Communication from Public

Name:	Fix the City
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Comments for Public Posting:	Please see the attached comment on behalf of Fix the City specifically addressing the impropriety of the proposed Framework Element Amendment, its inconsistency with prior court orders and its failure to comply with the City Charter, City Code, and CEQA. This attachment contains the Appellate Brief filed by the City of Los Angeles in support of the Framework Element EIR.

1999 WL 33738627 (Cal.App. 2 Dist.) (Appellate Brief)
Court of Appeal, Second District, Division 3, California.

FEDERATION OF HILLSIDE AND CANYON ASSOCIATIONS, a non-profit corporation; Coalition Against the Pipeline ("CAP"), an unincorporated association, Petitioners and Plaintiffs at trial/Appellants/Respondents on Cross Appeal,
v.
THE CITY OF LOS ANGELES; The City Council of the City of Los Angeles, Respondents at trial/Respondents on Appeal/Appellants on Cross Appeal.

No. B126659.
November 18, 1999.

LASC No. BS 042964
On Appeal and Cross Appeal From Judgment of the Superior Court of the State of California for the County of Los Angeles, The Honorable David Yaffe, Judge Presiding

City of Los Angeles' Combined 1. Respondent's Brief on Appeal 2. Opening Brief on Cross Appeal

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***1 I.**

INTRODUCTION AND SUMMARY OF ARGUMENT

In December 1996, the City adopted the General Plan Framework as an element of its general plan, thereby completing the first step in a year long process to deal with population growth which was occurring in Los Angeles and the surrounding region. This part of the City's role in this concerted multi-agency process to provide long range planning to deal with growth impacts, commenced in 1993, when the City sought public participation and input over a period of years on options it had to address the growth. As part of that process, the City conducted hundreds of meetings, sought input from thousands of people,

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generated an administrative record consisting of 80 volumes of studies, comments, and proposals, prepared a draft and final Environmental Impact Report comprising over 2,000 pages, and prepared many amendments to the draft plan which was eventually adopted in late 1996, after a formal public hearing process which commenced more than three years earlier.

Petitioners are two associations of unidentified members. Petitioner Federation of Hillside Associations, a corporation comprised of various associations, participated throughout the City's administrative process and complained about various issues, however Petitioner Hillside now raises only issues asserted by others who did not file suit. Petitioner Coalition Against the Pipeline ("CAP") is comprised of unknown members. CAP did not submit written comments during the public comment period on the EIRs, participated only late in the administrative approval process, and raised issues related to topics the General Plan Framework ("GPF") did not cover, not issues involving environmental impacts.

***2** Petitioners filed suit, claiming substantive and procedural violations of the California Environmental Quality Act ("CEQA"). Petitioners do not contend that they, or any others, had insufficient input into the formulation of the GPF or its policies, or insufficient time to review any documents. However, they asked that the entire plan be set aside, and that major portions of the EIR be redone and recirculated.

Petitioners cast their arguments as alleged violations of CEQA but in reality, they attack the City's policy decision to include various strategies in the plan to offset the negative impacts of regional population growth. Petitioners' challenge to the City's policy decisions are not the proper basis of a CEQA attack, however artfully worded.

The trial court rejected all their substantive challenges, holding that the City properly analyzed all impacts and alternatives to support its decision to approve the General Plan Framework. However, the trial court required the City to formally recirculate one of the many documents prepared in connection with its approval of the GPF.

Petitioners repeat their substantive attacks on appeal. The issue to be determined by this court is not the wisdom of the City's policies but whether the GPF will cause any significant impacts which the City did not properly review, or whether the City's conclusions about the impacts are supported by substantial evidence. If City's forecast and conclusions are supported by substantial evidence, then a violation of CEQA has not occurred, simply because other conclusions could be reached based on the same data and forecasts (Title 14, California Code of Regulations, "CEQA Guidelines", § 15384).

***3 A. Petitioners' Contentions on Appeal**

(1) Petitioners argue that the City's CEQA findings that transportation impacts would be mitigated to insignificance is not supported by substantial evidence. They base this claim on a quotation from the City's Transportation Improvement and Mitigation Program ("TIMP"), one of the programs adopted at the time of adoption of the General Plan Framework. The substance of this quotation questioned the availability of full funding for all of the transportation improvements over the 20 year life of the plan ("funding statement").[1] Petitioners argued that this "funding statement" constituted substantial evidence that impacts would not be mitigated, and therefore were significant.

[1] The TIMP contained a list of suggested projects for the City to implement over a 20 year period to carry out the policies and goals contained in the GPF. Some of the projects were identified as mitigation measures in the EIR and some were additional to those in the EIR.

(2) At trial, petitioners had argued that the TIMP funding statement constituted "significant new information" and that the TIMP therefore should have been made a formal part of the City's environmental impact report "EIR" and formally recirculated under Pub.Res.Code § 21092.1 and the CEQA Guidelines (Title 14, California Code of Regulations, "CEQA Guidelines" §15088.5).[2] (The trial court agreed.)[3] Now, on appeal, ***4** petitioners argue that the trial court's holding that the funding statement constituted "new information" which required the TIMP to be recirculated was inconsistent with the trial court's holding that the City's transportation findings were supported by substantial evidence.

[2] Reference to CEQA Guidelines is to the version in existence at the time of the various actions by the City required by CEQA. Extensive amendments occurred to the guidelines in 1998. Any substantive changes will be noted only if relevant to the discussion.

[3] The trial court rejected each of Petitioners' attacks on the substance of the plan and the sufficiency of the evidence to support the findings, but held that the City was required by Pub.Res.Code § 21092.1 to recirculate the TIMP. It issued a writ to that effect. Pending the outcome of its cross appeal of that action, the City has complied with the writ by recirculating the TIMP. (The City utilized the GPF EIR, as recirculated and updated, in connection with the City's approval of the Transportation Element of the General Plan, another of the GPF implementation programs. That action is now final, and the statute of limitations for an attack on that approval has expired).

(3) Petitioners attack the alternatives discussion in the EIR in a conclusionary manner which ignores the law about the range of alternatives required and the evidence about the alternatives the City chose.

(4) Petitioners attack the City's analysis of water impacts and claim the City improperly failed to consider a specific scenario relating to population growth.

B. Respondent City's Arguments On Appeal, and Cross Appellant City's Arguments On Cross Appeal

Here, as at trial, the City will show that petitioners did not raise many of the issues at a time when the City could have properly explained or corrected its analysis, that petitioners have not provided the court with the evidence relating to their claims, that petitioners rely on selected citations to the record which do not constitute substantial evidence in support of their arguments, and that petitioners' arguments are factually and legally insupportable.

(1) With respect to the attack on the City's transportation finding, a present ability to pay for these improvements is not a required finding under CEQA. First, mitigation measures for a policy document such as a plan may consist only of goals and policies, when the plan itself consists only of goals and policies (CEQA Guidelines § 15146). ***5** Second, substantial evidence supports the City's conclusions. The GPF contains provisions which require the City to determine the availability of infrastructure, particularly traffic infrastructure, prior to allowing the community plan amendments necessary to permit development.growth. The City's experts explained that as a general rule, revenues increase as development occurs. If the development exists which necessitates the improvements, then that development will generate increased revenues to pay for the improvements. Finally, the TIMP improvements go beyond those determined in the EIR necessary to mitigate impacts. Even if all the TIMP improvements cannot be paid for, substantial evidence supports the City's conclusion that the mitigation measures described as necessary in the EIR will be implemented.

With all this information before it, the City concluded that its forecasts about impacts and mitigation were supported by substantial evidence, that the mitigation measures were feasible and that the mitigation would be effective to reduce impacts to insignificance.

(2) With respect to the City's ***CROSS APPEAL*** of the trial court's holding that recirculation is required, if, as here, substantial evidence.supports the City's transportation findings despite a statement about the feasibility of some mitigation measures, then substantial evidence supports the City's conclusion that the same statement does not require recirculation.

