July 22, 2024

Dear Mayor Asatryan and Glendale City Council,

Walk Bike Glendale is excited to see the City's refreshed Bicycle Transportation Plan taking shape. For 15 years, our organization has actively engaged Glendale residents with bike rides, walking tours, safety courses, and advocacy to make our streets safer for everyone.

Despite those efforts, we are dismayed at the lack of implementation of the 2012 Plan. Now more than ten years later, very few bicycle lanes have been installed, leaving those who bike and those who want to bike left to take serious risks on our unfriendly streets. With a refreshed Plan on the horizon, we are optimistic that the safety of vulnerable road users is prioritized. A safe street for someone on a bicycle is a safe street for everyone, as research shows that streets with protected bike lanes decrease fatalities by as much 75% for *all* road users.[1]

By implementing the Bicycle Transportation Plan, Glendale will demonstrate a commitment to public safety. Since 2014, 351 cyclists have been injured as the result of being hit by a car in the City of Glendale, and 1 cyclist was killed. 61 of those victims were children, and 31 were seniors.[2] By failing to provide safe infrastructure, we are failing our city's most vulnerable citizens.

By implementing the Bicycle Transportation Plan, Glendale will make progress towards its goal of carbon neutrality by 2045. Personal vehicles account for 50% of Glendale's carbon emissions, yet over ½ of all vehicle trips are less than 3 miles,[3] meaning that the conversion of many trips from car to bike is achievable, and doing so is imperative to meet the local and state climate targets. Even if the state meets its ambitious target of 15% electric vehicles on the road by 2030—10x the current adoption rate—every person in the state would still need to reduce their daily driving by 4.5 fewer miles, to reach the state's 2030 climate target.[4] In order to decrease driving, the City must ensure that people feel safe biking and walking.

By implementing the Bicycle Transportation Plan, Glendale will improve the lives of our most vulnerable populations. Glendale has the unfortunate distinction of being the most deadly in the state for senior pedestrians. That is abhorrent and unacceptable. The infrastructure recommended by the Bicycle Transportation Plan is proven to reduce reckless driving and speed, and decrease injuries and fatalities for everyone. As our city faces a future of a rapidly aging population, it is imperative that we implement the Bicycle Transportation Plan to not only keep our seniors safe but to ensure their continued freedom of mobility by providing safe alternatives to driving. Emerging research shows that e-bikes, in particular, can dramatically improve the mental and physical health of seniors and people with disabilities.[5]

By implementing the Bicycle Transportation Plan, Glendale will be prepared for the future. Only 25% of 16-year-olds in the United States have a driver's license, compared to 43% in 1997.[6] Young people cite the rising cost of car ownership, preference for alternative options like biking or transit, and concern for climate change as their top reasons for foregoing driving. These young people are our future and we should be building the infrastructure to meet their needs.

We urge you to commit to adopting and implementing the Bicycle Transportation Plan. For safety. For the climate. For our future.

Sincerely,

Walk Bike Glendale Steering Committee

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[1] https://www.sciencedaily.com/releases/2019/05/190529113036.htm
[2] California Highway Patrol - Statewide Integrated Traffic Records System (03/01/2014 - 03/01/2024)
[3] https://data.bts.gov/Research-and-Statistics/Trips-by-Distance/w96p-f2qv/about_data
[4] https://t4america.org/wp-content/uploads/2020/10/Driving-Down-Emissions.pdf
[5] https://www.sciencedirect.com/science/article/pii/S2590198223001872
[6] https://deepblue.lib.umich.edu/bitstream/handle/2027.42/99124/102951.pdf

From: Don Anderson
To: DL City Clerk; Adjemian, Aram
Subject: Fw: Glendale City Council Meeting/Bicycle Transportation Plan
Date: Sunday, July 28, 2024 4:28:54 PM

From: Don Anderson <donanderson2001@hotmail.com>
Sent: Sunday, July 28, 2024 4:26 PM
To: vgharpetian@glendaleca.gov <vgharpetian@glendaleca.gov>; Brotman, Daniel <dbrotman@glendaleca.gov>; akassakhian@glendaleca.gov <akassakhian@glendaleca.gov>; Najarian, Ara <anajarian@glendaleca.gov>; easatryan@glendaleca.gov <easatryan@glendaleca.gov>
Cc: sabajian@glendaleca.gov <sabajian@glendaleca.gov>
Subject: Glendale City Council Meeting/Bicycle Transportation Plan

Dear Glendale City Council:

I am truly amazed that Glendale City Council is considering the proposed Bicycle Transportation Plan. Not only is the plan extremely expensive, it offers very few benefits to the large majority of Glendale's population. There are so many more important things that we need to focus on in this city, including:

- Ensuring that all residents have access to green spaces and parks,
- Improving the availability and affordability of housing,
- Upgrading our infrastructure,
- Improving fire response times,
- Funding existing obligations,
- Enhancing the walkability of our city, and
- Assisting businesses that are struggling in our community.

I would encourage you to shelve this plan and focus on the pressing issues that face the city and its residents. There is only a very small minority of people who are interested in bicycling in our community, and most of them do not reside in Glendale. This is a vanity project that only serves a privileged few. It will cause substantial impacts to our diverse neighborhoods, harm our economy and reputation, and be a boondoggle for corrupt politicians, businessmen, and lobbyists.

It’s important that we use public office to raise the standard of living and quality of life for all residents, and not serve special interests.

Thank you for your attention and continued service to the city.

Don Anderson
Niodrara Dr., Glendale

JULY 30, 2024

TO: Mayor Asatryan, Councilmembers Brotman, Kassakhian, Gharpetian, Najarian

From Arlene Vidor/South Glendale Resident.

RE: 8b: Bicycle Transportation Plan

Kudos to the City of Glendale for continuing forward with the Bicycle Transportation Plan. It is critical for car drivers to fairly and safely share all roads with cyclists – whose numbers are growing – pedestrians, AND EVEN OTHER DRIVERS (another problem for another discussion). I have heard people grousing about bike lanes and the "dreaded curse of traffic calming" -- lately and specifically complaining about the study being conducted on upper Brand. Please keep your eyes on the prize and do not scrap or slow this program down. Make necessary adjustments based on data and feedback collected. Change is a challenge but progress is essential. I'm confident that when all factors, e.g., traffic light timing, reevaluation of major traffic choke points, number of lanes, widths of the diagonal parking lanes and bike lanes, etc, are considered in aggregate, the world will adapt and embrace this. The citizens of Glendale need to get their collective learning curve on.

Again, this plan must move forward, advancing to city - wide implementation. This is the future and we need to embrace it.

From: Abajian, Suzie
To: Golanian, Roubik
Cc: Garcia, Michael; Calvert, Bradley; Cortes, Karen
Subject: FW: Bike Lanes in Glendale,CA
Date: Monday, April 29, 2024 11:25:35 AM
Attachments: image001.png
image003.png

Suzie Abajian, Ph.D.| City Clerk | City of Glendale
613 East Broadway, Suite 110 | Glendale, CA | 818-548-2090
sabajian@glendaleca.gov | www.glendaleca.gov | Follow us!

From: Arman Gara <arman1@mail.com>
Sent: Sunday, April 28, 2024 9:38 PM
To: Abajian, Suzie <SAbajian@Glendaleca.gov>
Subject: Fwd: Bike Lanes in Glendale,CA

As a resident of a condominium on Brand Blvd, I feel compelled to express my observations and concerns regarding the recent implementation of bike routes by the city of Glendale.
Since the introduction of these bike routes, I have diligently observed the usage of these lanes, only to find them consistently vacant. Neither presently nor in the past have I witnessed any significant presence of cyclists utilizing the designated paths. This has led me to question the rationale behind this initiative, particularly considering the allocation of financial resources towards its implementation.
From my perspective, the decision to create these bike routes appears to have been executed without thorough consideration or study. The consequences are now palpable, as Brand Blvd has undergone a transformation resulting in a considerable reduction in width, leaving only a single lane for vehicular traffic. This configuration has proven to be problematic, especially for parked vehicles attempting to maneuver onto the roadway.
Navigating Brand Blvd has become akin to traversing a maze, inevitably leading to an increased risk of vehicular accidents and traffic congestion. It is evident that reverting to the previous two-lane configuration would alleviate these pressing concerns and restore a semblance of order to the thoroughfare.
Furthermore, while the designated bike routes accommodate cyclists traveling from Mountain St. to Glenoaks Blvd, the lack of continuation beyond Glenoaks Blvd raises pertinent questions regarding the comprehensive connectivity of the cycling infrastructure. Where are cyclists expected to proceed beyond this point? The absence of a clear pathway further underscores the inadequacies of the current plan.
In light of these observations and considerations, I urge the city to reassess its approach to the management of Brand Blvd. It is imperative that any future decisions pertaining to transportation infrastructure be guided by comprehensive research and stakeholder consultation to ensure the optimal utilization of resources and the safety of all road users.
Thank you for your attention to this matter, and I trust that prompt action will be taken to address the issues outlined herein.

Yours sincerely,
Arman Gara Gulagian
1155 N. Brand Blvd Apt 301
Glendale, CA 91202

From: Abajian, Suzie
To: Golanian, Roubik
Cc: Garcia, Michael; Calvert, Bradley; Cortes, Karen
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Yours sincerely,
Arman Gara Gulagian
1155 N. Brand Blvd Apt 301
Glendale, CA 91202

From:	Adjemian, Aram
To:	Cortes, Karen
Cc:	Abajian, Suzie
Subject:	Fwd: July 30, 2024 City Council Agenda Item 8b - Objection to Approvals of the Proposed Bicycle Transportation Plan
Date:	Wednesday, July 31, 2024 1:44:26 AM
Attachments:	Petition for Review - Conformed.pdf Reply to Answer to Petition for Review - Conformed.pdf Excerpt by Tony Rubin, part of GCPP Admin. Record.pdf

Hi Karen,

This goes on AMS with item 8 b.
Thanks,
Aram

Get Outlook for iOS

From: Naira Soghbatyan <naira.soghbatyan@gmail.com>
Sent: Tuesday, July 30, 2024 6:43:24 PM
To: Asatryan, Elen <EAsatryan@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Najarian, Ara <ANajarian@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>; Gharpetian, Vartan <VGharpetian@Glendaleca.gov>
Cc: Abajian, Suzie <SAbajian@Glendaleca.gov>; Adjemian, Aram <AAdjemian@Glendaleca.gov>
Subject: July 30, 2024 City Council Agenda Item 8b - Objection to Approvals of the Proposed Bicycle Transportation Plan

Dear Mayor and Council Members:

I represent concerned Glendale residents, as well as the community group Protect Our Glendale and, on behalf of them, urge you to disapprove the planned Bicycle Network and implementation of the Bicycle Plan, as well as funding for same, since:
(1) it does not reflect the priorities and preferences of the people in Glendale and it is not based on representable survey results;
(2) it will endanger public health and safety, including for bicyclists, pedestrians, and motorists;
(3) it violates or disregards the lane widths and requirements in the Circulation element of the City's General Plan;
(4) it fails to account for any environmental impacts that would result from the plan, including traffic congestion, parking shortage, air quality impacts, greenhouse gas emission impacts, public services (fire, police, EMS response times), noise impacts, etc.;
(5) it violates the Vehicle Code, to the extent it proposes removal of lanes or other devices on the roads impeding traffic.

First, the Staff Report before you provides that the Plan was informed by various surveys. However, among listed outreach events, the Staff Report provides a list of events primarily

involving a limited number of people or pro-biking groups. (Staff Report, p. 9.) There are no random surveys sent to people, including people that would be impacted by the Plan's changes.

Tellingly, the Staff Report is silent on the voices of the community and the public sentiment especially with regards to the recent changes on the North Brand Blvd. and in La Crescenta, opposing road modifications that are aimed to make room for bicycles, including removal of parking, narrowing or removal of lanes, to make room for bikes. The Staff Report's silence speaks loudly about the lack of objective presentation of facts before you and should not be disregarded.

Second, as you have been noted by numerous public speakers to date, including by firefighters and fire department's officials, the road modifications on North Brand blvd. that accommodate bikeways and added green zones, have already severely impacted Firefighter's ingress and egress from the Fire Station. It is reasonably foreseeable that adding bicyclists in the crowded part of Glendale (including but not limited to South and Downtown Glendale), narrowing or removing lanes there, will further exacerbate the traffic congestion on the roads and lead to more delayed or impeded response times for firemen, police, and EMS services, thereby endangering people's lives and safety.

Compounding the problem is the fact that the proposed Bicycle Plan targets the South Glendale and Downtown Glendale area, which - per the City's own findings in the South Glendale Community Plan's (SGCP) Environmental Impact Report (EIR) - is already plagued with 7 adverse environmental impacts, including traffic, air quality, greenhouse gas emissions, public services, which will be further exacerbated by the SGCP. Notably, the SGCP proposed densification of population in the South Glendale and Downtown Glendale areas, which will translate into more vehicles or bicyclists on the roads. As such, the Bicycle Plan's proposed changes in South Glendale will inevitably exacerbate the environmental conditions that have been noted to be adverse and forecasted to exacerbate upon the adoption of the Bicycle Plan update.

The Council should also note that in 2018, the City Council adopted a Moratorium on residential development in Downtown Glendale in light of findings of public health and safety risks due to the exceeding density growth in Downtown Glendale. These problems with increasing and exceeding density have not been resolved to date. But the Bicycle Plan that had been drafted long before 2018 and was updated recently, as well as the Staff Report before you, disregards the reality and findings of the City, including those in the SGCP EIR and Downtown Moratorium.

Third, the Staff Report is silent on the lane width requirements in the Circulation Element of the General Plan. For example, the City's Pedestrian Plan's Mitigated Negative Declaration - which ironically proposed similar road changes on the same road sections as the Bicycle Plan - acknowledged the fact that the Circulation Element contains such limitations on lane widths. The Staff Report is notably silent on this issue. To the extent the Bicycle Plan proposes lane narrowing or lane reductions that are inconsistent with the Circulation Element, the Bicycle Plan violates the City's General Plan and should not be adopted. The City and staff should objectively and transparently analyze the Bicycle Plan's vertical inconsistency with the General Plan, as well as the fact that it may cause internal inconsistencies in the General Plan by proposing the road changes and changes in the Circulation Element that are not supported by other Elements of the General Plan, such as Land Use or Open Space, or Public Services.

Fourth, the Staff Report is unclear about the Bicycle Plan's compliance with CEQA, noting "N/A" for CEQA/NEPA considerations. (Staff Report, p. 10.) At the same time, the Staff Report provides that CEQA will be conducted on the Bicycle Plan in "early summer 2024." (Staff Report, p. 10.) Which statement is accurate? To the extent the City relies on Pub. Res. Code section 21080.20 to invoke a CEQA exemption, it must first disclose such intent to the public and also comply with all of CEQA's procedural requirements before it invokes such exemption. In addition, please note that Pub. Res. Code section 21080.20(a)(2)-(3) make it clear that the City Council should consider the environmental impacts and hear public comments about the bicycle plan and critically that each road change proposed under the Bicycle Plan "remains" subject to CEQA despite the general exemption for the plan itself. As such, the City's position that it should consider the environmental impacts of the Bicycle Plan at the *end* of the Plan's consideration and approval is improper and inconsistent with CEQA. The City Council should request that the City provide such environmental analysis and consideration of environmental impacts of the Bicycle Plan, which, in turn, should inform the Bicycle Plan's features and the decision on whether such features should be adopted.
To the extent that the Staff Report claims that the Bicycle Plan will reduce or is intended to reduce vehicle trips or vehicle reliance and thereby reduce greenhouse gas emissions in the City, we urge that the City provide supporting data to show, based on the expected addition of bicyclists on the road, especially in South Glendale and Downtown Glendale areas, how much reduction in vehicles and how much reduction in GHG emissions will result. Please also note that, based on the opinion of experts in the transportation field, such reduction in GHG emissions is illusory unless supported by respective calculations and facts. (See attached Expert opinion by expert T. Rubin.)

Fifth, to the extent the Bicycle Plan proposes lane-narrowing or lane removals or other devices that impede vehicular circulation on streets, it also violates the Vehicle Code. This issue has been extensively briefed in the litigation against the City, including Petition for Review before the Supreme Court. (See attached the Petition and Reply in support thereof.)

We hereby request that the City include the following documents into the administrative record of the Bicycle Plan:
1) SGCP;
2) SGCP EIR;
3) Pedestrian Plan;
4) Pedestrian Plan's Mitigated Negative Declaration;
5) All documents related to the 2018 Moratorium in the Downtown Glendale;
6) City's General Plan, including the Circulation Element;
7) the entire administrative record in the pending litigation in Protect Our Glendale v. City of Glendale;
8) the entire administrative record in the litigation in Save Our Glendale v. City of Glendale.

We further incorporate by reference all objections and comments to the City, related to: (1) SGCP; (2) Pedestrian Plan; (3) Glendale Unified School District's Carmel Partners' project proposed on Jackson/Wilson/Kenwood streets.

In light of the following considerations and concerns, **we urge** that the Council deny the Bicycle Plan or postpone any action on the Bicycle Plan and direct the staff to reconsider the Bicycle Plan in light of the above-noted concerns, including its inconsistencies with the City's General Plan, Vehicle Code, CEQA considerations, public health and safety risks, and cumulative impacts with other City Plans, such as the SGCP, Downtown Specific Plan, West

Glendale Community Plan and others.

We also urge the City Council to direct the City Staff to conduct citywide survey of the population (similar to those described in the City's General Plan), whereby the City would transparently disclose all the proposed changes (including lane narrowing, parking and lane removals) and inquire about the people's comments and opinions about such changes, in order to receive feedback from a representable survey class of people and to have objective and disinterested survey results about the public preferences and priorities related to the proposed Bicycle Plan.

Thank you.

Sincerely,
Naira Soghbatyan, Esq.

COMMENTARY

Does Bus Transit Reduce Greenhouse Gas Emissions?

Thomas Rubin, Marcy Lowe, Bengu Aytekin and Gary Gereffi Debate Public Transit Buses: A Green Choice Gets Greener

April 5, 2010

The American Public Transit Association claims that public transit saves an estimated 1.4 billion gallons of gas annually, which translates into about 14 million tons of CO2. *Time*'s Global Warming Survival Guide says "Ride the Bus." But does bus transit really reduce greenhouse gas emissions?

The latest major study in this debate says yes. Last October the Center on Globalization, Governance & Competitiveness, an affiliate of the Social Science Research Institute at Duke University, released the latest in a series of papers on climate change issues, *Public Transit Buses: A Green Choice Gets Greener*, by Marcy Lowe, Bengu Aytekin and Gary Gereffi. Public Transit Buses argues that bus transit dramatically reduces Green House Gas (GHG) emissions.

But Thomas Rubin, a mass transit consultant in Oakland, California, disagrees. He says the Duke University team has seriously distorted their analysis and that bus transit today is not greener than driving a car. Rubin was the Controller-Treasurer of the Southern California Rapid Transit District from 1989 until 1993 and has written many research reports on transit issues.

You can follow the link to read *Public Transit Buses*. Below, we present Tom Rubin's critique of that report, followed by a reply from the authors, and then a final response from Tom Rubin. – *Adrian Moore, Vice President of Research at Reason Foundation*

Part 1: A Critique of *Public Transit Buses: A Green Choice Gets Greener*
By Thomas A. Rubin

Which is "greener" – uses less energy and produces fewer emissions – riding in a transit bus or driving a car? While the results will vary depending on the particulars of the bus, the car, and how they are utilized, on average in the U.S., moving a passenger one mile in an auto uses less energy, and produces less emissions, per passenger-mile (one person traveling one mile) than carrying that person one mile in an urban transit bus.

However, researchers based at Duke University have reached a very different conclusion – but they have done so by assuming a bus passenger load over seven-and-one-half times the U.S. average and an auto passenger load 63% of the average, and prominently displayed the results produced by this extremely unrealistic mixture of assumptions in the first paragraph of their paper to produce maximum impact for their badly flawed hypothesis. This improper representation of the greenery of urban transit buses vs. the private autos must not be allowed to stand unopposed, for it could be utilized to justify very contraindicated governmental transportation decisions.

The Center on Globalization, Governance & Competitiveness (CGGC), an affiliate of the Social Science Research Institute at Duke University, has prepared a number of papers under the general title of *Manufacturing Climate Solutions – Carbon-Reducing Technologies and U.S. Jobs.* For the Environmental Defense Fund, it recently issued the latest component, Chapter 12, "Public Transit Buses: A Green Choice Gets Greener1."

The main message of the CGGD paper is that using transit buses to move people is very energy efficient and "green" compared to auto usage. Unfortunately, this conclusion is reached through the use of vehicle occupancy assumptions that are far removed from actual "real world" experience.

