law.” (AR 4658-4659.)

The Willits Settlement did not commit the City to any specific sidewalk repairs. Instead, the Willits Settlement requires the City to identify funds it “will allocate for repairs and describes the type of projects the City should consider first.” (SAR 165, 175.)

The Project

To satisfy the requirements of the Willits Settlement, the City considered a new ordinance adopting the Sidewalk Repair Program (the Project). (AR 4777-4783.) The City Council directed: (1) the Bureau of Street Services to provide recommendations on how to (a) incorporate best practices for the maintenance of the urban forest, including tree removals and replacements and (b) streamline the City’s process to facilitate sidewalk repairs (AR 4780-4782); and (2) the Bureau of Engineering to prepare an EIR (AR 4780).

In the interim, to comply with the requirements of the Willits Settlement, the City determined sidewalk repairs would commence under existing codes and policies, including a tree replacement ratio of two to one, with case-by-case environmental review under CEQA. (AR 114-115, 137.) In 2018, UNFLA unsuccessfully challenged the City’s interim approach. (City RJN Ex. A.)

The City’s Approval of the Project

In July 2017, the City issued a notice of preparation for the Project. (AR 4891-4896.) The City also issued an initial study for the Project. (AR 3482-3579.)

The City notified state agencies about the notice of preparation and the initial study, including the California Department of Fish and Wildlife (CDFW). (SAR 816-817.) The CDFW did not submit any comments for consideration by the City. (See AR 791-880 [public comments received].)

On December 26, 2019, the City released a draft EIR (DEIR) for the Project. (AR 5199-5202.)

The DEIR described the Project’s key components: (1) ministerial approval of certain sidewalk repair projects without CEQA review; (2) “streamlined discretionary approval process” for projects not eligible for ministerial review; (3) a revised Street Tree Retention, Removal and Replacement Policy establishing a two to one street tree replacement to removal ratio for years one through ten, three to one for years 11 through 21, and two to one for years 22 through 30, and; (4) mandatory project design features (PDFs). (AR 1 [notice of determination], 110 [DEIR];

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see also AR 24-27 [enacted ordinance], 10-14 (the revised street tree policy), 3-9 [new mandatory project features policy].)

The City notified state agencies, including the CDFW, of the completed DEIR. (AR 5193-5198.) The CDFW did not submit any comments to the DEIR. (See AR 1823-1830 [public comments received].)

The City provided a 157-day comment period for the DEIR. (AR 1823.) The City held seven public meetings during the comment period. (*Ibid.*) The City received nearly 300 comments on the DEIR. (AR 1823-1830.)

The DEIR reported the Project created: (1) certain significant and unavoidable impacts to aesthetics, cultural resources, noise, and tribal cultural resources (AR 92); (2) biological impacts to special-status species in the project area that would be less than significant in the highly-urbanized environment, including with project features of tree inspections/buffers and the enhanced tree replacement ratio (AR 260-274, 1109-1154); (3) recreational impacts that were less than significant since sidewalk repairs do not affect recreational facilities (AR 662, 3558); and (4) cumulative impacts that were less than significant under the “summary of projections” method adopted by the City and regional plans analyzing such impacts. (AR 582-612). The DEIR also noted the Willits Settlement primarily involved the repair of sidewalks damaged by trees and included tree removals. (AR 4653, 4657-4659, 4709, 6945).

In April 2021, the City issued the EIR, including responses to the DEIR. (AR 1817-2377.)

The EIR reported there would be significant and unavoidable impacts to Aesthetics (rare projects only), Cultural Resources (rare projects only), Noise, and Tribal Cultural Resources (rare projects only). (AR 1 [notice of determination], 3663-3664 [staff report].)

In May 2021, the City held public meetings at the Board of Public Works and the City Council Public Works Committee concerning the Project. (AR 3708-3766, 3777-3826).

On June 22, 2021, the City Council held a public meeting (AR 3936-3951) during which it voted to certify the EIR (AR 3946), made required CEQA findings (AR 28-57), and approved the Project (AR 24-27) including related necessary policies, i.e., the proposed Street Tree Policy (AR 10-14), Mandatory Project Features Policy (AR 3-9), and Ordinance (AR 24-27).

This proceeding followed.

STANDARD OF REVIEW

In reviewing an agency’s compliance with CEQA during the course of its legislative or quasi-legislative actions, the trial court’s inquiry during a mandamus proceeding “shall extend only to whether there was a prejudicial abuse of discretion,” which is established “if the agency has not proceeded in a manner required by law or if the determination or decision is not

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supported by substantial evidence.’ ” (*Vineyard Area Citizens for Responsible Growth Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 [citing Pub. Resources Code, § 21168.5].) “In evaluating an EIR for CEQA compliance, . . . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts.” (*Id.* at 435.)

CEQA requires an EIR to “be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (Guidelines,² § 15151; *Sierra Club v. County of Fresno (Friant Ranch)* (2018) 6 Cal.5th 502, 516.) “An EIR’s designation of a particular environmental effect as ‘significant’ does not excuse the EIR’s failure to reasonably describe the nature and magnitude of the adverse effect.” (*Id.* at 514.) “[T]here must be a disclosure of the ‘analytic route the . . . agency traveled from evidence to action.’ ” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 404.) “[A] conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.” (*Friant Ranch, supra*, 6 Cal.5th at 514.) If the deficiencies in an EIR preclude “informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred.” (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 128.)

“Where the alleged defect is that the agency has failed to proceed in the manner required by law, the court determines de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated requirements.” (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 845.)

With respect to “all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant’s failure to carry his burden.” (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) Moreover, “the reviewing court ‘may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,’ for, on factual questions, our task ‘is not to weigh conflicting evidence and determine who has the better argument.’ ” (*Vineyard Area Citizens for Responsible Growth Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at 435.)

“Regardless of what is alleged, an EIR approved by a governmental agency is presumed legally adequate, and the party challenging the EIR has the burden of showing otherwise.” (*Chico Advocates for a Responsible Economy v. City of Chico, supra*, 40 Cal.App.5th at 846.)

² The CEQA Guidelines are found at Title 14, Chapter 3 in the California Code of Regulations. For ease of reference, the guidelines are cited herein as “Guidelines.”

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Finally, “[t]he legal duties imposed by CEQA are to be strictly enforced. [Citation.] ‘Only by requiring the [agency] to fully comply with the letter of the law can a subversion of the important purposes of CEQA be avoided’ [Citation.] The requirements of CEQA also must be ‘interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1176.)

Of course, perfection is not required. Instead, courts look “for adequacy, completeness, and a good faith effort at full disclosure.” (Guidelines, § 15151.)

ANALYSIS

The City’s Waiver Argument

As a threshold matter, the City argues Petitioners have waived certain issues not raised in the petition. (Opposition 24:26-25:17.) More specifically, the City argues: (1) the petition does not contain any allegations concerning the (a) Willits Settlement (Opening Brief 25:4-27:10) and (b) the City’s alleged failure to consult with trustee agencies (the CDFW) (Opening Brief 27:11-28:7); and (2) Petitioners are improperly are trying to expand the issue of a lost tree canopy (petition ¶ 57(b)) to include the analysis of bird impacts from replacing preferred tree species (Opening Brief 9:13-18, 10:1-12:19) and the impacts of replacing native tree species (Opening Brief 13:4-16:14).

The court disagrees. The petition, when liberally construed, gives the City fair notice of the challenges to the EIR. (Code Civ. Proc., § 452. [“In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.”]) The City does not cite persuasive authority. Authorities involving demurrers or waiver based on an issue not in the Statement of Issues are inapposite. (Opposition 25:12-17.)

Accordingly, the court reaches the merits on all issues raised by Petitioners.

