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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF LOS ANGELES, SOUTHEAST DISTRICT

23 NEIGHBORS FOR SMART RAIL, a non-profit
24 California corporation,

25 Petitioner,

26 vs.

27 EXPOSITION METRO LINE CONSTRUCTION
28 AUTHORITY, a public entity; EXPOSITION
METRO LINE CONSTRUCTION AUTHORITY

Case No: BS125233

Assigned for all purposes to:
Hon. Thomas I. McKnew, Jr.

**RESPONDENTS' AND REAL PARTIES IN
INTERESTS' COMBINED
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO**

303293

RESPONDENTS' AND REAL PARTIES IN INTERESTS' COMBINED MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDATE

1 BOARD; and DOES 1 through 10, inclusive,
2 Respondents.

PETITION FOR WRIT OF MANDATE

Date Action Filed: March 5, 2010
Date Action Removed: April 14, 2010
Date Action Remanded: June 9, 2010

Trial Date: December 21, 2010

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6 LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY, a public
7 entity; LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
8 AUTHORITY BOARD; and ROES 1-10,
9 inclusive,

10 Real Parties in Interest.

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1 **I. INTRODUCTION.**

2 Los Angeles suffers from the worst traffic congestion and air quality in the Nation. For that very
3 reason, three decades ago, the citizens of Los Angeles County overwhelmingly endorsed a program to
4 finance construction of a comprehensive rail transit system. (8 AR 00213.) The rail transit system is the
5 linchpin of the region's strategy to significantly improve air quality through transit mobility that is
6 essential to the region's continued economic vitality.

7 The final environmental impact report (the "FEIR"), challenged by Petitioner Neighbors for
8 Smart Rail ("Petitioner") in this lawsuit, is the second environmental impact report evaluating
9 alternatives for a light rail line on the Westside of Los Angeles (the "Westside"). (5 AR 00141-77, 77
10 AR 12415.) Despite a decade of environmental analysis, Petitioner seeks to further delay
11 implementation of this critical transportation project.

12 Respondents Exposition Metro Line Construction Authority and the Exposition Metro Line
13 Construction Authority Board ("Authority") and Real Parties in Interest Los Angeles County
14 Metropolitan Transportation Authority and Los Angeles County Metropolitan Transportation Authority
15 Board ("Metro") demonstrate herein that the Authority's certification of the FEIR and the approval of
16 Phase 2 of the Exposition Corridor Transit Project (the "Expo Phase 2 Project," or the "Project") are
17 supported by substantial evidence. The Petition for Writ of Mandate must therefore be denied.

18 **II. STATEMENT OF FACTS.**

19 **A. Background to the Project.**

20 **1. Regional Transportation Plans and Environmental Studies.**

21 Over the next 20 years, the population of the Los Angeles Westside (the "Westside") is expected
22 to grow from 1.5 million to 1.8 million persons. The Expo Phase 2 Project implements the region's
23 regional and local transportation plans that address this projected growth. The Project is a component of
24 the Southern California regional transportation plan (439 AR 30061, 30069), the County-wide
25 transportation plan (3 AR 00022, 509 AR 33232), and the regional air quality management plan (3 AR
26 00022-23; 78 AR 12427; 475 AR 31669).

1 **2. Mid-City to Westside Transportation and Environmental Studies.**

2 In 1999, Metro's Mid-City/Westside Major Investment Re-Evaluation Study evaluated
3 transportation alternatives for the Mid-City/Westside Study Area. The alternatives evaluated in this
4 study included bus rapid transit ("BRT") and light rail transit ("LRT"). (736 AR 48080.)

5 Metro then completed a Draft Environmental Impact Statement/Environmental Impact Report for
6 transit alternatives in the Mid-City/Westside Study Area. In June 2001, Metro separated the Mid-
7 City/Westside Study Area into two separate transit corridors for purposes of environmental analysis: (1)
8 the Mid-City/Wilshire Transit Corridor ; and (2) the Mid-City/Exposition Transit Corridor extending
9 from downtown Los Angeles to Santa Monica. (*Id.* 48081.) In 2005, Metro certified the Final EIR and
10 approved a light rail project ("Expo Phase 1 Project") from downtown Los Angeles to Culver City along
11 Exposition Boulevard. (165 AR 18694, 168, 18852, 18863.) The Final EIR for the Expo Phase 1
12 Project also evaluated six alternatives for extending the light rail line from Culver City to Santa Monica.
13 But the Metro Board approved an alternative that ended Phase 1 at Culver City, and postponed for
14 additional environmental study the decision whether to extend the light rail line to Santa Monica. (3 AR
15 00018, 168 AR 18846).

16 **3. Notice of Preparation of the Draft EIR, Scoping Process and Identification of**
17 **Alternatives.**

18 On February 12, 2007, the Authority issued a Notice of Preparation announcing its intent to
19 prepare an environmental impact report for the Expo Phase 2 Project. (196 AR 20837-20849; 32 AR
20 00902.) The Authority conducted a series of public meetings to solicit input on the scope of the Draft
21 EIR and the alternatives to be evaluated. (32 AR 00902.) Alternatives identified by the public in the
22 scoping meetings included light rail transit in the Exposition right-of-way alignment; light rail transit in
23 the Exposition Venice/Sepulveda alignment; bus rapid transit in the Exposition right-of-way alignment;
24 no-build; transportation systems management and variations of the above alternatives. (*Id.* 00911-16;
25 298 AR 26391.) In October 2007, the Authority Board identified the six alternatives to be evaluated in
26 the Draft Environmental Impact Report. (298 AR 26395.)

27 **4. Public Review of the Draft EIR.**

28 On January 28, 2009, the Authority circulated the Draft Environmental Impact Report ("Draft

1 EIR”) for the Expo Phase 2 Project. (Tabs 78-85 AR 12416-14887; 521 AR 33407.) The Draft EIR
2 evaluated six alternatives, including a “No-Build” alternative, transportation system management
3 alternative (bus and other transportation improvements but without major new capital investment), and
4 four different light rail alignments (LRT1, LRT2, LRT3, and LRT4). Each of the light rail alignments
5 was further broken down into segments (1, 1a, 2, 3, and 3a) for purposes of environmental analysis. (9
6 AR 00241, 00246-47, 00250-51.)

7 The Authority conducted extensive consultation with local and state agencies and interested
8 members of the public. (33 AR 00949.) In total, the Authority conducted over 100 meetings with
9 various public agencies and other stakeholders, including three formal public hearings (32 AR 00928),
10 59 meetings with cities and other agencies, 60 other stakeholder meetings, and two business outreach
11 meetings (32 AR 00916-920, 923-925), and 30 group presentations and/or alignment tours (*Id.* 00916-
12 25).

13 **5. Preparation and Public Review of the Final EIR.**

14 Over 8,979 oral and written comments were submitted by agencies, individuals and interest
15 groups on the Draft EIR. (7 AR 00171.) The comments overwhelmingly supported extension of the
16 light rail line to Santa Monica. (7 AR 00175.) The Authority prepared a written response to every
17 comment submitted on the Draft EIR.

18 The Authority conducted additional environmental analysis on issues raised by the public. The
19 Authority identified five design options for the Project, including a grade-separated crossing at
20 Sepulveda Boulevard, elimination of parking at the Expo/Westwood Station, a buffer design for the
21 maintenance facility, retention of parking along Colorado Avenue, and redesign of the Colorado/4th
22 Street station. (3 AR 00022; 101 AR 14952.) The Authority also conducted additional analysis of the
23 Overland Avenue and Westwood Boulevard grade crossings in coordination with the Los Angeles
24 Department of Transportation (“LADOT”). The additional analysis confirmed the conclusions of the
25 Draft EIR that the Overland Avenue and Westwood Boulevard crossings would operate safely at-grade,
26 with effects mitigated to a less-than-significant level. (101 AR 14953.)

27 On December 21, 2009, the Authority made the Final EIR (“FEIR”) available for additional
28

1 public reviews and comment. (707 AR 56089.)

2 **6. Certification of the Final EIR and Approval of Project.**

3 On February 4, 2010, the Authority held a public hearing to consider certification of the FEIR
4 and approved the extension of light rail transit from Culver City to Santa Monica in the Exposition right-
5 of-way alignment. (2 AR 00006.) Many individuals and organizations, including Petitioner, appeared
6 and testified at the hearing. Petitioner submitted lengthy written comments on the FEIR at the hearing.
7 (727 AR 46941.) After consideration of all public comments, and the Authority certified the FEIR. (2
8 AR 00005-07.) The Authority also adopted light rail Alternative 2 ("LRT2"), with modifications, and
9 adopted detailed findings supporting the Authority's decision, a Statement of Overriding Considerations,
10 and a Mitigation Monitoring and Reporting Program. (3 AR 00008-131.) LRT2 uses the Exposition
11 Corridor right of way and then Colorado Avenue to the terminus in Santa Monica. (9 AR 00250.)

12 **III. STANDARD OF REVIEW.**

13 The adequacy of an EIR is presumed; the petitioner has the burden of proving otherwise. (Evid.
14 Code, § 664; *State of Cal. v. Super. Ct.* (1990) 222 Cal.App.3d 1416, 1419.) The standard of review in a
15 case alleging noncompliance with CEQA is whether the decision of the public agency is supported by
16 substantial evidence. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.)

17 "Substantial evidence" is defined as "enough relevant information and reasonable inferences
18 from this information that a fair argument can be made to support a conclusion, *even though other*
19 *conclusions might also be reached.*" (Guidelines,¹ § 15384, subd. (a), emphasis added.) A court "may
20 not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been
21 equally or more reasonable." (*Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559.)
22 Disagreement among competing experts does not render an EIR inadequate. (Guidelines, § 15151;
23 *Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App. 3d 852, 863.)

24 The question under the substantial evidence test is *not* whether there is substantial evidence to
25 support the conclusions of the opponents of a project; the question is only whether there is substantial
26

27
28 ¹ All references to "Guidelines" are to the State CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15000 et
seq.

evidence to support the decision of the agency in approving the project. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 407 (“*Laurel Heights I*”).) A “perfect” EIR is not required. “The courts have looked not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure.” (Guidelines, § 15151.)

IV. ARGUMENT.

A. The Environmental Baseline Utilized in the FEIR Complies With CEQA.

Petitioner claims that the FEIR omits “any discussion” of the effects of the Project on existing traffic and air quality. (Pet’s Br., 9:15.) Petitioner ignores substantial evidence in the record that contradicts its claim, and thus the argument is waived. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.3d 523, 541 [A challenge “to an EIR must lay out the evidence² favorable to the other side and show why it is lacking. Failure to do so is fatal.”].) The FEIR explains the methodology used to evaluate traffic impacts:

The impact threshold for intersections used in this FEIR utilizes the *Highway Capacity Manual* (HCP) operations methodology to quantify *existing* and future (2030) conditions at all intersections with and without the proposed project.

(11 AR 00350, emphasis added; see also 34 AR 01055.)

Similarly, the FEIR examines existing and future air quality conditions.³ The FEIR evaluates “the nature and magnitude of the change in the air quality environment due to implementation of the proposed project” using methods and significance thresholds recommended by the Air Quality Management District:

² 3 AR 00017 [Findings]; 11 AR 00336-45, 00353-54 [transportation/traffic analysis]; 72 AR 10737-40 [Table 5-4, Performance Measures for Current Year and Project Alternatives for Year 2030], 10748-49 [Table 5-7, LOS E/F Intersections for Current and Year 2030 No-Build Alternative], 13 AR 00495-99, 00515-18 [air quality analysis]; 59 AR 08391 [Table 4-29, Existing and Future Carbon Monoxide Concentrations Near Six “Worst-Case” Intersections], 08406-09 [Existing Conditions].

³ 13 AR 00495-510, 00515-18 [air quality analysis]; 59 AR 08294-95 [Table 2-1, Summary of Ambient Air Quality in the Proposed Project Vicinity], 08310 [Table 4-2, Annual Reductions in Criteria Pollutant Emissions Associated with Reduced Vehicle Single-Occupancy Miles Traveled in 2030], 08391 [Table 4-29, Existing and Future Carbon Monoxide Concentrations Near Six “Worst-Case” Intersections], 08406-09 [Existing Conditions], 08410-13 [No Build Conditions 2030], 08422-25 [Project 2030 Conditions], 08439-58 [Expo Construction 2011-2012].

1 The net increase in project emissions generated by project operation
2 activities and other secondary sources have been quantitatively estimated
3 and compared to thresholds of significance recommended by the [South
4 Coast Air Quality Management District].

5 (3 AR 00504; see 122 AR 15310-12, 15352-54 [SCAQMD CEQA Handbook].) Thus, the FEIR
6 analyzed traffic and air quality impacts using methods approved by the relevant regulatory agencies.
7 Using the approved methods, the FEIR discloses effects of the Project against existing and future
8 conditions with and without the Project.

9 **1. CEQA Requires Evaluation of the Effects of the Project Against Existing and
10 Future Conditions.**

11 Environmental impact reports must include a description of the “Environmental Setting” – “the
12 physical environmental conditions in the vicinity of the project.” (Guidelines, § 15125, subd. (a).) In
13 certain circumstances the Environmental Setting is also required to describe “potential future
14 conditions.” (Guidelines, § 15125, subd (e).) “[W]here failure to proceed with the project will not
15 result in preservation of existing environmental conditions, the *analysis should identify the practical
16 result of the project’s non-approval and not create and analyze a set of artificial assumptions that
17 would be required to preserve the existing physical environment.*” (*Id.*, § 15126.6, subd. (e)(3)(B),
18 emphasis added.)