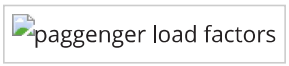
The central premise of the paper is stated in the Summary, first paragraph, first page:

Public transit substantially reduces fuel use and greenhouse gas emissions, making it a wise public investment in a new, carbon-constrained economy. A typical passenger car carrying one person gets 25 passenger miles per gallon, while a conventional bus at its capacity of 70 (seated and standing) gets 163 passenger miles per gallon. These fuel savings yield commensurate cuts in CO2 emissions. A passenger car carrying one person emits 89 pounds of CO2 per 100 passenger miles, while a full bus emits only 14 pounds. In addition, these benefits of conventional transit buses are further enhanced by a growing number of alternative options known as "green buses," including electric hybrid, all-electric, and other advanced technologies.

In the U.S., the average passenger load in a "conventional bus" in 2006 was 9.22 – slightly over one-eighth of the 70 factor used in the paper. Using the 2.33 bus miles/gallon (mpg) value on page two of the paper, this translates to 21.4 passenger-miles per gallon.

The average load in a “typical passenger car” in the U.S. was 1.58 in 20063. Using the 25 mpg in the CGGC paper above4, at 1.58 passengers/vehicle, that’s 39.5 passenger-miles per gallon.

(I will not go into detail as to emissions per passenger-mile of CO2 or other pollutants; simplifying greatly, in general, particularly for CO2, emissions are proportional to energy usage.)



Now, to be fair, if we actually go to the energy use data from the National Transit Database (NTD) for 2006 (Table 17, Energy Consumption), and add up the diesel gallon equivalents of all the energy utilized to power (non-catenary electric) buses, the result is 3.91 mpg and, applying that, the result is 36.0 passenger-miles per gallon, which is fairly close to the result above for automobiles.

So, by CGGC’s math, a transit bus loaded with an unusually high load provides 6.52 times the energy productivity of a passenger car with the absolute minimum possible passenger load.

By my calculations – which I will refer to, without any fear of being called to task, as “real world” – it was .54.

Which works out to an overstatement of right about a dozen times.

(If we utilized the actual 2006 average bus mileage factor of 3.91 mpg, versus the 2.33 mpg assumption of CGGC, the ratio would be approximately .89, with the auto producing about 12% more passenger miles per gallon of fuel than bus.)

My use of annual averages is somewhat unfair to buses for a variety of reasons. First, for autos, there is a significant amount of freeway driving, urban, rural, and inter-city, where high, constant speeds and high mileage factors are achieved – this type of travel is a relatively rare portion of urban transit bus usage.

Also, autos and buses are used very differently. Autos generally have their lowest load factors during peak periods, with most urban areas reporting statistics in the 1.10-1.15 range. There is far more peak hour utilization of bus than of auto as a percentage of total seat availability.

Auto mpg, like that of buses, is also lower during peak periods than the annual average. Also, most transit buses are diesel powered, and those that are not generally report their energy usage in diesel fuel Btu’s equivalents, and diesel motor fuel has approximately 11% more Btu’s per gallon than gasoline5.

Therefore, by using annual average statistics, I am working away from the situation where bus transit actually performs best. However, even if we assume that what CGGC was actually going for was peak hour auto usage, their assumptions are still far outside of the range of what has ever been actually achieved in the U.S. – particularly when one considers that, during the peak period, while buses are generally operating with their highest load factors on the *in*-bound trips in the morning and the

out-bound trips in the evening, when these buses then return for their next peak hour, peak direction load, they are generally carrying far fewer passengers than in their peak direction trips.

While 70 passengers on a "standard" 40-foot, 102-in wide bus, is certainly not unheard of in the transit industry, this is hardly a typical load, even on most crowded bus lines for most transit agencies, even for peak hour in-bound trips. Street-running urban buses – unlike, for example, an airliner flying between New York City and Washington, D.C. – make many stops along their routes. Typically, a bus has a very small passenger load when it begins a route, picks up passengers more-or-less constantly as it approaches its peak load point, most commonly the leading edge of the central business district, and then has a steadily decreasing passenger load as it nears the end of the route. Therefore, unlike a NYC-DC airline flight, which can often have a 100% seated load (a passenger in every seat), even though buses can have standees, it is unusual for a local, street-running bus route to approach a 50% average seated load even during rush hour. Annual average seated load factors over one-third are achieved only by a small handful of urban bus operators in the U.S., chiefly those in the largest cities.

The 70 passenger load used by CGGC above is almost certainly the "peak" load, or at least close to it, which means that it is reached and maintained only for a fairly short portion of the line, and then only during the peak hours. Given that most modern "low-floor" 40-footers have around 39/40 seats, the previous generation perhaps around 43, and the maximum number of seats on a 40-footer being 51 (and that for buses that were operated decades ago), CGGC's 70 passenger load is a *very* large factor, even before considering the low-load return trips during peak hour operations.

For example, the Los Angeles County MTA operates to a 120% load factor, which means scheduling for a maximum of 48 passengers on its 40-seat 40-foot buses – and that is at the peak load point. It is rare for even the transit operators in the largest cities to have maximum load point factors over 150%6, which would be 60 total passengers on a 40-seat bus – and these are the projected maximums at the peak load point, not anything remotely close to a load factor for an entire bus trip.

For the past thirty years, there have been two big city local transit bus operators (as opposed to long-haul commuter express operators, such as those operated into the Port Authority Bus Terminal by several contractors for NJTransit) that have had the highest average passenger loads (passenger miles/vehicle miles) almost every one of those years, MTA-New York City Transit and Los Angeles County MTA. For the 2007 NTD reporting year, MTA-NYCT reported 15.6, and LACMTA reported 14.0 – neither of these is remotely close to the 70 passenger load factor assumption that CGGC utilizes so prominently7.

In my experience of well over three decades in the transit industry, it is extremely rare for even the most heavily utilized local bus lines to achieve a working weekday load factor of 25.

A 70 load factor, as an annual average, is something that, in the transit industry, cannot be found on any type of rubber tire, or even rail vehicle, *period*; even commuter rail, which operates very large cars for very long trips, doesn't average half of that on an industry-wide annual basis.

The use of a bus load factor of 70 in the CGGC publication, *for any purpose what-so-ever, particularly when presented as something that is actually reasonable to contemplate*, is totally without justification; it is so far divorced from any kind of reality to call into question if CGGC lacks the technical competence to publish such a report – or, perhaps, worse.

On page 2, the paper discusses how a bus with a passenger load of eleven was approximately "breakeven" on fuel economy with a single-passenger car, but:

1. Prominent place to the 70 load in the very first paragraph.
2. The passenger load of eleven is actually well above the U.S. bus transit industry average of 9.2 for 2006 (although there are many large-city bus operators who exceed this mark on a regular basis)
3. The comparison is still to a single-passenger – 1.00 passengers – automobile, which is far under the actual U.S. average.

Overall, the impact of the eleven load factor example was to appear to present a "worst case" bus comparison to the automobile, where, in fact, the bus utilization factor was still significantly overstated and the auto factor was significantly understated.

Even if the analysis is limited to peak hour transit, when auto passenger loads are far lower than the all-day, full-year average, the 1.00 factor is still unrealistically low – and, I submit, a comparison of only peak-to-peak can be done only with extreme care, as this is a minority of the usage of both autos and buses and, therefore, unlikely to be representative of the whole for either.

The historical trend also does not favor bus transit. From 1977 to 2007, bus average passenger load fell over 25%, from 12.2 to 9.1. From 1984 through 2007, bus miles per gallon first rose slightly, from 3.65 in 1984 to 3.84 in 1993, but, as the utilization of alternative fuels increased, fell to 3.43 in 2007, an overall decrease of 6% from 1984 to 2007. When the combined effects of lower average passenger loads and lower miles per gallon are combined, passenger-miles per gallon fell 27%, from 42.8 in 1984 to 31.3 in 20078.

From 1970 to 2007, U.S. auto fuel economy increased 67%, from 13.5 mph in 1970 to 22.5 mph in 20079.

In fact, with the exception of a few U.S. transit operators, including MTA-NYCT, there is considerable question if transit has *any* energy and emissions advantages over automobiles *at all* at the present time – and, given the historical trend, and that there appears to be very significant likelihood for major progress being made for automobiles in both regards over the upcoming years, I am not prepared to concede that buses can get "greener" faster than automobiles in the foreseeable future10.

While the paper's endorsement of newer vehicle technologies is somewhat less objectionable, these cover a wide range of technologies and, at the present time, practicalities. Compressed natural gas (CNG) and liquefied natural gas (LNG) have become very prominent in the transit bus industry, even to the point of some old-time vehicle maintenance supervisors expressing a preference for them. However, other modes mentioned in the DGGC paper – particularly hydrogen fuel cell – are so far away from practical use that, when the California Air Resources Board was (again) considering actually implementing its long-planned zero-emission-bus rule, it was widely opposed – including by the California Sierra Club.

The purpose of this critique is *not* to attempt to show that buses are bad for energy use, air quality, or the economy. It is, rather, to show that any proposal to achieve improvements in any of these through transit, including bus transit, must be based on a realistic presentation of the current situation, the historical trend, and the *practical* potential for improvement. Any evaluation based on wholly ridiculous bus load factors and misstatements of auto load factors, using this analysis as the basis for future promises of improvements, fails this test badly.

Thomas A. Rubin, CPA, CMA, CMC, CIA, CGFM, CFM has over three decades of transit industry experience as the chief financial officer of two of the largest transit operators in the U.S., including the Southern California Rapid Transit District in Los Angeles, and as a consultant and auditor to well over 100 transit operators, metropolitan planning agencies, state departments of transportation, the U.S. Department of Transportation, and industry suppliers. He has presented well over 100 papers on a variety of topics at industry conferences.

Part 2: A Response to Thomas Rubin's Critique Of
Public Transit Buses: A Green Choice Gets Greener
By Marcy Lowe, Bengu Aytekin and Gary Gereffi

The report in question, released in October 2009, is a value chain analysis of the U.S. transit bus manufacturing industry. Its main purpose is not to analyze fuel efficiency, but rather to map out the U.S. supply chain for the manufacture of transit buses. We identify the lead firms across the bus supply chain, including original equipment manufacturers, system builders, and producers of components ranging from engines to interior lighting, along with a large after-market segment. Our purpose is to highlight how many U.S. jobs are involved in this supply chain, what types of jobs they are, and where they are located.

The main message of our report is that although the U.S. transit bus manufacturing industry is small, these jobs are widely dispersed throughout the Eastern United States and California-and there is plenty of opportunity to fill increasing bus orders with domestic production if U.S. transit policy were to shift to a greater emphasis on public transit. Our study places special emphasis on electric hybrids and other "green

buses," that is, those that run on alternatives to diesel or gasoline, because we believe these vehicles offer sustainable growth potential for the industry.

Throughout the report we emphasize that public transit is an underused option in the United States. As we note in the report, the 70-person figure cited in our fuel comparison does not refer to actual bus occupancy in average U.S. conditions, but rather to the capacity of the standard bus type we focus on in our supply chain. The actual number of occupants per bus in the U.S. varies widely, of course, ranging from a full bus in New York City during rush hour to a little-used bus operating in a small urban area during off-peak hours. Because our focus is U.S. jobs linked to the domestic manufacture of buses, our report does not attempt to calculate vehicle occupancy figures that would reflect the wide range of actual U.S. conditions.

We appreciate your interest in our report. We hope it adds a useful perspective to the ongoing discussion concerning the most promising public transit options and their job creation potential in the United States.

Part 3: Thomas A. Rubin's Response

The reply makes it clear that the "... main purpose [of the paper] is not to analyze fuel efficiency." As there is no response to, or exception taken to, the data cited in our original critique, which utilized actual vehicle occupancy and fuel mileage data, nor the calculations deriving there from, it appears that our conclusion – that the private auto is superior to transit buses in fuel efficiency and emissions per passenger mile, for the national as a whole and for most specific travel situations, is not disputed by CGGC.

Since the focus of the report is on "U.S. jobs linked to the domestic manufacture of buses," it would appear reasonable for the paper to discuss and compare the creation of jobs from the manufacture of passenger cars in the same manner as the paper compared fuel efficiency of buses vs. automobiles (which resulted in conclusions regarding "greenness" that CGGC now appears to have abandoned). However, this was not a part of the paper.

A detailed calculation of comparative job creation is far beyond what we have the space to get into in this short paper. However, let us see what we can come up with by making a number of admittedly very simplistic assumptions.

As was cited in the first posting, the average vehicle occupancy for transit buses in the U.S. was 9.21, and for passenger car vehicles, 1.58 in 2006. This means it takes an average of approximately 5.83 passenger cars to carry the average load of a bus (9.21/1.58).

Using the average price per 40-foot bus of $342,55811 in 2006, the year for these occupancy figures, that would mean that, to achieve equivalent cost per average passenger load, the cost of the passenger cars would be approximately $58,766, prior to adjustment for the lifetime utilization

of buses and passenger cars. I will arbitrarily adjust this by a factor of 2, representing my approximation of the ratio of lifetime bus vs. passenger cars miles12, resulting in an average "equivalency" cost per auto of $29,383 (not adjusting for the time value of money).

The actual average cost per new car in 2006 was $22,65113, approximately 77% of the calculated equivalency price above. If we make one more assumption – that the labor component per dollar of price for buses and passenger cars are equal – then it would appear that building buses to create passenger-miles does generate more jobs than does building passenger cars. While, admittedly, there are a large number of assumptions in the above calculation, the 1.3:1 ratio of the end calculation does appear to leave a "fudge factor" of some size.

However, one might ask, is the purpose of transportation to create jobs manufacturing vehicles? Or is it to move more people, and to move them further (leaving aside goods movement for the current discussion)? Which is more important, creating jobs or using taxpayer subsidies as cost-effectively as possible – particularly when this means moving people will mean lower taxes, or that more people can be moved further for the same number of taxpayer dollars? (For now, let us not get into discussions of transportation policy as a means of achieving "superior urban form," or of transit to actually contribute meaningfully to the achievement of such objectives; as for energy efficiency and "greenness," these were discussed in the first critique, resulting in the passenger car being shown as superior, which has not been challenged by CGGC).

Perhaps one answer to this conundrum may be found in 49 USC 5323(j)(2)(C), formerly know as the Urban Mass Transportation Act of 1964, as Amended, which requires that for Federally funded "rolling stock" procurements (including buses),"... the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and ... final assembly of the rolling stock has occurred in the United States" unless "including domestic material will increase the cost of the overall project by more than 25 percent."

From this provision, it does appear clear that creating U.S. jobs is a higher priority for public transportation in the U.S. than more cost-effective utilization of taxpayer funds, as so determined by the U.S. Congress.

Which is not necessarily the same thing as saying as this is the preference of the taxpayers and transit users of this nation.

And it does make one wonder a bit about the intended meaning of "competitiveness" in the name, Center on Globalization Governance and Competitiveness.

Footnotes

1 Marcy Lowe, Bengu Aytekin and Gary Gereffi, http://www.cggc.duke.edu/environment/climatesolutions/greeneconomy_Ch12_TransitBus.pdf October 26, 2009, Center on Globalization, Governance &

Competitiveness, Duke University, accessed January 18, 2010.

2 U.S. Department of Transportation, Federal Transit Administration, National Transit Database (NTD), 2006, Table 19, "Transit Operating Statistics: Service Supplied and Consumed," total of directly operated+ purchased transportation services passenger miles of 20,390,185,933, divided by total of directly operated + purchased transportation services vehicle total miles of 2,214,041,933.

Note utilization of vehicle total miles for the denominator, vice vehicle revenue miles. The primary difference between these two statistics is "deadhead" miles, such as driving a bus from the operating yard to the beginning of the first trip in the morning, and then back at the end of the day. Even though the buses are not carrying any passengers while deadheading from operating yards to/fm the beginnings and ends of bus lines and otherwise not in service to passengers, they are using fuel for such movements, which must be accounted for in the calculation of energy usage to produce human mobility.

http://www.ntdprogram.gov/ntdprogram/data.htm

3 (U.S. Department of Transportation, Research & Innovative Technology Administration, Bureau of Transportation Statistics, *Pocket Guide to Transportation 2009 (Pocket Guide)*, Passenger Car Passenger-Miles, 2006, 2,658,621 million, Table 4-3, "Passenger-Miles: 1990-2006, page 19; divided by Passenger Car Vehicle Miles, 2006, 1,682,671 million, Table 4-1, "Vehicle-Miles: 1990-2006," page 17:

http://www.bts.gov/publications/pocket_guide_to_transportation/2009/pdf/entire.pdf Accessed January 19, 2009.

4 *Ibid*., Table 6-1, "New Passenger Car and Light Truck Fuel Economy Averages, Model Years 1985-2008," auto miles/gallon increases from 27 to 30 mpg over this period.

5 Stacy C. Davis, Susan W. Dielgel, and Robert G. Boundy, *Transportation Energy Data Book– Edition 28 (Transportation Energy)* (ORNL-6984), U.S. Department of Energy, Oak Ridge National Laboratory, 2009, Table B.4, "Heat Content for Various Fuels," page B-4, accessed February 1, 2010:

http://cta.ornl.gov/data/tedb28/Edition28_Full_Doc.pdf

The values shown are 125,000 Btu/gallon for conventional (non-aviation) gasoline and 138,700 for diesel motor fuel.

Emission factors are also very different between automobiles, which are primarily gasoline powered at this time, and buses, which, at the present time, are primarily diesel powered (74.5% of the motor [non-electric] bus diesel fuel equivalent energy use was diesel in 2006), NTD 2006, Table 17. CO2 emissions per gallon of diesel are approximately 15% higher than that of gasoline (*Transportation Energy*, Table 11.11, "Carbon Dioxide Emissions from a Gallon of Fuel," page 11-15). Other factors – CO, NOX, PM, etc. – vary in ways more complex that can be approached in this paper.

6 Prior to MTA agreeing to reduce its load factors to 120% as part of its settlement of the Federal Title VI (discrimination in the utilization of Federal funding) lawsuit, Labor/Community Strategy Center v MTA, MTA utilized a 150% load factor for its surface bus routes serving the Los Angeles central business district during peak hours.

NTD, Table 19, 2007.

American Public Transportation Association, *2009 Public Transportation Fact Book–Appendix A: Historical Tables*, author's calculations from Table 2: Passenger Miles by Mode, Table 6: Vehicle Total Miles by Mode, Table 30: Fossil Fuel Consumption by Mode, and Table 32, Bus Fuel Consumption. Accessed February 1, 2010: http://www.apta.com/resources/statistics/Documents/FactBook/2009_Fact_Book_Appendix_A.pdf APTA's *Transit Fact Book* series uses, primarily, the same data as reported to U.S. DOT for NTD; however, for the motor bus mode, it includes some operators not reporting to NTD, so there are often minor variations between NTD and APTA bus data.

9 *Transportation Energy*, Table 4.1, "Summary Statistics for Cars, 1970-2007," page 4-2. Note that this report is on the average fuel mileage for all cars on the road in the year being reported, as opposed to the miles per gallon data from the *Pocket Guide*, which reports mpg for new vehicles only for the year being reported upon.

10 For a more factually driven analysis of transit vs. automobile energy utilization and emissions, I recommend Randal O'Toole, *Does Rail Transit Save Energy or Reduce Greenhouse Gas Emission?"* Cato Institute, Policy Analysis 615, April 14, 2008:

http://www.cato.org/pub_display.php?pub_id=9325

(Despite the title, the paper includes data for many transit modes, including buses.)

11 Dana Lowell, William P. Chernicoff, and F. Scott Lian, MJ Bradley & Assoc., for U.S. Department of Transportation, *Fuel Cell Life Cycle Cost Model: Base Case and Future Scenario Analysis* (DOT-T-01), June 2007, Table 8, "Weighted Average Bus Prices (2006 APTA Transit Vehicle Database)," page 13, accessed February 15, 2010: http://hydrogen.dot.gov/projects_across_dot/publications/fuel_cell_bus_life_cycle_cost_model/report/p

12 This calculation is the best I can do for an adjustment factor for the useful lives of auto's vs. buses. Unfortunately, it is difficult to come up with comparable data.

For 2006, the median age of passenger cars in the U.S. was 9.2 years (U.S. Department of Transportation, Bureau of Transportation Statistics, *National Transportation Statistics 2008*, Table 1-25, "Median Age of Automobiles and Trucks in Operation in the U.S.," accessed February 15, 2010: http://www.bts.gov/publications/national_transportation_statistics/2008/html/table_01_25.html)

For 2006, the average age of full-sized transit buses was 7.6 years, (*National Transportation Statistics 2008*, Table 1-28a, "Average Age of Urban Transit Vehicles.," accessed February 15, 2010: http://www.bts.gov/publications/national_transportation_statistics/2008/excel/table_01_28a.xls)

(Of course, the median value is not usually the same as the average value.)