The Project’s Impact on Birds

Petitioners argue the EIR does not adequately address and separately identify the short-term and long-term impacts of the Project on sensitive species resulting from habitat modification and consequent reduction in foraging habitat for sensitive species and wildlife. (Opening Brief 8:19-21.) Petitioners also argue the City failed to specifically consider the loss of tree canopy and tree/habitat value (short-term impacts) and net loss to habitat value (long-term impacts) associated with the Project. (Opening Brief 8:21-23.) Petitioners assert the City failed to adequately analyze all impacts to non-sensitive species. (Opening Brief 8:24-25.) Finally, Petitioners contend the EIR does not adequately identify or mitigate these impacts. (Opening Brief 8:23-24.)

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It is undisputed the Project will affect certain bird species, including sensitive species. (AR 287-288; see also AR 1143, 1148, 1150, 1152, 1154 [identifying species fully protected in California and of special concern affected by the Project].) The parties dispute whether the EIR provided a proper and legally adequate analysis of the impact. As raised by Petitioners, the issue also concerns the City's selection of the threshold of significance. Petitioners contend the City could not ignore the impacts of the Project to birds other than sensitive species.

An EIR may not set an impermissibly narrow threshold of significance for biological impacts. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 792; see also Guidelines, § 15064, subd. (b)(2). ["Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant."]) If evidence tends to show that the environmental impact might be significant despite the selected threshold in the EIR, the agency must address that evidence. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.)

CEQA mandates that public agencies consider short term impacts as well as long term impacts of a project. (Guidelines, § 15126.2, subd. (a). ["Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects."])

Among others, the City adopted the following threshold of significance:

BIO-1. Would the proposed Project result in the loss of individuals, or the reduction of existing habitat, of a state or federal listed endangered, threatened, rare, protected, or candidate species, or a Species of Special Concern or federally listed critical habitat? (AR 286.)

The City engaged in an analysis using biological experts as reviewed by expert consultants and City staff. (AR 666, 668-669, 35090-35096, 35261-35266.) The City concluded the Project's impacts to birds would be less than significant. (AR 287-288.) The City evaluated potentially impacted species and found only five special-status species (American peregrine falcon, purple martin, yellow warbler, pallid bat, and western red bat) have potential habitat within the highly urbanized areas where the Project's sidewalk repairs would occur. (AR 260-274, 287-288, 1109-1154.) The City supported its less-than-significant-impact determination by finding that: (1) these species are adapted to living in a heavily developed disturbed urban setting; (2) the PDFs would prevent impacts to migratory birds and special-status species; (3) the PDFs of standard stormwater runoff regulatory requirements would prevent impacts to special-status species; and (4) the heightened two to one and three to one street tree replacement ratio would result in more wildlife habitat at the end of the Project. (AR 260-274, 285-287.)

Petitioners argue, despite the threshold of significance chosen by the City, CEQA requires evaluation of non-sensitive status species. (Opening Brief 12:8-13:3.) Petitioners generally

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contend the loss of street trees would have an impact on non-sensitive species by reducing foraging sites. (AR 2684, 3315.) Petitioners note, according to comments in the administrative record, the EIR “underestimates the importance of urban habitat by failing to recognize that it is a complex matrix of wild and urban spaces and the growing movement of native plant gardening thus underestimates project impact on birds, including sensitive species.” (AR 2684.)

The City asserts Petitioners’ argument is not properly before the court because of Petitioners’ failure to exhaust administrative remedies. (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Ca .App.4th 1464, 1489 [exhaustion of administrative remedies is “a jurisdictional prerequisite to judicial review”].) The court disagrees.

Petitioners cite public comment in the administrative record asserting the City cannot exclude consideration of non-sensitive status species. (AR 2683-2684 *emphasis added*). [“Cavities in mature trees provide nesting and foraging sites for species such as woodpeckers, bluebirds, flycatchers as well as the listed species referenced in the DEIF. The DEIR underestimates the importance of urban habitat by failing to recognize that it is a complex matrix of wild and urban spaces and the growing movement of native plant gardening thus underestimates project impacts on birds, including sensitive species.”, 3284-3289 [Southern California Black Walnut tree not protected but significant locally and should be considered], 3315 [“Biologists on-site should be given authority to stop work to protect any species if they perceive impact on any species of wildlife if tree removal will cause loss of habitat. These species could be species protected by the Endangered Species Act, the Migratory Bird Treaty Act, or species that are locally important but not legally defined as protected.”]]

On the merits of Petitioners’ claim, the City argues it was not required to consider the Project’s impacts on non-sensitive status species. The City’s argument relies on Public Resources Code section 21001, subdivision (c), Guidelines section 15065, subdivision (a)(1) and Guidelines Appendix G. The City contends the law emphasizes minimizing impacts on sensitive-status species that may be endangered only, not non-sensitive species. (See Opposition 8:5-13.)

Guidelines section 15065, subdivision (a)(1) is not limited to special-status species and does not support the City’s position. The guideline provides:

“A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur: (1) The project has the potential to . . . substantially reduce the habitat of a fish or wildlife species; . . . threaten to eliminate a[n] . . . animal community; . . .”

In fact, Guidelines section 15065, subdivision (a)(1) differentiates between wildlife generally and special-status species and categorizes them separately. In addition to the findings set forth above, the guideline also requires findings of significance when a project may “substantially

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reduce the number or restrict the range of an endangered, rare or threatened species;” Thus, under the guideline the focus is not merely on special-status species.

Public Resources Code section 21001, subdivision (c) similarly does not limit an agency’s inquiry into special-status species. The statute provides:

“The Legislature further finds and declares that it is the policy of the state to: . . .
(c) Prevent the elimination of fish or wildlife species due to man’s activities”

While special-status species may be more prone to elimination due to man’s activities, the Public Resources Code’s focus is not so limited. Instead, the inquiry is on wildlife generally.

Finally, the City’s position overlooks Appendix G’s instruction that Appendix G does “not necessarily represent thresholds of significance” and that “[s]ubstantial evidence of potential impacts that are not listed on [the] form must also be considered.” (Guidelines, Appendix G, introduction.) The questions set forth in Appendix G “are intended to encourage thoughtful assessment of impacts” (*Ibid.*)

The court finds the City’s position it can limit its focus of impacts to special-status species as a general matter is legally unsupported. The City’s threshold of significance must be supported by substantial evidence. As noted, Appendix G of the Guidelines specifies: “Substantial evidence of potential impacts that are not listed on this form must also be considered. The City’s argument impacts are limited to special-status species contradicts the general policy goals of CEQA and its protection of the environment. (See also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 734 [“noise may have negative effects on wild animals, including stress-related illness, abandonment of favored habitats, and population declines”].)³

As the court understands it, the City contends it “carefully evaluated” whether the impacts to birds other than special status species should be evaluated. (Opposition 8:14-15.) The City phrases its evaluation as whether any non-listed species should be treated as special-status species for purposes of evaluation and notes its “special-status determinations” are entitled to great deference. (Opposition 8:14-18.) The City’s argument demonstrates its position it need only determine environmental impacts to special-status species (or those it has decided to treat as special-status species).

The City’s argument, however, does not address Petitioners’ position. The issue is not whether the City should have treated more birds—other than the three identified—as special-status species. The issue is whether the City’s failure to consider impacts to birds other than special-status species is consistent with CEQA’s requirements.

³ The Court notes the noise analysis set forth in Appendix G does not require consideration of impacts to wildlife. *Keep Our Mountains Quiet v. County of Santa Clara* nonetheless found such noise impacts required analysis under CEQA.

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The EIR expressly recognizes:

“[m]ature street trees . . . may provide suitable nesting habitat for a number of common predatory and migratory bird species, including, but not limited to, red-tailed hawk [], house finch [], mourning dove [], house sparrow [], American crow [], and Anna’s hummingbird. The barn owl [] and the great horned owl [] are two relatively urban-adapted owl species that utilize street trees for roosting and nesting. Barn owls are commonly observed nesting in a variety of palm trees species throughout the City. . . . Mature street trees adjacent to open water in coastal areas in the West Los Angeles and Harbor project zones have potential to provide nesting habitat for piscivorous species like the osprey [], black-crowned night heron [], snowy egret [], and great blue heron [].” (AR 261.)