19 The common sense purpose of the above provisions is to insure that the EIR provides a realistic
20 evaluation of the effects of the project – not overstating and not understating the impacts. The
21 requirement to describe both existing and projected future conditions reflects the importance of
22 evaluating the effects of the project over time taking into account population and other changes that are
23 projected to occurring during the life of the project. (Guidelines, § 15144 [An EIR “necessarily involves
24 some degree of forecasting”]; *San Francisco Ecology Ctr. v. City & County of San Francisco* (1975) 48
25 Cal.App.3d 585, 595 [agencies “are encouraged to make reasonable forecasts in the preparation of the
26 EIR”].) The evaluation of impacts (and benefits) over time is necessary for light rail projects that are
27 designed to alleviate increases in traffic, and resulting air emissions, that are projected to occur in the
28 future as a result of population growth. This is the approach expressly recommended by the South Coast

1 Air Quality Management District for the evaluation of the air quality effects of transportation projects.
2 (122 AR 15352-54.)

3 **2. The Lead Agency Has the Discretion to Select the Appropriate “Baseline” in**
4 **Identifying Significant Effects of the Project.**

5 Petitioner complains that the Authority used conditions (with and without the project) in 2030 to
6 determine whether the Project has a significant effect on traffic and air quality. Lead agencies are not
7 required to blindly use existing conditions to identify significant effects when future conditions provide
8 a more accurate baseline for the evaluation of project impacts. The Guidelines state that existing
9 conditions will “normally” constitute the baseline. (*Id.*, § 15125, subd. (a).) But the Guidelines
10 recognize there are circumstances where the existing conditions are not the appropriate baseline to use
11 in the identification of significant effects. For example, “where the issue involves an impact on traffic
12 levels, the EIR might necessarily take into account the normal increase in traffic over time.” (*Save Our*
13 *Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125-126.)

14 The cases cited by Petitioner explicitly recognize that the lead agency has the discretion to select
15 the appropriate baseline.

16 We do not attempt here to answer . . . how similar baseline conditions
17 should be measured in future cases, CEQA Guidelines section 15125 . . .
18 subd. (a) directs that the lead agency “normally” use a measure of physical
19 conditions “at the time the notice of preparation [of an EIR] . . .” But as
20 one appellate court observed, “the date for establishing baseline cannot be
21 a rigid one. Environmental conditions may vary from year to year and in
22 some cases it is necessary to consider conditions over a range of time
23 periods.”

24 (*Comtys. for a Better Env’t. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 327-328,
25 quoting *Save Our Peninsula Com.*, *supra*, 87 Cal.App. 4th at p. 125.) *Save Our Peninsula* states:
26 “[T]he agency has the discretion to resolve factual issues and to make policy decisions. If the
27 determination of a baseline condition requires choosing between conflicting expert opinions or differing
28 methodologies, it is the function of the agency to make those choices based on all of the evidence.”
(*Save Our Peninsula Com.*, *supra*, 87 Cal.App. 4th at p. 120.)⁴ The cases cited by Petitioner do not

4 The leading authorities on CEQA recognize that “the lead agency is free to choose a different
baseline.” (1 California Environmental Law & Land Use Practice (2010) Environmental Impact Reports
303293 7)

1 support its claim. In *Communities for a Better Environment*, the petitioners challenged a determination
2 by air quality district that the issuance of a permit authorizing major changes to an oil refinery in Los
3 Angeles did not require the preparation of an environmental impact report. The refinery project
4 “included substantially increasing operation of the existing cogeneration plant and four boilers.”
5 (*Comtys. for a Better Env’t., supra*, 48 Cal.4th at p. 320.) The air quality district reached the conclusion
6 that the project would not have any significant effects (and thus did not require an EIR) even though the
7 air district “acknowledged that the . . . [Project] . . . would increase NOx [oxides of nitrogen] emissions”
8 and that this estimated increase “exceeded the District’s established significance threshold of 55 pounds
9 per day. . . .” (*Id.* at p. 320.) Utilizing the rigorous standard of review applicable to review of negative
10 declarations, the Supreme Court concluded that there was a “fair argument” that “the [Project] will
11 increase NOx emissions significantly.” (*Comtys. for a Better Env’t, supra*, 48 Cal.4th at p. 320.)

12 The environmental document being challenged in *Communities for a Better Environment* was a
13 negative declaration, not an EIR. As the Court noted, CEQA requires the preparation of an EIR
14 whenever there is a “fair argument” that the project will have significant environmental effects.
15 (*Comtys. for a Better Env’t, supra*, 48 Cal.4th at p. 316.) Here the Expo Authority made the
16 determination that the Phase 2 Project had significant environmental effects and prepared and circulated
17 Draft and Final EIRs. Second, *Communities for a Better Environment* concerns a project that modified
18 an **existing, operating** facility. As the Court noted, where a project proposes changes to an existing
19 facility, it is appropriate to compare the effects of the proposed change against the impacts of the
20 existing operations at that facility. (*Id.* at p. 322.)

21 *Communities for a Better Environment* and *Woodward Park Homeowners Assoc. v. City of*
22 *Fresno* (2007) 150 Cal.App.4th 683 have nothing to do with this case. In both of those cases, the project
23 proponent argued that the impacts of the project should be measured against what was previously
24 planned and approved, but never realized. In both cases, if the newly proposed project was approved,
25

26 § 22.04[5], p. 22-60 to 61; 1 Kostka & Zischke, Practice Under the California Environmental Quality
27 Act (2d ed. 2010) Project Description, Setting, and Baseline, § 12.20, p. 598 [“[A] lead agency may
28 determine that another baseline is more appropriate either for overall evaluation of a project’s impacts or
for evaluation of a particular project impact.”].)

1 the previously approved project never existed, and never will exist. The Authority proposes to construct
2 a *new* light rail project from Culver City to Santa Monica. Thus, there are no existing traffic or air
3 quality effects of the Project against which the proposed project can be compared. But even more
4 fundamentally, the official adopted demographic data for the region indicate that the population (and
5 therefore traffic) in the area of the Project will increase over the life of the Project. (8 AR 00218-34
6 [FEIR]; see also Tabs 438, 444.) The Project is proposed to alleviate existing and *future* traffic (and
7 resulting air emissions) on the Westside. In this circumstance, it is reasonable to compare the traffic and
8 air emissions with and without the Project at the planning horizon for the Project (the year 2030) in
9 order to determine the impacts of the Project over time.

10 In *Save Our Peninsula Committee*, the court reviewed the approval of a residential development
11 project in Monterey County, an area with limited water supplies. (*Save Our Peninsula Com., supra*, 87
12 Cal.App.4th at pp. 99-109.) The Draft EIR identified water use as a critical issue, and used past water
13 use on the project site for irrigated pastureland to establish the “baseline” water use. (*Id.* at pp. 109-
14 111.) Using this methodology, the Draft EIR identified a baseline of 45 acre-feet per year. (*Id.* at p.
15 110.) *After* the circulation of the Draft and Final EIRs to the public, the County changed the baseline
16 water use on the project site to 51 acre-feet per year. (*Id.* at p. 115.) This upward adjustment in the
17 baseline was attributable to an increase in water use as part of a one time “test” of the aquifer. (*Id.* at p.
18 123.) Not only was there no “substantial evidence” for the change, the court concluded that there was
19 “*no justification*” for the last minute increase in the baseline. (*Ibid.*) Under these unusual facts, the
20 court concluded that substantial evidence did not support the County’s last minute adoption of an
21 increase in the baseline water use on the property. (*Id.* at p. 125.)

22 The facts concerning the identification of the baseline for the Expo Project are entirely different.
23 The Draft and Final EIRs included the same methodology for identifying the existing and future baseline
24 conditions. The Authority did not change the baseline proposed by the EIR consultants and disclosed to
25 the public in the Draft EIR.

26 **3. Substantial Evidence Supports the Authority’s Selection of the Baseline for**
27 **Evaluating the Traffic and Air Quality Effects in 2030.**

28 The Authority adopted the following finding:

1 For most of the environmental topics in the FEIR and in these Findings,
2 the Authority finds that existing environmental conditions are the
3 appropriate baseline condition for the purpose of determining whether an
4 impact is significant. However, the Authority finds that the existing
5 physical environmental conditions (current population and traffic levels)
6 do not provide reasonable baselines for the purpose of determining
7 whether traffic and air quality impacts of the Project are significant. The
8 Authority is electing to utilize the future baseline conditions for the
9 purpose of determining the significance of impacts to traffic and air
10 quality.

11 (3 AR 00017 [Findings of Fact].)

12 There is substantial evidence supporting the Authority's finding. The FEIR indicates that, due to
13 population growth, traffic congestion and resulting air emissions will increase in the project area over
14 the next twenty years. (8 AR 218-34 For example, the FEIR documents that traffic at intersections in
15 the Project area will worsen over time:

16 Twenty-eight of the ninety study area intersections currently operate at
17 [Level of Service] E or F. [I]n 2030, with no additional transit investment,
18 38 of 90 study area intersections are projected to operate at [Level of
19 Service] E or F

20 (8 AR 00233.)

21 The FEIR determined that the Project would have a significant effect on traffic if it caused *either*
22 (1) a deterioration of the Level of Service at an intersection to LOS E or worse, *or* (2) for intersections
23 that are already operating at LOS E or F, if the Project results in "an increase in the average vehicle
24 delay of 4 seconds or more." (11 AR 00350.) By analyzing delay as a result of the Project at a higher
25 number of congested intersections in year 2030, the FEIR adopted a more rigorous test for identifying
26 significant traffic impacts.

27 Petitioner contends that the environmental review of the project must assume that the only
28 change to the *environment* that will occur in the next twenty years is the operation of the Project, an
assertion that is self-evidently ridiculous. This Project is intended to address long-term transportation
objectives. Accordingly, the long-term traffic effects should be evaluated based on a longer-term
perspective that takes the anticipated increases in population and traffic congestion into account.
Petitioner's contention is contrary to the methodologies for evaluating traffic and air quality effects of

1 transportation projects recommended by the relevant air quality and transportation agencies (see § IV.B.
2 infra.)

3 The same logic supports the FEIR's evaluation of air quality effects (by comparing air quality
4 with and without the Project in 2030). Using methods approved by the California Air Resources Board
5 and the South Coast Air Quality Management District, the FEIR examines existing air quality conditions
6 (13 AR 00496-99), and compares existing and future air quality conditions with and without the Project
7 (13 AR 00504; 13 AR 00496-99; 13 AR 00518; 59 AR 08391) [Comparison of existing carbon
8 monoxide [CO] concentrations to CO concentrations with Project]]. The FEIR also compares the effects
9 of the Project alternatives using significance thresholds recommended by the Air Quality Management
10 District. The FEIR explains :

11 The analysis in this section focuses on the nature and magnitude of the
12 changes in the air quality environment due to implementation of the
13 proposed project. Air pollutant emissions associated with each alternative
14 would result from construction activities, project operations, and project-
15 related effects on traffic volumes. [A]ir quality impacts are estimated as
16 they could affect the nearest sensitive uses. The net increase in project
17 emissions generated by project operation activities and other secondary
18 sources have been quantitatively estimated and compared to thresholds of
19 significance recommended by the [South Coast Air Quality Management
20 District].

21 (13 AR 00504.) The Authority exercised its discretion to determine whether the Project has significant
22 air quality impacts using methods approved by the state air quality agencies. "It is the function of the
23 agency to make those choices based on all of the evidence." (*Save Our Peninsula Com., supra*, 87
24 Cal.App.4th at p. 120.) Substantial evidence supports the Authority's determination.

25 **B. The FEIR Analysis of Traffic Impacts Is Based on Approved Traffic Models, and**
26 **Reflects the Recommendations of the Transportation and Land Use Agencies.**

27 Petitioner's challenge to the FEIR's traffic analysis is based on a generalized claim that the
28 traffic study area is too "narrow." (Pet'r Br., 12:3.) The argument ignores the substantial evidence in
the record supporting the Authority's selection of the traffic study area.

The FEIR evaluates the impact of the Project using the Highway Capacity Manual ("HCM")
approved by the Federal Transit Administration. (*Id.* 10718.) The HCM is used to evaluate light rail

1 projects throughout the nation where congested or oversaturated intersection conditions exist. (72 AR
2 10716-18 [HCM operations analysis methodology].) The FEIR's approach to calculating level of
3 service ("LOS") using HCM methods is a commonly accepted practice among the jurisdictions in the
4 project area. (*Id.* 10717.)

5 **1. The Traffic Study Area Reflects the Recommendations of the Relevant**
6 **Transportation and Land Use Agencies and Incorporates All Areas**
7 **Potentially Impacted by the Project.**

8 The Authority identified the traffic study area (see 11 AR 00332, Figure 3.2-1) in consultation
9 with staff from Culver City, Los Angeles, and Santa Monica, including individual experts
10 knowledgeable about local traffic patterns and potential impact areas. (11 AR 00331, 00336, 00356-57
11 [Transportation/Traffic Analysis]; 72 AR 10699, 10704 [Transportation/Traffic Background Report].)
12 The 103-page FEIR traffic study utilized state-of-the art traffic demand forecasting models (not
13 challenged by Petitioners) to define a study area that would capture substantive changes in circulation
14 and parking from implementation of the Project. (72 AR 10699, 10718-21.) It evaluated both potential
15 local and general impacts on the transportation system. (11 AR 00331; 72 AR 10699, 10718-21, 10724-
16 80 [grade crossing impacts, impacts on highway performance measures, and intersection traffic
17 impacts]; see also 34 AR 01055-56 [Response to Comments].)