As to average annual mileage per vehicle, for buses, for the 2006 reporting year, it was 30,030 (American Public Transportation Association, *2008 Public Transportation Fact Book*, "Table 51:Bus and Trolleybus National Totals, Fiscal Year 2006, 2,494.9 million Vehicle Total

Miles divided by 83,080 Bus Revenue Vehicles Available for Maximum Service:
http://www.apta.com/resources/statistics/Pages/transitstats.aspx
For passenger cars for 2006, the average was 12,427 miles (U.S. Department of Transportation, Bureau of Labor Statistics, *Pocket Guide to Transportation 2009*, 1,682,671 million passenger car vehicle miles (Table 4-1, "Vehicle-Miles, 1990-2006), divided by 135,399,945 automobiles (Table 4-2. "Number of Aircraft, Vehicles, Railcars, and Vessels: 1990-2006" – the notes to these table makes it clear that "automobiles" in Table 4-2 has the same meaning as "passenger cars" in Table 4-1).
If we assume that median age is the same as average age, and that miles driven are constant over the vehicle life, and that average/median age is directly proportional to total useful life for both buses and passenger cars (all admittedly questionable assumptions), then the bus miles to median life are 228,.228 (7.6 years x 30,030 miles/year), and, for passenger cars, 114,328 miles (9.2 years x 12,427), or a ratio of 1.996:1 – which we shall round to 2:1
13 U.S. Department of Energy, "Fact #520: May 26, 2008, Average Price of a New Car, 1970-2006, accessed February 15, 2010:
http://www1.eere.energy.gov/vehiclesandfuels/facts/printable_versions/2008_fotw520.html

SUPREME COURT S285215

Court of Appeal Case No. B329274
LASC Case No. 21STCP01247

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

PROTECT OUR GLENDALE,

Petitioner and Appellant,

v.

CITY OF GLENDALE, et al.,

Respondents

From An Opinion Of The Court of Appeal, Second Appellate District, Division One Affirming The Los Angeles Superior Court

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PETITION FOR REVIEW

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To The Honorable Patricia Guerrero, Chief Justice Of The State Of California And The Honorable Associate Justices Of The Supreme Court:

Petitioner and Appellant Protect Our Glendale ("**Petitioner**") petitions this Court for review of the May 1, 2024 opinion of the Court of Appeal, Second Appellate District, Division One ("**Opinion**," attached), which affirmed the judgment of the Los Angeles Superior Court.

I. ISSUES PRESENTED

1. Does CEQA[1] or Guidelines[2] allow a Program MND[3]?

2. Does a deferred *study* qualify for *mitigation* to warrant an MND?

3. May an agency rely solely on meeting thresholds of significance as mitigation for an MND?

4. Does the phrase "implement the circulation element of a general plan" under the Vehicle Code section 21101(g) mean "to be consistent with the circulation element of a general plan"

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[1] All references to CEQA are to California Environmental Quality Act.

[2] All references to "Guidelines" are to CEQA Guidelines. (Cal. Code Regs., tit. 14, §15000 et seq.) "These Guidelines are binding on all public agencies in California." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720, fn. 2.

[3] Mitigated Negative Declaration

and should cities comply with the Vehicle Code Section 21101 when implementing street modifications to control traffic?

II. WHY REVIEW SHOULD BE GRANTED

California Rules of Court ("**CRC**"), Rule 8.500(b) states the grounds for review by this Court. In this case, subdivision (1) applies because important questions of law need to be settled.

While the Opinion is not published, Respondent City of Glendale ("**City**"), as well as the League of California Cities ("**League**") have requested publication of it ("Publication Request"), proposing, *inter alia,* their own interpretations of the Opinion that result in mischief and legal chaos. While the Publication Request was properly[4] denied by the Appellate Court for failure to meet any of the standards for publication set forth in California Rules of Court, rule 8.1105(c), it is now pending before the Supreme Court. And, if ordered published, the Opinion will turn CEQA and Vehicle Code on their heads.

Far from a small and specific development project, this case involves a so-called pedestrian plan, which – despite its

[4] The Opinion is heavily based and decided on facts, including facts that are inaccurate and no party had raised before. Nonetheless, the Opinion is silent on critical legal issues raised by Petitioner, which – as evident from the Publication Request – can be and are interpreted by agencies to mean far more than what the Opinion holds and create inconsistencies with the law.

promising description – proposes street changes that have little to do with pedestrians or pedestrian safety and instead aim to promote transit and bicycle uses on major City arterials and in primarily busy South and Downtown Glendale areas. Those street changes include, but are not limited to: traffic lane removals, street bulb-outs, narrowing of lanes, conversions of streets into bicycle boulevards, removal of street-parking.

Despite the fact that the City in its environmental review *admitted* that its proposed lane-removals and bulb-outs may have traffic impacts, it nonetheless proposed illusory mitigation measures committing at most to studying those impacts when *implementing* the street changes individually and further *either* mitigating impacts to meet thresholds of significance yet to be determined or simply making a finding that traffic impacts will be less than significant through unidentified "beneficial impacts."

The City's sole excuse for not performing studies of impacts before the MND was proposed is that the proposed activities are planned for 25 years and hence purportedly make it infeasible for the City to perform the required environmental studies now. And yet predictably, even *before* the Opinion was released, the City began implementing its proposed street changes.

Notably, the South and Downtown Glendale are home to disadvantaged communities and are already plagued with various environmental impacts threatening with health and

safety risks to people. And some of the streets, on which the above-listed modifications are proposed, are major arterials of regional significance that connect the City with other cities.

As such, this case may and will set a bad precedent for the City and other municipalities to prepare long-term plans that may admittedly have impacts and yet to claim that the study or mitigation of such impacts is infeasible solely due to those plans being long-term and thus defer timely studies of such plans and their impacts until the implementation phase, in reliance on the Opinion's erroneous interpretations of the law.

This case presents preliminary dispositive questions for a wide swath of litigation under CEQA and Vehicle Code – questions applicable to California statewide as public agencies make crucial long-term policy changes and decisions; questions that will affect millions of people in California, including disadvantaged communities; questions that need to be settled by this Court to ensure uniformity in judicial decisions and scrupulous enforcement of CEQA's *environmental protection* mandates and the Vehicle Code's *narrowly-construed* and narrowly-tailored grant of authority by the State to local agencies and procedural and substantive legal mandates and safeguards.

The *four issues* in this Petition are those of first impression and reviewed *de novo,* as they involve statutory interpretations of

CEQA, Guidelines, and the Vehicle Code, which both the Trial Court and the Court of Appeal engaged and erred in.[5]

First, on the issue of whether CEQA allows for a Program MND (Mitigated Negative Declaration), the Opinion – relying on the City's wholly unsupported contention and placing the burden on Petitioner to disprove it – categorically concluded: "CEQA thus permits program-level MNDs. (See *Pala Band of Mission Indians v. County of San Diego*, *supra*, 68 Cal.App.4th at p. 575.)" (Opinion, 34.) The Opinion even concluded that the Supreme Court "implicitly endorsed" Program MNDs in *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist*. (2016) 1 Cal.5th 937, 961. (Opinion, p. 37.) Yet, neither CEQA nor case law supports the Opinion's conclusions or statutory interpretations.

Critically, the Opinion's conclusions sanctioning the use of Program MNDs run counter to the very definition of an MND under CEQA, which require that the project proponent commit to specific mitigation measures that will "clearly" reduce all

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[5] Apart from erroneous statutory interpretations and omissions – as detailed in Petitioner's Petition for Rehearing – the Opinion is based on inaccurate and novel facts that no party had raised and is heavily impacted by them, despite the applicable *de novo* standard of review for statutory interpretations of CEQA and Vehicle Code and the non-deferential low-threshold fair argument standard for CEQA.

potential impacts to "insignificant" levels and will be "incorporated" in the MND "before" the MND is released for public review. Public Resources Code §§ 21064.5 & 21157.5. There can be no such *clarity*, however, where the MND is contended to be a Program MND and thereby *defers* mitigation and even studies to identify and mitigate impacts until the time when the proposed changes are *implemented* and further proposes illusory and erroneous mitigation measures, as here.

Second, as emphasized by the Publication Request, the Opinion suggests that a commitment to *study* impacts in the future is equivalent to a commitment to *mitigate* impacts. And yet, this equation of study with mitigation conflicts with various fundamental CEQA provisions, including the prohibition of deferred studies and deferred mitigation even for Environmental Impact Reports ("**EIRs**") under Guidelines section 15126.4(a)(1)(B), let alone MNDs, as here. Equating studies with mitigation also runs contrary to CEQA's definition of an MND and its stringent requirements before warranting an MND to ensure that impacts are "clearly" reduced to less than significant levels "before" the MND is released. Public Resources Code §§ 21064.5 & 21157.5.

Third, the Opinion implicitly treats meeting *thresholds of significance* sufficient to warrant an MND and, despite Petitioner's challenge to it, is silent on that issue. The Opinion's

silence on the issue implicitly endorses actions, whereby cities, as here, may proceed with an MND and evade CEQA EIR's in-depth studies of impacts by merely claiming that impacts will be reduced to levels of insignificance by solely meeting the yet-to-be determined thresholds of significance. And yet such practice is disallowed by CEQA's definition of an MND, as well as the express prohibition under Guidelines § 15064 (b)(2) that "[c]ompliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may *still* be significant." (Emph. added.) As Petitioner argued – and the Court failed to address – reliance on threshold compliance was also held improper for MNDs by the Court in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-114 ("*CBE*") [rejecting reliance on regulatory compliance in MNDs].

Fourth and lastly, the Opinion wholly ignores the State's limitations of powers of local agencies to make street modifications under the Vehicle Code sections 21 and 21101, including the legislative safeguards that any street changes "implement the circulation element of a general plan." Vehicle Code § 21101(g). Instead, the Opinion equivocates and mischaracterizes the legislative safeguard of ensuring that changes "implement the circulation element of a general plan" with a much broader statement that such changes "be consistent

with the circulation element of a city's general plan" (Opinion, p. 10.)

As a manifest disregard of the legislative intent and the law, the Opinion, at p. 39, evades any discussion of the Vehicle Code's said limitations and instead holds that the street changes in this case "are within the construction and maintenance power [citation] though of course they may alter patterns of traffic," citing to *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 556. What the Opinion fails to note is that, immediately after the quoted statement, the Supreme Court in *Rumford* distinguishes the type of street changes in that case made for the purpose of regulating or slowing traffic, as also here, and mandates that the street changes made for such purpose are not within the construction and maintenance power of municipalities and must comply with the Vehicle Code's requirements.

The resulting mischief of the Opinion's above-noted novel and erroneous reasoning and omissions - as also evidenced by the arguments in the Publication Request – is that the Opinion endorses cities and municipalities to circumvent the Vehicle Code's narrowly-tailored and narrowly-construed mandates, as well as CEQA's stringent mandates for allowing MNDs and thereby evading EIRs for activities that agencies *admit* (as here) may have impacts, especially when making long-term policy

changes that can adversely and irreversibly affect millions of people, including disadvantaged communities.

Review must be granted because the Opinion creates confusion as to what duties and rights California governments have under CEQA and Vehicle Code, and the law must be clarified so governments and public interest litigants can know these duties and rights with certainty, to prevent multiplicity of suits, governmental abuses, and costly public interest litigations.

III. STATEMENT OF FACTS.

As detailed in Petitioner's Petition for Rehearing (pp. 15-26), the Opinion is largely based on novel facts that were neither supported by the record nor raised by any party in the case, which, in addition, raises grave concerns about due process.

The City described its Glendale Citywide Pedestrian Plan ("**GCPP**" or "**Project**") challenged here as a "comprehensive, centralized, and coordinated approach to improving pedestrian infrastructure, safety, and demand in Glendale. The Plan will make Glendale a safer, more pleasant, and more convenient place for walking." [AR[6] 2 (Notice of Determination ["**NOD**"]), 33 (MND).] Behind this optimistic and aspirational description, GCPP proposes *permanent physical* changes to busy "arterial"

[6] Parenthetical numbers starting with **AR** refer to "bates-stamps" in the City's certified administrative record ("**AR**").

streets (at least 16 traffic-corridors in densely-built and environmentally-challenged *South* Glendale Community Plan ("**SGCP**") and Downtown Specific Plan ("**DSP**") areas with disadvantaged communities. [AR 2480-81 [busy commercial arterial streets]; 3262, 3274, 3863-64 (16 traffic-corridors), 224-225, 1101 (maps), 2568-69 (South Glendale), 3274 (DSP/Moratorium); 5346, 5423 (disadvantaged).]

GCPP's changes include slow-street traffic-calming measures [AR 153, 67, 2666], lane-removal/narrowing and bulb-outs [AR 31, 34, 38-45, esp. 40-45], greenway [AR 196], sidewalk-narrowing [AR 2608], parking-removal [AR 31, 44], and new PPS street-designations with undisclosed features or effects. [AR 235.]

Far from ensuring pedestrian safety, GCPP's changes were to accommodate bikes and transit. [AR 5551 ("a road diet is the elimination of one or more lanes (parking, travel, or two-way-left-turn) to make room for bicycle facilities")]; 637 ("Common practices [of traffic calming] include narrowing or reducing the number of travel lanes, chicanes, traffic circles, chokers…. city would benefit in certain locations from slowing for increased safety and a more pleasant walking and biking experience").] Bulb-outs are for bicycle/transit uses or school crossings. [AR 630 (bikes); 364 ("transit boarding island or bulb-outs … for bus boarding"), 216-221 (school crossings).] Greenway will turn Louise street into a "bicycle boulevard." [AR 196, 3862, 2584-86.]

For years, the City identified the same 16-17 traffic-corridors and 22 intersections as having high collision-rates and proposed changes therein. [AR 4796, 4815-16 (2016 collision report), 4805 (number of lanes); 1113-1131 (same corridors/changes in 2017); 40-45 [2020 report, same 16 collision-corridors and changes).] The MND acknowledged that GCPP's "proposed changes" on such traffic-corridors may have significant traffic impacts. [AR 102, 31, 34.] Yet, rather than study those impacts, the City proposed two traffic mitigation measures deferring *studies* of impacts of *each* change until the time the changes are implemented, and further, depending on the study results, the City reserved itself an *option* to either mitigate such identified impacts *or* make findings that some unidentified "significant beneficial pedestrian impacts and/or other beneficial impacts pedestrian would reduce" the adverse traffic impacts to insignificant levels. [AR 31, 34, 102-103.]

As to air-quality, greenhouse gas emissions ("**GHG**"), cumulative or human health impacts, the MND summarily disclaimed those without much analysis and focused on the Project's *own* direct construction impacts, and relied on *traffic* mitigation measures. [AR 77, 87, 111-112.]

GCPP is related to other City plans, including Glendale's general plan, DSP, Community Plans, Bicycle Plan, and others. [AR 5881-86, 1335, 1344-46 (DSP other plans); 5882 ("Design

issues relating to pedestrian and bicyclist infrastructure such as building setbacks, streetscapes, infrastructure improvements, and facilities will be addressed as part of each [community] plan"); 2567 (other plans); 8 ("review for the southern portion of the Citywide Pedestrian Plan was analyzed as part of the [SGCP], but due to challenges associated with the [SGCP], the completion and the adoption of the Citywide Pedestrian Plan was delayed"), 5913 (SGCP, GCPP, DSP); 2582 (GCPP related "to other projects, such as the [SGCP]) which was challenged from an environmental perspective").]

Despite its undeniable nexus with numerous related plans, however, GCPP's MND's cumulative impacts analysis failed to note any of those related plans and disclaimed *cumulative* impacts by focusing solely on GCPP's impacts. [AR 111.]

GCPP's challenged approvals occurred during COVID-19 pandemic, which changed the pedestrian and traffic circulation patterns in Glendale. [AR 2603, 2664-67 (sidewalks); 3268 (comment); 3290-91 (comment)]. Yet, the approved GCPP or its MND relied on pre-COVID pedestrian/bicycle counts. [AR 2605-06, 2630 ("The recent traffic volume data *will* be compared to the previous year's data to address traffic flow pattern changes resulting from the Covid 19 pandemic." (Emph. added)).]

The City approved the GCPP and its MND on March 23, 2021 and filed the related Notice of Determination on March 24 and April 22, 2021. [AR 3, 4].

IV. PROCEDURAL HISTORY.

A. Petition and Answer.

Petitioner timely challenged GCPP-approvals for violations of CEQA and Vehicle Code on April 22, 2021 by filing a Verified Petition for Writ of Mandate and Complaint and Prayer for Declaratory and Injunctive Relief ("**Petition**"). [1AA:16-143.] The Petition quoted GCPP-related information from the SGCP/EIR and attached SGCP/EIR excerpts as Exhibits 1-3 from the City's certified SGCP-record. [1AA:28-30, 42-55 (¶¶ 58-61; Exhibits).]

The City answered the Petition on June 3, 2021 ("**Answer**"). [2AA:315-338.] The City's Answer did not contest the accuracy of Petitioner's quotations or Exhibit-excerpts from the SGCP EIR, but evasively and repeatedly countered:

"[T]he allegations in this paragraph purport to characterize the administrative record for this action and a previous unrelated action related to a separate and distinct project (the South Glendale Community Plan), which speaks for itself, and no answer is required. To the extent that the allegations in this paragraph allege facts inconsistent with the administrative

record, City denies each and every such allegation." [2AA:325-26 (Answer, ¶¶ 58-61).]

B. Parties' Briefs.

On November 18, 2022, Petitioner filed its Opening brief and Motion to Augment the Administrative Record or Alternatively the Request for Judicial Notice ("Motion/RJN"). [4AA:933-955; 5AA:956-1051.]

On December 19, 2022, the City filed its Opposition brief, its own RJN, and Opposition to Petitioner's Motion/RJN. [6AA:1130-1151, 6AA:1052-1110; 6AA:1111-1129.]

On January 3, 2023, Petitioner filed its Reply Brief in support of the Petition; Reply to the City's Opposition to the Motion/RJN; Opposition to the City's RJN, and a Supplemental RJN. [6AA:1160-1171; 6AA:1172-1183; 6AA:1155-59; 6AA:1184-1248.]

C. Questionable Unavailability of the Trial Transcript; Petitioner's Counsel's Sworn Declaration About In-Court Statements at Trial and the City's Frivolous Objections.

On January 16, 2023, Petitioner ordered a court-reporter for the January 18, 2023 trial from Coalition Court Reporters of Los Angeles ("**CCROLA**"). [6AA:1282; 1297-98, 1344-1351.] On that same day, Petitioner emailed CCROLA the names of counsel appearing at trial, cc'ing the City's counsel. [*Id.*]

On January 18, 2023, after the trial, Petitioner's counsel contacted CCROLA, ordered the trial-hearing transcript on a 10-day-turnover. [6AA:1351-52.] On February 1, 2023, CCROLA informed Petitioner's counsel that the court-reporter James Buford prepared *no* transcript for the matter as he accidentally reported a *different* matter that contained the word "Glendale" in the case name. [6AA:1297-98, -1350.] The matter that was mixed-up with Petitioner's scheduled *trial* in this case was a *brief* trial setting conference ("**TSC**") for the Glendale Unified School District, with different counsel. [6AA:1297-98, -1353-54.]

Reportedly, the court-reporter had worked in the same court and department for years. [6AA:1297.] It is questionable how an experienced court-reporter could mix: (1) a case involving a *Respondent* "*City* of Glendale" with a case involving a *Petitioner* "Glendale Unified *School District*," (2) a *trial* with a *TSC*; or (3) wholly different names of counsel in each matter.

On March 1, 2023, Petitioner's counsel provided a *sworn declaration* in support of a Motion to Vacate, detailing what occurred at trial, including the trial court's questions to the parties and the parties' responses. [6AA:1296-1302.]

In its March 13, 2023 opposition to the Motion to Vacate, the City objected to Petitioner's counsel's said *declaration* – not for accuracy, but rather on purely procedural grounds, claiming that the declaration was *unauthorized*, *irrelevant*, and *hearsay*.

[7AA:1450-1467, esp. 1464.]

As detailed in Petitioner's March 20, 2023 reply in support of the Motion to Vacate [8AA:1502], the City's said objections were frivolous, including because – unlike Petitioner's declaration of what transpired *in court* – a hearsay (for which Petitioner's declaration was objected to) is an "out-of-court statement." *People v. Sanchez* (2016) 63 Cal.4th 665, 674.