Public comments also noted non-special status species birds using street trees for nesting and foraging—“woodpeckers, bluebirds, flycatchers as well as the listed species referenced in the DEIR.” (AR 2684.) An academic study submitted to the City concerning the importance of street trees to birds “documented 587 observations of migratory birds and 351 year-round birds” in Los Angeles. The study advised it observed the following migratory birds in the City’s street trees: Yellow-rumped Warbler, Ruby-crowned Kinglet, Townsend’s Warbler, Orange-crowned Warbler, and the Black-throated Gray Warbler. The year-round birds observed in the study included the Bushtit, House Finch, Lesser Goldfinch, Anna’s Hummingbird, and Allen’s Hummingbird. (AR 3013, 3021.)

Despite the City’s recognition in the EIR of birds other than special-status species using the City’s street trees as well as the other evidence in the record concerning the number and species of birds using street trees for nesting and foraging, the City elected to evaluate only special-status species in BIO-1. While CEQA permits the City to choose its threshold of significance, there must be substantial evidence to support the City’s selection. Other than reliance on Appendix G of the Guidelines, the City provides no analysis of how it selected its threshold of significance. That is, how it determined it could determine environmental impacts to birds through consideration of only three special-status bird species.

Accordingly, the court finds the City’s threshold of significance (AR 286 [BIO-1]) is impermissibly narrow. The threshold of significance omits consideration of non-sensitive status species when there is substantial evidence the Project may have a significant impact on those non-sensitive status species. Alternatively, the EIR does not adequately explain for decision makers and the public why the City chose not to evaluate impacts to non-sensitive status year-round birds in the EIR.

The City contends even assuming Petitioners are correct and it was required to consider how the Project affects non-sensitive status species, the City conducted a sufficient evaluation. The City reports it did not find the Project would have a significant impact on the special-status species or birds generally (See Opposition 8:14-9:1.) The City specifically found that: “Due to the heavily disturbed urban setting within the City, all other wildlife species are unlikely to

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occur besides *periodic transient* occurrences; the Project site is not suitable for *permanent habitation*.” (AR 268 [emphasis added and foundation unclear].)

Petitioners persuasively demonstrate, however, the City’s finding is expressly contradicted by parts of the record, including the DEIR’s narrative. (See Reply 7:1-6 [citing AR 261 (DEIR) and AR 3021⁴ acknowledging mature street trees provide nesting habitat for non-sensitive species and 351 observations of year-round birds using the street trees with certain trees serving as a “critical resource.”]⁵ The trees also provide foraging habitat for many birds. (AR 287, 1148, 1150, 2684.) Thus, the City’s conclusion is unexplained at best and therefore misleading given other information provided by the City in the EIR.

The City’s explanation it considered non-sensitive status species in the context of canopy loss is also not persuasive. (Opposition 9:27-10:13.) The City cites evidence that street trees are a small fraction of the overall trees in the City and that the loss of overall street trees is 1.8 percent of the City’s total street trees with a maximum yearly decline of 0.3 percent of street tree canopy in year 13 [i.e., the year the canopy would begin to recover after replacement]. The City argues overall there would be a mere 0.1 percent reduction of overall Citywide tree canopy cover based on the Project. (AR 288, 292-293.)

The City’s general evidence concerning tree canopy overlooks more specific evidence concerning short-term impacts. The record demonstrates in low-income communities nearly all feeding birds use street trees for foraging because of a lack of private yard vegetation. (AR 3019.) Petitioners correctly note the threshold of significance as phrased is triggered by *any* reduction in existing habitat and it is undisputed that there is a reduction of street tree canopy as a short-term impact. (Reply 7:23-25.) The short-term impact analysis is lacking before the tree canopy begins to recover starting at year 13. Finally, the City cannot otherwise rely on the PDFs of standard nest monitoring/buffers and stormwater controls because those are limited measures and address nesting not foraging habitat (AR 285-286) and discharge from active construction sites. (AR 288.)

Even if the court ignored the substantial evidence of significant impact on non-sensitive status species, the effect is nonetheless identical for sensitive status species, i.e., value of habitat replacement for foraging as well as nesting. The City argues Petitioners have failed to cite any

⁴ Petitioner cites to the academic article discussing “year round birds” noted earlier. (AR 3021.) According to the evidence, “LA is home to a high diversity of birds, which utilize the metropolis throughout the annual cycle.” (AR 3031.)

⁵ The court notes the City failed to discuss foraging habitat for any birds other than the American peregrine falcon. (AR 287.) Despite the City acknowledging the purple martin and yellow warbler (special-status species) using street trees for foraging habitat, the EIR is silent about Project impacts, if any, on foraging habitat for the birds. (AR 287, 1148, 1150.) The City’s explanation of less than significant impacts to foraging habitat for the American peregrine falcon evaluates the impacts and explains the impacts of the Project are “unlikely” to deter prey species from the bird’s foraging habitat. (AR 287.)

critical evidence in the record that the same impact to non-sensitive species applies to the sensitive status species. (See Opposition 7:15-18.) Evidence before the City from the Community Forest Advisory Committee⁶ (CFAC) advised the City that it underestimated the biological impacts of the Project. (AR 2683.) CFAC explained Los Angeles is “on the Pacific Flyway and trees provide nesting and foraging habitat, preserving urban forest will have a profound impact on attempts at stabilizing bird populations.”⁷ (AR 2684.) The City did not respond to CFAC did not address the importance of foraging habitat for all birds. (See AR 1986-1987.)

Accordingly, the court finds the City failed to proceed as required by law when it omitted sufficient analysis of the Project’s impacts on non-sensitive status species as well as all short-term impacts associated with the Project.

The Project’s Impact on Native Trees

The City’s protected tree ordinance protects the California Live Oak, Western Sycamore, California Bay and the Southern California Black Walnut. (AR 260.) According to the City, “The protected tree ordinance applies only to non-planted trees, and therefore it is typically not applicable to street trees, which are generally planted.” (AR 260.)

Petitioners argue the EIR did not adequately address the loss of native trees which have been designated under the City’s protected tree ordinance. Failure to adequately address such an environmental impact undermines the EIR and does not adequately inform decision makers or the public about a potential project.

At issue is the City’s threshold of significance, BIO-2. The parties dispute its meaning. BIO-2 provides:

Would the proposed Project result in the loss of individuals or the reduction of existing habitat of a locally designated species or a reduction in a locally designated natural habitat or plant community? (AR 286.)

The City interprets BIO-2 as focusing on location only. That is, whether the Project would result in a loss or removal of locally designated natural habitat or plant community. To that end, the EIR’s analysis addresses habitat only in its discussion of BIO-2. The discussion references significant ecological areas (SEAs) and environmentally sensitive habitat areas (ESHAs). (AR 288.)

The parties interpret the BIO-2 as follows:

⁶ CFAC “is a group of representatives appointed by their councilmembers as well as the Mayor” and is “tasked with and dedicated to preserving a healthy urban forest . . .” (AR 2667.)

⁷ CFAC advises North American bird population has declined by 30 percent since 1970. (AR 2684.)

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Petitioners' Formulation (Reply 8:18-21)	City's Formulation (Opposition 11:13-15)
Would the proposed Project result in [1] the loss of individuals or the reduction of existing habitat of a locally designated species or [2] a reduction in a locally designated natural habitat or plant community?	Would the proposed Project [1] result in the loss of individuals [2] or the reduction of existing habitat of a locally designated species [3] or a reduction [modifying 1-3] in a locally designated natural habitat or plant community?