(3) The attacks on the City's alternatives discussion and on its discussion of and findings about water impacts and growth should be rejected as unsupported by law or the record in this. case. Moreover, petitioners have failed to exhaust administrative remedies relating to water impacts and were dilatory in raising their attacks on the alternatives.

***6 II.**

BACKGROUND

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A. Summary of General Plan Framework

1. *Purpose and Description of GPF*

The Southern California Association of Governments (SCAG)'projected that the City's population could increase due to natural factors such as birth and death rates from 3,485,399 residents in 1990 to 4,306,500 residents by the year 2010 (See Volume 9, of the Administrative Record at page 1537, "9 AR 1537"; 2 AR 114)[4]. The purpose of the GPF is to mitigate the impacts of that projected population growth by formulating policies to guide later City actions.

[4] The Administrative Record is comprised of Part I, II and III. Part I is bound in volumes 1 through 80, and referred to by volume and page number ("1 AR 1"). Parts II and III of the AR are shown on the index to record of proceedings ("Index"). The index is filed separately, and contained in the front of volume 1 of the bound volumes. Part II starts at page 17 of the index and describes documents which have been omitted, from the bound volumes to reduce space and costs pursuant to stipulation. Part III starts at page 21 of the index, and describes documents relating to public participation. Documents in parts II and II were available during trial and are available at the City's offices. Copies will be provided to either counsel or the court upon request.

The GPF contains goals and policies to influence the City's amendment of the mandatory plan elements to improve air quality, mitigate traffic impacts of additional growth, improve the City's distribution of land uses and its urban form pattern to protect the character of low- density residential neighborhoods, encourage pedestrian activity and transit use, encourage rhixed use commercial and residential development, improve the City's employment base, especially in economically depressed neighborhoods, and ensure that infrastructure is ***7** adequate in relationship to growth and development.

The GPF consists of an Executive Summary (2 AR 90-99) and chapters consisting of goals, objectives, policies and programs relating to Growth and Capacity (2 AR 112-120), Land Use (2 AR 121-186), Housing (2 AR 187-194), Urban Form (2 AR 195-216), Open Space (2 AR 218-228), Economic Development (2 AR 229-240), Transportation (2 AR 241-256), Infrastructure and Public Services (2 AR 257-282), and, Chapter 10, Implementation Programs (2 AR 283-311).

Each of the chapters, lists goals, objectives and policies to guide the City's development. For example, the Transportation Chapter (2 AR 241-256) contains two goals to mitigate impacts SCAG-projected growth may have on existing regional transportation if that growth occurs as projected: (1) adequate accessibility to work opportunities and essential services and acceptable mobility (Goal 8A, see 2 AR 246); and (2) an adequate street system to "facilitate the movement of those reliant upon the system" (Goal 8B, see 2 AR 256). These goals are supported by objectives, which, in turn, are supported by policies. Each objective has its corresponding policies, listed under it by subheading (i.e. policies 8.1.1 through 8.1.7 support objective 8.1). There are 83 separate policies listed in the transportation chapter of the GPF.

Each policy has related programs which are proposed to implement the policy (cross referenced in parentheses following the policy). Chapter 10 of the GPF lists the 70 programs for all GPF policies/objectives (2 AR 283-311). Of the 70 programs for implementation of all the GPF goals, objectives and policies, 22 are directed at mitigation of ***8** transportation impacts which *may* result from SCAG-projected population growth projections.[5]

[5] The programs specifically referenced in the GPF Transportation Chapter include program nos. 1, 2, 3, 4, 5, 6, 17, 18, 31, 33, 34, 37, 38, 39, 41, 42, 44, 45, 46, 52, 53, 54 (located in Chapter 10 at 2 AR 263-307). Program P4 calls for adoption of Transportation Improvement and Mitigation Plans for selected areas (2 AR 287-288).

The GPF's land use policies (2 AR 121-186), guide the City's future modification of the community plans. It is those community plans, not the GPF, which allow or prohibit increased development which in turn triggers the transportation impacts, since the land use diagram in the general plan framework "does not connote land use entitlements or affect existing zoning for properties...[but is instead] intended to serve as the guideline for the subsequent amendment of the City's Community Plans where the precise designation and alignment of uses will be determined." (2 AR 122. See also 2 AR 91).

The GPF was designed to coordinate increased development with the necessary infrastructure to maintain the quality of life

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("Third Bullet 'Mitigation Measures"', [revisions to FEIR] at 15 AR 2437, referencing Land Use Policy # 3.3.2(d), found at 2 AR 160). The City concluded that the policies and goals would promote and facilitate this end. However, in response to public concerns expressed during the administrative process about the feasibility of the various mitigation measures, the GPF contains a specific provision which prevents amendment of community plans to permit additional development until the supporting infrastructure is in place.[6]

[6] Policy No. 3.3.2 d at 2 AR 159-160 ["Consider regulating the type, location, and/or timing of development, when... there remains inadequate public infrastructure or service to support land use development."]

Since the GPF was designed as a flexible policy document to guide future ***9** decisions, not as an absolute limit on allowable development, an integral part of the GPF is its on-going monitoring program (2 AR 284-285). The monitoring program was designed to monitor the status of development activity and capabilities of infrastructure (2 AR 285 [summary]; 2 AR 303-304 [GPF required contents of program]). The required Annual Report on Growth and Infrastructure (2 AR 285) is to be used to guide the community plan amendment process (2 AR 110 [General Plan Preparation, Revision and Update Program]).[7]

[7] "Phasing of such updates may be made in accordance with Objective 3.3 and Policies 3.3.1 and 3.3.2, based on the monitoring of population, development, and infrastructure...." (2 AR 110).

2. *Relationship to Other Plans and Development Approvals*

Under state planning law, the City must adopt a general plan for the physical development of the City (Govt. Code § 65300). The City's land use element of its general plan designates the allowable uses and sets limits on the intensity of development, as required by Govt. Code § 65302.

Due to the large size of the City, its land use element is contained in 35 geographically separate community plans. Zoning and other approvals allowing development must be consistent with the Land Use designations on the applicable community plan. The City wide Framework is also an element of the City's general plan but it consists of goals, objectives, policies, and programs to serve as a guide for future amendments to the other City wide elements (2 AR 92). The GPF does not designate or require particular uses in any area of the City. The relationship of the GPF to other City wide elements is described in more detail at 2 AR 104-106.

*10 B. Public Participation into Formulation of Draft GPF

The preparation of the GPF started in 1993, and continued over a three year period during which the City conducted an unprecedented number and variety of public meetings, information sessions, outreach programs, interviews and other publication of its efforts to seek wide public input into the various proposals for the GPF. The process also entailed discussion of various forecasts and impacts which would occur with and without the planning effort (See City's trial brief, at AA 63-65 for description of the process). Petitioners originally claimed that the public had insufficient input into the formulation of the GPF, However, after they reviewed the extensive administrative record prepared by the City, petitioners dropped this allegation and stipulated that large portions of the record, showing the extensive public outreach conducted by the City, need not be physically presented to the court (See Stipulation, Respondents' Appendix "RA" at 1-2).

C. Description of Draft EIR and Conclusions about Transportation Impacts

Analysis of the impacts of any long range plan necessarily involves forecasting, since policies, goals, objectives are not capable of precise measurement.[8] The impacts are usually secondary, and are dependent on demographic predictions about social and economic factors influencing human behavior which may cause physical change.

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[8] CEQA Guidelines 15146, 15144. ["Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can."]