D. Tentative Ruling and Trial.

On January 18, 2023, the trial court issued its tentative ruling ("**Tentative**"). [6AA:1355-1369.]

The Tentative highlighted and flagged issues, requesting the City's explanations on:

(1) Whether the traffic mitigation measures are adequate where, after the disjunctive "or," they suggest that environmental impacts must be offset by a beneficial effect [6AA:1360];

(2) "[Where does the City commit, if at all, in the MND to further project level environmental analysis?]" [6AA:1360];

(3) The City's reliance on traffic mitigation measures to reduce air quality and GHG impacts [6AA:1362];

(4) Whether the City may delegate the duty to make findings in the mitigation measures [6AA:1366];

(5) Whether the City's deferred traffic studies are post-hoc rationalization [6AA:1366];

(6) Whether the mitigation measures' proposed beneficial offsetting is proper [6AA:1367];

(7) "What is the authority allowing the City to engage in the proposed adverse/beneficial balancing in a mitigation measure? Does the MND provide the explanation of the balance, who conducts the analysis and who reviews and approves the analysis?" [6AA:1368, fn. 5]; and

(8) "Petitioner argues "Even if those are the 'beneficial effect' presumed in MMs, City fails to explain how physical traffic impacts can be 'offset' by non-traffic societal/health benefits; and reduction of congestion, VMT or GHG is not guaranteed." (Reply 4:17-19.) [The court has requested the City address this issue during argument. The authority and particulars of the measure is unclear.]" [6AA:1369, fn. 8.]

At trial, the Court noted there were *additional* issues it did not include in the Tentative and required the City to address those as well. [6AA:1298 (Decl. ¶ 5).] The first among those issues was the fact that the City left its air-quality cumulative impacts analysis "blank" at AR 77. [6AA:1298.] The Court noted that it reviewed the entire MND but did not find any cumulative

impact analysis and asked if Petitioner encountered anything. [*Ibid.*] Petitioner's counsel noted she did not find any specific analysis and added that the issue, along with related projects, was raised before the City at AR 3274. [6AA:1298.] The Court verified and agreed. [*Ibid.*] In response, the City's counsel referenced the MND's page about mandatory findings of significance, at AR 111. [6AA:1298.] Petitioner's counsel countered that the MND's statements at AR 111 (mandatory findings of significance) cannot cure deficiencies at AR 77 (air-impacts) and the cumulative analysis at AR 111 is inadequate as it focuses only on the Project's *own* impacts. [*Ibid.*]

The second issue omitted from the Tentative was the MND and Mitigation Monitoring and Reporting Program's ("MMRP") disjunctive "OR" challenged by Petitioner, which challenge found "traction" with the court. [6AA:1299 (Decl. ¶ 6).] In response, the City reassured that traffic impacts will be reduced regardless, but provided no further support for its claim. [*Ibid.*]

As to the Vehicle Code violations, the Court questioned City whether the Vehicle Code's requirement that the proposed street changes *implement* the circulation element is the same as the requirement to show *consistency with* the circulation element of the general plan. [6AA:1299 (Decl. ¶ 7).] The City asserted that "in this case" to *implement* the circulation element means consistency with the circulation element. [*Ibid.*]

On the Tentative's flagged *first, sixth, seventh,* and *eighth* issues on offsetting or balancing traffic impacts, the City's counsel provided no specifics or authority as to how such claimed offsetting would occur. [6AA:1299 (Decl. ¶ 8).]

In response to the Tentative's *second* issue as to whether the City committed to CEQA review of its proposed specific projects and whether there would be initial studies for same, the City admitted *no* initial studies would occur if those projects are deemed consistent with GCPP. [6AA:1299 (Decl. ¶ 9).]

At trial, Petitioner further argued that the traffic mitigation measures are improper for leading to improper *piecemealing* and altered *baseline*, since, per the MND and MMRP, the City would measure traffic impacts of each street change or so-called "pedestrian projects" as against "the existing condition" [AR 31] *at the time of* each project's implementation, thereby evading studies of *incremental* or cumulative impacts of all changes. [6AA:1299-1300 (Decl. ¶ 10).] The Court questioned the relevance of an altered baseline since the thresholds of significance would apply regardless, to which Petitioner's counsel replied that the baseline *is* relevant since thresholds measure projects' *changes* against the baseline. [*Ibid.*]

As to the *third* issue of whether the MND's air-quality and GHG analysis could rely on traffic mitigation measures, the City's counsel argued the Project aimed to reduce traffic

congestion. [6AA:1300 (Decl. ¶ 11).] To the Court's question for legal authority to counter the City's noted argument, Petitioner pointed to its reply brief [6AA:1163], citing to *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 196 ("*California Farm*") and *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 118–119 ("*Davidon*"), holding that courts should not presume that activities designed to protect the environment would have no impacts. [6AA:1300.]

As relevant to the Tentative's *fourth* flagged issue, in response to the Court's question as to *who* will make the mitigation measures' findings that traffic impacts are reduced to insignificant levels, including through offsetting with some "beneficial impacts", the City's counsel *admitted* that, per the MND/MMRP, those findings will be made by the Planning Director or Director of Public Works, but added that he "assumed" the City Council would make those findings. [6AA:1300-01 (Decl. ¶ 12).] To support his assumption, the City's counsel pointed *not* to the *binding* MND or MMRP, but to a City official's oral statement before the Transportation and Parking Commission ("**TPC**") on February 22, 2021, stating: "All of these projects would also come back to the TPC for review and recommendation, as well as going to Council for Council approval prior to actual implementation" at AR 2569. [6AA:1300-01.]

Petitioner countered that the only binding documents were the MND/MMRP, which expressly named "Director[s]" [AR 31, 34], and that the City counsel's assumptions or staff statements that conflict with binding documents are irrelevant. [6AA:1300-01.]

As to the Tentative's flagged *fifth* issue on whether the City's actions would lead to unlawful *post-hoc* rationalization, the City's counsel provided no substantive response. [6AA:1301 (Decl. ¶ 13).] On that note, to counter the Tentative's reliance on a *Program MND*, Petitioner distinguished the term of art of Program MND from an MND *for* a program. [*Ibid.*]

At trial, Petitioner's counsel countered the Tentative's finding that most of Petitioner's cited evidence is speculation or argument and distinguished *speculation* from *reasonable inferences* based on the presence of "causal effect", quoting from *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197 ("*Medical Marijuana*"). [6AA:1301 (Decl. ¶ 14).] Petitioner's counsel also noted that, as defined in *Medical Marijuana*, Petitioner's inference that lane-removals or bulb-outs/chokers on busy, arterial streets *may* cause traffic congestion (also, admitted in the MND) and spill-over traffic into adjacent residential streets is not speculation, since there *is* a causal nexus between the proposed changes and inferences. [*Ibid.*] Petitioner further noted that in *Medical Marijuana,* the issue was that allowing marijuana dispensaries to be built only at

limited specific locations would reasonably foreseeably cause traffic and other impacts since customers would have to travel to those specific locations, and that our Supreme Court did not treat that inference as speculation. [*Ibid.*] With the same rationale, Petitioner's counsel argued it was reasonably foreseeable that the GCPP's changes, including parking-removal, *may* have impacts. [*Ibid.*]

For its closing argument, Petitioner noted that, under the Public Resources Code § 21168.9 and the applicable fair argument (*de novo*) standard of review, the court had no discretion to disregard the City's CEQA non-compliance and "shall" issue a writ. [6AA:1301 (Decl. ¶ 15).]

E. Order and Petitioner's Motion to Vacate.

On or about February 14,[7] 2023, the trial court issued its final ruling denying the Petition ("**Order**") and mailed it to the parties. [6AA:1253-1272 (Minute-Order/Order.]

On February 22, 2023, Petitioner contacted the Court's Clerk to reserve the earliest possible date for a Motion to Vacate the Judgment under Code of Civil Procedure ("**CCP**") §§663, 663a ("**Motion to Vacate**"), and reserved the earliest available date of June 23, 2023 at 9:30 am. [6AA:1276.]

On March 1, 2023, Petitioner filed its Notice and Motion to

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[7] The enclosed/mailed documents were date-stamped with the date of February 15, 2023. [6AA:1253-54, 1255-1272.]

Vacate for legal errors and use of inapplicable standard of review, along with its counsel's above-described declaration of what transpired at trial. [6AA:1273-1371.]

On March 14, 2023, the City filed its opposition, claiming that the Motion to Vacate disputed facts, and objecting to the declaration on procedural grounds; City raised no jurisdictional challenge to the noticed Motion hearing date. [7AA:1450-1467.]

On March 20, 2023, Petitioner filed its reply, rebutting the City's misrepresentations of facts and law. [8AA:1492-1503.]

On June 12, 2023, the City filed a Notice Regarding the Jurisdictional Time Frame Applicable to Petitioner's Motion to Vacate, claiming the trial court lost jurisdiction on June 5, 2023 under CCP §663a(b). [9AA:1569-1572.]

On June 23, 2023, the trial court held the Motion hearing and denied the Motion for lack of jurisdiction. [9AA:1578-1580.]

F. Petitioner's Appeal of the Trial Court Decision and the Appellate Opinion.

Petitioner timely appealed the Trial Court's decision on April 18, 2023. After the parties' briefs were filed, on February 21, 2024, the Appeal Court heard extensive oral arguments of Petitioner and the City and, on May 1, 2024, issued the Opinion at issue affirming the Trial Court's ruling.

G. Petition for Rehearing.

On May 16, 2024, Petitioner filed a Petition for Rehearing, identifying the factual and legal errors in the Opinion. On May 23, 2024, the Appeal Court denied the Petition.

H. Request for Publication.

On May 21, 2024, the City and the League filed a Publication Request. The Appellate Court denied the Publication Request on May 23, 2024, and forwarded the Publication Request to the Supreme Court with a recommendation to deny it for failure to meet any of the publication grounds.

Petitioner objects to the Publication Request.

V. LEGAL DISCUSSION

A. This Court Should Grant Review to Clarify that CEQA Does Not Allow a Program MND.

At p. 32, the Opinion provides: "Protect Our Glendale argues without authority that although CEQA permits a program-level EIR, it does not permit a program-level MND. We disagree." And, at p. 34, the Opinion concludes: "CEQA thus permits program-level MNDs. (See *Pala Band of Mission Indians v. County of San Diego*, *supra*, 68 Cal.App.4th at p. 575.)"

The Opinion's reasoning and statutory interpretations endorsing Program MNDs violates CEQA and rules of statutory interpretation. First, holding that CEQA allows Program MNDs

runs counter to the MND's own definition under CEQA and Guidelines, whereby an MND is proper only if the project proponent commits to mitigation measures that "clearly" mitigate impacts to less than significant levels, where such specific mitigation measures are identified and incorporated in the MND before the MND is released to the public. See Public Resources Code §§ 21064.5, 21157.5 (a)(2); Guidelines §§ 15369.5, 15064 (f)(2); 15070 (b)(1). Stated differently, CEQA allows an MND where: (1) mitigation measures "*clearly*" reduce impacts; (2) mitigation measures clearly reduce impacts to "*insignificant*" levels; and (3) such fully enforceable and effective mitigation measures are formulated and "*incorporated"* into the MND *before* the MND is released to the public – not years after, during the implementation phase, and outside of the public eye, as the City contended and the Opinion allowed. (*Id.*)

Simply put, an agency cannot legally or legitimately claim that impacts will be "clearly" reduced to "insignificant" levels to warrant an MND, while simultaneously claiming that it is yet to *study* impacts and determine whether and how to mitigate, as well as propose illusory mitigation measures relying solely on meeting thresholds of significance yet to be determined. The Opinion notably fails to address Petitioner's above-noted legal authority and arguments as to why CEQA does not allow Program MNDs. [AOB 56, 62.]

Moreover, as also detailed in Sections V.B-C, *infra,* holding that CEQA allows Program MNDs runs counter to various CEQA provisions and prohibitions against deferred mitigation (Guidelines § 15126.4(a)(1)(B)) and deferred studies (Guidelines § 15004(a)-(b) [project must be approved after studies, which, in turn, must occur as early as possible to enable meaningful consideration of impacts]); express provision that tiering (i.e., conducting a more general CEQA review of a plan in a Program EIRs, followed by a more specific CEQA review and specific EIRs when specific development projects are identified) is not an excuse to defer studies (Guidelines § 15152(b)); and the provision that an agency may not rely on thresholds alone to claim that impacts will be less than significant (Guidelines § 15064 (b)(2)).

Second, while citing to *Pala Band of Mission Indians v. Cnty. of San Diego* (1998) 68 Cal.App.4th 556, 580 ("*Pala*") in support of its categorical reasoning, the Opinion failed to address Petitioner's distinction as to why *Pala* is inapposite [AOB 67; ARB 14-15 & 68; see also Oral Argument February 21, 2024]. Notably, even the leading CEQA treatise Kostka & Zischke, Practice Under Cal. Environmental Quality Act, co-authored by the City's Counsel Michael Zischke, does not present *Pala* as sanctioning a Program MND.

Third, to further support the City's wholly unsupported contention that CEQA allows Program MNDs, the Opinion (at pp.

35-37) misreads the reasoning in the California Supreme Court's *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 945 ("*San Mateo*"), claiming that: "the Supreme Court implicitly endorsed program-level MNDs by holding that to treat such an MND as a tiered EIR would 'disregard the substance of the [agency's environmental] conclusions.'"

As Petitioner pointed out, however, our Supreme Court in *San Mateo* declined to entertain the notion of a Program MND, since – by mere virtue of findings required to proceed with an MND – the agency had concluded that the impacts *have been* mitigated fully. [Appellant's Opening Brief ("**AOB**"), p. 67; Appellant's Reply Brief ("**ARB**"), p. 74.]

Fourth, while the Opinion questions it, the *only* CEQA clearance that is used for plans and policies for which further CEQA review is contemplated is tiered EIRs – *not* MNDs:

> Where the proposed project " 'encompasses a wide spectrum, ranging from the adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate [site-specific] impact,'" **CEQA mandates the use of tiered EIR's**. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal. App. 4th 729, 740 [Cit. omit.], citing *Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1315 [Cit.

omit.]; § 21093, subd. (b).) " 'Tiering' refers to the coverage of general matters in broader EIR's (such as on general plans or policy statements) with subsequent narrower EIR's or ultimately site-specific EIR's incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared." (CEQA Guidelines, § 15385.)

Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1143 (bold emphasis added).

Fifth, the Opinion's construing CEQA or Guidelines to allow Program MNDs errs as it violates the well-settled rules of statutory construction. The Opinion fails to acknowledge that – as Petitioner noted [AOB 67, ARB 14-15 & 68, 70-71] – all references in Guidelines as to program-level documents reference *solely* EIRs. E.g., Guidelines §§ 15152 (g)-(h) (tiering/program EIR, master EIR), 15168 (Program EIRs). As such, under the statutory interpretation maxim *expressio unius est exclusio alterius:* "The expression of some things in a statute necessarily means the exclusion of other things not expressed." *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852. It follows that, since CEQA only mentions EIRs for all program-level documents and does not reference a Program MND, Program MNDs are necessarily excluded from program-level environmental reviews.

Further, the Opinion violated the statutory interpretation rule against inserting or adding words in a statute. As in the case of any legislation, when CEQA's statutory language is unambiguous, courts must "presume the Legislature meant what it said, and the plain meaning of the statute controls." *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 45. As this Court stated:

> "'In the construction of a statute ... the office of the judge is simply to ascertain and declare what is in term or in substance contained therein, not to insert what has been omitted or omit what has been inserted....' We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." *California Fed. Savings and Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.

And yet here, the Opinion adds "Program MND" to the list of CEQA clearances under Guidelines §§ 15152 (g)-(h), 15168.

As yet another violation of rules of statutory interpretation, the Opinion fails to ascertain the legislative intent of the statute and instead interprets CEQA in a way so as to defeat its intent, leading to mischief and absurd results. In the words of the Court:

> We must follow the construction that "comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose

of the statute, and avoid an interpretation that would lead to absurd consequences." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246, 40 Cal.Rptr.2d 903, 893 P.2d 1224.) Further, we must read every statute, " 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' " (*Pieters, supra,* 52 Cal.3d at p. 899, 276 Cal.Rptr. 918, 802 P.2d 420, quoting *Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 814, 114 Cal.Rptr. 577, 523 P.2d 617.)

Chaffee v. San Francisco Library Com. (2004) 115 Cal.App.4th 461, 467–468.

The Opinion's construction of CEQA and Guidelines as if allowing Program MNDs defeats the apparent and express rules of construing CEQA under Guidelines section 15003 (f): "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)"

Interpreting CEQA to allow an MND – where no meaningful in-depth review of impacts has occurred and where CEQA requires a low-threshold non-deferential fair argument standard of review and mandates to resolve all doubts in favor of requiring an EIR [AOB 32 (Review is de novo, *with a preference for resolving doubts in favor of environmental review* (*Aptos*

Council v. Cnty. of Santa Cruz (2017) 10 Cal.App.5th 266)] – to defer studies of impacts and their mitigation to a later date fails CEQA's goal and statutory interpretation rule under Guidelines section 15003 (f) to afford the best possible protection of the environment and defeats CEQA's safeguards and policies.

Similarly, the Opinion's endorsing of the flawed concept of a Program MND leads to absurd consequences and mischief, as here, where an agency that *admittedly* has not even performed studies to determine the scope of the proposed activity's impacts in order to then determine *how* the agency can or will mitigate impacts and *how* effective such mitigation measures can be, can nonetheless assert that its mitigation measures will "clearly" reduce impacts to "insignificant" levels, as required by CEQA under Public Resources Code § 21064.5.

Procedurally, the Opinion's failure to require the *City* to provide any legal authority on point to support its novel affirmative contention that CEQA allows Program MNDs and instead shifting the City's burden to Petitioner to prove the negative and disprove the City's erroneous and unsupported contention, as well as the Opinion's construction of CEQA, Guidelines, and case law in a way that conflicts with CEQA, statutory construction rules, and case law, is a critical error that prejudicially allowed the Court to uphold the City's CEQA determinations and the MND.

As such, this Court should grant review and settle this purely legal and critical issue of whether CEQA allows Program MNDs and to confirm that it does not under the applicable law.

B. This Court Should Grant Review to Clarify that a Deferred *Study* of Impacts Is Not *Mitigation* to Warrant an MND.

Derivative of its erroneous legal conclusion that CEQA allows Program MNDs, the Opinion suggests – as interpreted and contended by the Publication Request (p. 4) – that an agency's commitment to *study* impacts is equivalent to a commitment to *mitigate* and is sufficient as a mitigation measure to warrant an MND. This position, however, runs counter to CEQA's very definition of an MND, requiring to ensure that impacts are "clearly" mitigated and reduced to the level of significance "before" the MND is released to the public under Public Resources Code §§ 21064.5 & 21157.5. Simply put, it is impossible to mitigate impacts without first quantifying such impacts and determining and showing what kind of mitigation will clearly reduce those impacts to less than significant impacts, as required for an MND, and whether such mitigation will even be feasible in light of various environmental factors.

The Opinion's equation of study and mitigation in an MND setting is also contrary to settled law that, where, as here, the city acknowledges an environmental impact, it is required to do

more than agree to a future study of the problem. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 195–196 ("questions of whether mitigation measures will be required, of what they might consist, and how effective they will be are left unanswered. Given the City's recognition that Gateway II *will* cause urban decay, it was required to do more than agree to a future study of the problem"). As the Court in *California Clean* noted, "CEQA requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount." (*Id.* at 520.)

The mischief of the Opinion's treatment of studies as sufficient mitigation to warrant an MND is manifest: agencies may avoid preparing an EIR and studying impacts they identify as potentially significant and instead commit solely to studies of impacts at later times, after the approval of the project and before its implementation, as the City did here. This, in turn, is inconsistent with the well-settled law that post-approval studies amount to nothing more than post-hoc rationalization which our Supreme Court has repeatedly condemned. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81 ("The resolution …. represents simply an example of that "*post hoc* rationalization" …. which the courts condemned"); see also *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 ("the time to analyze the impacts of the Project and to formulate

mitigation measures to minimize or avoid those impacts was during the EIR process, *before* the Project was brought …. for final approval.")

As such, this Court should grant review and settle this purely legal and critical issue of whether a study of impacts amounts to mitigation to warrant an MND and to confirm that it does not under the applicable law.

C. This Court Should Grant Review to Clarify that Meeting Thresholds of Significance Is Insufficient Mitigation to Warrant an MND.