As noted, the City considered only *location* when it considered BIO-2. That is, the City determined an impact from the Project occurs only if a loss or reduction of individuals occurs within “a locally designated natural habitat or plant community.” (Opposition 11:16-19.) The focus of BIO-2, according to the City, is on location; the City contends “BIO-2 applies to identified habitats.” (Opposition 11:21-22.) Accordingly, the EIR considered 12 sensitive communities identified by the CDFW and 10 sensitive environmental areas (SEAs) and three environmentally sensitive habitat areas (ESHAs). (AR 288.) The EIR found the Project’s impact on SEAs and ESHAs would be less than significant. (AR 288.)

The City argues its interpretation is correct because “in a locally designated natural habitat or plant community” is based on the Los Angeles CEQA Thresholds Guide (Thresholds Guide), which is in turn based on Appendix G in the Guidelines.⁸ (Opposition 11:16-22.) Moreover, the City explains “the threshold of special-status species” is separately analyzed in the EIR at BIO-1. (Opposition 11:18-19.)

The court finds Petitioner’s argument more persuasive. First, Petitioner’s interpretation of the threshold of significance is consistent with its plain language. Second, BIO-1 does not provide any analysis of the loss of trees or tree canopy—the focus of BIO-1 as set forth in the EIR is birds and bats.⁹

First, a “sensitive biological resource” as defined in the Thresholds Guide is a “locally designated or recognized *species or habitat*.” (AR 7079 [emphasis added].) The Thresholds Guide is not limited to habitat (i.e., location). “Sensitive biological resources may be specific species or a habitat area.” (AR 272.) The City’s interpretation incorrectly overlooks the Threshold Guide’s focus on species as well as habitat. The City’s view of the threshold would overlook the

⁸ Petitioners contend the City’s argument is without merit because the thresholds adopted in the Thresholds Guide are broader than those in Appendix G. (Reply 9:1, 18-20. [“Respondent cites to no evidence that the Thresholds Guide is based on Appendix G, Section IV.b.”])

⁹ The court acknowledges the City is interpreting its own EIR, and its interpretation is entitled to deference. Nonetheless, the EIR must discuss impacts to biological resources, including trees. Despite the City’s claim (Opposition 7:1 [City conducted “extensive evaluation of potentially impacted species, including birds and black walnut trees”]), the court could not locate a single reference to the Southern California Black Walnut tree anywhere in the EIR’s discussion of environmental impacts. (AR 254-296.)

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importance of a loss of individuals of a locally designated species in a non-locally designated natural habitat or plant community, i.e., an urban setting. (See also AR 7078. [“A project may impact biological resources through the loss or destruction of individuals of a sensitive species or through degradation of sensitive habitat.” (Emphasis added.)])

The City’s interpretation of BIO-2 improperly excludes consideration of an environmental impact simply because the impact does not occur in a particular location. (See Reply 9:2-4. [“The City’s interpretation of BIO-2 would mean that a ‘sensitive biological resource’ (such as an oak tree) that is not located ‘in a locally designated natural habitat or plant community’ could be destroyed without even triggering the significance threshold.”])

Second, the EIR’s discussion of BIO-1, claimed by the City to address “special-status species,” contains no discussion of the removal of trees designated as protected by the City. (AR 260.) The discussion of impacts for BIO-1 does not reference the City’s protected tree ordinance or otherwise discuss any specific species of tree. (AR 287-288.) The EIR’s discussion of BIO-1 is limited to birds and bats. (AR 287-288.) Thus, the City’s claim impacts to the reduction of locally designated tree species is properly considered in BIO-1 is not supported by the EIR’s analysis set forth in BIO-1.

Accordingly, the EIR’s evaluation of the Project (AR 288-289) using the BIO-2 threshold is incomplete and therefore fundamentally flawed. The EIR provides no discussion for decision makers and the public of the Project’s impact on native trees outside of SEAs and ESHAs. (AR 288.) That the City failed to properly interpret BIO-2 deprived decision makers and the public of important information about the Project.

Despite the lack of analysis and discussion, the City argues even assuming Petitioners are correct, there is no evidence to suggest “any potentially-affected street trees are ‘Protected Trees’ under the City’s ordinance, which must be naturally occurring and not planted.” (Opposition 11:28-12:1.) Thus, under the circumstances the City did not violate CEQA by failing to analyze the significance of an environmental impact.

It is impermissible for the court to substitute its findings for that of the City and engage in a post hoc cure to overlook the error with the EIR’s discussion of BIO-2. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers* (1982) 136 Cal.App.3d 303, 311.) There is no question the City failed to provide an adequate analysis of environmental impacts on trees—whether through BIO-1 or BIO-2. Thus, in the context of a tree analysis, the EIR fails as an informational document because it deprived decision makers and the public of adequate and complete information on the issue.

As noted, the City has designated certain trees as protected, including the Western Sycamore and Southern California Black Walnut. (AR 260.) The Western Sycamore and Southern California Black Walnut are native tree species that exist as street trees in the City of Los Angeles. (AR 3362, 3363 [4,977 Southern California Black Walnuts, 8,878 Coast Live Oaks, and 5,572 Western Sycamores].) Under the City’s tree ordinance, protected trees are those that are naturally

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occurring—not planted. The City’s experts opine almost all trees in a paved and graded right-of-way are planted. (AR 3735, 3748-3750, 5275.)

Petitioners claim the City’s position there are no naturally occurring protected trees in paved and graded rights-of-way is not supported by the evidence. As noted by the City, the EIR did not report (as claimed by Petitioners) that 12 percent of the street trees were naturally occurring (Opening Brief 14:1-4.); instead the EIR noted 88 percent of the City’s tree well sites are planted leaving 12 percent of tree well sites vacant.¹⁰ (AR 137.)

Petitioners also claim there is evidence of a naturally occurring protected tree (a California Sycamore) at Hollywood Boulevard and Courtney Avenue. (Reply 9:19-21.) The evidence they rely upon, however, does not establish the tree as naturally occurring, i.e. protected. (See AR 3273-3274.) The evidence merely notes the native nature of the tree—not whether it was planted. (AR 3273. [“Native tree species such as California sycamore exist as street trees and the roots of those trees are causing damage to sidewalks.”])

Petitioners also claim evidence of “remnants of the natural landscape” with protected trees may exist as street trees. (Reply 9:21-23.) While the Los Angeles Audubon Society provided the statement, the foundation for the claim is not clear. (AR 2738, 3236. [“In areas that historically were native woodlands, *native street trees may be naturally occurring*; indeed, some of the *huge oak trees* along and near Ventura Boulevard in Encino *are* remnants of the natural landscape.”] [Emphasis added].)¹¹

As noted, it is not the court’s role to evaluate the evidence in this context. The comment by the Los Angeles Audubon Society along with the City’s admission a street tree is “typically” or “generally planted” by the City (AR 149, 2280) and the difficulty of determining whether a native tree is, in fact, protected is an environmental impact to be considered by the EIR, decision makers and the public.¹² Similarly, whether the Black Walnut Tree¹³ is “rare” qualifying

¹⁰ Petitioners heavily rely on their misreading of the information in the EIR for their argument about the EIR’s tree analysis. (AR 137.) From their misreading, Petitioners assert “no reasonable person could reach the same conclusion” and “there is a reasonable possibility that the Project will impact naturally occurring native street trees that would qualify as protected trees.” (Opening Brief 14:1, 8-9.)

¹¹ In 2021, the City reported there is no mechanism in place to determine whether a street tree that may be protected under the City’s ordinance was planted. (AR 5275.)

¹² The City appears to recognize a non-planted protected street tree could be affected by a sidewalk repair project. (AR 2281.) The City reports a specific evaluation in that situation would occur. (AR 2281.) As noted by Petitioners, the mechanism for such an evaluation is unclear.

¹³ The City indicates it included the Black Walnut tree in its discussion of BIO-1. The City cites AR 260-274, 237-288, 1109-1154 for support. With the exception of AR 1131, the court could find no Black Walnut tree reference. AR 1131 merely reports the Project site is not a suitable habitat for the tree.