The EIR prepared by the City projected impacts which might occur through the year 2010. The data in the EIR lends strong support to 3 conclusion that the GPF, which is ***11** comprised of policies, goals and implementation programs designed to mitigate impacts of population growth projected to occur naturally, does not and will not cause the impacts described in the EIR. (In fact, after preparation of the EIR, the GPF was amended to clarify that it does not override the existing community plans which provide for the location and intensity of various types of uses.) The EIR concluded that the growth, and the impacts associated with that growth, will occur with or without the GPF.[9]

[9] There is ample evidence to support a conclusion that the adoption of the General Plan Framework was not a project approval subject to CEQA since it does not "cause" any impacts, either directly or indirectly (Pub.Res.Code § 21065). This was not fully known until the completion of the EIR process,, and in particular, the "alternatives" analysis. The City prepared the EIR to examine and measure the impacts that could occur, and to provide an informational document to assist it in making policy decisions about how to mitigate growth.

The DEIR is found at 8 AR 1282 - 14 AR 2410. A table of contents (8 AR 1284-1290) combined with the Index to the record of proceedings filed with the trial court (RA 9, 14-17) will assist the reader in locating various discussions. The DEIR contains an Introduction (8 AR 1291-1297), a table showing the summary of impacts before and after mitigation (8 AR 1298-1309), Project Description (8 AR 1310-1321), including an explanation of the organization of the GPF (8 AR 1313-1317), impacts analysis (8 AR 1322 to 12 AR 1939), cumulative analysis (12 AR 1940-1962), alternatives analysis (12 AR 1968-2001), other required analyses, and appendices (13, 14 AR). ? Separate chapters are provided on transportation impacts (10 AR 1652-1686), land use (2 AR 121-186), water (10 AR 1592-1620), and alternatives (12 AR 1968-2001).

The DEIR defined a significant impact on transportation as being an increase in future highway congestion (10 AR 1664). Classification as a significant impact is determined ***12** by several factors: (1) an increase in travel time (by community plan area, "CPA"), (2) decreased accessibility to jobs (by CPA) and (3) inability to meet federal targets for increased percentage of transit use. In addition, the DEIR defined a significant impact as being development that results in transit demand which exceeds capabilities (10 AR 1664).

The DEIR concluded that over the projected 20 year time period of the analysis, and before mitigation: (1) an increase in travel time will occur in some, but not all, CPA's, primarily due to growth outside the City (10 AR 1669); (2) that increase in travel time will occur regardless of implementation of the GPF (Id.); (3) decreased accessibility to jobs will occur, but that with the GPF, accessibility will actually increase in 1/3 of the CPA's when compared to a no-growth scenario (10 AR 1670, 1677); and (4) an increase in the use of transit will occur under current trends and existing city policies but that increase will not meet the federal targets (10 AR 1669). However, with imposition of policy-level and other mitigation measures described in the DEIR (10 AR 1673-1679), the DEIR concluded that each of those impacts would be reduced to a level of insignificance (10 AR 1680).

D. Environmental Impact Report Review Process

1. *Preparation of the DEIR*

On July 13, 1994, the Planning Department issued a Pre-Draft Request for Comments concerning the scope and content of the proposed EIR (13 AR 2027 [copy of request for comments]; 13 AR 2028-2041 [notice of preparation and initial study]; 13 AR 2058-2227 [comments]; 13 AR 2043-2057 [mailing list]). The City received 26 responses from agencies, private organizations and others. Petitioner Hillside Federation submitted a ***13** comment (13 AR 2159). Petitioner Coalition Against the Pipeline did not. Materials obtained from all the background reports, analysis and meetings, responses to the notice of preparation, along with many other studies, were compiled into a draft EIR (Vols 8-14 of AR).

On January 26, 1995, the City issued a "Notice of Completion [of DEER]", releasing both the Draft Framework Element and its accompanying Draft EER for public review and comment through April 26, 1995, which was twice the circulation period required by CEQA (40 AR 12027-12094, see CEQA Guidelines §§ 15105, 15106). To accommodate the requests of several members of the public, the Planning Department extended the comment period even further, through May 26, 1995 (41 AR 12207-12210).

The Notice of Completion, the GPF and DEIR described seven programs to implement the GPF subsequent to its adoption: a Monitoring Program, an Annual Report on Growth and Infrastructure, a Capital Improvement Program, a Transportation Improvement and Mitigation Program (TIMP), a Community Plan Update Program, Planning and Zoning Code Amendments, and a program of new and amended Plan Elements. Pub.Res.Code § 21081.6 also requires a monitoring program, which was adopted at the time of GPF approval (1 AR 26-29).

On February 13, 1995, the City completed a draft of the TIMP, the first of the implementing programs proposed in the draft GPF (19 AR 3363-3409). It was not part of the analysis of the Draft EIR; instead the TIMP was one of the City's many proposed programs to implement portions of the GPF policies. The TIMP was described in detail in the transportation chapter of the DEIR (10 AR 1673-1685), and referenced and generally described in the GPF itself as a proposed implementing program (2 AR 99, 2 AR 249 [policy ***14** 8.3.4]; 2 AR 284, 287-288 [contents of TIMP]). Because the TIMP was completed in advance of any of the other implementation programs, the City made it available to the public for review, and it was available during the entire period that the GPF and Final EIR were the subject of hearings before the Planning Commission, City Council Committees, and City Council itself. Copies of the TIMP were distributed at seven public hearings on the DEIR and draft GPF and mailed to persons who had requested a copy. It was referenced in comments submitted during the public comment period[10] and in responses to comments.[11]

[10] 16 AR 2608, Comment A-1 reproduced in Final EIR, paragraph 9 ["A separate report has been prepared in conjunction with the Framework to address transportation issues (the TIMP).... Include the TIMP in the draft Environmental Impact Report (EIR)"]. The TIMP was attached to the FEIR as part of Appendix G, as requested in this comment.

[11] (18 AR 3129 [Response to Comment AM-7]) 33 AR 10678-10679 [July 27, 1995, consultant report to Planning Commission, stating that the TIMP was available during the 90 public comment period for the DEIR which ended in May, 1995].

2. *Preparation of Final EIR.*

During the public comment period, the City conducted public hearings/workshops pursuant to notices mailed to 9,500 persons and published in the Los Angeles Times (Part III, AR, Box 6, File X, B). Many people commented during the public comment period, including Petitioner Hillside Federation. Again, Petitioner CAP submitted no written comments during the public comment period on the DEIR. The City prepared formal responses to all comments on environmental impacts timely presented during this period (Pub.Res.Code § 21091(d)).

On April 23, 1996, the Department of City Planning released the Final EIR for ***15** the draft GPF (1 AR 43-83) The Final EIR consisted of additions and corrections to the text, and figures (15 AR 2411-2600), responses to comments submitted during public comment period, along with the City's detailed responses, in three volumes (16 AR-18 AR) and additional Appendices G (Transportation/Circulation) and H (Volume 19 AR).

E. Formal General Plan Framework and Final EIR Approval Process

After preparation of the Final EIR, the Planning Commission conducted a series of policy issue sessions in public meetings between March 1995 and May 1995 to review various Planning Department Staff Reports and to discuss the GPF1 & major recommendations (see 76 AR 16248 for early draft of GPF).[12] In Los Angeles, a plan is adopted or amended by resolution of

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City Council, only after approval by the Planning Commission and recommendations by the Mayor. Any changes made by City Council after approval by the Planning Commission must be referred back to the Director of Planning, the Commission and Mayor for approval or recommendation, respectively (Los Angeles Charter § 96.5(3)). Most of these decisions occur after public hearings are scheduled and noticed. The Final EIR was available to, and part of the matters considered by, each of these agencies and to the public during this process which occurred between July 1995 and December 1996. The TIMP was part of the matters considered by these agencies, since it was a separate program adopted by the City Council at the time of adoption of the GPF. A brief summary of the administrative ***16** hearing process follows.

[12] March 2, 1995, "Targeted Growth Areas,"; (32 AR 10311-10319; 37 AR 11392); March 9, 1995, "Jobs Goal Policy," (32 AR 10321-10326; 37 AR 11427); April 20, 1995, "Growth Monitoring System" (37 AR 11465); May 19, 1995, "Mixed Use Development" (32 AR 10352-10359; 38 AR 11498).