Even though Petitioner repeatedly raised the issue that reliance on thresholds of significance alone cannot legally justify an MND [AOB 65-66, ARB 65], the Opinion failed to address this critical issue and legal authority, especially at pp. 28-32. And yet, by virtue of upholding the City's MND which solely proposed that traffic impacts will be reduced, if at all, to levels below thresholds of significance, the Opinion implicitly agreed with the City that such mitigation is sufficient to warrant an MND.

And yet, as Petitioner repeatedly argued, thresholds of significance alone are insufficient to support a conclusion of an agency that impacts will be less than significant, as a matter of law: ".... Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be

significant." Guidelines § 15064 (b)(2); see also, Guidelines § 15189 (a) ("The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project"); Public Resources Code §§ 21157.5 (a)(2) & 21159.2 (a) (MND's requirements).

As also earlier noted, reliance on thresholds of significance was specifically held to be improper for MNDs in *CBE, supra,* 103 Cal.App.4th at 111-114, where the Court rejecting reliance on regulatory compliance in MNDs and held that a respective Guidelines provision was inconsistent with CEQA and hence invalid.

The Opinion's omission of and failure to address this critical issue about the sufficiency of thresholds of significance for mitigation of impacts for an MND – as also identified by Petitioner's Petition for Rehearing (p. 30) – was prejudicial since it endorsed the City's failures to duly mitigate a long-term plan's admittedly significant traffic impacts by summarily claiming that impacts will be reduced to levels below thresholds of significance and even thresholds that are yet to be identified. (Opinion, p. 31.)

As such, this Court should grant review and settle this purely legal and critical issue of whether meeting thresholds of significance alone is sufficient to warrant an MND or conclude

that impacts will indeed be clearly mitigated to levels of insignificance, and to confirm that it is not.

D. This Court Should Grant Review to Clarify that the Phrase to "Implement the Circulation Element" under Vehicle Code Section 21101(g) Does Not Mean "To Be Consistent with the Circulation Element" and that Cities Should Comply with the Vehicle Code Section 21101 When Implementing Street-Modifications to Control Traffic.

At pp. 38-39, the Opinion failed to address the *procedural* requirements of the Vehicle Code challenged by Petitioner and ignored the limitations by the State on the authority of the City to make street changes aimed to control traffic. Instead, the Opinion relied on a quote from *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 556 ("*Rumford*") to hold that street-changes may be made by cities under their powers to construct and maintain streets. Notably, the Opinion failed to address Petitioner's contentions that *Rumford* supports Petitioner's challenge in that it distinguishes street widening or narrowing for purposes of construction and maintenance of streets from street-changes for purposes of controlling traffic, as here. [AOB 77-78.]

The Opinion's failure to address Petitioner's noted distinction in *Rumford* and instead reliance on a *partial* quote

from *Rumford* resulted in a legal error and mischief, whereby the Opinion implicitly endorsed the City's long-term plan of numerous street-modifications without requiring compliance with the Vehicle Code. As the Court stated in *Rumford:*

> Relatively permanent, physical changes in the width or alignment of roadways that are effected by islands, strips, shoulders, and curbs clearly are within the construction and maintenance power (*Walnut Creek, supra*) though of course they may alter patterns of traffic.
>
> The Berkeley barriers, **however**, make **no basic structural** changes. **Like signs** and **signals** they leave existing surfaces in use; **their only effect** is to **control** the **circumstances** of **use**. They are **not part** of the **street** itself; they are rather "devices . . . placed ***upon*** a street" (*§ 21401*; italics added) "*for the* ***purpose*** of regulating, warning, or guiding traffic" (*§ 440*; italics added). Thus it appears that they are traffic control devices permissible only if they "conform to the uniform standards and specifications promulgated by the Department of Transportation." (*§ 21401*.)

Rumford, supra, 31 Cal.3d at 556-557 (Ital. orig., bold emph. added).

Due to this cursory review of Petitioner's Vehicle Code challenge, the Opinion failed to address a critical legal issue

raised by Petitioner that the Vehicle Code section 21101(g)'s requirement that street changes "implement the circulation element of a general plan" (hereinafter, "*implementation requirement*") is not the same as a requirement that those street changes "be consistent with the circulation element of a general plan" (hereinafter, "*consistency requirement*"); and that, before approving any street modifications for the purpose of regulating traffic, the City had to meet the *implementation requirement* and ensure that street changes "implement" the circulation element of the City's general plan, which the City failed to do.

While not addressing the issue directly, the Opinion nonetheless indirectly equated the *implementation requirement* with the *consistency requirement*. It states: "subdivision (g) of section 21011 [] mandates that street ingress/egress restrictions *be consistent* with the circulation element of a city's general plan, by restricting access to streets in a manner inconsistent with its general plan" (Opinion, p. 10, emph. added). The Opinion, however, conflicts with the express terms of the Vehicle Code section 21101(g), which provides: "Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features *to implement* the *circulation* element of a general plan…." (emph. added).

First, as Petitioner detailed [AOB 69-75; ARB 76-79] – but the Opinion failed to address – the Opinion's use of the phrase "to

be consistent with" for Vehicle Code section 21101(g) is contrary to the express terms of the Vehicle Code.

Second and critically, interpreting the Vehicle Code to only require consistency with the circulation element impermissibly broadens the narrowly-defined construction and narrowly tailored grant of limited authority by the State under the Vehicle Code sections 21 and 21101. To wit, such interpretation upholds *any* local agency action, as here, that can be remotely claimed to be consistent with or further the circulation element. See, *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847, 858 ("*Poway*" [rejecting similar broad constructions of the Vehicle Code]).

Third and substantively, as reasoned in *Poway*, at 859, the Legislature incorporated the Planning and Zoning Law's specific due process requirements by referencing the circulation element in the Vehicle Code § 21101(g) [formerly, (f)]. Among such due process requirements are: "Where amendment of a general plan is required, it must be accomplished pursuant to Government Code section 65350 et seq. Under section 65357, subdivision (b) of that article, copies of documents amending a general plan, including the diagrams and text, must be made available to the public…" *Poway*, 229 Cal.App.3d at 861. As further distinguished by *Poway* at 863, the Planning and Zoning Law distinguishes *implementation* from *consistency* under Gov. Code §§ 65450 and

65454, respectively. Simply put, conflating *consistency* with *implementation* in Vehicle Code section 21101(g) improperly removes the due process safeguards therefrom.

As a manifest mischief of such due process violation, the City's public notices about its challenged GCPP misleadingly presented GCPP as a plan for a "safer, more pleasant, and more convenient place for walking" without any notice about the proposed lane-removals or bulb-outs. [AR 3866-68, 4713-1.] The result is a City-approved and now Court-endorsed long-term citywide plan of massive street-changes for purportedly a span of 25 years, which nonetheless precluded and evaded informed and meaningful public participation that is mandated and guaranteed by the Vehicle Code and the Planning and Zoning Law.

As such, this Court should grant review and settle this purely legal and critical issue of whether the Vehicle Code section 21101(g)'s phrase and procedural requirement that street changes "implement the circulation element of a general plan" is coterminous with a requirement that street changes "are consistent with" or "further" the circulation element of the general plan" and to confirm that it is not.

VI. CONCLUSION.

For all of the foregoing reasons, Petitioner prays that this Court grant review of the Opinion of the Court of Appeal, to settle

four important questions of law, and to restore the will of the people to ensure that the environmental protection and orderly growth under CEQA, Vehicle Code, and Planning and Zoning Law are not subverted through incorrect statutory interpretations, but are instead scrupulously enforced.

DATED: June 10, 2024

NAIRA SOGHBATYAN, ATTORNEY AT LAW

By: */s/ Naira Soghbatyan*
NAIRA SOGHBATYAN
Attorney for Appellant
PROTECT OUR GLENDALE

WORD COUNT CERTIFICATE

The undersigned states that the word count for this PETITION FOR REVEW, exclusive of tables, captions, signature block and this certificate, according to Microsoft Word is: 8,400.

DATED: June 10, 2024

NAIRA SOGHBATYAN, ATTORNEY AT LAW

By: */s/ Naira Soghbatyan*
NAIRA SOGHBATYAN
Attorney for Appellant
PROTECT OUR GLENDALE

EXHIBIT A

COURT OF APPEAL OPINION

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PROTECT OUR GLENDALE, Petitioner and Appellant, v. CITY OF GLENDALE et al., Respondents.	B329274 (Los Angeles County Super. Ct. No. 21STCP01247)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Naira Soghbatyan for Petitioner and Appellant.

Cox, Castle & Nicholson, Michael H. Zischke, Lisa M. Patricio, Morgan L. Gallagher, Edward G. Schloss; City of Glendale, Michael J. Garcia, Gillian van Muyden, Yvette Neukian for Respondents.

The Glendale City Council and Glendale's Community Development Department (collectively, Respondents or the City) formulated and approved a 25-year plan to improve the pedestrian experience within the City of Glendale, declaring that with implementation of two mitigation measures relating to transportation, the plan would have no significant environmental impact. Protect Our Glendale, a non-profit unincorporated association, petitioned the superior court for a writ of mandate directing the City to vacate its approval of the plan and prepare an environmental impact report (EIR) prior to any future approvals. Protect Our Glendale argued that in approving the pedestrian plan, the City failed to comply with Public Resources Code section 21000, et seq., the California Environmental Quality Act (CEQA), and the plan itself violated Vehicle Code section 21000.[1]

The trial court denied the petition, finding that Protect Our Glendale failed to establish the City violated CEQA, and the pedestrian plan did not violate the Vehicle Code. We agree and affirm.

BACKGROUND

A. The Project

On March 23, 2021, the City approved the "Glendale Citywide Pedestrian Plan (the Plan or Project)," which it described as "a comprehensive, centralized, and coordinated approach to improving pedestrian infrastructure, safety, and demand in Glendale."

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[1] Undesignated statutory references will be to the Public Resources Code.

The Plan proposed potential permanent road modifications to be considered in the next 25 years, including lane removals, curb bulb-outs, greenways, bicycle lanes, removal of approximately four parking spaces at one intersection, replacement of one traffic lane with parking spaces, and new street designations as Pedestrian Priority Streets.[2]

The Plan concerned 16 traffic "corridors," basically intersections. The proposed changes were:

(1) Signage—add or remove crosswalks, repaint all crosswalks from parallelograms to "continental" stripes, shift crosswalks 30 feet up or down the street, shift bus stop locations;

(2) Refuge Islands—construct median refuge islands in the middle of the street which intersect crosswalks;

(3) Signals—change signal timing to allow for pedestrian head starts, replace "circular flashing beacons" with "rectangular rapid flashing beacons," add protected left-turn arrows;

(4) Turn Pockets—"consider" removing left-turn or right-turn pockets;

(5) Sidewalks—widen sidewalks, fill in a "slip" lane (right-turn lane separated from the main roadway by a refuge island) with landscaping; remove (approximately four) parking spaces near two intersection corners and replace them with curb extensions;

(6) Lane Replacements—replace traffic lanes with bicycle lanes, diagonal parking spaces, bus-stop lanes and bus stops;

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[2] A greenway is a corridor of undeveloped land preserved for recreational use. A bulb-out is a curb expansion which extends the sidewalk into the parking lane, for example to narrow the roadway to shorten the crossing distance for pedestrians or to facilitate transit boarding.

install a floating bus stop (a dedicated bus lane separated from traffic by a refuge island);

(7) Curb Ramps and Speed Bumps—reconstruct a curb ramp; and add speed bumps.

The biggest changes involved turning six-lane streets to four lanes by widening curbs and/or painting bike and bus lanes and diagonal parking spaces.

B. Environmental Impact

1. Study

The City examined 21 areas of potential environmental impact: aesthetics, biological resources, geology/soils, hydrology/water quality, noise, recreation, utilities/service systems, agriculture and forest resources, cultural resources, greenhouse gas emissions, land use/planning, population/housing, transportation, wildfire, air quality, energy, hazards/hazardous materials, mineral resources, public services, tribal cultural resources, and "mandatory findings of significance."

As to each area, the City posed between two and seven questions. For example, the City examined whether the project would obstruct an existing mitigation measure or result in a cumulative impact in connection with other projects.

As to each question, the City identified whether the project would have a "potentially significant impact," a "less than significant impact with mitigation incorporated," a "less than significant impact" or "no impact," and gave a rationale for the selection.

Examples of the rationales were: (1) Many improvements—e.g., curbs, gutters, rights-of-way, signalizations—would replace existing improvements, resulting

in no net impact; (2) "An increase in walking as an alternative to use of the automobile could . . . reduce overall vehicular emissions in the City and improve regional air quality"; and (3) the City's standard construction-period emissions and dust control measures, which were consistent with SCAQMD rules, would reduce air quality impacts from minor ground disturbances during construction to less than significant levels.

a. Air Quality and Greenhouse Gas Emissions

Regarding potential impacts to air quality and greenhouse gas emissions, the City determined that impacts would be less than significant, and no mitigation was required.

b. Transportation

The City assessed four potential transportation areas of concern: Would the project: (1) Conflict with the City's traffic plan? (2) Conflict with CEQA Guidelines section 15064.3? (3) Substantially increase hazards? Or (4) Result in inadequate emergency access?

The City determined that no significant environmental impact could occur with respect to a conflict with the City's traffic plan, increased hazards or emergency access. However, there was a concern that the Plan could conflict with CEQA Guidelines section 15064.3.

CEQA Guidelines section 15064.3 was modified in 2018 to provide that in order to determine the significance of a project's transportation impacts, an agency must measure, either quantitatively or qualitatively, the "amount and distance of automobile travel attributable to a project," or the "vehicle miles traveled," instead of the "level of service" impacted by the project. (CEQA Guidelines, § 15064.3(a).) The Guideline provided that

"the effects of the project on transit and non-motorized travel" were relevant to measuring vehicle miles traveled, but "a project's effect on automobile delay" would no longer constitute a significant environmental impact. (*Ibid.*)

The Guideline provided that "[v]ehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact." (CEQA Guidelines, § 15064.3(b)(1).) The Guideline provided that agencies "have discretion to determine the appropriate measure of transportation impact consistent with CEQA." (CEQA Guidelines, § 15064.3(b)(2).)

No Plan implementation would generate new vehicle trips or increase the existing traffic load, the City explained, but components of the Plan such as lane removal and bulb-outs could reduce the vehicle capacity of an intersection, and signal timing adjustments favoring pedestrians could slow down traffic, which could result in "queuing that could affect traffic operations at adjacent intersections," for example by prompting drivers to make detours.

The City stated it was "currently in the process of developing [vehicle miles traveled] standards and [would] perform a [vehicle miles traveled] analysis, as appropriate, where a Plan component [was] authorized for implementation."

The City found that any vehicle miles traveled impact could be reduced to insignificant levels through implementation of a Mitigation Monitoring and Reporting Program. The Mitigation Monitoring and Reporting Program comprised two mitigation measures, TRANS-1 and TRANS-2.

TRANS-1 provided that prior to eliminating vehicle travel lanes, the City "shall" prepare a vehicle miles traveled analysis, and if applicable a level of service and queuing analysis, to

determine whether the project would cause a significant impact according to city thresholds or would result in queuing that could affect traffic operations at adjacent intersections.

If the proposed improvement would result in a significant impact, TRANS-1 provided that the City "shall" either modify the project to bring the impact within city thresholds or make findings that beneficial impacts reduced the adverse impact to "a less-than-significant level."

In TRANS-2, the City committed to ensure that bulb-outs would not extend beyond the parking lane into through lanes of any roadway far enough to eliminate or narrow travel lanes below minimum widths as described in the City's "Circulation Element."

If eliminating or narrowing through travel lanes was necessary, the City committed to preparing a vehicle miles traveled and/or level of service or queuing analysis to determine whether the project would cause a significant impact according to city thresholds or would result in queuing that could affect traffic operations at adjacent intersections.

If the proposed bulb-out would result in a significant impact, TRANS-2 provided that the City "shall" either modify the bulb-out to bring the impact within city thresholds or make findings that beneficial impacts reduced the adverse impact to "a less-than-significant level."

The City found that all of the Plan's other proposed improvements, for example creation of greenways and signage changes, would have no significant environmental impact.

On April 22, 2021, the City filed a Notice of Determination with the Los Angeles County Clerk, advising that the City had approved the Plan and asserting in a Mitigated Negative

Declaration (MND) that with implementation of the Mitigation Monitoring and Reporting Program (i.e., TRANS-1 and TRANS-2), the Plan would have no significant effect on the environment.

c. Parking

The City did not study the impact of adding or removing parking spaces.

C. Administrative Challenge

On March 23, 2021, the day the City approved the Plan, Naira Soghbatyan, Protect Our Glendale's attorney, emailed a 15-page letter to the Glendale City Council setting forth her own objections to the Plan. (It is not clear on whose behalf Soghbatyan wrote the letter, as in it she stated both that her firm represented Glendale residents and that *she* "strongly urge[d]" the City to reject the Plan.)

1. Procedural Challenge

Soghbatyan mainly criticized the procedure followed by the City to approve the Plan and the lack of evidence supporting it. She argued: (1) The Plan description was so misleading as to amount to ineffective notice; (2) the project description was silent on various concepts and otherwise incomplete; (3) the Plan disregarded "the changed reality and the dangers revealed by the Covid-19 pandemic"; and (4) the MND was based on circular and otherwise unsupported reasoning.

Soghbatyan argued that the City's finding that the Plan would cause no adverse greenhouse gas effect assumed that increased bus use would decrease emissions by removing cars from traffic. This assumption was flawed, she argued, because in the Covid era, buses would be underutilized. She supported the argument with a 2010 article written by Thomas Rubin, a Southern California Rapid Transit District official, who stated

that bus transit did not reduce greenhouse gas emissions over car transit because not enough people used buses.

Soghbatyan argued that the City's reliance on the beneficial effects of transit-use, biking, and walking to reduce transportation impacts was misplaced because people would be more at risk of contracting Covid if they took buses, and bicycling and walking could be hazardous. She supported the argument with a link to a 2020 homeowner's association objection to a City of Los Angeles EIR concerning the construction of two skyscrapers in Hollywood. She also supported the argument with links to CDC and New York State Department of Health Web sites describing dangers to pedestrians, both of which, ironically, stated that measures such as wider sidewalks and refuge islands like those proposed by the City would increase pedestrian safety.[3]

2. Substantive Challenges

Substantively, Soghbatyan argued the Plan would result in adverse environmental impacts in the areas of transportation, air pollution, greenhouse gases, historical resources, aesthetics, public services, land use, and mandatory findings, but the only evidence she offered in support was a four-time reference to "common sense."

Soghbatyan also argued the Plan violated the Vehicle Code, and the Mitigation Monitoring Program violated CEQA by deferring mitigation.

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[3] Pedestrian Safety | Transportation Safety | Injury Center | CDC; <https://www.cdc.gov/transportationsafety/pedestrian_safety/index.html> (as of April 30, 2024). Pedestrian Safety: It's No Accident (ny.gov); <https://www.health.ny.gov/prevention/injury_prevention/pedestrians.htm> (as of April 30, 2024).

D. Mandate Proceedings

On April 22, 2021, Protect Our Glendale, represented by Soghbatyan, instituted these writ proceedings, seeking a traditional writ of mandate compelling the City to vacate its approval of the plan and prepare an EIR prior to any future approval. Protect Our Glendale alleged the City failed to comply with CEQA by summarily dismissing all environmental impacts relating to air quality, greenhouse gas emissions, land use, public services and human beings, and by proposing illusory transportation mitigation measures and improperly deferring those measures.

Protect Our Glendale also alleged two violations of the Vehicle Code. It alleged that adoption of the Plan violated subdivision (a)(1) of section 21011 of the Vehicle Code, which governs street closures, by improperly closing off streets, and subdivision (g) of section 21011, which mandates that street ingress/egress restrictions be consistent with the circulation element of a city's general plan, by restricting access to streets in a manner inconsistent with its general plan.

On February 14, 2023, the trial court denied Protect Our Glendale's petition, finding the City's proposed mitigation measures were permissible and adequate, and the Plan did not violate the Vehicle Code.

Protect Our Glendale appeals.

DISCUSSION

A. CEQA

Protect Our Glendale contends there is substantial evidence of a fair argument that the Plan may have individual and cumulative impacts to transportation, air quality, greenhouse gas emissions, land use, public services and human

beings. Protect Our Glendale argues that in its MND the City summarily dismissed all impacts except for transportation, for which it proposed illusory mitigation measures which it then improperly deferred.

1. Applicable Law

CEQA "establishes a comprehensive scheme to provide long-term protection to the environment. It prescribes review procedures a public agency must follow before approving or carrying out certain projects." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1092.)