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as a special-status species (whether planted) requiring analysis under CEQA will be considered by the City. (Opening Brief 15:21-16:5.)

The court finds the City failed to comply with CEQA when it misinterpreted BIO-2. The City's misinterpretation limited the information provided and did not provide informed decision making or public participation.

Recreational Impacts

Petitioners argue the EIR did not adequately address the recreational impacts of the Project, specifically the loss of shade provided by mature street trees for pedestrians and those walking and cycling. (Opening Brief 16:15-17:1.) Petitioners appear to contend the loss of shade will mean fewer people on sidewalks as people elect to use cars, which in turn will have a significant impact on the environment. Petitioners' argument does not appear to be based on record evidence and is therefore speculative.¹⁴

Petitioners cite many objections and comments the City purportedly refused to evaluate. (AR 1911, 1918, 1945, 1954-55, 1962, 1992-1993, 2017, 2034, 2063, 2088, 2089-2090, 2112, 2168-2170, 2183-2184, 2201.) The comments stress how the removal of mature trees will provide less shade and more sun exposure for those on the sidewalks.

The City responded to the loss of shade comments in the EIR. The EIR reported "some loss of shade is expected if a mature street tree is removed and replaced by one or younger street trees until those street tree(s) grow, but this would result in a less than significant impact." (AR 1849.) The EIR noted there would be "an interim loss of shade from removed street trees, which could last several years or more in any one specific location." (AR 1849.) The City explained the "localized loss of shade would be temporary in nature, however, and limited to that specific sidewalk repair site." (AR 1849.)

Thus, the City evaluated the concern about the elimination of shade and there is sufficient analysis to have provided necessary information to the public and decision makers on the issue. That is, decision makers understood from the EIR's analysis there would be a lack of shade from the Project at least for some period of time because the EIR provided such information. In fact, the City provided a master response to comments it received concerning the loss of shade. (AR 1849-1850; See e.g., AR 1349. ["Due to the ongoing phased approach for implementation of the Project, including for street tree removal and replacement, the loss of shade from the time of removal and shade being provided from new tree growth will, collectively and cumulatively, would result in a less than significant impact over time, despite there being an interim loss of shade from removed street trees, which could last several years or more in any one specific

¹⁴ For example, Petitioners argue: "The use of sidewalks for walking, running and bicycling is not a use that would likely be transferred to parks, however, because there are few parks that provide the extended, level pathways for walking and running that sidewalks provide." (Reply 11:16-18.)

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location. Such localized loss of shade would be temporary in nature, however, and limited to that specific sidewalk repair site.”])

Finally, the court notes the parties dispute whether the City should have been able to determine there was no significant effect on recreation through the Notice of Preparation and Initial Study. (AR 662.) The City is permitted to rule out the environmental impact through an Initial Study. (See Guidelines, § 15128. [“An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.”].)

Accordingly, the court finds Petitioners have not met their burden of demonstrating a prejudicial abuse of discretion based on the City’s alleged failure to analyze recreational impacts of the Project.

Adequacy of the Response to Comments

Petitioners argue the EIR did not adequately respond to public comments.

Once a draft EIR is prepared, the lead agency must provide public notice and opportunity to comment. (Pub. Resources Code, § 21092.)

“The lead agency shall consider comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.” (*Id.*, § 21091, subd. (d).) The written responses must describe the disposition of any “significant environmental issue” raised by commenters. (*Id.*, subd. (d)(2)(B).)

When a significant environmental issue is raised in comments objecting to a draft EIR’s analysis, the agency’s response must be detailed and provide a reasoned, good faith analysis of the issue:

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency’s position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice. The level of detail contained in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be

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appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment. (Guidelines, § 15088, subd. (c).)

It is undisputed the City provided responses to the nearly 300 comments totaling almost 479 pages (AR 1862-2340), including nine master responses in nearly 32 additional pages on the most prevalent topics and issues (AR 1831-1862). Petitioners object to certain responses as deficient.

First, Petitioners argue the City provided a deficient response to a comment concerning impacts to wildlife. The subject comment and response are as follows

Comment	Response
<p>The DEIR completely overlooks the relative value of different tree species to wildlife. The project would result in the removal of tree species that are beneficial to wildlife and replacement with tree species that are far less beneficial to wildlife. This would result in a significant adverse impact on migratory and resident bird species if not mitigated. Tree species of particular importance to birds include native trees such as California Sycamore and Coast Live Oak in addition to Chinese Elm, Carrotwood, Southern Live Oak, and Camphor (E. Wood, California State University, Los Angeles, pers. comm.). American Sweetgum (Liquidambar) has value for resident birds such as sparrow species. These tree species are also important for insects, including native pollinators, which is one reason they are good for birds (Burghardt et al. 2009). The [Project] would allow replacement of these tree species at the discretion of the City and without consideration for habitat values. Given recent trends, and the assumptions described in the DEIR, the City intends to replace wildlife-supporting large trees with small trees that have little wildlife value, such as Crape Myrtle. This element of the program alone is a significant adverse impact to migratory and resident birds.</p>	<p>As stated in Section 2.5.4.2, the purpose of the revised street tree policy is to provide a diverse street tree population. See Response P136-5 for more detail. Section 3.3 of the DEIR discusses potential impacts to wildlife, including migratory birds, and finds all impacts to be less than significant.</p>

(AR 2333.)

Petitioners claim the following response was a circular reference to the comment about the “high ecological value” of certain tree species: “Section 3.3 of the DEIR discusses potential impacts to wildlife, including migratory birds, and finds all impacts to be less than significant.” Petitioners’ argument incorrectly paraphrases the comment. The comment references the “relative value” not “high ecological value” of different tree species. The City’s response regarding its desire for a diverse street tree population is sufficient to address the comment concerning relative value. The City’s references to a master response and a particular section of the DEIR sufficiently responds to the comment. (See *Los Angeles Conservancy v. City of West*

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Hollywood (2017) 18 Cal.App.5th 1031, 1041. [“The City could therefore respond, as it did, by referencing the EIR’s discussion of the issues concerning the 9080 Building and Alternative 3 and providing a brief, general response.”]]

Petitioners also argue the City provided a deficient response to a comment concerning “high biogenic emitters.” The subject comment and response are as follows:

Comment	Response
<p>At page 2-44, the City states that the two most prevalent native tree species in the Los Angeles area are considered “high biogenic emitters.” Please explain further and provide documentation to support this assertion. The DEIR goes on to state the following: “Therefore, widespread use of native tree species must be thoroughly evaluated before being implemented. All efforts would be made to plant native trees; however, if the existing street tree well location or size is not suitable for a native tree, a UFD acceptable street tree species would be planted.” This statement seems contradictory. Does the City plan on planting native tree species on a case-specific basis but not on a “widespread” basis? What is meant by “widespread?” How much room is necessary for a native species to be planted? Does it vary by species? Native tree species such as California sycamore exist as street trees and the roots of those trees are causing damage to sidewalks. One example can be found at Hollywood Boulevard and Courtney Ave. Does the City plan on replanting native species when native species are removed? Will the removal of three or more native species still require a public hearing before the Board of Public Works? A picture can be seen below. Picture of California sycamore located at Hollywood Blvd and Courtney Ave. Los Angeles, CA 90046</p>	<p>The characterization of the coast live oak (<i>Quercus agrifolia</i>) and western or California sycamore (<i>Platanus racemosa</i>) as high biogenic emitters was based on information from SelecTree, which defined biogenic emissions as the sum of the hourly emission rates of isoprene and monoterpenes, expressed as microgram emissions per gram dry leaf weight per hour. See page 9-3 of the DEIR for a full reference for SelecTree. High emitters are street trees that generate greater than 10 micrograms total emissions. See Response P-136-5 for information on types of replacement street trees and P-133-1 for information on the location of replacement street tree plantings. See also Master Response No. 1 on streamlining for information on when a discretionary approval is required.</p>

(AR 2286.)