1. *July 20, 1995 - Planning Commission*

The Planning Commission conducted hearings on the draft GPF and FEIR on July 20 and July 27, 1995. Opponents were primarily concerned that the GPF would override community and specific plans, and could be used to circumvent CEQA, that existing infrastructure was inadequate, that the City shouldn't grow at all until existing deficiencies are remedied, that water supply is inadequate, and that streamlining the development approval process will override local control (38 AR 11533-11580 [transcript of 7/20/95 hrg]; 3 AR 555-577; 32 AR 10368-33 AR 10672 [7/20/95 staff report]; 3 AR 321-335 [proposed changes to GPF after 7/27/95 hearing]; 3 AR 317-318, 314 [action and notice of action of Planning Commission]). The Commission-approved changes included revising the text (1) to state that the GPF is a strategy to accommodate growth and new development, should that growth occur (in order to make the GPF growth neutral) (2) to clarify that GPF will accommodate new development and.the population increases projected by SCAG, but does not promote growth, and (3) to clarify that growth may occur at lower levels than forecast (3 AR 336-554).

2. *January 19, 1996 meeting of City Council*

In response to concerns expressed by many that the GPF would cause growth, would cause the amendment of existing designations in the community plans and would require immediate upzoning of various properties, the City Council adopted a motion ("the Feuer motion") clarifying that "the Community Plans, and not the General Plan Framework Element, ***17** be declared the documents that determine the precise designation of land uses for the purpose of implementing zoning entitlements on parcel level in the City." (4 AR 604).

3. *January - April, 1996 - Council Committees*

The Planning and Land Use ("PLUM") Committee was the primary committee to review actions relating to land use planning and zoning. However, since the GPF addressed many topics other than zoning, it was sent to various other Council Committees for review of matters within their specialized areas.[13] Persons appeared at these public hearings between January and early April 1996, and spoke generally about various features of the GPF (See generally, AR, Volumes 37-39 for available transcripts of hearings, and Index, at page 10-11). On April 3, 1996, the GPF was also reviewed at a public hearing by the Public Works Committee which sent the item to PLUM, and directed staff to prepare amendments to the GPF concerning strategic planning for infrastructure capacity, and existing infrastructure deficiencies (4 AR 593-602 [Public Works Committee Report]). See also, testimony at PLUM Committee relating to funds for infrastructure (38 AR 11700, 11709-11710).

[13] Housing, Public Works and Transportation Committees (4 AR 587-589 [transmittals], 4 AR 590 [Housing Committee response], 4 AR 591-592 [Transportation Committee response], 4 AR 593-594 [Public Works Committee response]).

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4. *May 7, 1996 PLUM Committee*

After a lengthy public hearing,[14] PLUM recommended adoption of various ***18** changes to the GPF and that the TIMP be adopted as the first of many GPF implementation programs (4 AR 676). The PLUM amendments made the long-range land use maps approved by the Planning Commission more general in nature, clarified that the GPF neither encourages or mandates growth, and made other adjustments not relevant to this lawsuit (4 AR 604 [Feuer motion]; 4 AR 675-703 [PLUM report, with attachments]; 5 AR 703.5-938 [draft GPF as amended]; 38 AR 11660-11742 [PLUM transcript - public testimony only]).

[14] Forty-four persons provided testimony: 25 in opposition to the GPF; 19 in favor. A representative of the City Department of Water and Power ("DWP") addressed issues relating to water supply, and reaffirmed that the DWP anticipates being able to meet water supply needs through water recycling, conservation, and access to alternate water supplies. (38 AR 11729-11731 [transcript of hearing, Jerry Gewe, speaker]).

5. *July 17, 1996 City Council*

On July 17, 1996, the City Council conducted a public hearing and took testimony from a large number of speakers on the May 1996 PLUM recommendations (6 AR 940 [transmittal, notice of hearing]; 39 AR 11748-831 [hearing transcript]), made minor modifications, adopted the PLUM recommendations, and forwarded its actions for drafting and recommendation by the Planning Commission (6 AR 943-950 [notice to public re 7/17/96 action, with motions attached]; 6 AR 951-1015 [adoption of PLUM report from May 1996, with attachments, including additional findings, mitigation measures, and errata sheets]).[15]

[15] A series of additional public hearings were held by the Planning Commission, PLUM and City Council on an issue not relevant to this lawsuit between August and October, 1996. (6 AR 1030-1032 [Planning Commission on August 1 and 8, 1996]; 7 AR 1269, 1270 [City Council to PLUM, October 2, 1996]; 7 AR 1275-1277 [PLUM on October 8, 1996]).

6. *December 11, 1996 Final Approval of GPF and FEIR*

On December 11, 1996, the City Council, after another public hearing, ***19** approved the GPF (1 AR 4 [notification of Council action]; 1 AR 7-12 [adoption of PLUM report, with attachments]), adopted the TIMP, including an errata sheet (1 AR 31-34), adopted additional mitigation measures and an EIR errata sheet (1 AR 36-41), adopted a mitigation monitoring program (1 AR 26-29) and certified the FEIR.

The City Council also adopted findings about the significance of the potential environmental impacts identified in the EIR, as required by CEQA (1 AR 43-83). Among other findings not relevant to this lawsuit, it found that:

(1) although "demographic forecasts are estimates about the future and are subject to change," the GPF accepts SCAG's population and housing forecasts, but not its employment forecast, "as a basis for policy" (1 AR 47);

(2) the City is not promoting that growth occur, but instead seeks to "accommodate growth when and if it takes place (1 AR 47);

(3) although the amount of growth which the GPF permits by policy could result in a significant increase in the demand for water, the projected 2010 water supply will be more than adequate to meet projected year 2010 demand and mitigation measures imposed through GPF policies and programs will ensure that the demand will be met (1 AR 54-55);

(4) that while the growth permitted by GPF policy could result in significant increase in traffic congestion and vehicle miles traveled ("VMT"), growth outside the City accounts for 60% of the City's VMT increase (1 AR 58), and the GPF's land use policies and programs reduce the rate of increase in VMT by encouraging a "significant change in travel behavior from

single-occupancy automobile use to other travel modes" (1 AR 58).

The Council further found that, combined with imposition of the additional ***20** mitigation measures recommended in the Final EIR, the GPF policies would avoid or substantially reduce the otherwise potentially significant transportation impacts (1 AR 58-59).

III.

PROCEEDINGS IN TRIAL COURT

The petition for writ of mandate was timely filed in January 1997. Not until June 18, 1998, due to delays caused by petitioners' failure to take the steps necessary to obtain the administrative record of proceedings, was the matter heard on noticed motion. The court granted a writ of mandate based on only one of the six issues raised by petitioners, holding that the City should have formally recirculated the TIMP as part of the EIR due to its statement that there may be insufficient funds to pay for some of the mitigations described in the TIMP. The court rejected each of the other grounds, holding that the City's findings were supported by substantial evidence, that the City had not abused its discretion in certifying the FEIR, and that the EIR's discussions of water, population issues and alternatives were legally adequate. The court rejected petitioners' request that the entire EIR be recirculated and that the findings be redpne. (AA 49-50 [Minute Order]; compare proposed Judgment (RA 38:12-18) to City's objections (RA 51, at 52:22-27) to the final Judgment (AA 91-92).

Petitioners have appealed from the trial court's denial of the writ of mandate on each of the issues on which the writ was denied and the City has cross appealed from the trial court's grant of a writ of mandate directing it to recirculate the TIMP and awarding costs to petitioners. The arguments in support of the City's cross appeal regarding recirculation is contained in Section IV, B, 2 of this brief.

*21 IV.

ARGUMENT

A. Standard of Review

Petitioners allege that the City's adoption of an element for its general plan, a legislative act, violated CEQA. The standard of review is "whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required.by law or if the determination or decision is not supported by substantial evidence." (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376 at 392, n. 5.; Pub.Res.Code § 21168.5). "Substantial evidence" is

> "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record."[16]

16 This guideline was amended effective January 1998, to incorporate existing case law defining substantial evidence as *excluding* "'argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate', and *including* 'facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.'" (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, at 1352, 1359 [unsubstantiated conclusions about traffic being dangerous, without factual basis, not "substantial evidence"]).