CEQA Guidelines are regulations adopted to implement CEQA, codified at California Code of Regulations, title 14, chapter 3, sections 15000-15387. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 792, fn. 11.)

"Under CEQA and its implementing guidelines, an agency generally conducts an initial study to determine 'if the project may have a significant effect on the environment.' " (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist*. (2016) 1 Cal.5th 937, 945 (*Friends of College of San Mateo Gardens*); CEQA Guidelines, § 15063.)

If the initial study reveals no substantial evidence that the project may have a significant environmental effect, the agency must prepare a negative declaration to that effect. (CEQA Guidelines, §§ 15063(b)(2), 15070; *San Bernardino Valley Audubon Soc. v. Metropolitan Water Dist*. (1999) 71 Cal.App.4th 382, 390.)

"If there is substantial evidence that the project may have a significant effect on the environment," then the agency must prepare an EIR before approving the project. (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 945.)

However, and as happened here, if significant environmental impacts are identified but project revisions will avoid or mitigate them such that clearly no significant effect on the environment would occur, the agency may prepare an MND. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 776-777 (*Parker*).)

Such mitigation measures are themselves subject to challenge, however, on the ground that they are insufficient to mitigate the project's impacts. (*Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.4th 665, 693.) If the lead agency is presented with a fair argument that a project may have a significant effect on the environment notwithstanding mitigation measures, and that argument is supported by substantial evidence, the agency must prepare an EIR. (CEQA Guidelines, § 15064(f)(1).)

A party seeking mandamus bears the burden to demonstrate that substantial record evidence supports any proffered fair argument that the project will have a significant adverse impact. (*McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 87.) If the party seeking mandamus fails to meet this burden, the MND must be upheld. (*Parker*, *supra*, 222 Cal.App.4th at p. 786.)

2. Standard of Review

We review compliance with CEQA for a prejudicial abuse of discretion. Prejudicial abuse of discretion exists " 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' " (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.)

We determine de novo whether an agency has employed correct procedures, " 'scrupulously enforc[ing] all legislatively mandated CEQA requirements.' " (*California Coastkeeper Alliance v. State Lands Comm'n* (2021) 64 Cal.App.5th 36, 55.)

" 'In reviewing the adoption of a[negative declaration], our task is to determine whether there is substantial evidence in the record supporting a fair argument that the Project will significantly impact the environment; if there is, it was an abuse of discretion not to require an EIR. [Citation.] " 'Whether a fair argument can be made is to be determined by examining the entire record.' " [Citation.]' [Citation.] 'Although our review is de novo and nondeferential, we must give the lead agency the benefit of the doubt on any legitimate, disputed issues of credibility.' " (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 684.)

To determine whether substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment, " 'deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.' " (*Parker*, *supra*, 222 Cal.App.4th at p. 778.) In this sense, whether the lead agency's record contains substantial evidence supporting a fair argument is treated as a question of law. (See, e.g., *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 289.)

Substantial evidence includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (§ 21080, subd. (e)(1).) Argument, speculation, and unsubstantiated opinion or narrative do not constitute substantial evidence. (§ 21080, subd. (e)(2).)

3. Application

a. Burden of Proof

As stated above, a lead agency must prepare an EIR if there is a fair argument, supported by substantial evidence, that a project may have a significant effect on the environment notwithstanding mitigation measures. (CEQA Guidelines, § 15064(f)(1).) As the appellant, Protect Our Glendale bears the burden of identifying in the record substantial evidence of a fair argument that the Plan may have a significant effect on the environment that would not be mitigated. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193.)

Protect Our Glendale contends the project may have significant environmental effects in the areas of transportation, air quality, greenhouse gas emissions, land use, and mandatory findings. However, it identifies no evidence supporting its contentions. Instead, it relies exclusively on Soghbatyan's letter of March 23, 2021, which itself adduced no evidence other than "common sense" to support her substantive objections to the Plan.

Protect Our Glendale also criticizes the City's procedure in adopting the MND, specifically the lack of evidence supporting it, the validity of its assumptions and wisdom of its goals, and the adequacy of its explanations. However, flaws in adopting an MND do not constitute substantial evidence of an adverse environmental impact.

To be sure, an agency will "not be allowed to hide behind its own failure to gather relevant data. . . . CEQA places the burden of environmental investigation on the government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may

actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 [fact that initial study checklist was incomplete and marked every impact "no" supported fair argument that project would have significant environmental effects].)

"However, the ultimate issue is not the validity of the initial study, but rather the validity of the lead agency's adoption of a negative declaration. Even if the initial study fails to cite evidentiary support for its findings, 'it remains the appellant's burden to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact.' [Citation.] 'An absence of evidence in the record on a particular issue does not automatically invalidate a negative declaration. "The lack of study is hardly evidence that there *will* be a significant impact." ' " (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379; see *Aptos Council v. County of Santa Cruz*, *supra*, 10 Cal.App.5th at p. 295 ["Pointing to a lack of evidence in the administrative record does not by itself constitute substantial evidence of a significant environmental impact"].)

We divide the discussion below into three categories: (1) Non-transportation impacts (i.e., relating to air quality and greenhouse gas emissions); (2) unmitigated transportation impacts; and (3) mitigated transportation impacts. The City found the Plan would cause no significant non-transportation impacts and no significant transportation impacts from selected improvements such as lane redesignations and sign changes. The City found that significant transportation impacts *could*

arise from other improvements, specifically lane removals and the installation of bulb-outs, but those impacts would be mitigated to insignificance by TRANS-1 and -2.

For reasons we will explain, Protect Our Glendale has not made a sufficient showing as to any of these three categories. The Plan concerns long-term goals, not implementation, and contemplates only modest changes to already-developed land. The record does not reflect any fair argument that the project may have a significant effect on the environment that would not be mitigated.

b. Non-Transportation Impacts: Air Quality, Greenhouse Gas Emissions, Land Use, Public Services, Human Beings, and Mandatory Findings

As noted, the City examined 21 areas of potential environmental impact: aesthetics, biological resources, geology/soils, hydrology/water quality, noise, recreation, utilities/service systems, agriculture and forest resources, cultural resources, greenhouse gas emissions, land use/planning, population/housing, transportation, wildfire, air quality, energy, hazards/hazardous materials, mineral resources, public services, tribal cultural resources, and "mandatory findings of significance."

It found the Plan would cause no significant environmental impact as to any area except one—transportation.

Protect Our Glendale contends that in addition to transportation, there is substantial evidence of a fair argument that the Plan may have individual and cumulative impacts on air quality, greenhouse gas emissions, land use, public services and human beings. It argues the City failed to make certain

mandatory findings and summarily dismissed these impacts in its MND.

The record is to the contrary.

The Plan recommends improvements (e.g., curb extensions, median islands, crosswalk markings, bulb-outs and lane modifications) which do not themselves generate more vehicle trips or congestion that would substantially increase vehicular pollutants or greenhouse gas emissions. The Plan is designed to make walking more attractive, and thus reduce driving, causing reduced emissions and improved air quality. These facts supported the City's conclusion that the Plan will result in less than significant impacts on air quality, greenhouse gas emissions, land use, public services, human beings or any other category as to which mandatory findings are required.

Protect Our Glendale identifies no evidence supporting its contentions. Instead, it relies on Soghbatyan's letter of March 23, 2021, which itself adduced no evidence other than "common sense." Instead, Protect Our Glendale mainly criticizes the City's procedure in adopting its MND, specifically the lack of evidence supporting it. But even if Protect Our Glendale is correct that the Plan will not result in increased biking, walking and transit use, no evidence in the record suggests the Plan itself will have any adverse non-transportation environmental impact.

c. Unmitigated Transportation Impacts

The City found no improvements except lane removals and installation of bulb-outs would result in a cognizable environmental transportation impact. Therefore, it found no mitigation was needed as to proposed non-lane removal, non-bulb-out improvements.

Protect Our Glendale argues that to the contrary, the Plan's proposed non-lane removal and non-bulb-out

improvements will have adverse environmental impacts relating to transportation.

To support its argument, Protect Our Glendale must first identify a transportation impact resulting from a particular non-lane removal or non-bulb-out improvement and then adduce evidence that the impact will occur. It fails to do either.

1. Impact

To identify a transportation impact, Protect Our Glendale argues it is reasonably foreseeable that the Plan's proposed non-lane removal and non-bulb-out improvements, including installation of greenways and bicycle ways, may lead to "traffic congestion and related impacts."

Because the effect of traffic congestion on automobile delay is no longer a cognizable environmental impact under CEQA (Pub. Resources Code, § 21099, subd. (b)(2)), Protect Our Glendale presumably means that increased traffic congestion will cause increased vehicle miles traveled by inducing drivers to make detours. However, with one exception, it fails to explain how any non-lane removal or non-bulb-out improvement, for example installation of greenways or bicycle ways, could increase congestion.

That exception concerns parking. The Plan proposes to remove approximately four parking spaces near one intersection corner and replace them with curb extensions. It also proposes to replace one traffic lane with diagonal parking spaces. Protect Our Glendale argues that reducing parking will foreseeably cause cars to drive around, thus increasing vehicle miles traveled and causing a corresponding environmental impact. Citing *Taxpayers for Accountable School Bond Spending v. San Diego Unified*

School Dist. (2013) 215 Cal.App.4th 1013, 1053-1054 (*Taxpayers*). It argues the City failed to study this impact.

2. Evidence

In addition to identifying no transportation impacts, Protect Our Glendale identifies no evidence supporting an impact of any sort. Its citations to the record are generally to the proposed improvements themselves, which it concludes without explanation will foreseeably have transportation impacts, apparently as a matter of common sense.

(a). Street Designation Guidelines and Traffic Studies

For example, the Plan proposed to redesignate streets as pedestrian priority streets after "[d]evelop[ing] design guidelines for Pedestrian Priority Streets, including sidewalk and crossing standards (e.g., the limited curb cuts, high-visibility and decorative crossings) and public realm improvements (e.g., landscaping, trees, and amenities) that are required along Pedestrian Priority Streets." It also acknowledged that traffic studies would be required to assess potential impacts of all proposed redesignations.

Protect Our Glendale argues the Plan fails to identify these design guidelines and failed to conduct any traffic studies, which is a failure to identify and study the impacts of redesignating streets, which constitutes substantial evidence of a fair argument that the street redesignations may have significant transportation impacts. Protect Our Glendale cites without explanation *Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at page 311 and *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at pages 1378-1379, 1382 as support for the

argument, both of which involved a specific project implementation, not a plan-level document.

The argument appears to be either that a present EIR should be prepared for future guidelines and studies or that the City should not be allowed to plan for future guidelines or studies. Protect Our Glendale supports neither argument with any rationale or authority.

We fail to see how the City could study the environmental impact of future design guidelines or traffic studies. In any event, the City's purported failure to do so is not substantial evidence that street redesignations may have significant transportation impacts.

(b). Covid; Project Goals; Assumptions; and Public Opposition

Protect Our Glendale argues that the Plan is unwise because (1) the City's CEQA review occurred before the 2020 COVID pandemic, rendering its data obsolete and its conclusions inaccurate; (2) the Plan will not increase walking or biking as an alternative to automobile use, and thereby reduce emissions and improve regional air quality; (3) and several members of the public opposed the Plan on the grounds that public transportation and bicycle riding are undesirable, and the Plan would result in a "traffic nightmare." Protect Our Glendale argues that the Plan's deficiencies undermine its CEQA study.

We need express no view on these matters because even if true, the undesirability or ineffectiveness of a plan to increase walking, bicycling and public transit use is not substantial evidence of a significant environmental impact caused by that plan. Protect Our Glendale argues the City relied on its

unrealistic goals to underestimate environmental impacts, but nothing in the record supports this speculation.

(c). Parking

It is not clear that the Plan will reduce parking. The Plan proposes to remove approximately four spaces at one intersection and replace one traffic lane with a line of angled parking. The net effect appears to be to *increase* parking. *Taxpayers* concerned a project which provided 174 fewer parking spaces than needed. (*Taxpayers*, *supra*, 215 Cal.App.4th at p. 1046.) Here no evidence suggests the Plan creates a parking shortage.

(d). Cumulative Impacts

Protect Our Glendale asserts that the City failed to study the Plan's transportation impacts cumulative with several other projects in Glendale and surrounding jurisdictions, which it argues renders it "reasonably foreseeable," presumably as a matter of common sense, that the Plan may have cumulative impacts with those other projects. (See § 21083, subd. (b)(2) ["the incremental effects of an individual project are considerable when viewed in connection with . . . the effects of other current projects"]; CEQA Guidelines, §§ 15064(h)(1) [same] and 15065(a)(3) [same].)

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

"(a) The individual effects may be changes resulting from a single project or a number of separate projects.

"(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past,

present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, § 15355.)

"When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, § 15064(h)(1).)

"When there is no substantial evidence of any individual potentially significant effect by a project under review, the lead agency may reasonably conclude the effects of the project will not be cumulatively considerable, and it need not require an EIR on this basis." (*Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 701-702; see *Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles* (2019) 37 Cal.App.5th 768, 782 [same].)

As discussed above, Protect Our Glendale adduces no substantial evidence of any individual potentially significant transportation impact by the Plan. The City's purported failures to study a topic, adduce evidence supporting its conclusions, or identify guidelines to be used in the future do not themselves constitute substantial evidence of an adverse environmental impact. Therefore, the City was entitled to conclude that the

effects of the Plan would not cumulate with effects of other plans, and it was not required to prepare an EIR on this basis.

d. Mitigated Transportation Impacts

Our third category concerns mitigated transportation impacts. The City found that removing traffic lanes and installing bulb-outs could cause a conflict with CEQA Guidelines section 15064.3(b)(2), which requires an agency to evaluate a transportation project's impact on vehicle miles traveled. The City explained that lane removal and bulb-out installation could cause drivers to make detours, thus increasing vehicle miles traveled to the point they constitute a significant environmental impact. The City explained it was in the process of developing vehicle miles traveled standards, and before implementing any improvement, i.e., removing a traffic lane or installing a bulb-out, it committed to measuring the impact of the improvement on vehicle miles traveled, and mitigating any impact to insignificance.

Protect Our Glendale agrees that because the Plan's proposed improvements would occur on busier arterial streets, it is reasonably foreseeable that traffic would re-route or spill over into adjacent non-arterial streets and residential neighborhoods.

Although TRANS-1 and -2 propose to mitigate this impact to less-than-significant levels, Protect Our Glendale argues TRANS-1 and -2 are inadequate and unenforceable, and in any event improperly defer mitigation.

1. Legal Principles

An agency must adopt feasible mitigation measures to substantially lessen or avoid otherwise significant adverse environmental impacts. (§ 21002.) To be legally adequate, a mitigation measure must be capable of: "(a) Avoiding the impact

altogether by not taking a certain action or parts of an action[;] [¶] (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation[;] [¶] (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment[; or] [¶] (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." (CEQA Guidelines, § 15370.)

"Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. . . . The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards." (CEQA Guidelines, § 15126.4(a)(1)(B).)

"[T]he analysis must be specific enough to permit informed decision making and public participation. . . . The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. 'Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable

choice of alternatives so far as environmental aspects are concerned. . . . When the alternatives have been set forth in this manner, an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406-407 (*Laurel Heights*).)

Where substantial evidence supports the approving agency's conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy. (*Laurel Heights*, *supra*, 47 Cal.3d at p. 407.)

2. Adequacy of TRANS-1 and -2

(a). Choice of Remedy

Protect Our Glendale argues TRANS-1 (for lane removal) and TRANS-2 (for bulb-outs) are inadequate because they commit the City only to a vehicle miles traveled study *or* a level of service study, not both.

Protect Our Glendale cites no authority, and we are aware of none, for the proposition that an agency must use all available methods, or any particular combination of methods, to reduce an impact to a less-than-significant level. In any event, Protect Our Glendale mischaracterizes TRANS-1 and -2. Both provide that "Prior to implementation of the pedestrian projects involving the elimination or removal of vehicle travel lanes, the City shall prepare a Vehicle Miles Travelled (VMT) analysis, *and as applicable* a level of service (LOS) *and* queuing analysis of the affected intersection to determine whether the project would cause a significant impact per the City's LOS thresholds or would result in queuing that could affect traffic operations at adjacent intersections." (Italics added.)

TRANS-1 and -2 thus commit the City to at least a vehicle miles traveled analysis, which CEQA Guidelines section 15064.3 permits. They also commit the City to a level of service and/or queuing analysis "as applicable." Protect Our Glendale offers no explanation why this does not suffice.

(b). Study vs. Mitigation

Protect Our Glendale argues TRANS-1 and -2 are inadequate because they commit the City only to conducting a study, not to mitigating an environmental impact. We disagree.

As stated above, "[t]he specific details of a mitigation measure . . . may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review," "provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure." (CEQA Guidelines, § 15126.4(a)(1)(B).)[4]

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[4] CEQA Guidelines section 15126.4 provides in pertinent part:

"(a) Mitigation Measures in General.

"(1) An EIR shall describe feasible measures which could minimize significant adverse impacts . . . . [¶] . . . [¶]

"(B) . . . Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly

Because the Project is a long-term, high-level plan, with no specific construction project on the table, and because the City has as yet developed no vehicle miles traveled standards, it is impractical or infeasible to include specific details of a mitigation measure during the project's environmental review.

TRANS-1 and -2 commit the City to mitigating any significant impact by adopting specific vehicle miles traveled or level of service performance standards, as appliable, and by (1) modifying the implementation to lessen the impact or (2) making findings that significant beneficial pedestrian and/or other impacts would reduce the adverse impact to a less-than-significant level.

This commitment suffices.

(c). Impact/Benefit Offsets

Protect Our Glendale argues that the "findings" outcomes in TRANS-1 and -2 (that if a significant impact exists, "the City shall make findings, that significant beneficial pedestrian impacts and/or other beneficial impacts would reduce the adverse . . . impact to a less-than-significant level") (1) constitutes improper impact/benefit balancing in an MND (as opposed to an EIR), and (2) permits unidentified social benefits to offset physical transportation impacts. We disagree.

By their plain language, TRANS-1 and -2 obligate the City to find that a significant beneficial pedestrian or other benefit

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achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

would "reduce" the adverse impact to a less-than-significant level. The mitigation measures do not permit the City to *offset* an impact by balancing it against a benefit. Protect Our Glendale argues that no social benefit can reduce a transportation impact. We disagree. A direct transportation impact caused by a physical change to a street, for example, might be reduced if that change induces people to drive less often.

3. Enforceability of TRANS-1 and -2

TRANS-1 and -2 provide that the City's Director of Community Development and Director of Public Works are responsible for implementation.

Relying on CEQA Guidelines prohibiting delegation of environmental findings (Guidelines, § 15025), prohibiting delegation of statements of overriding considerations (Guidelines, § 15093), and mandating a written sign-off during implementation on any significant environmental effect identified in an EIR (Guidelines, § 15091), Protect Our Glendale argues that delegating implementation of TRANS-1 and -2 to a nonelected city officer, without requiring a written sign-off on any mitigation measure, renders TRANS-1 and -2 unenforceable. We disagree. Guidelines sections 15025 and 15093 pertain only to environmental findings and statements of overriding considerations, not implementation of mitigation measures. Guidelines section 15091 requires only that adverse effects identified in an EIR be signed off on during implementation. Here there is no EIR.

4. Deferral

Protect Our Glendale argues that to the extent the Plan contemplates future approvals of "pedestrian projects," it evades consideration of the cumulative impacts of each project. In a

similar vein, it argues the Plan's mitigation measures as a whole fail because they improperly defer mitigation. We disagree.

As discussed above, CEQA Guidelines section 15126.4 provides that an agency may develop a plan-level project that proposes no specific construction implementation. When, as here, such a course renders it infeasible or impractical to evaluate future environmental impacts, the agency may develop the specific details of mitigation measures after project approval "provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure." (CEQA Guidelines, § 15126.4(a)(1)(B).)

Thus, an agency may defer committing to specific mitigation measures if such measures are described in an EIR and performance criteria are identified. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1026-1030; see *City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 855 [upholding future adaptive strategies designed to respond to changing, on-the-ground conditions]; *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 971 [upholding performance standards rather than specific mitigation details].)

Protect Our Glendale preliminarily argues that CEQA Guidelines section 15126.4 pertains only to EIRs, not to an MND as here. The argument is without merit. (*Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at p. 1396 [approving deferral of specific mitigation details in an MND].)

Protect Our Glendale argues the City may not defer formulating its specific mitigation details because it is not infeasible or impracticable to formulate them now. It argues any mitigation measures must specifically identify examples of actions that can feasibly achieve the required threshold.