Petitioners generally argue the comment asked for further explanation and the response provided a source, but the response did not explain why this constituted a reason to forgo high ecological value trees as replacement trees. The comment did not question why a high biogenic emitter is a reason to forgo high ecological value trees as replacement trees—it asked for further information and documentation. The City’s response explained what it meant by high biogenic emitters and referenced other responses on issues concerning tree replacement. The City’s response was a reasoned and good faith analysis of the comment.

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Petitioners next argue the City provided deficient responses to comments regarding the Project's impacts on recreation, pedestrians, and bicycle and public transit users of the sidewalks.

First, Petitioners note there are comments about the Project's impact on shade caused by tree removal, i.e., a lack of shade will create more opportunities for a disabled person to become weaker from sun exposure and will affect transit riders waiting for buses. (SAR 160-161, AR 2089-2090.) Regardless of whether the City had to respond to the nature of these comments (see Opening Brief 18:21-27, Opposition 16:16-24), the City did provide a master response on the issue of shade's cooling effects, as discussed above. (AR 1849-1850.) The City sufficiently responded with a good faith and reasoned analysis.

Second, Petitioners make a series of arguments about canopy loss, temporary impacts, energy consumption, heat islands, and recreational impacts, but do not cite any specific comments. (Opening Brief 19:9-26.) The City had an obligation to provide a response to timely made comments. The City has no obligation to respond after the closing period for comments. In any event, the City provided sufficient responses to these types of concerns. (See Opposition 17:17-18:2.)

Accordingly, the court finds Petitioners have not demonstrated the City failed to comply with CEQA's mandates based on its response to comments.

Cumulative Impacts Analysis

The EIR is required to evaluate "cumulative impacts of a project when the project incremental effect is cumulatively considerable, . . ." (Guidelines, § 15130, subd. (a).) EIR analysis of cumulative project impacts is necessary because the full environmental impact of a proposed action cannot be gauged in a vacuum. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 720.)

A "cumulative impact" consists of two or more individual effects which, when considered in combination, are considerable or compound/increase other environmental impacts. (Guidelines, § 15355.) Accurate assessment of environmental impacts requires consideration of cumulative impacts created by the Project together with other projects causing related impacts. (*Id.*, subd. (b).)

An understated cumulative impacts analysis "impedes meaningful public discussion and skews the decision maker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval." (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.) An EIR should avoid "the fallacy of division" that occurs when cumulative impacts are overlooked through separate focus on "isolated parts of the whole." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-735.)

Petitioners argue the removal of 12,860 street trees, which represents nearly 2 percent of all street trees (AR 1817, 1864), will have a significant effect on the environment because the removal of a mature urban forest will lead to increased heat, decreased pedestrian traffic, and increased energy use. (AR 33348-33360.) Petitioners label the loss of such trees “potentially disastrous” given “the context of countless development projects resulting in the loss of massive numbers of street trees, as well as the significant loss of the urban forest as a result of building policies” (Opening Brief 20:20-24.)

The City used a summary of projections approach in the EIR to evaluate cumulative impacts. (AR 582-583.) The method, authorized by the Guidelines, allows an agency to use “[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, *that describes or evaluates conditions contributing to the cumulative effect.*” (Guidelines, § 15130, subd. (b)(1)(B) [emphasis added].) “[D]iscussion of cumulative impacts in an EIR should be guided by the standards of practicality and reasonableness.” (*League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 150 [cleaned up].) The EIR should “focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.” (Guidelines, § 15130, subd. (b).)

Petitioners argue the plans relied by the City for its summary of projections approach did not address the relevant impacts of the Project. Petitioners argue where the agency relies on a summary of projections, the plans used “must contain projections for the cumulative effect at issue in the instant project” (Opening Brief 21:17-18.) Petitioners claim:

“the EIR relies wholly on irrelevant plans with respect to the project’s resulting impacts to City street trees . . . but none of these plans contain projections or analysis that account for an describe impacts related to loss of street trees and the urban tree canopy that have, are and will (i.e., are probable to) arise from the activity that each respective plan contemplates. The EIR has not selected a single planning document as part of its summary of projections approach that quantifies the loss of City’s street trees and the urban tree canopy, and resulting environmental effects from the projects contemplated in said plans.” (Opening Brief 22:5-11.)

Petitioners use *League to Save Lake Tahoe v. County of Placer* [*Save Lake Tahoe*] (2022) 75 Cal.App.5th 63 as an example of an agency’s use of a *relevant plan* for purposes of a cumulative impacts analysis. In *Save Lake Tahoe*, the agency relied upon a general plan’s general projections about development of forestlands and the amount of development authorized under a community plan. “The EIR showed the project’s contribution to the cumulative impact would be less than that allowed under the existing community plan did not violate CEQA where the EIR also analyzed the project’s impacts on the physical environment.” (*Id.* at 152.)

While Petitioners contend the City's analysis is "inadequate" as to each resource topic, Petitioners focus their argument on two topics—aesthetic and biological resources. (Opening Brief 23:21-23.) As to aesthetics, Petitioners argue the City's analysis is silent on removal of other than the limited number of Los Angeles Historic-Cultural Monuments (HCMs) street trees. (Opening Brief 23:27-28.) Petitioners assert the City provided no analysis of related projects or projections. (Opening Brief 24:1.)

The City does not dispute Petitioners' premise that its selection of a plan or plans for the summary of projections analysis must inform on the impact at issue—here, the loss of street trees and urban canopy. (Opposition 18:21-23.) The City contends "Petitioners are incorrect." The City asserts "the applicable plans found that a loss of street trees would not be a significant impact." (Opposition 18:23-24.)

The EIR generally reports it used projections from the City of Los Angeles Framework Element, the City's Mobility Plan 2035, the Los Angeles County General Plan, Southern California Association of (SCAG) Regional Transportation Plan and Sustainable Communities Strategy, the Metro Long-Range Transportation Plan, and the South Coast Air Quality Management District's Air Quality Management Plan to analyze cumulative impacts. (AR 583-588.) Using projections within the various plans, the City found the Project's incremental effect would not have a cumulatively considerable impact. (AR 588-612.) The City contends its analysis is reasonable, in good faith and supported by substantial evidence. (See generally Opposition 18:24-20:23.)

As noted by Petitioners, where an EIR "uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized." (Guidelines, § 15150, subd. (c).) "The relationship between incorporated part of the referenced document and the EIR shall be described." (*Ibid.*)

As to aesthetic impacts, the City argues the City's Framework Element "provides a policy for 'more but smaller size (e.g., 15 gallon) trees in lieu of fewer larger size (e.g., 24-inch box) trees'" (Opposition 18:25-27.) The City cites its Mobility Plan 2035 and its objectives of bringing sidewalks into good condition by 2035. (Opposition 19:4-8.) The City's EIR for the Mobility Plan 2035 found aesthetic impacts would be less than significant because (among other reasons) any removal of street trees would be pursuant to the City's policies regulating such removal. (Opposition 19:19-21.) The City also notes an adopted regional transportation plan include plans for repair of sidewalks and the plan found aesthetic impacts less than significant because of the general location of transportation projects in urban areas. (Opposition 19:26-27.)

Petitioners accurately report the City's explanation and defense of its cumulative impacts analysis is based primarily on information and discussion not contained or referenced in the EIR. As to aesthetic impacts, the EIR's discussion does not incorporate by reference or summarize the EIR for the City's Framework Element (see Opposition 18:25), the City's Mobility Plan 2035 (see Opposition 19:4), the County's mobility element (see Opposition 20:7), Metro's long-range

transportation plan (see Opposition 20:10) or the 2016 air quality management plan. (See Opposition 20:11.)¹⁵ Thus, the City may not rely on such plans to justify its conclusions about cumulative impacts on aesthetic resources. (*Laurel Heights Improvement Assn. v. Regents of the University of California, supra*, 47 Cal.3d at 394. [“A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If postapproval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken. We have expressly condemned this use of EIR's.”])