(See also Pub.Res.Code § 21082.2(c)). Moreover,
"when an appellant urges the insufficiency of the evidence to support the findings it is his duty to set forth a fair and adequate

statement of the evidence which is claimed to be insufficient. He cannot shift this burden onto ***22** respondent, nor is a reviewing court required to undertake an independent examination of the record when appellant has shirked his responsibility in this respect." (*Jacobson v. County of Los Angeles* (1977) 69 Cal. App. 3d 374, at 388, internal quotations and citations omitted).

Decisions of public agencies in carrying out the provisions of CEQA are entitled to deference; "there is no presumption that error is prejudicial" (Pub.Res.Code § 21005). Courts have utilized a "good faith" analysis to measure an agency's'compliance with CEQA. (*Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal. App.3d 20, 37; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 305).

B. Substantial Evidence In The Whole Record Supported The City's Conclusion That Transportation Impacts Would Be Mitigated To Insignificance.

The appeal and cross appeal both challenge the trial court's rulings relating to transportation impacts. The City found that if all mitigation measures described in the EIR were imposed, the potential impacts on transportation would be substantially reduced. At trial, Petitioners raised two challenges to this action. Petitioner's first argument was that the City's findings were not supported by substantial evidence. This argument was based on a single statement that questioned the fundability of some of the TIMP improvements, and hence the feasibility of the mitigation measures.

Petitioners' second argument was also based solely on the same statement in the TIMP. Petitioners argued that the draft TIMP should be formally circulated as part of the ***23** DEIR since the single statement constituted "significant new information". Recirculation is required when "significant new information" is added to the EIR after circulation but before certification, AND. that information establishes that there will be a "substantial increase in the severity of an environmental impact" (Pub.Res.Code § 21092.1; CEQA Guidelines § 15088.5). Petitioners argued that the TIMP statement showed that the mitigation measures were infeasible, and therefore transportation impacts would be significant.

The trial court held that substantial evidence supported the City's findings that the mitigation measures would reduce the impacts to insignificance (and therefore the mitigation measrues were feasible), despite the TIMP quotation. However, the trial court held that the same TIMP quotation required recirculation under CEQA Guidelines § 15088.5 (AA 49-50). Both petitioner and the City agree that the two rulings are inconsistent because both are based on the same evidence, and both are subject to the same standard of review.[17] As shown below, substantial evidence supports the City's conclusion that the mitigation measures are feasible, and its decision not to recirculate the TIMP on that basis. This court should affirm trial court's ruling on findings and reverse its ruling on recirculation.

[17] i.e., the substantial evidence standard (CEQA Guidelines § 1509 l(b) [findings]; *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112 ("Laurel Heights II"), at pages 1134-1135; CEQA Guidelines § 150885.(e) [recirculation]).

1. *Since Substantial Evidence Support a Conclusion That Transportation Impacts Would Be Mitigated, the City's Findings Were Proper*

Petitioners claim that the evidence does not support the City's conclusion that ***24** mitigation measures for the potential transportation impacts were financially feasible. The trial court correctly rejected this argument.

If an EIR identifies potential significant impacts as the result of implementation of a project, the public agency can approve that project only if it makes specified findings (Pub.Res.Code § 21081). Under Pub.Res.Code § 21081(a), the City must either find that "changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment"; that mitigation is within the jurisdiction of another agency, and should be imposed by that agency (Pub.Res.Code § 21081(a)(2)) or mitigation is infeasible, and if so, the benefits of the project outweigh its impacts (Pub.Res.Code §§21081(a)(3), 21081(b)).

The City first found that assuming that SCAG's population and housing estimates occur as forecasted (1 AR 47), then the growth projected to occur could "result in a significant increase in traffic congestion," which the City considered potentially significant (1 AR 58). The City found that implementation of the policies and programs in the GPF and EIR relating to land use and transportation, along with other mitigation measures described in the EIR would "avoid or substantially lessen" the otherwise potentially significant transportation impacts resulting from the growth anticipated as a result of SCAG-projected population increases (Pub.Res.Code § 21081(a)(1); 1 AR 58-59). The City also found that one of the mitigation measures (expansion of the rail transit system) was within the jurisdiction of another agency (LACMTA), and should be adopted (Pub.Res.Code § 21081 (a)(2); 1 AR 59).

25 a.** ***Policy Level Approvals QnTy Require Policy Level Mitigation

Petitioners seeks to hold the City to a level of detail in implementation of transportation mitigation measures not required by CEQA, by claiming that the transportation measures are not "feasible".[18] CEQA recognizes the degree of specificity of a mitigation measure will vary with the degree of detail of the project which is approved.[19] Thus, CEQA allows different types of EIRs for different situations. For instance, program EIR's are designed to discuss "broad policy alternatives and program wide mitigation measures (CEQA Guidelines § 15168(b)(4)). Here, the GPF is a long range policy document, not construction of a specific building. The City explained in the EIR that, "Framework policies are recommended to mitigate the defined significant environmental impacts." (15 AR 2414), Mitigation through commitment to policies is expressly recognized as appropriate by the State of California Office of Planning and Research (15 AR 2414).

[18] Mitigation includes both "avoiding the impact altogether by not taking a certain action" and "minimizing" the impact by "limiting the degree or magnitude of the action and its implementation" (CEQA Guidelines § 15370). "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time", taking into account various factors (CEQA Guidelines § 15364).

[19] "An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." (CEQA Guidelines § 15146).

The City's transportation goals, objectives, policies and proposed implementing programs consist of a wide variety of proposals to mitigate impacts of SCAG-projected population growth on various aspects of transportation. The amount of detail about these mitigation measures is only required to be consistent with the amount of detail in the ***26** underlying activity, here the adoption of a plan consisting of policies and goals (CEQA Guidelines § 15146). Whether or not there currently exists sufficient funding sources to implement each of these measures is not an evidentiary finding that CEQA requires the City to make, and is not determinative of whether substantial evidence supports the findings the City did make. Since the-GPF consists of policies and programs over a period of time, the mitigation can consist of policies and programs to be implemented over the same period of time. The City need not guarantee full implementation at time of plan approval and EIR certification.

b. ***The Entire Record Must Be Reviewed To Determine If Substantial Evidence Supports The City's Findings That Transportation Impacts Would Be Mitigated***

Findings must be supported by substantial evidence in the entire record (CEQA. Guidelines § 15091(b)). Petitioners' claim that transportation impacts will be both significant and unmitigated should be rejected because they did not present a fair statement of the evidence but focused on only an isolated quotation (*Jacobson v. County of Los Angeles* (1977) 69 Cal. App. 3d 374, at 388, internal quotations and citations omitted).

Petitioners point to a quotation from the TIMP that "preliminary analysis indicate that the City's portion of the TIMP's cost will be well beyond anticipated revenues" and that an "order of magnitude cost for the entire system wide TIMP is estimated

to be $12 ***27** Billion over a 20 year period." (19 AR 3363-3409).[20] Based solely on these statements, they assert that traffic mitigation is infeasible (AOB 6:27-28).

[20] See 19 AR 3326-3409 for entire study (Appendix G to FEIR), 19 AR 33603362 for listing of various transportation mitigation measures from the GPF, and 19 AR 3368 for source of petitioners'quotations.

Petitioners' argument is not supported by substantial evidence for several reasons. A single statement in an 80 volume administrative record cannot constitute substantial evidence unless it is the only evidence on the subject, since substantial evidence is to be determined "by examining the whole record." (CEQA Guidelines § 15384; *Jacobson v. County of Los Angeles*, *supra*, 69 Cal.App.3d 374, 388). Moreover, it is not the only evidence in the record on this issue.