18 The traffic study evaluated ninety intersections on the Westside. (11 AR 00336-40.) The study
19 area included all of the intersections adjacent to at-grade crossings and nearby intersections that could
20 potentially be affected by a queue extending back from the at-grade crossings at the light rail tracks. (72
21 AR 10704-09.) In areas near stations, additional consideration was given to the access routes to the
22 stations. (*Ibid.*) The roadway segments leading up to each of these intersections were also part of the
23 study area, since they could be affected by queues at the intersections and were sometimes affected by
24 intersection-related mitigation measures (e.g., parking restrictions to gain additional approach lanes).
25 (*Ibid.*) At LADOT's request, the FEIR study area also included intersections at four additional
26 intersections. (*Ibid.*) The FEIR also included an analysis that calculated the average vehicular delay at
27 the proposed crossings to evaluate the extent of additional traffic delay due to the at-grade crossings.
28 (11 AR 00368-69; 72 AR 10735-37.) Thus, the traffic study area was not improperly restricted, but

1 rather, was defined using approved traffic forecasting models.

2 **2. The Study Area Is Supported by Substantial Evidence.**

3 Contrary to Petitioner's claim, the Authority did not ignore intersections that could be impacted
4 by the Project. The Authority's traffic consultants performed intersection capacity analyses for ninety
5 critical intersections within the study area. (72 AR 10747-77.) These analyses evaluated the AM and
6 PM peak hour level of service ("LOS") for each of the intersections. (*Ibid.*) Consistent with approved
7 methods in Los Angeles,⁵ intersections operating at LOS A through D were considered to be operating
8 at satisfactory LOS, and intersections operating at LOS E and F were considered unsatisfactory. (*Id.*
9 10706; 34 AR 01055.) An intersection was treated as impacted if Project traffic was projected to cause
10 deterioration from LOS A-D to LOS E or worse. (*Ibid.*) LOS E is an allowable threshold of
11 significance. (*Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 623-625.)
12 The FEIR also considered an intersection impacted if the intersection is already operating at LOS E or F
13 and the Project results in an increase in the average vehicle delay of four seconds or more at the
14 intersection in 2030. (72 AR 10706.) As recommended by LADOT, the FEIR analyzed traffic impacts
15 at key Westside intersections. (72 AR 10724-30, 10754-62.) The analysis showed that there would be
16 no significant impacts to any of these intersections as a result of the Project. (*Ibid.*) In other words, the
17 delay that would be added to these intersections would not exceed the threshold of significance. This
18 confirms that the study area included all intersections that would experience a material change in traffic
19 congestion as a result of the Project. (See *Id.* 10760; 34 AR 01056 [Response to Comments].)

20 Without support, or even identification of a specific intersection or street segment, Petitioner
21 argues that the FEIR traffic analysis is deficient. (Pet'r Br., 12:7-8.) CEQA does not require an analysis
22 to be exhaustive. (*Dry Creek Citizens Coal. v. County of Tulare* (1999) 70 Cal.App.4th 20, 26). It
23 requires only that an EIR reflect a good faith effort at full disclosure of the impacts of a project.
24 (Guidelines, § 15151.) Petitioner argues that "common sense dictates that these and other major
25 arterials in the area will be adversely affected by the [Project]" (Pet'r Br., 12:8-9.) But Petitioner
26

27
28 ⁵ Caltrans, Guide for the Preparation of Traffic Impact Studies (2002), available at
<http://www.dot.ca.gov/hq/traffops/developserv/.../tisquide.pdf>.

1 fails to cite *any* evidence that the FEIR's traffic analysis is legally inadequate, or that the record does not
2 contain substantial evidence to support the Authority's decision, and has forfeited this argument. (*Sierra*
3 *Club v. City of Orange, supra*, 163 Cal.App.3d at p. 541.)

4 Petitioner erroneously claims that the Authority ignored suggestions from LADOT requesting
5 that the traffic study recognize Sepulveda Blvd. as an alternate route to Interstate 405 Freeway ("I-
6 405"). (Pet'r Br., 12:12-14.) In fact, the Authority met with LADOT several times to study the
7 potential traffic impacts of the project on Sepulveda Blvd. (11 AR 00359; 72 AR 12120-21 [Milestone
8 3 Analysis].) As a result, the Authority added a third northbound lane on Sepulveda Blvd. (in addition
9 to the third southbound lane proposed in the Draft EIR). (11 AR 00359; 72 AR 12120-21; 687 AR
10 38391 [LADOT Letter, Oct. 2009].) In its review of the FEIR, LADOT confirmed that Project
11 operations at Sepulveda Blvd. "would not impact the operation at adjacent signalized intersections."
12 (687 AR 38391.)

13 The Authority's finding regarding the traffic impacts of the Project reflects the determinations of
14 relevant transportation and land use agencies and is supported by substantial evidence.

15 **C. The FEIR's Discussion of Growth-Inducing Impacts Is Adequate Because It**
16 **Inform[s] Interested Persons of the Probability of Transit-Oriented Urban Infill**
Development That Is Planned for the Transit Corridor.

17 Petitioner claims that the discussion of the Project's growth-inducing impacts is "grossly
18 deficient" because it allegedly "fail[s] to discuss the potential impacts of concentrating . . . growth
19 around the planned transit stations" (Pet'r Br., 13:17-19.) Petitioner also faults the FEIR for
20 allegedly assuming that transit-oriented development is necessarily beneficial. (*Ibid.*) But Petitioner
21 ignores the substantial evidence in the record that supports the Authority's conclusion that the Project's
22 growth-inducing impacts would be less than significant and that the Project will have beneficial effects.

23 **1. Substantial Evidence Supports the Conclusion that the Project Will Have a**
24 **Less Than Significant Growth-Inducing Impact.**

25 In support of its claim that the Project will have a significant growth-inducing effect on the
26 environment, Petitioner points to two proposed mixed-use developments. (*Ibid.*) The first is a project at
27 Bergamont Station in Santa Monica that has been proposed in concept only, and for which, the City of
28 Santa Monica had not received an application. (*Ibid.* [citing 780 AR 52796-98.]) The second is a

1 mixed-use structure proposed by Casden West LA, LLC to be built adjacent to a Project station (the
2 "Casden project"). (*Ibid.* [citing 781 AR 52799-801 (Mar Vista Community Council report)].)
3 Petitioner argues that these two developments are indirect effects of the Project, and the environmental
4 impacts of each should have been identified and analyzed in the FEIR.

5 At the time the EIR was prepared, the impacts of the proposed project at Bergamot Station were
6 unknown and unknowable because no application had been filed with the City of Santa Monica. (780
7 AR 52798.) Similarly, no application for the Casden project was on file with the City of Los Angeles
8 until after the NOP for the Project was filed. (29 AR 00865, Table 5.4-1 [no project identification on
9 file with the City of Los Angeles].⁶) CEQA does not require any discussion of the impacts of a
10 hypothetical project. (CEQA Guidelines, § 15064, subd. (d) [only "reasonably foreseeable" indirect
11 effects need be considered in determining whether an impact is significant]; see also *San Franciscans*
12 *for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 72-77 [for
13 purposes of cumulative impacts analysis, "probable future projects" may be limited to those projects
14 requiring an agency approval for an application which has been received at the time the notice of
15 preparation is released].)

16 CEQA provides that "[l]ead agencies may limit discussion on [less than significant] effects to a
17 brief explanation as to why those effects are not potentially significant." (Pub. Resources Code,
18 § 21002.1, subd. (e); see also *id.*, § 21100, subd. (c).) Moreover, both projects cited by Petitioner, if
19 approved, will undergo environmental review under CEQA. (781 AR 52800.) And most
20 fundamentally, the FEIR's conclusion is supported by substantial evidence in the record. Thus, even if
21 the two projects cited by Petitioner were substantial evidence that the Project will have a significant
22 growth-inducing impact, which they are not, a reviewing court "'may not set aside an agency's approval
23 of an EIR on the ground that an opposite conclusion would have been equally or more reasonable.'" (*In*
24 *re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143,
25 1161-1162 [quoting *Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 564].) Consistent with these
26

27
28 ⁶ An NOP for the Casden project was filed with the Office of Planning and Research on June 10, 2009.
See <http://www.ceqanet.ca.gov/ProjDocList.asp?ProjectPK=598249>.

1 principles, the Court of Appeal in *Napa Citizens for Honest Government v. Napa County Bd. of*
2 *Supervisors* (2001) 91 Cal.App.4th 342, 367-371 found an EIR's discussion of growth-inducing impacts
3 on regional housing needs was adequate where an appendix to the EIR included a market and
4 jobs/housing analysis that estimated the project's impact on jobs and housing needs. There, the Court
5 articulated several key factors to be considered when reviewing an agency's analysis of growth-inducing
6 impacts. First, because growth-inducing effects of a project are indirect environmental impacts,
7 "[n]othing in the Guidelines, or in the cases, requires more than a *general* analysis of projected growth."
8 (*Id.* at p. 369, emphasis added.)

9 The detail required in any particular case necessarily depends on a
10 multitude of factors, including . . . the nature of the project, the directness
11 or indirectness of the contemplated impact and the ability to forecast the
12 actual effects the project will have on the physical environment. In
13 addition, it is relevant, although by no means determinative, that future
14 effects will themselves require analysis under CEQA.

15 (*Ibid.*)

16 Here, each and every factor supports the adequacy of the FEIR analysis. The FEIR explains that
17 the Project would not result in any significant growth-inducing impact because it does not (1) remove an
18 impediment to growth, (2) result in the urbanization of land in a remote location, (3) establish a
19 precedent-setting action the way a zoning or general plan amendment approval might, and (4) economic
20 growth and expansion will not occur in the area as a result of the Project. (29 AR 00861-62; 35 AR
21 01782 [citing CEQA Guidelines, § 15126.2, subd. (d)].) As the FEIR explains,

22 The Expo Phase 2 project would be built within a well developed urban
23 area [i.e., Culver City, the west side of Los Angeles, and Santa Monica]
24 where only infill development opportunities remain. The project would be
25 located in an area that is already well served by an existing network of
26 electricity, water, sewer, storm drain, and other infrastructure that
27 accommodates existing and planned growth. The project would not
28 provide new accessibility, but would enhance accessibility by transit
thereby reducing private automobile use. The need for a high capacity
major transit investment in the Expo Phase 2 community is driven by
significant population and employment concentrations along with
continued growth trends in the greater area. The project would
accommodate and serve residents and visitors to the project cities and
would provide an increased level of public transit service that is consistent
with local and regional growth projections and land use transportation
policies. The project also is consistent with local and regional planning to
accommodate anticipated corridor growth by reducing VMT [vehicle
miles traveled] and other impacts attendant on private automobile use. In
fact the proposed project is the culmination of a planning process that has

1 been underway for over 30 years and it would result in the provision of
2 light rail service from downtown Los Angeles to Santa Monica.

3 (29 AR 00861-2.)

4 Contrary to Petitioner's mischaracterization of the record, the FEIR discloses in great detail the
5 adopted land use plans that support transit-oriented development within 0.5 mile of proposed stations.
6 (20 AR 00619 [Fig. 3.11-2]; 66 AR 10117-9, Table 2-2 .) The Authority also assessed the compatibility
7 and consistency of the Project with existing and future land uses based upon the applicable locally
8 adopted land use plans. (20 AR 00616-21; 66 AR 10101 [Land Use Technical Background Report,
9 assessing, among other things, "whether the proposed alignments are consistent with applicable land use
10 policies" and "evaluat[ing] land uses that would support transit ridership to assess the compatibility of
11 the proposed alignments with applicable land use policies"].)

12 The Project will accommodate the anticipated growth in population and transit-oriented
13 development already contemplated in those other planning documents. (20 AR 00618-21; 29 AR
14 00861-62; 66 AR 10126-37.) This conclusion is amply supported by substantial evidence. Specifically,
15 the FEIR disclosed the existing and forecasted regional population and job growth, population and job
16 densities, and transit-oriented development within the project study area in the Southern California
17 Association of Governments ("SCAG")⁷ Regional Transportation Plan ("RTP"), Regional
18 Transportation Improvement Plan ("RTIP"), Regional Comprehensive Plan and Guide ("RCPG"), and
19 Regional Comprehensive Plan ("RCP"). (8 AR 00218, Table 1.2-1; *id.* 00219-22; 11 AR 00345; 20 AR
20 00616; 66 AR 10126-29.)

21 Under federal and state law, SCAG prepares an RTP that plans for transportation, growth
22 management, hazardous waste management, and air quality. (20 AR 00616.) SCAG's 2008 RTP is a
23 long-range plan that identifies multi-modal (i.e., different transportation modes) regional transportation
24 needs and investments out to the plan horizon year of 2035. (66 AR 10128.) Not only does the 2008
25 RTP include the Expo Phase 2 project among the list of projects with already-committed funding (11
26

27 ⁷ SCAG is the designated Metropolitan Planning Organization for the six-county Southern California
28 region, which consists of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura
 counties.

1 AR 00345; 20 AR 00616; 66 AR 10128; 439 AR 30069 [2008 RTP Project List]; *id.* AR 30032
2 [explaining same]), it specifically “[e]ncourage[s] land-use and growth patterns that complement our
3 transportation investments,” “recognizes that many existing transportation corridors lack the residential
4 and commercial density to adequately support non-auto transit uses . . . ,” and incorporates . . . land-use
5 policies as a means to influence transportation performance and the economy in the region.” (66 AR
6 10128.) SCAG’s RCP serves as a framework to guide decision-making with respect to the growth and
7 changes that can be anticipated in the region through the year 2035. The FEIR analyzed the Project’s
8 consistency with SCAG’s broad policies and specific implementation measures with special attention
9 given to the goal of supporting transit-oriented development, mass transit, and reducing vehicle miles
10 traveled, energy use, and air emissions. (66 AR 10162-67, Table 4-2; 329 AR 27295, 436 AR 29154.)