We disagree. The Plan is a 25-year, high-level planning project that identifies no specific construction implementation. Its transportation impact must be measured by a vehicle miles traveled standard that is relatively new, being implemented in 2018, and for which the City as yet has no protocol. It is thus impractical or infeasible to formulate now the mitigation measures for future projects.

"Certainly, when drafting an EIR or a negative declaration, an agency must necessarily engage in some forecasting. (CEQA Guidelines, § 15144.) 'While foreseeing the unforeseeable is not possible, an agency must use its best efforts to *find out* and disclose all that it *reasonably* can.' (*Ibid*., italics added.) Nonetheless, it need not consider impacts that are too speculative. The CEQA Guidelines explain that '[i]f, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.' (CEQA Guidelines, § 15145.) After all, ' "where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." ' " (*Aptos Council v. County of Santa Cruz*, *supra*, 10 Cal.App.5th at p. 295.)

Protect Our Glendale argues the Plan itself should be deferred until each individual development project is designed. We disagree. CEQA allows for prospective planning projects.

(See *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 575.)

Relying on *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 (*King & Gardiner*), Protect Our Glendale argues TRANS-1 and -2 do not commit the City to mitigation, do not include specific performance measures, and do not provide potential actions to feasibly achieve a performance measure. We disagree. TRANS-1 and -2 include performance measures—vehicle miles traveled standards the City is currently formulating. And if any significant impact is identified, TRANS-1 and -2 require either physical redesign of an implementation or a finding that a beneficial impact reduces the adverse impact to insignificance, for example because the Plan reduced vehicle usage.

King & Gardiner is distinguishable. There, the prospective mitigation plan, which was developed by private parties, required mitigation only "to the extent feasible," with no performance standards, and did not commit the agency to adopting the plan. (*King & Gardiner*, *supra*, 45 Cal.App.5th at p. 855.)

Protect Our Glendale argues that the performance thresholds of TRANS-1 and -2—the City's vehicle miles traveled or level of service standards, as applicable—are legally inadequate because they are optional, which precludes certainty and fails to guarantee that impacts will be "clearly" reduced to insignificant levels. We disagree. Compliance with an applicable threshold is required by TRANS-1 and -2, not optional. That it is unknown in the present which threshold will apply in the future does not render the mitigation scheme uncertain.

Protect Our Glendale argues that the Plan cannot propose study of future environmental impacts because such study

requires determination of an "environmental baseline," which must occur before project approval. We disagree. An agency may, and in fact must, consider new information in the environmental baseline if changes would involve a new significant impact. (CEQA Guidelines, § 15162.)

e. Program-Level Review of Planning Documents

The Plan has eight chapters identifying "projects, programs, and policy changes needed to make Glendale an even better and safer place to walk."

Protect Our Glendale argues without authority that although CEQA permits a program-level EIR, it does not permit a program-level MND. We disagree.

1. CEQA Applies to "Projects," Including Planning Projects

CEQA applies to "proposed activities," which it often terms "projects." (Cal. Code Regs. (CCR), tit. 14, § 15002, subd. (a).) "The term 'project' has been interpreted to mean far more than the ordinary dictionary definition of the term." (*Id.* at subd. (d).) " 'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: [¶] . . . [¶] . . . An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof . . . ." (*Id.* at § 15378, subd. (a)(1).) CEQA thus distinguishes between construction projects and local general plan projects.

Here, the project is a local general pedestrian plan that proposes goals, policies and guidelines for future developments. It does not bind the City to any specific physical improvements.

2. CEQA Permits a Planning Project MND

To reiterate the process described above, under CEQA, an agency first conducts an initial study to determine " 'if the *project* may have a significant effect on the environment.' " (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 945, italics added.)

If the initial study reveals no substantial evidence that the project may have a significant environmental effect, the agency prepares a negative declaration to that effect. (CEQA Guidelines, §§ 15063(b)(2), 15070.)

"If there is substantial evidence that the project may have a significant effect on the environment," then the agency must prepare an EIR before approving the project. (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 945.)

However, if significant environmental impacts are identified but project revisions will avoid or mitigate them such that clearly no significant effect on the environment would occur, the agency may prepare an MND.

By this process, CEQA necessarily contemplates that an initial study of the potential environmental impacts of a planning project may result in an MND.

Environmental impacts " 'should be assessed as early as possible in government planning.' Environmental problems should be considered at a point in the planning process ' "where genuine flexibility remains." ' [Citation.] A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative

approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at p. 307.)

But with a long-term planning project, reassessment and mitigation of environmental impacts when a specific construction project is proposed is as early as environmental impacts can be assessed. CEQA thus permits program-level MNDs. (See *Pala Band of Mission Indians v. County of San Diego*, *supra*, 68 Cal.App.4th at p. 575.)

3. Protect Our Glendale's Authorities are Inapposite

Protect Our Glendale relies on one statute, two CEQA Guidelines and one case for the proposition that contrary to the process described above, CEQA mandates that an EIR be prepared for a program-level project, and does not allow a program-level MND.

Protect Our Glendale first relies on section 21068.5, which it argues requires that a tiered EIR be prepared for program-level projects. We disagree.

Section 21068.5 provides in full: " 'Tiering' or 'tier' means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site–specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report."

"Unlike '[p]roject EIR[s],' which 'examine[] the environmental impacts of a specific development project'

[citation], the CEQA provisions governing tiered EIRs 'permit[] the environmental analysis for long-term, multipart projects to be "tiered," so that the broad overall impacts analyzed in an EIR at the first-tier programmatic level need not be reassessed as each of the project's subsequent, narrower phases is approved.' " (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 959.)

Section 21068.5 simply defines "tier." It does not mandate tiered EIRs for program- or planning-level projects.

Protect Our Glendale next relies on CEQA Guidelines sections 15152 and 15168. Guidelines section 15152 again defines "tier" and describes the usage and benefits of tiered EIRs. Guidelines section 15168 defines "program EIR" as "an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: [¶] (1) Geographically, [¶] (2) As logical parts in the chain of contemplated actions, [¶] (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or [¶] (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways." Guidelines section 15168 then goes on to describe the uses and advantages of program EIRs. Neither guideline mandates that a tiered or program EIR be prepared for every program-level project, especially not a project where there is no substantial evidence that the project may have a significant effect on the environment.

Finally, Protect Our Glendale relies on *Friends of College of San Mateo Gardens* for the proposition that CEQA does not permit programmatic environmental review of planning

documents through an MND. The case actually cuts against Protect Our Glendale's position.

In *Friends of College of San Mateo Gardens*, "a community college district proposed a district-wide facilities improvement plan that called for demolishing certain buildings and renovating others. The district approved the plan after determining that it would have no potentially significant, unmitigated effect on the environment." (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 943.) The district thus issued an MND.

"Years later, the district proposed changes to the plan. The changes included a proposal to demolish one building complex that had originally been slated for renovation, and to renovate two other buildings that had originally been slated for demolition. The district approved the changes after concluding they did not require the preparation of a subsequent or supplemental EIR." (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 943.)

The issue in *Friends of College of San Mateo Gardens* was quite narrow, and is not probative here. What is probative is that in deciding the issue, the Supreme Court distinguished between an MND and a tiered EIR. It stated, the "initial study and MND were not a tiered EIR. The District's 2006 initial study and MND did not purport 'to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.' [Citation.] The District's initial environmental review documents instead expressly concluded that 'all potential impacts' of the entire project—including *every* building on the campus—had 'been mitigated to a point where no significant impacts would occur, and there is no substantial evidence the project would have a significant effect on the environment.'

[Citations.] To now entertain the argument that the 2006 MND should be treated as a tiered EIR would disregard the substance of the District's conclusions in order to permit plaintiff to raise an untimely challenge as to the adequacy of the MND, as well as the District's decision to proceed by MND in the first place." (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at pp. 960-961.)

Rather than holding that CEQA does not permit programmatic environmental review of planning documents through an MND, the Supreme Court implicitly endorsed program-level MNDs by holding that to treat such an MND as a tiered EIR would "disregard the substance of the [agency's environmental] conclusions." (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 961.)

Protect Our Glendale thus offers no authority contravening the process outlined above for adopting an MND for a planning-level project.

f. Future CEQA Review is not Precluded

Protect Our Glendale argues for the first time in its reply that approval of the Plan will preclude future CEQA review because "an MND ends CEQA review." We disagree.

CEQA Guidelines section 15162 provides that "[w]hen an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record [that] [¶] . . . Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of

previously identified significant effects . . . ." (CEQA Guidelines, § 15162(a)(1).)

This subsequent review provision is "designed to ensure that an agency that proposes changes to a previously approved project 'explore[s] environmental impacts not considered in the original environmental document.' " (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 951.)

Thus, when each potential future improvement is proposed, designed, and funded, Guidelines section 15162 obligates the City to review the project for new significant environmental effects if the improvement materially deviates from the Plan.

g. Conclusion

We conclude Protect Our Glendale failed to satisfy its burden of adducing substantial evidence of a fair argument of any substantial environmental impact.

B. Vehicle Code

Protect Our Glendale contends the Plan violates Vehicle Code section 21101 by directing the permanent, partial closure of city streets without state approval. We disagree.

We review the interpretation of a regulation or statute de novo. (*Family Health Centers of San Diego v. State Dept. of Health Care Services* (2021) 71 Cal.App.5th 88, 97.)

A city has no authority over vehicular traffic control except as expressly provided by the Legislature. (*City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, 1106-1107.)

Vehicle Code section 21101 provides in part: A city may adopt rules and regulations closing a street to vehicular traffic only when in the opinion of the legislative body having

jurisdiction the highway is no longer needed for vehicular traffic. (Veh. Code, § 21101, subd. (a)(1).)

Here, the Plan proposes no street closing. (See *Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1179 ["Vehicle Code section 21101, subdivision (a)(1) grants authority only for a *complete closure* of a street to *all vehicular traffic*"].) "Relatively permanent, physical changes in the width or alignment of roadways that are effected by islands, strips, shoulders, and curbs clearly are within the construction and maintenance power [citation] though of course they may alter patterns of traffic." (*Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 556; see Veh. Code, § 21101, subd. (g) [permitting a local authority to "[p]rohibit[] entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan"].)

C. Conclusion

Because Protect Our Glendale failed to adduce evidence supporting a fair argument of a substantial environmental impact, and because the Plan does not violate the Vehicle Code, the judgment is affirmed.[5]

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[5] **Senate Bill No. 922**

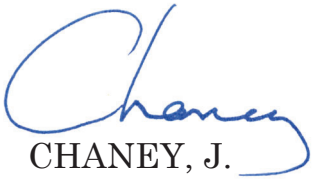
The City observes that Senate Bill No. 922 enacted a complete statutory exemption from CEQA for pedestrian plans (such as the Plan) effective January 1, 2023. (Stats. 2022, ch. 987.) It argues that as a practical matter there is no effective remedy that could be ordered in the unlikely event Protect Our Glendale succeeds on any of its CEQA claims. We disagree.

CEQA requires that when an agency determines a project is exempt, it must give notice of that determination to the public, which begins the limitation period for any challenge. Here there

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED



CHANEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.

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has been no such notice because the City has not yet determined the Plan is exempt. Therefore, affirmance on the ground that the Plan will inevitably be deemed exempt would deprive Protect Our Glendale of the opportunity to challenge that exemption.

PROOF OF SERVICE

I, NAIRA SOGHBATYAN, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is Naira Soghbatyan, Attorney at Law, 215 North Kenwood Street, # 210, Glendale, California 91206. On June 10, 2024, I served the within document:

PETITION FOR REVIEW

☒ BY ELECTRONIC SERVICE: I caused the document(s) to be sent to the persons at the electronic notification addresses listed with the TrueFiling Servicing Notification.

SERVICE LIST

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Second District Court of Appeal	Served by TrueFiling

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

Executed on June 10, 2024, at Glendale, California.

/s/ Naira Soghbatyan

NAIRA SOGHBATYAN

SUPREME COURT Case No. S285215

Court of Appeal Case No. B329274

LASC Case No. 21STCP01247

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

PROTECT OUR GLENDALE,

Petitioner and Appellant,

v.

CITY OF GLENDALE, et al.,

Respondents

From An Opinion Of The Court of Appeal, Second Appellate District, Division One Affirming The Los Angeles Superior Court

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REPLY TO ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondents ("City") are not free "to deceive courts, argue out of both sides of his mouth, fabricate facts and rules of law, or seek affirmatively to obscure the relevant issues and considerations behind a smokescreen of self-contradictions and opportunistic flip-flops." *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 558. But that is what the City does.

To derail the Court from the *four* narrow *legal* issues in the Petition for Review ("**Petition**"), the City engages in *ad hominem* attacks, evasions, and equivocations, and overwhelms this Court with irrelevant and inaccurate facts. It also offers merit-based arguments non-responsive to the subject of this Petition.

To the extent the City claims the Opinion is based on "well-settled law" (Answer, p. 13) or Petitioner does "not raise any important questions of law" (Answer, p. 4), it argues from both ends of its mouth. In its Publication Request, *before this Court,* the City lauds the Opinion for settling legal issues and seeks publication under California Rules of Court ("**CRC**"), Rule 8.1105(c)(2), (4), (6). (Publication Request, pp. 4, 2.)

The City's claim that the Opinion is based on well-settled law is an epitome of sophistry. The Opinion offers no statutory provisions or relevant case law for its categorical conclusions or implicit endorsements on all *four* issues. And the Answer offers no authority either, short of attempts to factually distinguish

Petitioner's legal authority on irrelevant grounds or supplement what the Opinion left out.

The Opinion – by *explicitly* endorsing Program Mitigated Negative Declarations ("**MND**") and by extending CEQA's tiering under Public Resources Code ("**PRC**") §21068.5 beyond Program Environmental Impact Reports ("**EIR**") (*first* issue), and by *implicitly* allowing deferred studies and reliance on significance-thresholds in MNDs (*second* and *third* issues) – devised *new law,* violating CEQA and statutory interpretation rules.

The Answer to the *fourth* (Vehicle Code) legal issue turns it into a factual dispute, supplementing what the Opinion omitted.

While the Opinion failed to address the *third* and *fourth* legal issues, Petitioner preserved those through a Petition for Rehearing (pp. 30, 38-43) under CRC, Rule 8.268 & 8.500(c)(2).

The Petition is warranted to settle important CEQA and Vehicle Code legal issues under CRC, Rule 8.500(b)(1), and the Answer offers no tenable objections thereto.

II. LEGAL DISCUSSION

A. This Court Should Grant Review to Clarify that CEQA Permits No "Program MNDs."

The Answer on the *first* issue is untenable. First, to euphemize the Opinion's categorical conclusion that CEQA "permits program-level MND" (Opinion, p. 34), the City uses semantic games to distinguish Petitioner's used term of "Program

MND" from descriptive phrases such as "plan-level environmental review," "program-level MND," or "programmatic review of planning documents through an MND." (Answer, pp. 13, 14.) The City's attempt to split hairs is unavailing.

In its reasoning on "Program-level MNDs," the Opinion uses the phrase "Program-level EIR" to denote a "Program EIR" – the only term used by CEQA and Guidelines; it also cites to PRC §21068.5 and Guidelines §15168 on tiering or "Program EIR," (Opinion, pp. 34-35.) Hence, the Opinion uses "Program-level EIR" and "Program-level MND" to refer to "Program EIR" and "Program MND," in CEQA parlance.

Second, the City seeks to excuse its use of an MND by claiming it conducted "a plan-level analysis and no specific projects have yet been proposed." (Answer, p. 13.) The excuse is meritless and irrelevant. The *first* issue is purely legal and whether the City indeed conducted a "plan-level analysis" (a term fabricated by the City) or what are the factual specifics or merits of the Pedestrian Plan ("**Plan**") is irrelevant.

Moreover, albeit irrelevant, the City's excuse that the Plan proposed no specific projects fails. As the Petition noted and the City failed to rebut, the Plan proposes specific street-changes [Administrative Record ("**AR**") 1113-1131], which the City has *already* begun implementing (soliciting bids, contractors, and constructing) under the innocuous names of "beautification" and

"rehabilitation." (Petition, p. 10 ["*before* the Opinion was released, the City began implementing its proposed street changes."]; Petition for Rehearing, pp. 13, 38, 39.)[1], [2].

Also, had the City performed a plan-level CEQA analysis, as it claims, it must have conducted *site-specific* CEQA reviews and prepared *narrow* and *site-specific* EIRs for those "beautification" or "rehabilitation" projects under PRC §21068.5 and Guidelines §§15152(g)-(h) & 15168. It did not. And such failure was not unexpected. The City, in court, *conceded* it would make *no further CEQA* review of the Plan's projects, except for

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[1] See, San Fernando Road "Beautification" project at https://storymaps.arcgis.com/stories/ed1ba35c7c894fca84187c7715d69b6a/print; https://www.glendaleca.gov/government/departments/public-works/projects/current/san-fernando-road-beautification-project-phase-ii; and https://glendalenewspress.outlooknewspapers.com/2023/09/05/option-for-san-fernando-road-project-gets-green-light/ (Glendale Newspress Article, September 5, 2023); *compare with* AR 1113 (items ## 9, 11), 1122-23.

[2] See "La Crescenta Avenue Rehabilitation Project" at: https://www.glendaleca.gov/government/departments/public-works/projects/current/la-crescenta-avenue-rehabilitation-project; *compare with* AR 1113 (item #17) & AR 1131.
See also, 6/25/24 City Council hearing, public opposition, and Councilmember's concerns over lane- and parking-removal: https://www.youtube.com/watch?app=desktop&v=zlMOtEWbu00, Time Marker 39:50-56:25, esp. 47:27 through 53:53.

new information, citing to Guidelines §15162. (City's Opposition Brief, pp. 42, 47; Appellant's Reply Brief ["**RB**"], p. 15.)

Also, albeit irrelevant to the *legal* dispute here, the City's record-citations are unavailing: none suggests the Plan's "recommendations" would, as relevant, undergo further CEQA review as the City suggests now. (Answer, pp. 13, 15, 21.)

For example, **AR 1574** is a citation to a document developed in 2016-2017 [AR 1521-22, 1527] and titled "Be Street Smart Glendale," which apparently was later bates-stamped and folded into a "Pedestrian Plan" through an added 3-page caption in 2021. [AR 1518-1520.] And the cited page states:

> "These recommendations are preliminary, and all will require further study (including detailed traffic analysis), community and stakeholder outreach, and additional design." [AR 1574.]

Notably, the page references only future *traffic analyses*, but not *CEQA review,* as required for CEQA's program-level review.

The validity of the quoted statements is also questionable since they were made in 2016-2017, before the 2021 MND. And the 2021 MND or MMRP is *silent* on any future *CEQA* review for those purported "recommendations" and only references *traffic studies*, the "timing" of which is "prior to implementation" (as opposed to prior to *approvals*) and the "responsibility" for which

is on "Director of Community Development; Director of Public Works" (as opposed to City Council). [AR 31 (MMRP); 34 (MND).]

Accordingly, the City's precatory statement in AR 1574 does not establish that the proposed street-changes were "recommendations" in 2021 or would undergo *CEQA* review.

The City's reliance on **AR 1631** and **1673-1709** is misplaced for the same reasons as noted for **AR 1574**, *supra.*

Moreover, that the cited pages note *recommendations* in a 2016-2017 "Be Street Smart Glendale" plan [AR 4819-4821] does not mean those recommendations [AR 1113-1131] are not specific to require CEQA review under Guidelines §15004(b): "With public projects, at the *earliest feasible* time, project sponsors shall incorporate *environmental considerations* into project *conceptualization*, *design*, and *planning*…." *Id.* (Emph. added.)

Also, **AR 1674** confirms that, despite the known controversies of such recommendations, their "incremental implementation" was inevitable:

"Phased Implementation

> …. even the most complex, costly, or controversial projects can start with modest, incremental improvements. In most cases, it is not necessary to implement all elements of a pedestrian project at a single point in time. The level of design, outreach, and costs for improvements at a particular location can be substantial. However, that

should not be a barrier to beginning implementation." [AR 1674.]

The referenced passage squarely conflicts with Guidelines §15004(b) and case law, mandating CEQA review at the *earliest* possible time so that environmental considerations *inform* their design and not succumb to economic and political pressures. *Bozung* v. *Local Agency Formation Com*. (1975) 13 Cal.3d 263, 282 [CEQA review must occur before a project gains "irreversible momentum"]; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135 [postponing CEQA analysis "can permit 'bureaucratic and financial momentum' to build irresistibly behind a proposed project, 'thus providing a strong incentive to ignore environmental concerns.' (*Laurel Heights I, supra,* 47 Cal.3d at p. 395, 253 Cal.Rptr. 426, 764 P.2d 278.)"]; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1336 (EIR needed "where significant impacts were a realistic possibility, even though the exact form that development would take could not be known.")