First, the GPF itself specifically provides that the development which triggers the need for transportation mitigation measures will only be allowed to occur when the money is available for the infrastructure (2 AR 159-160). If the TIMP's preliminary projection is correct and funds will not be available in sufficient amounts, then the City will not amend its community plans to allow the intensification of development (See Revision to FEIR, "Third Bullet, 'Mitigation Measures"' at 15 AR 2437).

Second, the City's own transportation experts explained that if and when development is permitted to increase through amendment to community plans, the development would generate additional revenues to fund the infrastructure (34 AR 10731-10732 [7/1/96 report from Department of Transportation]).

Third, this quotation is presented in the context of various statements in the ***28** brief by Petitioners about the need for increased transit (AOB 5:19-6:4). The EIR's assumptions re transit were based on already funded transit stations.[21]

[21] Comment M-13 contained in the final EIR asks that policies/mitigation be revised to reflect that MTA is largely unfunded (16 AR 2737). Response M-13 refers to D13 (at 16 AR 2743), which refers to Response H-21 (at 16 AR 2705-06), which states that the land uses and densities are based on the transit stations that have already been funded.

Fourth, even if the City's portion of-the improvements described in the TIMP is "well beyond anticipated revenues," not all of the actions described in the TIMP require funding as many of TIMP's recommendations were not dependent upon financing. TIMP contained recommendations to enhance accessibility to work opportunities and essential services, recommendations to reduce the number of vehicle trips (Transportation Demand Management, "TDM"), and other strategies designed to induce modifications to human behavior, and relocation of various land uses to reduce the demand on transportation. (See, for example, a draft summary list of TIMP recommendations, at 19 AR 3370).

Finally, the TIMP improvements went beyond those required by the EIR. Comparing the mitigation measures described in the EIR (to which the City's findings related) to the cost of the full implementation of all actions described in the draft TIMP is like comparing apples to apple pie a la mode. The draft TIMP called for more extensive implementation actions than those referenced in the CEQA findings and called for implementation of more specific infrastructure. (Compare 10 AR 1673, 1678-1679 [EIR Mitigation Measures] to 19 AR 3395 [TIMP proposed programs]). The fact that the City's. implementing program was more ambitious than the mitigation the DEIR contemplated should not be a basis for invalidating the DEIR-described and City-imposed mitigation measures.

***29** Finally, petitioners complain that [some of] the City's proposals to deal with regional growth problems require "interagency cooperation" (AOB 5:27). Without directly saying so, petitioners appear to be implying that the need for such cooperation would make the mitigation measures infeasible (AOB 5-6). Petitioners do not explain how the fact that the GPF was designed to be coordinated with the planning actions of other agencies makes its policies, objectives, goals and implementing programs infeasible. To the contrary, only through the cooperation and coordination of other agencies could the City be effective in improving the regional impacts of growth. Joint effort is clearly legally and practically required, since, other agencies have authority over some of the resources involved in transportation mitigation (for instance, CALTRANS authority over state highways, and LACMTA authority over rail transit).[22] Petitioners argue that the infeasibility "is also all the more clear in light of the fact that the extent of funding available from other agencies of government to pay for the TIMP.is at best highly speculative." (AOB 7:2-5, emphasis added). Petitioners reference no evidence in support of this

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statement. They have failed to meet their burden of proof, and their arguments should be rejected (*Jacobson v. County of Los Angeles*(1977) 69 Cal. App. 3d 374, 388).

[22] Moreover, CEQA specifically allows a finding that mitigation measures are within the jurisdiction of an agency other than the lead agency (Pub.Res.Code § 21081(a)(2)). In accord with this provision, the City found that one of the mitigations (expansion of the rail transit system) was withing the jurisdiction of another agency (LACMTA) and has or should be adopted by that agency (1 AR 59).

Given the wide ranging nature of the GPF mitigation measures, and the limited value of the evidence Petitioners rely upon, it is apparent that substantial evidence does support the City's conclusions regrading transportation impacts. Since there is "enough ***30** relevant information and reasonable inferences from this information that a fair argument can be made to support" the City's conclusion, then it is immaterial whether other conclusions, such as those which petitioner promotes, might also be reached. Under the definition of substantial evidence, the City's conclusions, being supported by substantial evidence, cannot constitute an abuse of discretion.

2. *Since Substantial Evidence Supported a Conclusion That Transportation Impacts Would Be Mitigated. The Trial Court Erred In Holding Recirculation Was Required*

(CROSS APPELLANT CITY'S OPENING ARGUMENT ON CROSS APPEAL)

On appeal, petitioners argue that the court's statement that recirculation of the TIMP was required is inconsistent with its conclusion that the City's findings regarding transportation impacts were supported by substantial evidence, and that therefore, the findings must also be set aside (AOB 10:1-18).

The City agrees that these two holdings are inconsistent. The standard of review for adequacy of findings and decision not to recirculate is the same. However, the City disagrees with petitioners' conclusion that the findings must be set aside. Instead, since as shown above, substantial evidence supports the City's findings that transportation impacts will be mitigated, substantial evidence also supports the City's conclusion that the TIMP need not be recirculated. The obligation to recirculate is triggered only by new information showing that the EIR was so deficient as to render public comment on the draft EIR "in effect ***31** meaningless" (*Laurel Heights II*, at page 1130.)

The isolated quotes upon which the trial court relied (AA 49-50) do not constitute the type of significant new information triggering the need for recirculation under Pub.Res.Code § 21092.1 or CEQA Guidelines § 15088.5(a) & (b).[23] The same substantial evidence which supports the City's findings that transportation impacts will be reduced to insignificance if identified mitigation measures in the form of policies are implemented (a finding which the court upheld), supports the conclusion that there is not substantial evidence in support of a conclusion that the mitigation measures are infeasible, and therefore impacts will be more severe, as required by Pub.Res.Code § 21092.1 and CEQA Guidelines § 15088.5.

[23] At trial, the City argued that since TIMP was available during public comment period, there is no need to recirculate. The court disagreed, holding that the formal procedures had to be followed, even if in actuality the purposes of circulation had been met by receipt of comments and discussion about the contents of the TIMP.

Here, the record consists of the contents of the plan itself, the contents of the mitigation measures, as discussed in the GPF and the DEIR, responses to comments, and other evidence before the decision making body in the form of memos, testimony and other reports. Instead of reviewing the quotations contained in the TIMP in light of all the other evidence hi the record supporting a contrary conclusion, the court referenced only a small portion of the evidence, and erred in so doing. The judgment granting the writ requiring recirculation should be reversed.

***32 C. The Trial Court Properly Rejected The Claim That The Alternatives Analysis Was Inadequate.**

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Petitioners' attack on the alternatives is identical (word for word) to that raised before and rejected by the trial court. Their arguments are self contradictory: they asserted the need for a particular alternative which the City in fact included, and then criticized the City for choosing that alternative. The trial court correctly rejected these arguments. Petitioners' criticisms are simply a disagreement with the City's policy choices in the types of alternatives it considers necessary to permit a reasoned choice.

The City's discussion of alternatives was guided by CEQA Guidelines § 15126, which stated

> "The range of alternatives required in an EIR is governed by 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice.... The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making."[24]

[24] See parallel provision in 1998 amendments, at CEQA Guidelines § 15126.6(a) ["An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.... there is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376)."]).

In the absence of any showing that the alternatives picked by the City failed to comply with CEQA, or that other adequate alternatives should have been studied, the trial court correctly ***33** rejected Petitioners' attack on the City's alternatives analysis, as shown below.