11 The FEIR also analyzed the project’s consistency with the following local land use planning
12 documents: the West Los Angeles Community Plan (i.e., Segment 2 [Sepulveda to Cloverfield]) and the
13 Palms-Mar Vista-Del Ray Community Plan (i.e., Segment 1, and Segment 1a [Venice/Sepulveda]); the
14 Culver City General Plan Land Use Element (Segment 1a), which specifically discusses the Project; the
15 Santa Monica General Plan Land Use and Circulation Element (“LUCE”) (stating that the “eastern half
16 of the Olympic Corridor is well-suited to accommodate office growth due to the relative ease of locating
17 a light- or heavy-rail line through the [Southern Pacific railroad] right-of-way and the direct access to the
18 freeway”); the City of Santa Monica’s Zoning Ordinance, amended in April 2006 to designate the
19 Exposition right-of-way within the City as a Transportation Preservation District; and the Santa Monica
20 Civic Center Specific Plan. (20 AR 00618; 66 AR 10129-37, 10167-84 [Tables 4-3 – 4-5].)

21 In light of those approved local and regional plans, the Authority found that the Project will not
22 have any significant growth-inducing impacts; rather, it will serve transit-dependent populations that are
23 currently underserved by mass transit, and accommodate the projected growth. (*Id.*; 7 AR 00159-60; 8
24 AR 00216; 35 AR 01782; 29 AR 00862-63; 66 AR 10184-94.)

25 The FEIR discloses future growth in and around the Project area in a manner that allows for
26 informed decision making and public participation. (*Napa Citizens for Honest Government, supra*, 91
27 Cal.App.4th at pp. 369-371; see also *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1128-

1 1129 [finding EIR's conclusion that an aggregate mining project would not have growth-inducing
2 impacts is adequate because it explained how the project would "simply be minimizing obstacles to
3 growth and not causing growth itself"]; *Friends of the Eel River v. Sonoma County Water Agency* (2003)
4 108 Cal.App.4th 859, 877 [finding EIR's analysis of growth-inducing impacts adequate where project to
5 increase water diversions "is designed to accommodate the projected population growth of the eight
6 cities and counties served by the [water agency], as that growth is forecast under the general plans for
7 these cities and counties].) Because the FEIR concludes, based on substantial evidence, that the growth-
8 inducing impacts are less than significant, nothing more than a "brief explanation" of the Authority's
9 reason for reaching this conclusion is required. (Pub. Resources Code, § 21002.1, subd. (e); see also *id.*,
10 § 21100, subd. (c).) The FEIR's discussion of growth-inducing impacts far exceeds this requirement.

11 The lone case Petitioner cites in support of its growth-inducing argument is *Bakersfield Citizens*
12 *for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1218 ("*Bakersfield*"). *Bakersfield*
13 held that the EIRs for two retail projects were inadequate because each failed to consider the *cumulative*
14 *impacts* of the two projects – each within 3.6 miles of each other, and each containing a Wal-Mart
15 "supercenter" – on urban blight in the area surrounding the projects. (*Ibid.*) *Bakersfield* is
16 distinguishable on its facts. There, unlike here, "neither EIR contains any discussion of or reference to
17 retail development in the area surrounding the project site." (*Id.* at p. 1213.) As demonstrated above,
18 the FEIR includes lengthy and detailed discussion of transit-supportive and transit-oriented development
19 in the Project area.

20 **2. Substantial Evidence Supports the Conclusion that Transit-Oriented**
21 **Development Will Have Beneficial Effects.**

22 Contrary to Petitioner's claim, the FEIR does not merely "assume" that transit-oriented
23 development near Project stations "is necessarily beneficial." (Pet'r Br., 13:26.) The record abounds
24 with substantial evidence to support the statement that transit-oriented development, which focuses
25 projected growth "toward areas with available infrastructure and supportive of reduced vehicle miles
26 traveled, fewer air emissions, and reduced energy consumption," has beneficial effects. (See, e.g., 13
27 AR 000506-10; 29 AR 00866-7; 59 AR 08278-09487 [air quality]; 11 AR 00353-54; 29 AR 00861-62; 3
28 AR 00106-107 [reduced VMT and VHT].)

1 **D. Substantial Evidence Supports the FEIR's Evaluation of Cumulative Impacts.**

2 **1. Petitioner Failed to Exhaust Its Administrative Remedies Regarding the**
3 **Alleged Defects in the Cumulative Traffic Impacts Analysis that It Raises for**
4 **the First Time in Its Opening Brief.**

5 As demonstrated below, the FEIR cumulative impacts analysis is supported by substantial
6 evidence. As a threshold matter, however, the Court need not reach the specific arguments raised by
7 Petitioner regarding an alleged failure to adequately analyze cumulative impacts on traffic because the
8 specific defects asserted in the cumulative traffic analysis were never raised during the administrative
9 proceedings. Petitioner itself raised a host of specific alleged defects in the cumulative impact analysis
10 in three lengthy comment letters. (34 AR 01568 [comment L481-3]; 35 AR 01783-90 [comment L560-
11 32]; 727 AR 46957, 46963, 46971, 46972-4.) But no comments were submitted claiming, as Petitioner
12 does for the first time in its opening brief, that “there is no indication in the FEIR that the assumed
13 ‘future conditions’ [in the traffic analysis] included the traffic generated by any of the ‘related’ projects
14 list in the FEIR [or DEIR] Table 5.4-1.” (Pet’r Br., 15:11.⁸) Nor did anyone submit a comment that the
15 cumulative impact analysis of construction-related traffic impacts “fails to acknowledge that the Expo
16 Phase I project . . . will likely be under construction at the same time as the Project.” (*Id.* fn. 8.)

17 Exhaustion of administrative remedies is jurisdictional. (Pub. Resources Code, § 21177, subd.
18 (a); *Bakersfield Citizens for Local Control*, *supra*, 124 Cal.App.4th at p. 1199.) The petitioner bears the
19 burden of proving that the issue was timely raised before the lead agency. (*Porterville Citizens for*
20 *Responsible Hillside Dev. v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.) “The ‘exact issue’
21 must have been presented to the administrative agency” (*Sierra Club v. City of Orange*, *supra*,
22 163 Cal.App.4th at p. 535 [quoting *Mani Bros. Real Estate Group v. City of Los Angeles* (2007) 153
23 Cal.App.4th 1385, 1394].)

24 None of the specific issues raised in its brief regarding the alleged inadequacy of the FEIR’s

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26 ⁸ One comment in the record hints at Petitioner’s claim that the Casden project will have a cumulatively
27 significant traffic impact on the intersection of Sepulveda and Pico. (See 37 AR 03413, Comment
28 E629-24 [“The construction of [the Casden] project and Expo Phase 2 will cause a combined negative
impact upon the neighborhood surrounding the right-of-way.”].) But Petitioner does not cite any
evidence in the Administrative Record to support its bald assertion that “the Casden project will clearly
add substantial additional traffic to the nearby intersection” (Pet’r Br., 15:16-17.)

1 analysis of cumulative traffic impacts was timely raised. Thus, they are waived. (*Central Delta Water*
2 *Agency v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 245, 274.) Any rejoinder that
3 Petitioner put the Authority on notice that “something or other” was allegedly wrong with the
4 cumulative traffic impacts analysis has been specifically rejected by the Court of Appeal. (See, e.g.,
5 *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021 [finding a failure to
6 exhaust issue of alleged inconsistency with *county’s* general plan where comment claimed inconsistency
7 with *city’s* general plan].)

8 **2. Even If Petitioner Had Exhausted Its Administrative Remedies, Substantial**
9 **Evidence Supports the Authority’s Cumulative Impact Analysis.**

10 Contrary to Petitioner’s claims, the Authority provided ample analysis of the cumulative impacts
11 on traffic, and every other potential impact, often by incorporating the discussion of the Project’s
12 impacts and the impacts of related projects in impact-specific sections of the FEIR. For instance, with
13 respect to air quality impacts, the FEIR explains that operation of the Project will have beneficial
14 impacts on air quality, and therefore it will not result in any cumulative impacts, and its contribution to
15 any air quality impacts will not be cumulatively considerable. (29 AR 00866-67 [incorporating the air
16 quality analysis in Section 3.4 at 13 AR 00495-520]; see also 59 AR 08278-9487 [Final EIR Final Air
17 Quality Technical Background Report].) The FEIR discloses that during peak construction, the Project
18 will result in a cumulatively considerable contribution of NOx, which is significant and unavoidable.
19 (29 AR 00874 [incorporating by reference the air quality construction impacts analysis in Chapter 4].)

20 Guidelines section 15130, subdivision (b), provides that “[t]he discussion of cumulative impacts
21 shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not
22 provide as great detail as is provided for the effects attributable to the project alone. The discussion
23 should be guided by standards of practicality and reasonableness” “The analysis of cumulative
24 impacts is only necessary if the impact is significant and the project’s incremental effect is cumulatively
25 considerable [Citation].” (*City of Long Beach v. Los Angeles Unified Sch. Dist. (“LAUSD”)* (2009) 176
26 Cal.App.4th 889, 909. “If the lead agency determines that a project’s incremental effect is not
27 cumulatively considerable, the EIR need only briefly describe the basis for its findings. [Citations]”
28 (*Ibid.*)

1 Applying these principles, *City of Long Beach v. LAUSD*, *supra*, 176 Cal.App. 889 held that
2 LAUSD's "relatively brief explanation for its conclusion [that the project would not contribute to
3 cumulative impacts on air quality] is sufficient." (*Id.* at pp. 908-909.) In *City of Long Beach v. LAUSD*,
4 the EIR described how a project's cumulative impacts on air quality could be considered less than
5 significant if it "reduced the rate of growth of vehicle miles traveled, and is consistent with the AQMP
6 [i.e., the Air Quality Management Plan]" (*Id.* at p. 908.) The EIR further explained that "(1) the
7 consultants expected the project to reduce emissions levels through the reduction of vehicle miles
8 traveled, and (2) there was no proposed school construction within a one-mile radius of the project
9 site" (*Id.* at p. 909.)

10 Here the FEIR explains why the Project's contribution to regional air quality is not cumulatively
11 considerable:

12 The future CO concentrations at the study intersections in 2030 take into
13 account project-specific and cumulative conditions, since the assessment
14 relies on future transportation projections, which reflect the proposed
15 project and reasonably foreseeable background growth and development
16 projects. The AQMP [Air Quality Management Plan] incorporates
17 transportation project assumptions from the RTP and the RTIP developed
18 by SCAG to estimate regional stationary and mobile air emissions. If the
related projects are individually consistent with the RTP and the RTIP,
then all cumulative impacts would be accounted for in the AQMP. The
Expo Phase 2 project, which is included in SCAG's 2008 RTP and the
2008 RTIP and is discussed in Section 3.4 (Air Quality), is determined to
have a beneficial air quality effect. Therefore, significant cumulative
impacts would not occur [as a result of the Project].

19 (29 AR 00866.) The FEIR also explains, among other things, that the Project "is fully conforming to the
20 2007 AQMP and California's [Clean Air Act] State Implementation Plan (SIP)[,]" "[o]peration of the
21 LRT [light rail transit] Alternatives and associated parking areas and the maintenance facility would not
22 expose sensitive receptors to substantial pollutant concentrations[,]" "[p]ollutant levels would be below
23 the SCAQMD localized significance thresholds for CO, NO2, PM10, and PM2.5[,]" and therefore "[t]he
24 proposed project would not result in a cumulatively considerable contribution to this cumulative
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1 impact.” (*Id.* 00867.) This “brief statement” is all that CEQA requires. (*City of Long Beach, supra*,
2 176 Cal.App. at pp. 908-909.)⁹

3 Petitioner’s complaint that the FEIR’s cumulative impact section did not catalogue every impact
4 on each intersection in the study area resulting from each of the 24 projects listed in Table 5.4-1 also
5 fails on the merits. A discussion of cumulative impacts may rely on *either* “[a] list of past, present, and
6 probable future projects producing related or cumulative impacts . . . , *or* [¶] [a] summary of projections
7 contained in an adopted local, regional or statewide plan, or related planning document, that describes or
8 evaluates conditions contributing to the cumulative effect. . . . [such as] a general plan, regional
9 transportation plan, or plans for the reduction of greenhouse gas emissions.” (Guidelines, § 15130,
10 subd. (b)(1)(A)-(B), emphasis added.) The FEIR followed Guidelines section 15130, subdivision
11 (b)(1)(B), for cumulative transportation/traffic impacts. (29 AR 00866, 11 AR 00331-438 [Section 3.2];
12 72 AR 10693-12247 [Final EIR Transportation/Traffic Technical Background Report].¹⁰) The FEIR
13 study area included the intersection at Pico Blvd. and Sepulveda Blvd. that Petitioner singles out as
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15 ⁹ The same holds true for the FEIR’s discussion of cumulative impacts for Transportation/Traffic (29
16 AR 00866 [incorporating analysis in Section 3.2], *id.* 00872-3]), Aesthetics (*id.* 00866, 00873-4),
17 Biological Resources (*id.* 00867, 00874), Cultural Resources (*id.* 00868), Geology, Soils, and Seismicity
18 (*id.* 00868-9), Hazards and Hazardous Materials (*id.* 00869, 00874-75), Hydrology/Water Quality (*id.*
19 00869-70, 00875), Land Use/Planning (*id.* 00870, 00875), Noise and Vibration (*id.* 00870-76),
20 Paleontological Resources (*id.* 00871), Parks and Community Facilities (*id.* 00871, 00876), Safety and
21 Security (*id.* 00871, 00876-77), Socioeconomics (*id.* 00871-72, 00877), and Energy Resources (*id.*
22 00872).