The City's discussion of cumulative impacts on aesthetic resources relies on three adopted plans in its analysis. Referencing the County's General Plan and a 2008 SCAG transportation report, the EIR discusses population growth in Los Angeles County with the addition of 300,000 new housing units and a million new residents over the next 30 years. (AR 589.) The reference to the County's General Plan and the 2008 SCAG report provides no discussion about trees, tree canopy or sidewalk repair. The high-level documents do not provide detail concerning particular projects. Instead, the referenced plans generally refer to population growth and development of housing.

Relying on SCAG's 2015 regional transportation report,¹⁶ the EIR notes the Southern California region “is expected to add another seven million residents between 2008 and 2035.” (AR 589.) The EIR describes the anticipated expansion, development and “densification of development in existing areas.” (AR 589.) The EIR acknowledges the “growth could adversely affect scenic vistas and specific scenic resources, alter visual character and quality in some neighborhoods and communities, and change the overall landscape of the cities and communities.” (AR 589.) The SCAG 2015 report provides, “Regional transportation projects that require the conversion of open space to development—when taken into consideration with the other infrastructure and development projects in the SCAG region and surrounding areas—would constitute a significant cumulative impact.” (AR 589.)

The City generally includes the removal of street trees and reductions in the citywide tree canopy as resulting effects of the development and growth. (AR 589.) The EIR acknowledges regional transportation projects and infrastructure improvements “have the potential to degrade the visual character or quality of the site and its surroundings which such improvements pass through areas where open space is the existing condition, which, when

¹⁵ The City's citations in its Opposition Brief to the various plans is often to the EIR's general reference to the plans relied upon for the cumulative impacts analysis, not the discussion in the EIR about the cumulative analysis. (See AR 583-588.) Instead, the City uses various plans, not discussed or incorporated by reference in the EIR, to now justify the City's decision for purposes of this litigation.

¹⁶ As noted in the EIR, SCAG is a planning organization for six counties within the Southern California region—Los Angeles, Orange, Riverside, San Bernardino, Ventura and Imperial. (AR 586.)

considered in combination with other infrastructure and development with the SCAG region and nearby areas, constitutes a significant cumulative impact on the visual character of the region.” (AR 589.)

Contrary to the City’s contention that “the *applicable plans* found that a loss of street trees would not be a significant impact” (Opposition 18:23-24 [emphasis added]), the court finds the EIR fails to do just that. The City’s analysis is deficient as an informational document on the cumulative effect analysis concerning aesthetic resources because there is no substantive discussion in the EIR (or documents referenced therein) to a cumulative effect from the Project on impacts created by the SCAG regional transportation plan.

The EIR relies on a single plan, SCAG’s 2015 transportation plan and related EIR, to provide general information about population growth and transportation projects. While there is a single reference to the removal of street trees attributed to SCAG’s report (AR 589 [paragraph two]), the “discussion of cumulative impacts” does not “reflect the severity of the impacts and the likelihood of their occurrence, . . .” (Guidelines, § 15130, subd. (b).) The EIR’s reference to SCAG’s report does not discuss the impact SCAG’s project has or will have on street trees and tree canopy, if any, this Project, and the cumulative effects of impacts. (*Ibid.* [cumulative impacts discussion should focus on “the cumulative impact to which the identified other projects contribute”].)

Also contrary to the City’s assertion, the EIR does not summarize or reference SCAG’s EIR’s discussion of SCAG’s active transportation plan “to maintain and repair thousands of miles of ‘dilapidated sidewalks . . .’” (Opposition 19:23-25.) (See Guidelines, § 15150, subd. (c) [requiring summary of referenced material].) Decision makers and the public could not know—based on the EIR and its references—SCAG’s EIR “found that the aesthetic impacts to ‘scenic resources, including, but not limited to trees’ were less than significant because of the ‘general location of transportation projects in urban areas.’” (AR 26005-26011 [SCAG EIR].) (Opposition 19:25-27.)

To be sure, the EIR reports: “Past and present development in the City and the region have resulted in localized obstruction of scenic vistas and focal views, degradation of visual quality as open space has been converted to urban uses, the removal of street trees, and reductions in the citywide tree canopy throughout the region.” (AR 589.) The EIR in its cumulative impacts section, however, does not discuss any particular past, present or future projects or the City’s approval and/or analysis of such projects.

The EIR also explains the Project “would not affect scenic highways, or contribute to a cumulative loss of scenic vistas or focal views.” (AR 589.) The City notes:

“where street tree removal would be necessary, the effects on the character and quality of the neighborhood would be more perceptible and prominent. Additionally, the proposed Project would result in the temporary loss of shading from the street tree removals. However, in most cases, implementation of a street

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tree replacement policy would offset any long-term aesthetic impact, with removed street trees replaced at a 2:1 ratio for the first 10 years, a 3:1 ratio for years 11 through 21, and a 2:1 ratio for the remaining 9 years of the Project. The proposed Project would result in a net neutral street tree canopy as the replacement street trees reach maturity at Year 30 of the Project. This means that at the end of the Project the City will have a greater ratio of street trees to urban canopy than it did before the Project started. Over the life of the Project, or the next 30 years, the City would have an increased number of street trees and would have a larger urban canopy size than at the start of the Project.” (AR 589.)

The analysis, however, is not a cumulative impacts analysis. The analysis—in the EIR’s cumulative analysis section—is merely additional discussion of the Project’s impacts. It is not a cumulative impacts analysis of aesthetic resources.¹⁷

The City’s cumulative impacts analysis for biological resources suffers from the same defects. The City again explains and defends its analysis with plans not referenced in its biological resources discussion of cumulative impacts in the EIR. (AR 582-594.) While the City argues its Mobility Plan 2035, Metro’s long range transportation plan, air quality management plan and the County’s Mobility Element support its analysis (Opposition 20:6-13), the EIR is silent about the plans and any analysis of impacts. (AR 593-594.)

The EIR does reference the City’s Framework Element and notes development “that may be pushed out to other areas could result in the loss of habitat for plants and animals” (AR 593.) The “cumulative effect of numerous small projects in natural open space will have a significant impact” (AR 593.) The EIR reflects the County’s General Plan revealed development may significantly impact wildlife movement corridors and linkages. (AR 593.) Finally, the EIR reports plans included in SCAG’s regional transportation programs would result in significant impacts to biological resources related to “increased access in . . . undeveloped areas from the extension of transportation infrastructure through rural areas.”¹⁸ (AR 593.)

¹⁷ As to the impact analysis, Petitioners specifically take issue with the City’s “net gain” projection because trees that may die *after* three years of planting will not be replaced. (Opening Brief 24:6-8.) The EIR notes, however, given that all trees that die within 3 years of planting will be replaced, and there is a static replacement rate of eight percent for trees from years four to 15. (AR 1855.) The City’s “net gain” projection is based on a replacement program that is at a 2:1 and 3:1 ratio. That is, the Project is a tree-for-tree replacement—it is two or three trees for each tree that is removed. Thus, with the replacement ratio and an eight percent mortality rate, at the end of the Project, there will be “an increased number of street trees” with “a larger urban canopy size than at the start of the Project.” (AR 589.)

¹⁸ Contrary to the City’s position the EIR’s references to SCAG projects did not include a summary from the SCAG EIR or its data that biological impacts would only occur through the conversion of natural habitats and not in an urban environment. The EIR also did not summarize the SCAG EIR to report impacts to plant communities would not be significant in rights-of-way. (Opposition 19:27-20:5.) Accordingly, such information was not adequately

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The EIR's analysis is deficient. Certainly, the EIR references three adopted planning documents. The EIR, however, does not explain how those planning documents inform on the cumulative effects of the Project. The EIR's discussion of open space development in undeveloped areas does not advise decision makers or the public about cumulative impacts related to the Project; the analysis in the EIR does not consider the adopted planning documents and analyze cumulative impacts related to street trees and street canopy and sidewalk repair in an urban environment. As referenced in the EIR, the three planning documents appear to have no real relevance to the Project—the Project does not contemplate development in open space or rural areas. The EIR could not find on the sources relied upon “that a loss of street trees would not be a significant [cumulative] impact.” (Opposition 18:23-24.)