1. *Description of Alternatives*

After much study and consultation with the public, the City determined to include five alternatives in the DEIR:

a) the "no project - no growth" alternative, i.e. development moratorium within the City (12 AR 1968-1969 [description], 12 AR 1978-1983 [impacts discussion], 1 AR 72-73 [findings]);

b) the "no project - existing community plan build out" (12 AR 1969 [description], 12 AR 1983- 1987 [impacts], 1 AR 74 [findings]);

c) Alternative Al, increased targeting of land use around transit centers and full build out of transit (12 AR 1969 [description], 12 AR 19884992 [impacts], 1 AR 74-75 [findings]);

d) 2010 Market Buildout Alterative, projected levels of buildout using existing community plans to determine distribution, based on SCAG's total population projections (12 AR 1970 [description], 12 AR 1992-1996 [impacts], 1 AR 75-76 [findings]). Petitioners do not attack this alternative, claiming that is the "true" no project alternative (AOB 19:3).

e) Theoretical Buildout Alternative, projected buildout under GPF without land use distribution policies or triggering mechanisms to time growth to infrastructure (***34** 12 AR 1970 [description], 12 AR 1996-2000 [impacts], 1 AR 76-77 [findings]).[25]

[25] More discussion about alternatives is contained in additions and corrections in the FEIR (15 AR 2597 et seq.), and the CEQA Findings and description re alternatives (1 AR 72-78). The findings contain a good summary of the alternatives and the City's conclusions about their feasibility and desirability as proposals to minimize the impacts of the SCAG-projected growth on the City.

Petitioners attack four of these alternatives in somewhat self-contradictory arguments, draw a conclusion based on their own arguments that four alternatives are infeasible (despite the fact that two of the four are required discussions under CEQA Guidelines), and then assert that the EIR is defective since only a single alternative remains. The City will address each of

petitioners' arguments below.

2. *Petitioners' Arguments Regarding Alternatives Have No Substantive Merit*

Petitioners' argument ignores the purpose of alternatives discussion, which is to "permit a reasoned choice" and "foster meaningful public participation and informed decision making" (CEQA Guidelines § 15126(d)(5)). They 'nitpick' each of the City's alternatives for various reasons. Their criticism are directed to the policy choices of the City, not to legal adequacy under CEQA. This is not a valid basis for a legal attack, since CEQA does not dictate the policy decisions of the public agency (CEQA Guidelines § 15121 (b)). None of their arguments are factually or legally supported.

Petitioners argue that the "No project - no growth" alternative (moratorium on development) is "illegal" (AOB 12:20), "completely beyond the range of practicality" (essentially the same argument as the first, AOB 13:2-3) and "self contradictory" (AOB 13:19-20). The first two arguments are provided Without any citation to explain why a ***35** moratorium on development is illegal (population growth occurs without development (2 AR 115 [GPFJ), and ignore the fact that CEQA requires this discussion (CEQA Guidelines § 15126(d)(4)). The third argument complains that a base year of 1990 was employed in the analysis, and misstates the analysis of the alternative itself (AOB 13:20-23). This argument has no substance.

Petitioners attack the "no project-existing community plan buildout" alternative by complaining that it does not compare the increases over the currently existing development (AOB 15:3-6). Petitioners completely contradict their argument against the first alternative! The discussion they claim is lacking is precisely what the "no project-no growth" alternative provides (which petitioners said was illegal). At any rate, this Community Plan Buildout analysis is specifically called for in the CEQA guidelines (CEQA Guidelines § 15126(d)(4) ["The 'no project' analysis shall discuss the existing conditions, as well as what would reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."]). As with the prior argument, there is no substance to this assertion.

Petitioners claim Alternative Al (transit network based on full build out of all of MTA's funded and proposed transit lines) is inadequate because there is no documentation to prove that it will occur. This alternative increased the clustering of uses around transit stations and is similar to the GPF for that reason (12 AR 1988) but the City ultimately concluded that there would be greater impacts due to greater development potential (1 AR 74-75). The purpose of an alternatives discussion is to foster meaningful discussion (CEQA Guidelines § 15126(d)(5)). All alternatives are merely proposals unless they are ***36** approved and implemented.

Finally, petitioners attack as "infeasible by definition" (AQB 19:17) the fifth alternative - the long range build out of the GPF use categories without the triggering mechanisms to tie infrastructure to new development. (If this was "infeasible by definition," then the inclusion of this definition in the DEIR which was circulated for four months in early 1995 should have triggered some sort of written objection during the public comment period from petitioners or others, for that matter.) This alternative was particularly helpful because it informed the City that a triggering mechanism should be included in the GPF so that allowable increases in density through community plan amendments would not occur until infrastructure and its funding was available.

The City's choice of alternatives fulfilled both the letter and the purpose of an alternatives discussion - to permit reasoned choice. By analyzing various scenarios, the City was able to project the effectiveness of the various scenarios and options it had in selection of long term policies and programs to deal with the impacts of SCAG-projected population growth. By seeing what would happen if it did nothing or attempted to stop growth altogether (the two 'no project' alternatives), the City was able to devise the best combination of mitigation for the growth that was inevitable with or without the GPF. What became clear was that a crucial feature of dealing with growth impacts was contained in the GPF - its program for tuning allowable development with available infrastructure and frequent updating of its data along with a formal monitoring program. For this reason, the City concluded that the GPF was the environmentally desirable alternative, because it had the best combination of land use policies tied to mitigation measures tied to annual reporting and selective amendments ***37** of community plans only when consistent with the GPF policies (1 AR 77-78 [findings adopted by City Council explaining why GPF was environmentally superior alternative]).

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3. *Petitioners' Attack on The Alternatives WasJhnproperly Raised*

Petitioners' did not raise their claims in the administrative process at a time the City could reasonable address their complaints, and now claim that it is not their job to propose alternatives to the City. Determination of the range of alternatives is usually made at the scoping stage, which, predates preparation of the draft EIR (See discussion in Citizens of *Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 533, 569). Although one of the petitioners did participate in the scoping process which attempts to set the general parameters of the draft EIR, they did not raise the issues they now claim constitute an abuse of discretion on the part of the City (See 13 AR 2159-2163 for Petitioner Hillside's response to Notice of Preparation). The City cannot be held to have abused its discretion in not fully addressing these issues if they are not timely raised.

"We cannot, of course, overemphasize our disapproval of the.tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay. As one federal court has aptly stated: '[T]he NEPA requirement of studying alternatives may not be turned into a game to be played by persons who -- for whatever reasons and with whatever depth of conviction -- are chiefly interested in scuttling a particular project.' (citation)"

***38** (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, *supra*, 52 Cal.3d 533 at 568).

Petitioners have failed to establish that they exhausted administrative remedies by presenting these arguments in a timely manner to the City. The requirement of exhaustion of administrative remedies is jurisdictional (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292-293). Objections must be specific (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d at 1197, 1198).

Petitioners provided only three citations to the record to establish exhaustion on all of their arguments that four of the five alternatives are inadequate (49 AR 7026-27 [AOB 15:17]; 47 AR 6683 at 6684 [AOB 13:18] and 47 AR 6683 at 6688 [AOB 22:27]). The three citations are taken from two letters submitted in 1996 by a single individual to various committee members, long after the close of the public comment period on the DEIR. Neither of these letters provides any factual support for the arguments, which themselves are not supported by CEQA, as shown below.

To the extent petitioners claim the DEIR is flawed, they should have submitted the reasons during the public comment period at a time when the City could have addressed them and modified its alternatives in a timely manner. Even up to the date of oral argument before the trial court, petitioners identified no alternative which they claimed the City should have analyzed (RT 19:13-21:4).

*39 D. Petitioners' Contentions About Water Supplies and Job/population Growth Are Without Merit

1. *Petitioners' Attack on The Findings Re Water Supplies Is Without Merit*

Petitioners' claim that the City's finding that supply would meet demand is unsupported by evidence (AOB 23:11-13, see 1 AR 54 for finding). Petitioners base this argument on quotations from an introductory statement in the draft EIR about per capita projected usage (citing to 10 AR 1592), and a statement that water demand will decrease over time (citing to 10 AR 1596) without referencing or discussing the data underlying the statement, the textual explanations of the methods of calculation, the meaning of the terms used and the factors used to reach the ultimate conclusion. Without referencing any of the 29 page discussion in the DEIR (10 AR 1592-10 AR 1620), its 9 tables or 5 figures (*Id.*), Petitioners simply state "the EIR has obviously failed to analyze or even acknowledge the impacts of population and employment growth upon the City's water requirements and resources, and its purported finding of insignificant impacts are self contradictory and nonsensical." (AOB 23:27-24:2). Petitioners argument should be deemed without merit based on the *Jacobson* rule.