23 ¹⁰ Traffic volume forecasts for year 2030 conditions are based on the results of the Metro Travel
24 Demand Model, which receives its demographic inputs from the SCAG Regional Travel Demand
25 Model. (11 AR 00373-4.) Specifically, the Metro Travel Demand Model predicts future travel based on
26 SCAG forecasts of regional growth in population and employment in the six-county region; SCAG
27 forecast changes in the socio-demographic characteristics of travelers; and further characteristics of the
28 roadway and transit systems including travel times, costs, and system capacity that reflect the planned
system (No-Build) and the TSM and LRT Alternatives. (*Id.* 00347.) Because the traffic growth patterns
in various subareas within the study area are noticeably different, traffic volumes for the 90 intersections
in the study area were grouped into six subareas, and the growth factors for each subarea were applied to
the existing year 2007, 2008, and 2009 intersection traffic counts to develop the future background
(base) volumes at each of the study area intersections. (*Id.* 00348; see also 34 AR 01055 [Master
Response 1: Traffic Methodology].) Thus, use of the Travel Demand Model is consistent with the
“summary-of-projections” analysis of cumulative impacts. (Guidelines, § 15130, subd. (b)(1)(B).)

¹⁰ In addition, as demonstrated above, at the time the NOP for the Project was filed on Feb. 23, 2007
(206 AR 21041-43), there was no application on file for the Casden project. Thus, it need not be
considered even if the list method were used. (*San Franciscans for Reasonable Growth, supra*, 151
Cal.App.3d at 72-77.)

1 having received inadequate study because the analysis did not specifically account for the Casden
2 project's cumulative traffic impacts. (72 AR 10704-09.) Significantly, *Petitioner does not challenge*
3 *the adequacy of that analysis*. Instead, it complains, for the first time at trial, that the
4 Transportation/Traffic cumulative impact analysis did not use *both* the "summary of projections" *and*
5 "list of projects" approaches. (Pet'r Br., 14.26-15:3.) Thus, even if Petitioner had exhausted its
6 administrative remedies, which it did not, it has failed to show that the cumulative impact analysis is not
7 supported by substantial evidence.

8 Petitioner asserts that the FEIR's analysis of cumulative construction impacts on traffic is
9 inadequate because it "fails to acknowledge the fact that Expo Phase I project . . . will likely be under
10 construction at the same time as the Project." (Pet'r Br., 15:fn. 8.) But construction of Expo Phase 1
11 Project is scheduled to be completed by the end of 2010. (8 AR 00214.) Petitioner also fails to explain
12 how traffic impacts caused by construction on sections of Phase 1 would impact traffic at the
13 intersections impacted by construction of Phase 2. "Because construction traffic impacts would be
14 localized, any other development with potential to result in additive effects with regard to traffic would
15 have to be in the immediate vicinity of the portion of the Expo Phase 2 project that is being
16 constructed." (29 AR 00873; *id.* 00870 [noise/vibration], *id.* 00874, 00876 [localized air quality
17 impacts].)

18 To summarize: Petitioner waived every argument it makes in its one-page section on cumulative
19 impacts, because Petitioner failed to present its arguments during the administrative proceedings.
20 Nevertheless, each of the FEIR's conclusions is supported by substantial evidence.¹¹

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23 ¹¹ Petitioner cites *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721
24 and *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 274 Cal.App.4th 713, 732-
25 733. Neither advances its cause. In *Kings County*, the agency employed a "ratio" method to compare
26 the individual project's air quality impact against the cumulative impact to conclude that the project's
27 impacts were not cumulatively considerable. (221 Cal.App.3d at p. 721.) The FEIR compares
28 cumulative traffic conditions in 2030 under the No-Build Alternative with cumulative conditions in
2030 with LRT. (29 AR 00866; 11 AR 00348, 00414-5.) In *San Joaquin Raptor*, the agency failed to
use projections or a list of other related projects. (27 Cal.App.4th at p. 740.) In the FEIR, traffic
impacts were evaluated using projections based on regional planning documents. (29 AR 00866; 11 AR
00347.)

1 **E. The Mitigation Measures and Mitigation Findings Are Supported by Substantial**
2 **Evidence.**

3 **1. The Authority Adopted the Mitigation Findings Required by CEQA.**

4 Petitioner singles out *five* measures (concerning parking, noise, safety, and construction impacts)
5 to claim that the mitigation measures do not comply with CEQA. However, the findings adopted by the
6 Authority regarding these mitigation measures (3 AR 00054-56 [Findings of Fact]) fully comply with
7 CEQA and substantial evidence supports these findings.

8 When an EIR identifies a significant effect, the lead agency is required to adopt one of three
9 findings: (1) Changes or alterations are required of, or incorporated in, the project that “avoid or
10 substantially lessen” the significant environmental effect; (2) the changes or alterations are within the
11 jurisdiction of another public agency; or (3) specific considerations make the mitigation measure
12 infeasible. (Guidelines, § 15091; see Pub. Resources Code, § 21081.) If substantial evidence supports
13 *any* of these findings, the Court must conclude that the EIR complies with applicable CEQA
14 requirements. (Pub. Resources Code, § 21081.)

15 Courts are required to defer to an agency’s assessment of the effectiveness of the mitigation
16 measures proposed in an EIR. “For projects for which an EIR has been prepared, where substantial
17 evidence supports the approving agency’s conclusion that mitigation measures will be effective, courts
18 will uphold such measures against attacks based on their alleged inadequacy.” (*Sacramento Old City*
19 *Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027; see also *Laurel Heights I, supra*, 47 Cal.3d at
20 407 [reviewing courts do not weigh conflicting evidence on effectiveness of mitigation].) In this case,
21 substantial evidence supports the Authority’s findings that (1) the mitigation measures “substantially
22 lessen” significant effects of the Project relating to parking, noise, safety, and construction impacts, and
23 (2) the measures are within the jurisdiction of another agency.

24 **2. Substantial Evidence Supports the Authority’s Finding Regarding Mitigation**
25 **of Spillover Parking.**

26 The FEIR evaluated the effect of the Project on parking in the Project area. (11 AR 00411-33
27 [Transportation/Traffic Analysis]; 72 AR 10777-95 [Transportation/Traffic Technical Report].) It
28 concludes that proposed parking for the Project may be less than the forecasted peak period demand at

1 four of the proposed Project stations. (11 AR 00411-13; 72 AR 10793-95.) To minimize the potentially
2 significant adverse impacts resulting from a shortage of parking, the Authority adopted mitigation
3 measure MM TR-4. (3 AR 00054-55 [Findings]; 11 AR 00413-14.) MM TR-4 establishes a program to
4 monitor on-street parking activity of transit patrons prior to the opening of light rail service and the
5 availability of parking monthly for six months thereafter. (3 AR 00113 [MMRP].) If parking
6 availability exceeds a designated performance standard (100% utilization of available parking spaces),
7 Metro is required to work with the appropriate local jurisdictions and affected communities to develop a
8 parking permit program. (*Id.*; 3 AR 00113; see also 34 AR 01063-64.) A residential permit parking
9 program is a mitigation measure in neighborhoods which may not have adequate parking due to limited
10 land availability. (34 AR 01768 [Response to Comments].) A similar mitigation measure was adopted
11 for the Expo Phase 1 Project (739 AR 48431 [Expo Phase 1 FEIS/EIR]), and permit programs already
12 exist in several neighborhoods near the Project (72 AR 10795).

13 The FEIR explained that the designed parking supply at each of the Project stations is planned
14 based on ridership forecasts as well as design/physical constraints and availability issues at each site.
15 (34 AR 01186; 11 AR 00411; 72 AR 10793-95.) The FEIR identified parking demand for a fully
16 mature transit system in 2030. The designated parking spaces at each station will not be at capacity on
17 opening day. (72 AR 10793-95.) The Authority considered the possibility that adding more parking
18 could have the effect of increasing traffic around each station by encouraging auto access as opposed to
19 non-motorized or transit access. (34 AR 01186.) Moreover, the Authority would either have to
20 purchase more property for surface parking, which could have land use impacts, or provide structured
21 parking, which would be costly and potentially create impacts to adjacent land uses. (*Ibid.*) The
22 Authority's approach to mitigation of parking impacts avoids these other impacts. The mitigation
23 measure also includes options such as time-restricted, metered, or shared parking arrangements that may
24 be implemented in order to achieve the performance standard in the event a permit parking program is
25 not possible. (*Id.* 01063-64; 3 AR 00113 [MMRP]; 619 AR 36397-98.) To ensure implementation,
26 Metro has agreed to reimburse local jurisdictions for the costs associated with developing and
27 implementing permit parking programs. (3 AR 00113; 35 AR 01769.)
28

1 CEQA authorizes the use of performance standards in establishing mitigation measures based on
2 future studies. (Pet'r Br., 17:20-22; Guidelines, § 15126.4; *Sacramento Old City Assn.*, *supra*, 229
3 Cal.App.3d at p. 1029.) Such an approach is especially appropriate when the results of later field studies
4 are used to tailor a mitigation measure to fit actual environmental conditions. (*Defend the Bay v. City of*
5 *Irvine* (2004) 119 Cal.App.4th 1261, 1275 [approving measures calling for future field surveys for
6 sensitive species and requiring construction of breeding ponds if species is found by survey]); *Nat'l*
7 *Parks & Conserv. Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1366 [upholding deferred
8 determination of placement of protection fences along railroad line until further study of migration
9 patterns during project operation].)

10 In *Sacramento Old City Association*, the court upheld as adequate a deferred mitigation measure
11 to meet a performance standard of ninety percent parking usage. (229 Cal.App.3d at p. 1029.) The
12 FEIR acknowledges the potential for spillover parking impacts with operation of a fully mature transit
13 system. When and where spillover parking impacts will actually occur, however, can only be
14 determined by monitoring parking conditions around the stations since parking demand estimates in the
15 FEIR are based on long-range ridership forecasts. (72 AR 10793-95.) If, after the start of service,
16 parking utilization within any neighborhood increases to 100%, the Authority and Metro will implement
17 an appropriate parking solution (permit, time-restricted, metered, or shared parking) to comply with the
18 parking utilization performance standard. (3 AR 00113.) Just as in *Sacramento Old City Association*,
19 this mitigation measure identifies a performance standard based on parking usage, defines the
20 Authority's commitment (develop a parking management program), and describes the Authority's
21 responsibility (financial contribution).

22 Petitioner argues that a permit parking program would not be adequate mitigation because it
23 would not provide residents "with the ability to park in their own neighborhood in substantially the same
24 manner that they are currently accustomed to." (Pet'r Br., 17:13-20.) First, Petitioner misstates the
25 standard for adequacy of mitigation measures under CEQA. Mitigation includes rectifying an impact by
26 repairing, rehabilitating, or restoring the affected environmental resource or compensating for the impact
27 by providing substitute resources or environments. (Guidelines, § 15370.) This standard is not
28

1 equivalent to restoring the affected environment to where residents do not experience any change as a
2 result of a project. A mitigation measure need only present a “viable solution” that will effectively
3 mitigate an impact to a less than significant problem. (*Gray v. County of Madera* (2008) 167
4 Cal.App.4th at p. 1116 (cited by Petitioner). Mitigation Measure Transportation 4 (“MM TR-4”) is a
5 viable solution in neighborhoods which may experience parking impacts. (see 35 AR 01768 [Response
6 to Comments].)

7 Second, parking mitigation programs are not at all similar to the mitigation in *Gray*. In *Gray*, the
8 impact was a decline in levels of potable water from private wells. One of the mitigation measures
9 proposed was to rehabilitate wells to provide additional water. (167 Cal.App.4th at p. 1117.) But there
10 was no evidence in the EIR that the wells could provide more potable water. (*Ibid.*) Another option was
11 to allow residents to hook into the project’s wells, but those wells did not produce potable water. (*Ibid.*)
12 The court concluded that this mitigation measure was not adequate under CEQA because it “does not
13 replace the lost water from private wells with a substantially similar quality of water.” (*Ibid.*) The court
14 concluded that replacement water through bottles was also ineffective because it “defies common sense
15 for the County to conclude that providing bottled water is an effective mitigation measure” for the loss
16 of a landowners potable well water. (*Id.* at pp. 1117-1118.)

17 The Authority is not proposing to eliminate parking at residents’ homes; rather, MM TR-4
18 addresses impacts to *public* parking. A parking permit program is a commonly-used, entirely feasible
19 and effective solution to preserve sufficient public parking for local residents. Moreover, given a
20 permit to reserve local parking places the residents in a position substantially similar to their position
21 without the stations. The permit parking program is in stark contrast to a plan to replace a resident’s
22 supply of potable water with bottled water. Because the Authority and Metro have committed to both
23 monitoring parking utilization around Project stations and implementing the option(s) identified MM
24 TR-4 to meet the parking performance standard, the measure complies with CEQA. (3 AR 00054-55
25 [Findings]; see *Sacramento Old City Assn., supra*, 229 Cal.App.3d at p. 1027.)

26 **3. Substantial Evidence in the Record Supports the Adequacy of Mitigation**
27 **Measures to Reduce Impacts of Removed Parking.**

28 The FEIR estimates that approximately 35 utilized parking spaces are proposed to be eliminated

1 on the south side of Colorado Ave. between 14th St. and 4th St. Mitigation measures MM TR-9, MM
2 TR-9(a), and MM TR-9(b) propose replacement parking lots to accommodate this loss of parking.
3 (3 AR 00014, 11 AR 00431-32; 34 AR 01062.) Additional replacement options also include
4 implementation of diagonal parking on adjacent streets or other design options. (11 AR 00431-32.)
5 These are well-established approaches to parking mitigation that are supported by substantial evidence.
6 (*Ibid.*; 3 AR 00054-55 [Findings].)

7 Petitioner argues that the mitigation measures are inadequate and constitute improper deferral of
8 mitigation. (Pet'r Br., 17:21-22, 18:9-10.) However, there is substantial evidence in the record
9 supporting the Authority's determination that the mitigation measures offer viable solutions to the loss
10 of parking. The measures themselves identify the location of parcels that the Authority intends to
11 acquire. (11 AR 00431.) In response to comments received on the Draft EIR, the Authority developed
12 two additional design options—a Colorado Parking Retention Design Option to preserve on-street
13 parking along Colorado Avenue, and a Colorado/4th Parallel Platform and South Side Parking Design
14 Option for the terminal station—which are included as alternative mitigation measures in lieu of
15 acquiring the replacement parking lots. (*Id.* 00432.) The FEIR analyzed both options so that they may
16 be adopted at a later date if they prove to be the best mitigation option(s) available. (*Ibid.*; 3 AR 00022.)