To be sure, relying on the 2:1 and 3:1 street tree replacement ratios, the EIR reports the “Project would not reduce but rather increase habitat.” (AR 594.) The EIR concludes:

“The replacement ratios would result in a net gain in the total number of street trees and a net neutral street tree canopy by Year 30 of the Project, which would provide nesting habitat for species protected under the MBTA. Therefore, impacts on biological resources would not result in cumulatively considerable contributions to cumulatively significant biological impacts.” (AR 594.)

As with aesthetic resource impacts, however, the EIR's analysis is not a cumulative impacts analysis. The analysis—in the EIR's cumulative analysis section—is merely additional discussion of the Project's impacts. It is not a cumulative impacts analysis of biological resources

Finally, the City argues res judicata and/or collateral estoppel applies to Petitioners' argument regarding the cumulative impacts analysis. (Opposition 20:24-21:7.) More specifically, the City argues Petitioners should be barred from making this argument here because UNFLA was unsuccessful with an argument regarding cumulative effects in a separate matter by failing to produce evidence. (City RJN Ex. A at 8, 10, 13.) The court disagrees. The prior litigation was before an EIR was certified and this litigation is challenging the sufficiency of the certified EIR.

Accordingly, the court finds the City failed to proceed in the manner required by law when it failed to conduct a cumulative impacts analysis with summaries of projects relevant to the Project. For that reason, the court finds the EIR's cumulative impacts analysis deficient.

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before decision makers or the public even though the information ultimately might have been found culling through the extensive administrative record. Petitioners again argue the City is engaging in post hoc rationalization.

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Description of Willits Settlement

Petitioners argue the EIR fails as an informational document because the Willits Settlement is a fundamental project objective. Petitioners assert the EIR dismisses mitigation and alternatives based on the City's false claims about the nature and terms of the Willits Settlement.

It is undisputed the EIR reports the main project objective of the Project is to fulfill the Willits Settlement. (AR 1817, 1831.) The parties dispute the obligations created by the Willits Settlement and the manner the EIR addressed such obligations.

Based on the text of the Willits Settlement, Petitioners argue the Willits Settlement did not commit the City to any specific sidewalk repairs (SAR 165, 175) and instead provides certain flexibility. (AR 4658-4659.) Additionally, the Willits Settlement expressly permitted funding for mitigation costs. (AR 4631, 4653-4654, 4662-4663.)

Therefore, Petitioners argue the City was not obligated to overrule Project alternatives and could have proceeded with such alternatives, even if the alternatives might have otherwise seemed cost prohibitive. The City had the discretionary authority to decide and to the extent it believed it did not have that option, it did not exercise its discretionary authority and there is a prejudicial abuse of discretion. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1062-1063.)

Petitioners specifically cite a public comment recited in the EIR stating: "The DEIR states, 'An important component of the Willits Settlement sidewalk repairs is street tree root pruning as well as the removal and replacement of street trees.'" (AR 2183.) Petitioners' argument incorrectly characterizes the City's position as the replacement of trees is the sole component of the Willits Settlement.

As noted by the City in its response to the comment, "The comment appears to conflate the elements of the Willits Settlement with project objectives and description. While they are interrelated, they are not the same thing." (AR 2183.) The City also references its response to other comments to explain the settlement. (See AR 2172, 2174.) The primary goal of the Willits Settlement is to improve walkway surfaces, which can be done through repair of damage to the walkway surfaces with a preservation of trees to the extent feasible. (AR 4653, 4657-4659, 4709, 6949.)

Petitioners argue the EIR inaccurately described the Willits Settlement in a way that makes it seem that certain proposed alternatives were completely infeasible. More specifically, Petitioners identify alternative numbers 1 (no project), 6 (avoiding repairs that would last longer than 30 days or require greater than 30 feet of excavation), 7 (obtaining private property to retain all street tree for alternative sidewalk designs), and sidewalk designs (use of alternative materials) as alternatives the City rejected based on the City's inaccurate description of the Willits Settlement. (AR 1841, 1843-1844, 1846.)

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Petitioners' argument is somewhat misleading. Petitioners cite to the responses to comments as they relate to the alternatives. The focus on responses to comments about alternatives overlooks the City's detailed findings concerning the alternatives (AR 41-51 [findings]) and the alternative analysis in the EIR (AR 633-642, 619-620, 661). The City's discussion of project alternatives sufficiently explains why the alternatives would not be the better approach than the Project. (See Opposition 22:5-14 [explaining reasons].) This analysis explains the alternatives were considered and ruled out.

Accordingly, the court finds Petitioners have not met their burden of demonstrating the City failed to comply with CEQA in its consideration of alternatives for the Project and its description of the Willits Settlement.

Consultation with CDFW

Petitioners argue the City did not properly consult with trustee agencies, specifically the CDFW.

"Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project" (Pub. Resources Code, § 21153, subd. (a) [emphasis added].)

It is undisputed the CDFW is a trustee agency for the Project. (Guidelines, § 15386. ["Trustee agencies include: (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department."]; see also AR 1985 [recognizing sensitive species impacted include Purple Martin and Yellow Warbler].)

The parties dispute whether the City complied with the consultation requirement in Public Resources Code section 21153, subdivision (a). As a preliminary matter, there is no dispute the City notified the CDFW of the notice of preparation, the initial study (SAR 816-817) and the DEIR (AR 5193-5198) The CDFW did not provide any comments to the City. (See AR 791-880 [public comments received for the notice of preparation and initial study]; AR 1823-1830 [public comments received for DEIR].) It is also undisputed the City did not actually consult with the CDFW. (AR 2294. ["Since the proposed Ordinance has not been adopted, no specific sidewalk repair is proposed under the Ordinance, and no impact to a sensitive species under the jurisdiction of the CDFW has been identified, therefore, no consultation with CDFW has occurred."]))

Petitioners stress CEQA requires an actual consultation. The City argues CEQA requires only an opportunity for consultation. The court agrees with the City.

Citizens for East Shore Parks v. State Lands Com. (2011) 202 Cal.App.4th 549, 567-568 provides a lead agency may rely on a responsible agency's failure to provide comments after receiving notice to mean that the responsible agency had no comments to make. (See also Guidelines,

§ 15207. [“[A]ny public agency or person who is consulted with regard to an EIR . . . fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.”])

Petitioners attempt to distinguish *Citizens for East Shore Parks v. State Lands Com.* is not persuasive. The Government Code’s definition of consultation is immaterial. (Gov. Code, § 65352.4. [“For purposes of Section 65351, 65352.3, and 65562.5, ‘consultation’ means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. . . .”]) The CDFW had several opportunities to provide comments to the City and remained silent. Nothing required the City to delay the Project to attempt to elicit a response from the CDFW (over which it has no authority) concerning the specifics of the Project.

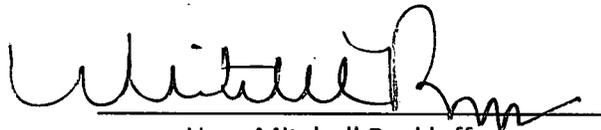
Accordingly, the court finds Petitioner’s have not met their burden of demonstrating the City failed to comply with CEQA based on a failure to consult with and obtain comments from the CDFW.

CONCLUSION

Based on the foregoing, the petition is granted.

IT IS SO ORDERED.

January 17, 2023



Hon. Mitchell Beckloff
Judge of the Superior Court

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