Had Petitioners met their burden to present a fair description of and citation to the evidence relating to water impacts, they would have found that the underlying discussion fully supported the City's conclusion that supply would exceed demand.[26]

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[26] They would understand the exact and estimated numbers which the City projected would be available from various sources, including City wells, the Aqueduct and purchased water from the Metropolitan Water District in 1990 (Table WR-4 at 10 AR 1606). They would understand that the City's experts used separate terms for drought water supply, average water supply and observed water supply (Table WR-4 and Figure WR-2 for 1990 (10 AR 1606, 1607), and Table WR-6 and Figure WR-10 for 2010 (10 AR 1610, 1611). They would know the actual observed water usage in each community plan area, planning region and planning subregion and for all of the City in 1990, in either gallons per day (GPD) or acre feet per year (AFY), with or without adjustments (Table WR-5, 10 AR 1608, for 1990), and a parallel projected table for 2010 (Table WR 8, 10 AR 1615). They would know that the term "maximum total available water supply" was different from the term "projected average water supply required in an average year", and they would have been able to work out the average per capita usage in 1990 and 2010 by dividing any of the appropriate adjusted or unadjusted numbers and ascertain that the statement they quoted was probably inaccurate, and the real numbers showed a declining per capita usage from 1990 to 2010.

***40** Had petitioners summarized or discussed any more of the evidence in the DEIR, they would have realized that the City was using the term total available water supply from all available sources (including purchased water) when it concluded that the total 2010 available water supply of 1,370,646 acre feet per year (10 AR 1614 for conclusion, 10 AR 1610 for figure) would more than meet the demand. (10 AR 1596 ["Future increases in demand for water... are proposed to be met primarily by purchasing additional water from MWD."])

Petitioner Hillside did not mention water supplies at all during the DEIR circulation period (16 AR 2732-2741), let alone in a manner alerting the City to the need for an explanation of its method for forecasting demand, usage and supply, and correction of any discrepancies in the numbers quoted in the EIR. Petitioner CAP submitted no written comment during the DEIR circulation period. Had petitioners raised this issue during the public comment period on the DEIR, they (and this court) could have had the benefit of the work of the City's water and math experts to explain this, perform the calculations, reduce their findings to writing, and clarify any inconsistencies with the text.[27] This court should ***41** reject the water arguments for failure to timely exhaust administrative remedies.

[27] The only citation to indicate this issue was raised is the same letter referenced in the TIMP argument above submitted long after the end of the public comment period, and after many layers of review of the GPF itself (see AOB at 24:25 citing to [49] AR 7035-7037).

The City's experts prepared the documentation, reviewed the comments that were made about the accuracy of the conclusion, clarified their findings at public hearings, and reiterated their conclusions that there would be sufficient supply to meet demand (15 AR 2589 [additions & corrections]; 38 AR 11729-11731 [testimony]; 33 AR 10678-10679 [7/25/95 staff report]; 13 AR 2157 [DWP response]). The City was entitled to rely upon its experts in the absence of any evidence to the contrary (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380).

2. *The City Properly Analyzed Projected Population Growth*

The GPF was designed to address the impacts of growth that SCAG projected would occur. Throughout the analysis, the City explained that it was assuming the existence of that growth, and describing the impacts it would have under Various scenarios shown in the alternatives. One of the goals of the GPF was to increase the jobs available to City residents, to provide fiscal growth to support its funding needs and maintain its vitality (2 AR 113)

Petitioners asserted that if the City achieves its goal of increasing jobs, "this will necessarily cause a significant correlative increase in the City's population over and beyond SCAG's projections of population growth." (AOB, 27:18-22). It is not clear what petitioners assert should follow from this argument, other than their statement that "obviously", the EIR fails to analyze "a whole range of environmental impacts that will be created" as a result.

***42** The evidence before the City was that differing birth/death rates within the various areas were a more likely indicator of population growth (9 AR 1537 [DEIR]; 2 AR 115 [GPF]). The City noted that jobs and population do not appear to be

correlated (16 AR 2850 ["U-29 It should be noted that SCAG's [increased] population forecast assumes a declining ratio of jobs formation in the City of Los Angeles."]). Petitioners provide no evidence to support this assertion, and haven't identified anything other than their own speculation that there is a correlation between jobs and population growth that wasn't considered in SCAG's projections. Since petitioners have provided no substantial evidence in support of this argument, it should be rejected.

***43 V.**

CONCLUSION

For the foregoing reasons, the portion of the judgment granting the writ on the issue of recirculation should be *reversed*, and the portion of the judgment denying the writ on the remaining issues should be *affirmed*.

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Communication from Public

Name:	Doug Haines
Date Submitted:	04/24/2023 10:12 AM
Council File No:	21-0934
Comments for Public Posting:	Please see attached letter on behalf of the La Mirada Avenue Neighborhood Association of Hollywood in opposition to the Hollywood Community Plan Update.

April 23, 2023

Doug Haines
La Mirada Ave. Neighborhood Assn. of Hollywood
P.O. Box 93596
Los Angeles, CA 90093-0596

City of Los Angeles, Planning and Land Use Management Committee
c/o office of the City Clerk
200 N. Spring St., Rm. 365
Los Angeles, CA 90012

Regarding: Hollywood Community Plan Update
Council File: 21-0934
Case numbers: CPC-2016-1450-CPU; ENV-2016-1451-EIR

The La Mirada Ave. Neighborhood Association (La Mirada) is one of three plaintiffs that successfully challenged the city's 2012 approval of the Hollywood Community Plan Update (Update) in the Superior Court case *Fix the City v. City of Los Angeles et al* (BS138580).

Despite being a plaintiff in this matter, and despite being listed on the Interested Parties list, La Mirada was not notified of the city's scheduling of a Special Meeting of the Planning and Land Use Management (PLUM) Committee for April 24 to consider approval of the revised Update.

La Mirada objects to the notification omission and requests the re-scheduling of the meeting with proper notification to all relevant parties. La Mirada further adopts all objections submitted to the Update, both in writing and during oral testimony, and requests that every document cited in written testimony be included as part of the administrative record.

La Mirada opposes the current reiteration of the Update and objects to its environmental impact analysis as attached to the city's council file 21-0934. The city has an obligation to file a return to the writ issued in this matter, and it is our opinion that the city has failed to do so. Please note that a binding ruling against the city was issued by the Honorable Allan J. Goodman in his grant of a preemptory Writ of Mandate overturning the city's approval of the Update.

Yet the city has refused to abide by the requirements of Goodman's order, instead conjuring up a variety of excuses to ignore it, particularly as expressed by the Director of Planning in his memo dated April 18, 2023. This is an inexcusable violation of the law, and may result in further litigation to ensure the city's compliance with the ruling.

La Mirada notes that the population of the Hollywood Community Plan Area has consistently declined in the over 30 years since the Plan was last approved, with an acknowledged population loss of over 20,000, a loss borne almost entirely by low-income minorities. In particular, according to the U.S. Census East Hollywood led both the city of Los Angeles and Los Angeles County in population loss between the years 2010 and 2020. This population loss has been confirmed by subsequent population analysis. No justification is therefore warranted to encourage further densification within the Update absent proper mitigation.

Subsequently, La Mirada demands that all proposed Update FAR increases and other densification measures be removed, as they are in direct violation of Judge Goodman's order.

Thank you for your courtesy and attention to this matter.

Doug Haines

La Mirada Ave. Neighborhood Assn. of Hollywood