17 Petitioner claims "the ability of Expo to acquire 'replacement parking lots' is uncertain and
18 speculative" due to land costs. (Pet'r Br., 18:10-12.) But CEQA does not require that an EIR evaluate
19 how a mitigation measure will be funded. (*Santa Clarita Org. for Planning the Env't v. County of Los*
20 *Angeles* (2007) 157 Cal.App.4th 149, 163; see also 1 Kotska & Zischke, *supra*, § 14.9, p. 694.) There is
21 substantial evidence to support the Authority's finding that the mitigation measures are feasible.

22 Thus, because the mitigation measures proposed are both adequate and feasible, and because
23 Petitioner points to nothing in the record that they will not be implemented, there is substantial evidence
24 to support the Authority's finding that parking impacts will be reduced to less than significant levels.

25 **4. Substantial Evidence in the Record Supports the Adequacy of Mitigation**
26 **Measures to Reduce Noise and Vibration Impacts.**

27 The FEIR discloses that there will be noise impacts resulting from operation of the Project in
28 certain locations. (21 AR 00664-75). The Authority committed to implementing mitigation measure

1 MM NOI-1 to reduce operational noise levels below the FTA moderate impact criteria at all identified
2 receptors. (*Id.* 006742; 3 AR 00119-20.) MM NOI-1 includes a variety of options for meeting this
3 performance standard, including construction of sound walls, berms, low impact frogs, and/or improving
4 sound insulation. (3 AR 00120-21; 21 AR 00675-83.) The Authority has committed to implement at
5 least one of these options once final design of the Project is completed to ensure that operational noise
6 impacts are reduced to a less than significant level. (3 AR 00064-66 [Findings].) As discussed in
7 Section IV.E.2, this type of mitigation measure is well-established and is adequate under CEQA.

8 Despite the fact that the mitigation options and performance standards are clearly defined in the
9 FEIR and the Authority's findings, Petitioner claims that the Authority was required to detail *how* the
10 Authority will provide sound insulation to impacted residences. CEQA does not require this level of
11 specificity. (*Sacramento Old City Assn.*, 229 Cal.App.3d at pp. 1028-1029 [agency can commit itself to
12 eventually devising measures that will satisfy specific performance criteria]; *Laurel Heights I, supra*, 47
13 Cal.3d at p. 418 [upholding noise mitigation measure that included evaluation of noise control
14 techniques to ensure compliance with noise performance standards after project was designed].) The
15 FEIR outlines specifically what the Authority will do to accomplish sound insulation for neighboring
16 residents: upgrade or replace existing windows and doors, weather strip windows and doors, and/or
17 install a mechanical ventilation system so that windows do not need to be opened for ventilation. (21
18 AR 00675). Sound insulation is a well-established, proven mitigation measure, as reflected in the FTA's
19 *Transit Noise and Vibration Impact Assessment* manual, which is designed to provide guidance for
20 preparing and reviewing noise and vibration analyses of mass transit projects. (179 AR 19461-62.) It
21 states that sound insulation treatments in comparable situations reduce transit noise by five to twenty
22 decibels. (*Ibid.*) At the location where sound insulation is proposed, Project noise will exceed FTA
23 moderate thresholds by only three to six decibels. (21 AR 00669-74.) Therefore, sound insulation, if
24 necessary, will mitigate noise impacts to less than significant levels.¹²

25 The Mitigation Monitoring and Reporting Plan identifies the parties responsible for
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28 ¹² Sound insulation is one of the key mitigation measures for residential areas that are located near
airports, such as LAX. (34 AR 01068 [Response to Comments].)

1 implementing, enforcing, and monitoring the mitigation measure. (3 AR 00119.) And the Authority has
2 also clearly articulated specific performance criteria. (*Id.* 00120; 21 AR 00675.)

3 Petitioner also argues that the mitigation measure is inadequate because it “would not restore the
4 affected residents to the position that they are currently accustomed to.” (Pet’r Br., 19:18-20 .) As
5 discussed in Section IV.E.2, above, this is not the standard identified either under CEQA or case law for
6 adequacy of mitigation measures. (See Guidelines, § 15370.) There is substantial evidence to support
7 the Authority’s findings that the mitigation measures for noise impacts are adequate to mitigate the
8 impacts to a less than significant level.

9 **5. Substantial Evidence in the Record Supports the Adequacy of Mitigation**
10 **Measures to Reduce Safety Impacts.**

11 Petitioner makes the unsubstantiated claim that the Authority did not pay sufficient attention to
12 potential safety impacts for pedestrians and motorists. (Pet’r Br., 19:22-26.) The record is replete with
13 evidence of the Authority’s adoption of measures to reduce potential safety impacts including Metro’s
14 Rail Safety Education Program and Orientation Program, CPUC required design safety features (set
15 forth in the *Metro Design Criteria*) and operational safety elements, system safety requirements per
16 Metro’s Safety Certification Program Plan and System Safety Program Plan guidelines. (24 AR 00715-
17 25 [Safety/Security Analysis]; 70 AR 10649-54 [Safety/Security Technical Report]; 34 AR 01070
18 [Response to Comments].) These safety features and requirements have been effective in reducing
19 pedestrian and vehicle safety risks to less than significant levels. (24 AR 00722-23.)

20 The FEIR acknowledges that emergency vehicles traveling on streets that intersect the Project’s
21 at-grade crossings may experience some additional delay above the level experienced prior to
22 implementation of the Project. (11 AR 00369.) A total of eight to ten gated crossings are proposed
23 between Overland Ave. and 19th St. (*Id.* 00362-64.) The FEIR includes measures to address the
24 potential delay issue at gated crossings, . (24 AR 00726-27.) To further ensure that community safety
25 response services will not be disrupted during Project operation, mitigation measure MM SAF-1
26 commits Metro to work with the cities to develop emergency response routes . (*Ibid.*; 3 AR 00123
27 [MMRP].) The Authority found that implementation of MM SAF-1 will reduce impacts to the delivery
28 of community safety services to a less than significant level. (24 AR 00727; 3 AR 00069-70

1 [Findings].)

2 In response to comments on the Draft EIR, the Authority conducted additional studies of the at-
3 grade crossings at Overland Ave., Westwood Blvd., Sepulveda Blvd., Barrington Ave., and Centinela
4 Ave. that confirmed that the at-grade crossings would be operated in a safe manner. (*Id.*; 24 AR 00723-
5 24; 72 AR 12099-137 [Milestone 3 Analysis]). LADOT concurred in the Authority's conclusion. (687
6 AR 38386-93 [LADOT Letter, Oct. 2009]). The CPUC also acknowledged the Authority's additional
7 work and analysis on crossing issues. (703 AR 45921-22 [CPUC Letter, Dec. 2009].)

8 Substantial evidence supports this finding of "no significant impact." The cities adjacent to the
9 Project alignment will continue to be able to provide a fast, controlled, and coordinated response to
10 emergencies. (24 AR 00717; 70 AR 10640-47 [Safety/Security Technical Report].) The FEIR notes
11 that the cities of Los Angeles, Pasadena, South Pasadena, and Long Beach have all successfully
12 implemented the procedures identified in MM SAF-1 on other Metro rail lines. (34 AR 01071
13 [Response to Comments].) Thus, there is substantial evidence to support the Authority's finding that
14 MM SAF-1 will lessen safety impacts to a less than significant level.

15 **6. There Is Substantial Evidence in the Record Supports the Adequacy of**
16 **Mitigation Measures to Reduce Construction Impacts.**

17 The FEIR includes eighteen mitigation measures that address construction impacts. (3 AR
18 00123-31 [MMRP].) MM CON-1 ensures at least one lane of traffic in each direction on access cross
19 streets during construction, or a detour route for motorists if one lane of traffic is not feasible; MM
20 CON-2 establishes Worksite Traffic Control Plans and Traffic Circulation Plans; and, MM CON-3
21 keeps designated major or secondary highways open during construction unless the local jurisdiction
22 approves closure after meeting performance criteria for traffic circulation. (*Id.* 00123-24; 28 AR 00823-
23 24 [Construction Impacts Analysis]; 34 AR 01072 [Response to Comments]; 35 AR 01796 [same].)
24 The Authority adopted a finding that these mitigation measures would reduce the impact of closure of
25 traffic lanes during construction to a less than significant level. (3 AR 00071-72 [Findings].)

26 Petitioner's claim that MM CON-2 does not include a performance standard is without merit.
27 (Pet'r Br., 20:21-23.) Regulatory approval of a mitigation program is an adequate performance
28 standard. (*Endangered Habitats League v. County of Orange* (2005), 131 Cal.App.4th 777, 794.) The

1 Authority has committed to formulating Worksite Traffic Control Plans and Traffic Circulation Plans in
2 coordination with each of the cities impacted by the Project before the start of construction. These plans
3 must meet the performance standards established by the Work Area Traffic Control Handbook and
4 Manual on Uniform Traffic Control Devices. (28 AR 00823-24.) Courts have upheld similar mitigation
5 measures. (*Endangered Habitats League, supra*, 131 Cal.App.4th at p. 794 [upholding mitigation
6 measure requiring a fuel modification plan in compliance with County guidelines and approved by the
7 County Fire Authority prior to the issuance of a grading permit and a construction vehicle plan to
8 mitigate traffic disruption].) Here, the mitigation measures included in the FEIR require the Authority
9 to work with adjacent jurisdictions to formulate detailed traffic control and circulation plans according
10 to criteria outlined in identified manuals as utilized by the relevant municipality, meanwhile maintaining
11 designated "Safe Routes to School" wherever possible and providing at least one lane of traffic in each
12 direction and/or providing for a detour route. (28 AR 00823.) These measures provide sufficient
13 performance criteria to effectively commit the Authority to mitigating construction traffic impacts.

14 Petitioner argues that MM CON-1 is deficient because it does not address the potential safety
15 impacts that may arise where maintaining designated Safe Routes to School would not be possible.
16 (Pet'r Br., 20:23-21:1.) The argument tells only half the story: Petitioner cites to an LADOT comment
17 letter submitted in response to the Draft EIR. (*Id.* at 21:26-28.) At that time, MM CON-1 did not
18 include a requirement that the Worksite Traffic Control Plans and Traffic Circulation Plans be designed
19 to maintain designated Safe Routes to School. The Authority revised the mitigation measure to
20 incorporate LADOT's recommendation and found that the measure, as amended, lessened the impact of
21 the construction of the Project to insignificant levels. (28 AR 00823-24; 3 AR 00070-72 [Findings].)

22 Petitioner argues that MM CON-3 is inadequate because it does not include standards for when a
23 jurisdiction may grant approval to close a designated Major or Secondary Highway. (Pet'r Br., 21:4-5.)
24 MM CON-3 mandates that *no* designated Major or Secondary Highway will be closed to vehicular or
25 pedestrian traffic except at night or on weekends unless approval is granted by the jurisdiction in which
26 it is located. (28 AR 00825.) MM CON-3 works in concert with the other construction mitigation
27 measures discussed above; the Authority will be required to comply with the Worksite Traffic Control
28

1 Plans and Traffic Circulation Plans formulated in coordination with each of the cities impacted by the
2 Project. Thus, there are multiple levels of performance criteria that must be met before a Major or
3 Secondary Highway can be closed during construction. Substantial evidence supports the viability and
4 efficacy of the mitigation measures.

5 **F. The Evaluation of Project Alternatives Complies With CEQA.**

6 **1. The FEIR Analyzed a Reasonable Range of Alternatives.**

7 Over the last decade, regional transportation agencies in Los Angeles have analyzed dozens of
8 alternatives for relieving traffic congestion and improving mobility on the Westside. (329 AR 27324-
9 391, 738 AR 48226.) During the most recent environmental review of the Phase 2 Project alone, the
10 Authority considered nine alternatives in addition to the No-Build and TSM Alternatives and conducted
11 detailed analyses of six alternatives in the FEIR. (9 AR 00288-301.) Petitioner nevertheless claims that
12 the Authority's evaluation of alternatives is inadequate.

13 CEQA requires the lead agency to consider a "reasonable range" of alternatives. (Guidelines,
14 § 15126.6, subd. (a).) "[A]n EIR need not consider every conceivable alternative to a project. Rather it
15 must consider a reasonable range of potentially feasible alternatives that will foster informed decision
16 making and public participation." (*Ibid.*; see also *Uphold Our Heritage v. Town of Woodside* (2007)
17 147 Cal.App.4th 587, 599 [[A]n EIR need not analyze every imaginable alternative or mitigation
18 measure, it should evince good faith and a reasoned analysis [citations], internal quotation marks
19 omitted].) "Among the factors that may be used to eliminate alternatives from detailed consideration in
20 an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to
21 avoid significant environmental impacts." (Guidelines, § 15126.6, subd. (c).)

22 The alternatives evaluated by the Authority included alternative transportation "modes" (bus,
23 rail, monorail and personal rapid transit) and alternative routes.¹³ Thus, the administrative record

24
25 ¹³ Venice Boulevard to Venice Beach; Venice Boulevard to Lincoln Boulevard to Santa Monica; a
26 branching network of four routes; Culver, Washington, Pico, and Santa Monica Boulevards; and the
27 Expo ROW and Venice/Sepulveda Boulevard alternatives). (3 AR 00087-96 [Findings]; 9 AR 00288-90
28 [FEIR § 2.6]; 34 AR 01080 [Response to Comments]; 221 AR 21179-82 [Scoping Report (May 2007)];
298 AR 26378-416 [Screening Meeting PowerPoint]; 412 AR 28947-60 [Final Alternatives Screening
Report].

1 demonstrates that the Authority evaluated a reasonable range of alternatives.

2 Petitioner also accuses the Authority of “reverse engineering” an arbitrarily narrow range of
3 alternatives, including two alternatives (LRT 3 & 4) it claims are “straw men, designed to make the
4 remaining two alternatives [LRT 1 & 2] look better from a cost and environmental standpoint.” (Pet’r
5 Br., 22:11-12.) Petitioner fails to cite *any* evidence to support these accusations of bad faith, and has
6 forfeited this argument. (*Inyo Citizens for Better Planning v. Bd. of Supervisors, supra*, 180 Cal.App.4th
7 at p. 14.)

8 Moreover, the record is to the contrary. LRT 3 & 4, (a Venice/Sepulveda alignment), were
9 included in response to public comments and were supported by opponents to LRT 1 & 2. (See, e.g.,
10 222 AR 21261-62; *id.* 21267 ; *id.* 21273-74, 21298, 21313-14, 21315, 21317, etc. [same].) Contrary to
11 Petitioner’s accusation, “[t]he fact that some segments [of LRT 3 & 4] emerged in an aerial
12 configuration was a reflection of the available right-of-way volume, and number of travel lanes, and
13 potential land acquisition.” (35 AR 01749; 35 AR 01369 [response to comment R-L-559-1]; 412 AR
14 28982 [Final Alternatives Screening Report].) Petitioner faults the FEIR for including the No-Build and
15 TSM Alternatives because they will not achieve the Project objectives. But an EIR *must* include a “no
16 project” alternative “to allow decision makers to compare the impacts of approving the proposed project
17 with the impacts of not approving the proposed project.” (Guidelines, § 15126.6, subd. (e)(1).) The
18 Authority included the TSM alternative in the FEIR to afford the public and decision makers an
19 opportunity to compare the Project to a “No Build Plus” future in which rapid bus transit is deployed
20 instead of light rail. Evaluation of the TSM alternative fosters public participation and informed
21 decision making.

22 Petitioner contends that the FEIR should have described and evaluated three alternatives that
23 were, in fact, evaluated by the Authority: A TSM and/or BRT alternative, “at least one alternative that
24 terminated in a different location, such as the ‘LRT on Venice/Venice . . . ,’ and “an alternative that
25 includes grade separation within Segment 1.” (Pet’r Br., 22:22-25.) The Authority’s decision not to
26 pursue each of Petitioner’s preferred alternatives in detail in the FEIR is supported by substantial
27 evidence, and Petitioner makes no attempt to argue otherwise. The BRT alternative was eliminated
28

1 from detailed analysis because it would have substantially fewer boardings than the LRT alternatives
2 (24,100 vs. 41,400 (Expo ROW) and 34,700 (Venice/Sepulveda)), and significant traffic impacts on
3 north/south cross streets during peak hours. (9 AR 00298-99; *id.* 00294-95, Table 2.6-2; 412 AR
4 28980-81; *id.* 28990-91.)

5 The Authority eliminated the LRT Venice/Venice alternative from further discussion because it
6 would generate even fewer boardings than the BRT alternative (17,200) due to fewer current and future
7 jobs in the vicinity, lower population projections, and less proximity to major study area trip generators.
8 (9 AR 00299; 412 AR 28991.) Moreover, the Venice/Venice alternative would require numerous
9 property acquisitions to widen 5.5 miles of Venice Boulevard, resulting in significant community
10 disruption. If an elevated line were used to lower the number of acquisitions, the visual impacts and
11 shadow from a 5.5-mile long aerial structure in a largely low-rise area would be significant. (9 AR
12 00299-300; 412 AR 28991.) Thus, substantial evidence supports the decision not to conduct detailed
13 analysis of the BRT or LRT Venice/Venice alternatives in the FEIR. Petitioner claims that the FEIR
14 should have included detailed analysis of a TSM alternative that “would achieve most of the objectives
15 of the project.” But this “argument” also fails. The TSM alternative that is analyzed in the FEIR
16 includes transit improvements (including a rapid bus route on surface streets from Culver City to Santa
17 Monica) above and beyond those identified in the No Build alternative, with the goal of improving
18 transit services as much as possible *without making major capital investment in new infrastructure*. (9
19 AR 00246.) As Petitioner admits, the Authority did not ultimately adopt this alternative because it fails
20 to achieve most of the project objectives.

21 The applicable test under CEQA is whether the agency evaluated a “reasonable range” of
22 alternatives. There is no obligation to evaluate variants of alternatives. (Guidelines, § 15126.6, subd.
23 (a); *Uphold Our Heritage v. Town of Woodside*, *supra*, 147 Cal.App.4th at p. 599; *A Local & Reg'l*
24 *Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 642, fn. 8; *No Oil, Inc. v. City of Los Angeles*
25 (1987) 196 Cal.App.3d 223, 234-238; *Laguna Village of Laguna Beach v. Bd. of Supervisors* (1982) 134
26 Cal.App.3d 1022, 1028-1029.)

27 Petitioner also fails to offer any description of its proposed modification to the TSM alternative
28

1 considered by the Authority. “[A]n EIR need not consider an alternative whose effect cannot be
2 reasonably ascertained and whose implementation is remote and speculative.” (Guidelines, § 15126.6,
3 subd. (f)(3).) Petitioner fails to cite any evidence that its hypothetical TSM alternative would avoid or
4 substantially lessen any significant impacts of the Project. This failure is also fatal to its argument.
5 (*Mann v. Comty. Redev. Agency* (1991) 233 Cal.App.3d 1143, 1151 [rejecting claim that a particular
6 alternative should have been included because petitioners “presented no evidence that their proposal
7 offered ‘substantial environmental advantages’” over the proposed project].)

8 Finally, Petitioner’s accusation that requests to consider a so-called “alternative” that includes
9 grade separation in Segment 1 “fell on deaf ears” misrepresents the record. (Pet’r Br., 22:8-12.) Grade
10 separations at Overland Avenue and Westwood Boulevard were considered because *every* at-grade
11 crossing in *every* LRT alternative was evaluated pursuant to the Metro Grade Crossing Policy to
12 determine whether grade separation is appropriate. (11 AR 00346 [FEIR Transportation/Traffic
13 Analysis]; 72 AR 12033-137 [Milestone 1, 2, and 3 Analyses under the Metro Grade Crossing Policy].)
14 Indeed, in response to Petitioner’s request, the Authority conducted *additional* analyses of grade
15 separations in Segment 1 (including grade separations at Overland and Westwood). (34 AR 01058-60
16 [Master Response 2, At-Grade Rail Crossings and Grade Separations]; *id.* AR 01081-2 [Master
17 Response 11]; 72 AR 12099-137 [Technical Memorandum, Milestone 3 Analysis - Overland Avenue,
18 Westwood Boulevard, Sepulveda Boulevard, Barrington Avenue, Centinela Avenue].) And the FEIR
19 included the evaluation of a grade separated design option at the Sepulveda crossing. (9 AR 00303-
20 306.)

21 **2. Petitioner’s Proposed Grade Separation Variants of Segment 1 of LRT 1 & 2**
22 **Do Not Merit Further Analysis Because Neither Would Reduce Any**
Significant Impacts, and Each Would Cause Potentially Significant Impacts.

23 Petitioner erroneously argues that the Authority improperly refused to subject the grade
24 separation variants of the LRT 1 & 2 alternatives to a detailed discussion in the FEIR, and failed to
25 conclude that grade separation was infeasible. Despite Petitioner’s claim, neither variant would reduce
26 any *significant* environmental impact. Thus, the Authority was not required find that they were
27 infeasible. “The purpose of an environmental impact report is to identify the *significant* effects on the
28

1 environment of a project, to identify alternatives to the project, and to indicate the manner in which
2 those **significant** effects can be mitigated or avoided.” (Pub. Resources Code, § 21002.1, subd. (a); see
3 also *id.*, § 21081, subd. (a)(3).)

4 The cases cited by Petitioner are inapposite because in each the court was asked to decide
5 whether substantial evidence supported a finding that alternatives that would avoid or substantially
6 lessen **significant** impacts were infeasible. (*Save Round Valley Alliance v. County of Inyo* (2007) 157
7 Cal.App.4th 1437, 1454-1455 [significant aesthetic impact to sensitive view shed]; *Uphold Our*
8 *Heritage v. Town of Woodside*, 147 Cal.App.4th, *supra*, at pp. 601-602 [demolition of historically
9 significant house]; *Ctr. for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th
10 866, 875-876, 884 [significant air quality impacts from sewer sludge composting facility].) CEQA does
11 not require an agency to make an infeasibility finding for an alternative “***found unsuitable for***
12 ***presentation in the EIR for other reasons.***” (1 *Kostka & Zischke, supra*, Project Alternatives, § 15.9,
13 p. 739, emphasis added.)

14 Nevertheless, in coordination with LADOT, the Authority conducted additional analysis of the
15 Overland and Westwood crossings (9 AR 00303), and it studied the grade-separation design option for
16 LRT 2 to determine if it would satisfy basic project objectives while reducing significant impacts (*id.*
17 00304). Importantly, LADOT concurred with the Authority’s determination that the Project could
18 operate at grade at both crossings without significant environmental impacts. (*Id.* 00303; 34 AR 01060;
19 72 AR 12138-45 [LADOT Letter, Oct. 2009].)

20 The Authority’s decision not to include further detailed analysis of grade separation at Overland
21 and Westwood is supported by substantial evidence in the record. Among other grade-separation design
22 options for Segment 1, the Authority analyzed community proposals to include either a 3,500-foot long
23 trench and underground station spanning Overland Avenue and Westwood Boulevard , or, alternatively,
24 a 3,000-foot long aerial structure. (9 AR 00304-06; 715 AR 45995-46008 [Technical Memorandum
25 analyzing four grade separation design options for Segment 1]; 716 AR 46009-24 [App. A, Plans,
26 Profiles, and Typical Cross Sections]; 717 AR 46025-32 [App. B, Drainage Memorandum]; AR 718
27 46033-93 [App. C, Overland-Westwood Grade Separation Cost Study].) The Authority ultimately
28

1 concluded that these grade-separated design options did not merit detailed discussion in the FEIR
2 because neither would reduce any significant environmental impacts, and each would cause potentially
3 significant construction and operational environmental impacts. (9 AR 00306; 715 AR 46008; 3 AR
4 00091 [Findings, same].)

5 The 3,500 foot trench would bisect two large gravity-fed storm drains, requiring a costly
6 pumping station, or requiring a significantly deeper trench. (9 AR 00304.) An underground station with
7 ventilation would be required, and the entire trench would need to be flood-proofed because the area is
8 in a FEMA Special Flood Hazard Zone AO. (*Id.* 00305.) In addition, a construction trench and
9 underground station would result in greater noise and vibration impacts, more aesthetic impacts due to
10 the increased size of the construction footprint, increased haul loads and routes through adjacent
11 neighborhoods and near the Overland Elementary School, greater traffic detours and lane closures,
12 increased dust and other air emissions, and a longer duration of construction impacts than the project
13 (*Ibid.*) Finally, the costs would be considerably higher than the proposed at-grade alignment (*ibid.*; see
14 also 715 AR 46008 [estimating cost for trench at \$224.3 million more than the Project]), but no ridership
15 benefits would result (9 AR 00305). For these reasons, and because the at-grade alignment, with the
16 adopted mitigation measures, would not result in any significant impacts, the Authority did not propose
17 a trench design option at Overland and Westwood. (*Id.* 00306; 3 AR 00091.) The aerial structure
18 (elevated) design option would reach 30 feet in height and extend 3,000 feet, creating a large physical
19 barrier that would bisect the neighborhood, resulting in greater visual impacts than the at-grade
20 alignment. (9 AR 00305.) The aerial structure would cause other more severe environmental impacts
21 than an at-grade alignment, including increased haul loads and routes through neighborhoods, more
22 noise, vibration, traffic detours, lane closures, adverse air quality and aesthetic impacts. (*Id.* 00306.) An
23 aerial structure would also considerably increase the Project costs. (*Ibid.*; see also 715 AR 46008
24 [estimating cost for aerial option at \$65.9 million more than the Project]; 718 AR 46040.) Therefore, the
25 aerial structure design option for Segment 1 was not retained for further consideration. (9 AR 00306; 3
26 AR 00091.)

27 The Authority evaluated a reasonable range of alternative, and substantial evidence supports the
28

1 Authority's findings regarding alternatives.

2 **G. Recirculation is Not Required Because the New Information Does Not Disclose Any**
3 **New Significant Impacts.**

4 In response to the comments of the Petitioner and other members of the public, the Authority
5 conducted additional analysis of some issues and added mitigation measures to the Project to further
6 reduce impacts. Thus, the Authority did precisely what CEQA commands, i.e., that the lead agency
7 consider public comments, respond to the comments and adopt additional mitigation measures where
8 appropriate.

9 Nevertheless, Petitioner claims that "new" information added in response to comments requires
10 recirculation of the FEIR. (See Pet'r Br., pp. 27-30.) Petitioner also argues that recirculation is required
11 because it submitted the Southstar Report with its comments on the DEIR, which purports to show that a
12 trench between Overland Avenue and Sepulveda Boulevard "was feasible and would lessen the impacts
13 of the Project." (Pet'r Br., 29:13-16 [citing Tab 728].)¹⁴ CEQA does not require recirculation, where,
14 as here, substantial evidence supports the Authority's determination that there are no new significant
15 effects and that the trench would not reduce significant impacts.

16 **1. Substantial Evidence Supports the Conclusion that Additional Mitigation**
17 **Measures Will Reduce Noise Impacts to a Less Than Significant Level.**

18 If a lead agency adds "significant new information" to an EIR after the DEIR has been
19 circulated, but before certifying the final document, it must recirculate at least those portions of the EIR
20 to which such information has been added. (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5;
21 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,
22 447.) "New information added to an EIR is *not* 'significant' unless the EIR is changed in a way that
23 deprives the public of a meaningful opportunity to comment upon a *substantial adverse environmental*
24 *effect* of the project or a feasible way to mitigate or avoid such an effect . . . that the project's proponents
25 have declined to implement." (Guidelines, § 15088.5, subd. (a), emphasis added.) Section 15088.5 of

26
27 ¹⁴ Petitioner states, without argument or citation to the Administrative Record, that "major changes"
28 added information to the FEIR that "clearly" require recirculation. (Pet'r Br., 26:14-27:6.) By failing to
support its claims with citations to authority and the Administrative Record, Petitioner has forfeited this
argument. (*Inyo Citizens for Better Planning v. Bd. of Supervisors*, *supra*, 180 Cal.App.4th at p. 14.)

1 the Guidelines codifies *Laurel Heights Improvement Assn. v. Regents of the University of California*
2 (1994) 6 Cal. 4th 1112 (“*Laurel Heights II*”). In *Laurel Heights II*, the Court reasoned that
3 “[r]ecirculation was intended to be an exception, rather than the general rule” and that “rules regulating
4 the protection of the environment must not be subverted into an instrument for the oppression and delay
5 of social, economic, or recreational development and advancement. [Citation]” (*Laurel Heights II*, 6
6 Cal.4th at p. 1132, internal quotation marks omitted.)

7 In response to the comments on the Draft EIR regarding noise and vibration impacts, the
8 Authority conducted supplemental noise analysis, focusing on receptors such as residential areas,
9 schools, and recording studios. (21 AR 00641 [FEIR § 3.12 Noise and Vibration]; *id.* 00656-67.) As a
10 result of the additional studies, the FEIR proposes that sound walls be added to five locations on the
11 Project route to ensure that noise impacts will be mitigated to less than significant levels. (21 AR
12 00673-35.)

13 Petitioner claims that “[t]he public was denied an opportunity to comment on the efficacy and
14 potential impacts of these additional sound walls.” (Pet’r Br., 28:7-8.) Petitioner does not cite any
15 evidence in the Administrative Record to support its claim that these new segments of sound wall will
16 be ineffective or result in a “new significant environmental impact.” (Guidelines, § 15088.5, subd.
17 (a)(1).) Sound walls are a well-established measure to reduce noise effects of transportation projects.
18 The Draft EIR and FEIR included a discussion of the use of sound walls to attenuate noise. (21 AR
19 00666-67, 00673, 00675) Substantial evidence supports the Authority’s conclusion that noise will be
20 mitigated to less than significance, and none of the sound walls or other sound mitigation measures in
21 these new locations would result in new substantial impacts.¹⁵

22
23 ¹⁵ As indicated in Table 3.12-10 (21 AR 00673-74), several of the “new” sound walls Petitioner appears
24 to refer to were either included in the Draft EIR (e.g. Military-Sepulveda), were slightly shifted in
25 location to overlap with existing sound walls along the other side of the alignment (e.g. Westwood-
26 Military), or were simply relocated from one side of the alignment to the other (e.g., West Pico-Federal).
27 In any event, all but one of the “new” sections of sound wall are located in the Expo ROW. (21 AR
28 00673-4 [Table 3.12-10]; 48 AR 08069 [sound wall along northern side of the tracks passing the
maintenance yard]; *id.* 008071, 008073 [northern section between West Pico Blvd. and Federal Ave.;
southern section between Sepulveda Blvd. and Military Ave.; and a southern section between Military
Ave. and Westwood Blvd.]; *id.* 08072 [southern section between I-405 and Purdue Ave.].) As the
Authority explained in the responses to comments, sound walls in the Expo ROW will not result in
division of communities since trespassing in the ROW is already prohibited and access via north-south

1 **2. Project Modifications Will Not Cause Any New Significant Traffic Impact**
2 **That Is Not Mitigated to a Less Than Significant Level.**

3 Petitioner claims that the refinement in signal phasing at the intersection of Westwood and
4 Exposition North Boulevards would cause a new significant impact by increasing the average delay
5 during the morning peak hour because “the delay would increase from 4 seconds [LOS A] to 38 seconds
6 [LOS D] (a 950 percent increase).” (Pet’r Br., 28:20-21 [citing 11 AR 00383-86].) Petitioner fails to
7 disclose that even with the increase in average delay, the intersection will have a LOS D – below the
8 threshold of significance. (11 AR 00350 [LOS criteria based on average delay].) For intersections
9 operating at an acceptable level under the No-Build conditions (i.e., at LOS D or better), the impact is
10 significant only if the project would result in a deterioration to LOS E or F. (10 AR 00323; 11 AR
11 00351.) For intersections operating at LOS E or LOS F under the No-Build conditions, an impact is not
12 significant unless it increases the average vehicle delay by 4 or more seconds. (10 AR 00323; 11 AR
13 00351.) The FEIR’s conclusion that the phasing refinement will not result in a significant impact is
14 supported by substantial evidence. (11 AR 00383 [Table 3.2-14 Segment 1 Study Area Intersections -
15 Year 2030 LOS (AM Peak Hour)]; *id.* AR 00385 [Table 3.2-15, same for PM Peak Hour].) Thus, the
16 additional information does not disclose a new significant impact that would require recirculation.

17 **3. Project Modifications Will Not Cause Any New Significant Parking Impact**
18 **That Is Not Mitigated to a Less Than Significant Level.**

19 Petitioner makes the cryptic claim that “this new information” [referring to 78 AR 12642-7; 11
20 AR 00416-21] undermines the conclusion that the Project will have a less than significant impact on the
21 supply of parking along Sepulveda Boulevard, Westwood Boulevard, and Overland Avenue. (Pet’r Br.,

22 roadways will be maintained, and visual impacts will be nonexistent or minimal due to heavy vegetation
23 in the ROW or pre-existing walls along the back lot lines of adjacent residences. (34 AR 01387.) In
24 addition, the sound wall adjacent to the Lantana campus (21 AR 00670, 74; 48 AR 08069) will be in
25 front of an existing 8-12 foot security wall and combination fence and wall surrounding the maintenance
26 facility, so it would add no new visual impacts. (34 AR 01068.) As for the new section of sound wall
27 added to mitigate noise at the Crossroads School (21 AR 00674; 49 AR 08083), the visual character of
28 the area is “mostly commercial and industrial in nature, with low-scale one- to two-story buildings and
 trees lining both sides of the street. . . a relatively continuous building façade, with minimal landscaping
 and no distinct visual features. (12 AR 00464; *id.* 00460 [photographs of Colorado Ave. between 17th
 and 20th Streets].) Moreover, any visual impacts will be mitigated to less than significance through
 landscaping, use of vegetation to deter graffiti, and application of the *Metro Design Guidelines* to reflect
 the opinion of impacted residents and neighboring groups. (34 AR 01147-48.)

29:6-9.) Since Petitioner does not identify specific evidence in the record, it has forfeited this issue. (*Inyo Citizens for Better Planning v. Bd. of Supervisors*, *supra*, 180 Cal.App.4th at p. 14.)

Nevertheless, there is substantial evidence to support the conclusion that the revised parking surveys do not disclose a new significant impact that would require recirculation. The supplemental parking surveys confirmed that relative to the parking spaces that were to be removed *that are actually being utilized*, there are sufficient parking spaces on adjacent streets that can serve as replacement parking. (*Id.* 00416-29.) The FEIR concludes that in most segments, including the Expo ROW, there is sufficient alternate on-street parking available to accommodate the removed *utilized* on-street parking spaces. (11 AR 00429.) New information added to an EIR that “clarifies or amplifies . . . an adequate EIR” does not require recirculation. (Guidelines, § 15088.5, subd. (b).)

4. The Revised Discussion of Greenhouse Gas Emissions Does Not Disclose Any New Significant Impact or a Substantially More Severe Impact.

Petitioner suggests that the FEIR discloses a new significant impact because it “reveals that the Project’s operation, rather than resulting in a net reduction of total, annual regional GHG [greenhouse gas] emissions will, in actuality, result in a net annual increase in GHG emissions.” (Pet’r Br., 30:5-8 [citing 14 AR 00527-28].) Petitioner does not challenge the Authority’s revised computations of GHG emissions using the South Coast Air Quality Management District (“SCAQMD”) guidance, nor its selection of the threshold of significance for regional GHG emissions formulated by the California Air Pollution Control Officers Association (“CAPCOA”). (14 AR 00525; 62 AR 09568 [Technical Background Support as well].) CAPCOA’s threshold of significance specifies that a project is considered less than significant if greenhouse gas emissions, including construction impacts amortized over 30 years, show an incremental increase below 10,000 tons of carbon dioxide equivalent (MTCO₂e) per year. (14 AR 00528.) Based on substantial evidence in the record, the Authority determined that the approved project alternative (LRT 2) would result in 345 MTCO₂e/year. (14 AR 00527.) Thus, the new information does not disclose a new significant impact that requires recirculation under the standard established in *Laurel Heights II*.

1 **5. At-Grade Crossings at Overland and Westwood Will Have No Significant**
2 **Impacts. Thus, the Southstar Report Does Not Constitute Significant New**
3 **Information.**

4 Petitioner claims that the Southstar Report constitutes “substantial new information” because it
5 “demonstrated” that a trench design option between Sepulveda Boulevard and Overland Avenue is
6 feasible and would “lessen the impacts of the Project.” (Pet’r Br., 29:13-16 [citing Tab 728].) First,
7 merely lessening impacts is not sufficient to require recirculation. “New information added to an EIR is
8 not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity
9 to comment upon *a substantial adverse effect of the project or a feasible way to mitigate or avoid such*
10 *an effect* . . . that the project’s proponents have declined to implement.” (Guidelines, § 15088.5, subd.
11 (a), emphasis added.) As demonstrated in Section IV.F.2, above, substantial evidence supports the
12 determination that at-grade crossings at Overland Avenue and Westwood Boulevard will not have any
13 significant impact. Thus, the Southstar Report does not constitute “significant new information.”

14 **H. The Exposition Authority’s Choice of LRT 2 Over Other Alternatives Is Supported**
15 **by Adequate Findings.**

16 CEQA affords lead agencies discretion to consider and balance a broad range of economic,
17 social, environmental, and technological factors in determining whether an alternative is infeasible.
18 (Pub. Resources Code, § 21081, subd. (a)(3); Guidelines, § 15091, subd. (a)(3).) Courts have upheld
19 infeasibility findings based on inconsistency with the project’s objectives (*Sierra Club v. County of*
20 *Napa* (2004) 121 Cal.App.4th 1490, 1503, 1507-09; *Assn. of Irrigated Residents v. County of Madera*
21 (2003) 107 Cal.App.4th 1383, 1401; *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23
22 Cal.App.4th 704, 715), inconsistency with a city’s growth management plan (*City of Del Mar v. City of*
23 *San Diego* (1982) 133 Cal.App.3d 401, 417), and a balance between achieving most of the project’s
24 objectives while minimizing environmental impacts (*Sierra Club v. Gilroy City Council* (1990) 222
25 Cal.App.3d 30, 44).

26 Petitioner erroneously claims that the Findings fail to acknowledge that the No-Build Alternative
27 would avoid the Project’s significant construction impacts, and that the TSM Alternative would avoid
28 the significant aesthetic impacts resulting from construction of the Westwood Station. (Pet’r Br., 30:16-
29 20.) Since the No-Build and TSM Alternatives, as defined, do not include any new infrastructure

1 beyond what is already committed to in regional planning documents (i.e., the I-405 widening from the
2 I-10 freeway to the 101 freeway; and the Overland Bridge Widening over I-10 (3 AR 00089)), it is self-
3 evident that they would avoid the construction and aesthetic impacts resulting from the Project; no
4 further explanation is required.

5 Petitioner's contention that the Findings do not address the feasibility of alternatives to LRT 2
6 would be feasible is groundless, and contradicted by the record. The express findings and citations to
7 facts supporting the findings are set forth in Section 6, Findings Regarding Project Alternatives. (3 AR
8 00087-97.) Before turning to the specific findings regarding each project alternative, the Authority
9 recited the legal standard of feasibility that it would apply throughout the Findings section. (3 AR
10 00087-88 [citing, *inter alia*, *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565
11 and the CEQA definition of "feasible" set forth in Pub. Resources Code, § 21061.1 (i.e., "capable of
12 being accomplished in a successful manner within a reasonable period of time, taking into account
13 economic, environmental, social, and technological factors")].)

14 In light of the goals and objectives of the Project (3 AR 00023-4), and the larger regional and
15 sub-regional planning goals, the Authority determined that the LRT Alternatives all provided decisive
16 benefits over the No-Build and TSM Alternatives. (3 AR 00092.) And the adopted alternative (LRT 2)
17 was determined to have environmental benefits (3 AR 00092-95), and performance efficiency and cost
18 effectiveness benefits (*id.* AR 00095-96; see also *id.* 00106-09 [incorporated by reference in the
19 Findings at *id.* 00088]) superior to the other LRT alternatives. The Authority weighed these economic,
20 environmental, social, and technological factors in selecting it as the only project capable of feasibly
21 achieving most of the project objectives. (*Id.* 00096 [Section 6.4]; see also *Sierra Club v. Gilroy City*
22 *Council*, *supra*, 222 Cal.App.3d at p. 44.) Substantial evidence supports the Findings.

23 **V. CONCLUSION.**

24 The FEIR and the administrative record document an exhaustive evaluation of the Project,
25 alternatives and mitigation measures. Since substantial evidence supports the Authority's certification
26 of the FEIR and approval of the Project. Petitioner has not met its burden. Under the deferential
27 standard of review in CEQA cases, the Petition must be denied.

1 Dated: November 12, 2010

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