Even assuming the City's citations called for binding studies and CEQA review before implementation (which they did not), such piecemeal studies or review would circumvent CEQA's requirement to consider the *cumulative impacts* of the whole action and prohibition against piecemealing. See, PRC §§ 21065.3 (project-specific impacts include all but cumulative impacts);

21083(b)(2) (significant impact findings are required if an impact is individually limited but cumulatively considerable); Guidelines §§15063(b)(1)-(2) and 15064(h) (cumulative impacts must be considered in the initial study and to decide whether to proceed with an MND); 15064.4 (cumulative impacts required for purposes of Greenhouse Gas Emission ["**GHG**"] impact analysis); 15378(a)&(c) ("whole of an action").

Moreover, if the Plan contemplated a "phased implementation" of street-changes [AR 1674], then CEQA mandates a "single Program EIR" for it under Guidelines §15165 – not an MND, as here. And, for a reason: to capture the cumulative impacts of all phases in one document. *Id.* Notably, the City's *cumulative* impacts analysis was little to nil. [AR 77 (air quality), 111 (generally and traffic).]

Lastly, the City's attempts to *legally* justify the Opinion's endorsement of Program MNDs (Opinion, p. 34) fail. Neither the Opinion (nor the City) cite to *any* provision in CEQA or Guidelines referencing or suggesting "Program MNDs." In fact, the City *evades* critical provisions Petitioner cites to show that CEQA could not possibly extend program-level CEQA review beyond EIRs and that using MNDs for program-level review would violate CEQA's very definition of MNDs. Guidelines §§15152 (g)-(h) (tiering/program EIR, master EIR); 15168 (Program EIRs); PRC §21064.5.

To support the Opinion's categorical holding permitting Program MNDs, the City relies on *Pala Band of Mission Indians v. Cnty. of San Diego* (1998) 68 Cal.App.4th 556, 575 ("*Pala*"). But *nowhere* does *Pala* endorse "Program-level MNDs."

Also, *Pala* is limited to its facts that are not even remotely similar to this case. First, *Pala's* project was not a *pedestrian* plan or street-changes, but a Site Element of "10 'tentatively reserved' disposal sites." *Pala,* 68 Cal.App.4th at 580. Second, *Pala's* MND *stated* that each later *actually* reserved site would "require [future] environmental review in accordance with [CEQA]." *Pala,* at 577-578.

Third, *Pala's* "tentatively reserved" sites are a term-of-art defined by the Waste Act and requiring, *inter alia,* that sites be later *actually* reserved within 5 years and that, *before* such *actual* reservation, general plan consistency determinations be made. *Pala,* at 563-565, esp. 564. In contrast here, the City uses an undefined generic word "recommendations," in its 2016-2017 document, and claims it has *already* made general plan consistency determinations. (Answer, pp. 20-22.)

As also noted by Petitioner and unchallenged by the City, "even the leading CEQA treatise Kostka & Zischke, Practice Under Cal. Environmental Quality Act, co-authored by the City's Counsel Michael Zischke, does not present *Pala* as sanctioning a Program MND." (Petition, p. 33.)

Neither does *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist. (2016) 1 Cal.5th 937, 945 ("San Mateo")* "implicitly endorse[]" Program MNDs, as the Opinion interpreted. (Opinion, p. 37.) That *San Mateo* "did not prohibit programmatic review of planning documents through an MND" (Answer, p. 14), as the City claims, does not mean it *affirmatively* "endorsed" or "permits" Program MNDs. (Opinion, p. 34, 37.)

In sum, the Petition's *first* issue warrants review to settle an important issue of law on permitting "Program MNDs," which the City conceded the Opinion settled. (Publication Request, p. 4.)

B. This Court Should Grant Review to Clarify that a Deferred *Study* of Impacts Is Not *Mitigation* to Warrant an MND.

As with the *first* issue, the Answer equivocates and paraphrases the *second* issue as if being about "mitigation measures that include performance standards." (Answer, p. 15.) The issue is, however, whether "a deferred *study* qualif[ies] for *mitigation* to warrant an MND." (Petition, p. 8.) By paraphrasing, the City obscures and conflates the issue for review.

While the City objects to Petitioner's characterization that the Opinion "suggests" a study of impacts is equivalent to mitigation (Answer, pp. 15-16), it lauded the Opinion for its analysis of study vs. mitigation and requested publication for

that reason. (Publication Request, p. 4 ["The Court's …. analysis of the difference between 'study' vs. 'mitigation,' the discussion of the viability of an impact benefit offset study…. [] provides comprehensive and meaningful guidance…."]) As with the *first* issue, the City here argues from both ends of its mouth.

Also, the City claims its traffic *mitigation* measures TRANS-1 and TRANS-2, "as a factual matter require more than a study of impacts." (Answer, p. 16.) Even assuming it is true (which it is not), it is irrelevant to the *second* issue, which is about *studies.* Notably, Guidelines §15370 defines *mitigation* as *minimization* or *prevention,* not studies.

The City's reliance on Guidelines §15126.4(a)(1)(B) is misplaced, as it is about *mitigation* and *EIRs*, not MNDs, as here. Also, it allows to defer not *studies* and not even *mitigation* of impacts, but rather "specific details of a mitigation measure," *and only* in case of several *conditions* the City here failed to meet.

Similarly, the City's cited cases are irrelevant to the *second* issue, since they relate to *deferred mitigation* and offer merits arguments improper at this Petition stage. And, on the merits, those cases do not support reliance on studies to warrant an MND, since most of them involve EIRs. *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011; *City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242

Cal.App.4th 833; *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 971.

And, while *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359 (*"Gentry"*) involved an MND, that case is inapposite and, in fact, supports Petitioner. First, it is not about deferred *studies,* but *conditions* to prepare *control/mitigation* plans or comply with *existing* regulations. *Id.* at 1396. *Gentry* does not invalidate but rather follows *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-311 ("*Sundstrom*") and concludes that one of the conditions improperly deferred mitigation. *Gentry,* 36 Cal.App.4th at 1396-1397. And, as *Sundstrom* holds, "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA…." *Id.* at 307.

Second, even if the issue here involved deferred *mitigation* and even if *Gentry* allowed deferred mitigation under Guidelines §15126.4(a)(1)(B) (none of which is true), *Gentry* would still not sanction deferred mitigation here, since *Gentry* (1998) *precedes* the latest amendments to Guidelines §15126.4(a)(1)(B) in 2018 (Register No. 52), whereby *conditions* were added before an agency may defer formulation of *specifics* of mitigation measures, including conditions of *infeasibility* and commitment to mitigate.[3]

[3] Before the 2018 amendments, Guidelines §15126.4(a)(1)(B) contained no *conditions.* See, *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669–670.

The City's attempt to distinguish the *mitigation* in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 195-196 (*"California Clean"*) from the mitigation here is also unavailing. The disputed issue is not *mitigation,* but *studies*. Also, even for mitigation, as *California Clean* stated, "questions of whether mitigation measures will be required, of what they might consist, and how effective they will be are left unanswered." *Id.* The City's TRANS-1 and TRANS-2 did not answer those questions either. Instead, they required *traffic studies*, which – *in case of* finding impacts – would trigger *two* options the City could choose from: (1) *mitigation;* "or" (2) *finding* that some *unspecified* "*beneficial pedestrian* impacts and/or *other beneficial* impacts *would* reduce the adverse VMT *or* LOS/intersection operation impact to a *less-than significant* level." [AR 31, 34, emph. added.]

Even the trial court questioned such mitigation. [6AA:1368, fn. 5; 6AA:1369, fn. 8.] It asked: (1) Whether the traffic MMs are adequate where, after the disjunctive "or," they suggest that environmental impacts must be offset by a beneficial effect [6AA:1360]; (2) [Where does the City commit, if at all, in the MND to further project level environmental analysis?] [6AA:1360]…." [**AOB**[4], p. 23.]

[4] Appellant's *Electronic* Opening Brief.

The City's *example* of apparently the *second* "finding" option, whereby the City *might* conduct a traffic study and "show that the applicable standard would not be exceeded due to the reduced vehicle trips resulting from the proposed improvement" (Answer, p. 16) is nonsense: if the proposed change *indeed* reduces vehicle-trips, then its related traffic study would find no impacts and not even trigger the "finding" *option*. [AR 31, 34.]

Lastly, the City's excuse that the Plan "is a 25-year, high-level planning project that identifies no specific construction implementation" (Answer, p. 17) is disingenuous. As detailed in Section II.A, *supra,* not only did the Plan provide specific street changes that required early CEQA review [AR 1113-1131], but the City had long begun their incremental implementation.

In sum, review is warranted to settle the important legal issue of whether deferred *studies* are proper for MNDs, which was endorsed by the Opinion. (Publication Request p. 4.)

C. This Court Should Grant Review to Clarify that Meeting Thresholds of Significance Is Insufficient Mitigation to Warrant an MND.

The Answer to the Petition's *third* issue on thresholds of significance is also untenable. The City turns the *legal* issue into a factual dispute, claiming "Petition does not articulate an argument as to what more might be needed" (Answer, p. 17); it then relies upon an irrelevant statement from the Opinion,

claiming Petitioner identified no "evidence supporting an impact of any sort." (Answer, p. 18.) But this is not an *evidentiary* issue.

First, the MND *acknowledged* the Plan *may* have traffic impacts, proposing traffic mitigation. [AR 31, 34, 103.] Thus, Petitioner need not make a *showing* of traffic impacts.

The issue is that the City's traffic mitigation required, if at all, compliance with *thresholds* of significance – which were yet-to-be developed – as if meeting thresholds alone would be sufficient or proper for MNDs. [AR 31, 34.]

As such, the *third* issue before this Court is whether the City or the Opinion could properly rely solely on the City's meeting of thresholds of significance to conclude – as CEQA requires – that "*revisions* in the project plans or *proposals* made by, or agreed to by, the applicant *before* the proposed negative declaration and initial study are *released* for public review *would avoid* the effects *or mitigate* the effects to a point where *clearly no* significant effect on the environment would occur." PRC §21064.5 (Emph. added). Tellingly, the Answer evades PRC §21064.5. See, *In Re Neilson's Estate* (1962) 57 Cal.2d 733, 746 ("silence, evasion, or equivocation may be considered as a tacit admission of the statements made").

As Petitioner claimed and the Opinion ignored, solely meeting thresholds of significance, let alone unknown and yet-to-be formulated, cannot meet the *certainty* or *timing* requirements

in PRC §21064.5. And *because* the City's mitigation relied solely upon meeting the thresholds of significance – and for each individual street-change separately – it failed to consider *any other* impacts, including cumulative impacts of *all* street-changes of the Plan and those with other *related* plans. [AOB, 44-46.] This is precisely why the Court in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-114 ("*CBE*") (overruled on other grounds) rejected amendments to Guidelines, which would allow agencies to rely on regulatory compliance in the MND's "fair argument" context:

> The trial court recognized the fair argument problem with Guidelines section 15064(h). If a proposed project has an environmental effect that complies with a subdivision (h)(3) regulatory standard, the lead agency is *directed* under subdivision (h)(1)(A) (and implicitly under subd. (h)(2)) to determine that the effect is not significant, regardless of whether other substantial evidence would support a fair argument that the effect may be environmentally significant. This direction relieves the agency of a duty it would have under the fair argument approach to look at evidence beyond the regulatory standard, or in contravention of the standard, in deciding whether an EIR must be prepared…."

CBE, supra, 103 Cal.App.4th at 112-113 (emphasis original).

Further, that the Opinion relies on Guidelines §15126.4(a)(1)(B) to justify deferred *mitigation* is irrelevant to the Petition's *third* issue of whether an agency may rely solely on thresholds of significance to warrant an MND under PRC §21064.5. Also, as noted in Section II.B, *supra,* Guidelines §15126.4(a)(1)(B) is expressly about EIRs, not MNDs.

Lastly, the City's attempts to distinguish Petitioner's legal authority are unavailing. The City claims Petitioner's cited provisions apply to *state agencies* or MNDs following a Master EIR (Answer, p. 18), but is silent on their counterparts applicable to the City. PRC §21064.5, Guidelines §15064(f)(2) [definition of MND]; Guidelines §15064(b)(1) ["Compliance with the threshold does not relieve a lead agency…."]; Guidelines § 15064(h)(3) [while an agency may rely on regulations to show no cumulative impacts, such regulations must be "previously approved," through a public process, and specific enough; and, even after such compliance, there may still be evidence of cumulative impacts.]

Unless the Opinion is reviewed, it will enable the City and other agencies to violate CEQA, whereby *no agency* will prepare *any* EIR for *any* plan and may instead summarily assert that it will conduct *future studies* of impacts, based on *thresholds* of significance *yet*-to-be formulated, and then, in case such studies reveal impacts, will either mitigate or make a finding that some

unspecified beneficial impacts will reduce impacts to insignificant levels. [AR 31, 34.] This will lead to a pro-forma CEQA review this Court has repeatedly condemned. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135–136 [CEQA review must not be reduced "'to a process whose result will be largely to generate paper…..'"]; *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 941 ["The preparation and circulation of an EIR is more than a set of technical hurdles"]; see also, *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347 ["CEQA contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project."]

In sum, the Petition properly raises the *third* issue to settle an important question of law as to whether an agency may properly rely solely on thresholds of significance to warrant an MND – an issue the Opinion omitted and Petitioner duly preserved. (Petition for Rehearing, p. 30.)

D. This Court Should Grant Review to Clarify that to "Implement the Circulation Element" under Vehicle Code §21101(g) Does Not Mean "To Be Consistent with the Circulation Element" and that Cities Should Comply with Vehicle Code §21101 When Proposing Street-Changes to Control Traffic.

The Answer to the *fourth* (Vehicle Code) issue (pp. 19-22) is *four times* longer than the Opinion. (Opinion, pp. 38-39). It improperly mischaracterizes and supplements the Opinion.

First, contrary to the City's claims (Answer, p. 19), the Opinion did not "review" the Vehicle Code, but merely *referenced* it. Instead, the Opinion relied on the City's "construction and maintenance power," from an incomplete quote from *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, to dispose of the Vehicle Code issue, and failed to address the *procedural* requirements of the Vehicle Code §21101(g) or the related *fourth* issue here.

Second, the City's merits arguments are irrelevant and fail. It claims it made a "specific finding" that the Plan "is consistent with" the Circulation Element at AR 102 and that the Plan analyzes its consistency with the Circulation Element at AR 1485. (Answer, pp 20-21.) But the issue here is <u>not</u> *consistency,* but *implementation*.

Also, the City's claimed "specific" consistency finding at AR 102 is a red herring: that page mentions consistency with the "Complete Streets Plan that was added to Circulation Element in 2011" (*id.*). And the 2011 Complete Streets Plan was applicable only to *North* Glendale and involved *non*-physical changes, distinct from the Plan's *physical* changes proposed in *South* and *Downtown* Glendale. [AOB p. 74.]

Third, even assuming the Plan *implements* the Circulation Element by establishing a "comprehensive and centralized approach to improving pedestrian infrastructure and safety, and addresses the City's demand for better pedestrian facilities" at AR 2932, as the City claims (Answer, p. 21), the City fails to explain how, if at all, *lane-removals* and *bulb-outs* challenged for Vehicle Code compliance, *implement* such *pedestrian* policies or provide "better *pedestrian* facilities." [AR 2935 (no lane-removal or bulb-out policies).]

Fourth, the City's attempt to distinguish *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847 is unavailing, as it is based on the *factual merits* of the Plan, irrelevant to the legal issue here. Moreover, as noted in Section II.A, *supra,* that the Plan is a 25-year plan is an irrelevant and bogus excuse.

The City's claim that, unlike *Poway,* "the City does not claim that the Plan served to amend the Circulation Element" is disingenuous. (Answer, p. 22.) The Plan proposes *narrower* or *no* lanes than in the Circulation Element, which may be allowed if found necessary. [AR 31, 34; 2923 [the Plan will "recommend new policies" vis-à-vis existing plans, including Circulation Element.]

In sum, review of the *procedural requirement* of the Vehicle Code §21101(g) and meaning of "implement" therein is warranted to settle an important question of law, preserved by Petitioner. (Petition for Rehearing, pp. 39-43.)

III. CONCLUSION.

For all of the foregoing reasons, Petitioner prays that this Court grant review to settle *four* important and dispositive questions of law.

DATED: July 8, 2024

NAIRA SOGHBATYAN, ATTORNEY AT LAW

By: */s/ Naira Soghbatyan*
NAIRA SOGHBATYAN
Attorney for Appellant
PROTECT OUR GLENDALE

WORD COUNT CERTIFICATE

The undersigned states that the word count for this REPLY TO ANSWER TO PETITION FOR REVEW, exclusive of tables, captions, signature block and this certificate, according to Microsoft Word is: 4,200.

DATED: July 8, 2024

NAIRA SOGHBATYAN, ATTORNEY AT LAW

By: */s/ Naira Soghbatyan*
NAIRA SOGHBATYAN
Attorney for Appellant
PROTECT OUR GLENDALE

PROOF OF SERVICE

I, NAIRA SOGHBATYAN, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is Naira Soghbatyan, Attorney at Law, 215 North Kenwood Street, # 210, Glendale, California 91206. On July 8 2024, I served the within document:

REPLY TO ANSWER TO PETITION FOR REVIEW

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

Executed on July 8, 2024, at Glendale, California.

/s/ Naira Soghbatyan

NAIRA SOGHBATYAN

From: Abajian, Suzie
To: Cortes, Karen
Subject: FW: Bike lanes--agenda item 8.b.
Date: Thursday, August 1, 2024 12:25:11 PM
Attachments: image001.png
image003.png

Suzie Abajian, Ph.D.| City Clerk | City of Glendale
613 East Broadway, Suite 110 | Glendale, CA | 818-548-2090
sabajian@glendaleca.gov | www.glendaleca.gov | Follow us!

From: Mary-Lynne Fisher <m-lfisher@att.net>
Sent: Tuesday, July 30, 2024 11:07 AM
To: Asatryan, Elen <EAsatryan@Glendaleca.gov>; Najarian, Ara <ANajarian@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Vartan Gharpetian <electvartan@gmail.com>
Cc: Abajian, Suzie <SAbajian@Glendaleca.gov>
Subject: Bike lanes--agenda item 8.b.

Dear Mayor Asatryan and city council members,

I will make my comments brief because of the lateness of this email and the density of the agenda packet.

1. Any plan to reduce the traffic lanes on Foothill Blvd. would be a huge mistake. It's not simply that it is the largest east-west street in Crescenta Highlands. It is the only one capable of carrying large numbers of personal and commercial vehicles. Unlike the unincorporated section of Foothill Blvd., where Montrose Avenue is also a main east-west traffic street, there is no other street to which traffic can move.

2. The projected high cost of the project is enormous and unwarranted by any reasonable assessment of bicycle use. For comparison I suggest that staff speak to their colleagues in the La Canada about their recent experience with reducing traffic lanes on Foothill Blvd. First, La Canada improved Descanso Drive, which is a reasonable alternative for personal vehicles. The Foothill project took far longer and I assume cost far more than projected primarily because in digging up the street workers repeatedly discovered objects such as buried cables that were not on their map. They were forced to stop work, identify the responsible entity and coordinate work with them.

3. The Foothill Blvd. project in La Canada looks beautiful in large part because bluffs or retaining walls on either side are attractive. I drive this route several times a week. **I rarely see a cyclist.** When I do it's usually a single one. This project was completed sufficiently long ago for it to become known and used--if the users exist. If cyclists aren't using bike lanes that are about as safe and scenic as that stretch of Foothill Blvd., what makes you think they will use a less attractive and more heavily traveled by large trucks?

Any plan to devote scarce resources to more bike lanes, especially along Foothill Blvd. in Crescenta Highlands, needs much more thought.

Regards,

Mary-Lynne Fisher

From: Abajian, Suzie
To: Golanian, Roubik
Cc: Garcia, Michael; Calvert, Bradley; Cortes, Karen
Subject: FW: Comments from VWW Neighborhood Association on Item 8b, Project Update: Bicycle Transportation Paln
Date: Thursday, August 1, 2024 12:27:06 PM
Attachments: image001.png
image003.png

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From: Catherine Jurca <cathjurca@gmail.com>
Sent: Monday, July 29, 2024 9:13 PM
To: Asatryan, Elen <EAsatryan@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>; Gharpetian, Vartan <VGharpetian@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Najarian, Ara <ANajarian@Glendaleca.gov>
Cc: Abajian, Suzie <SAbajian@Glendaleca.gov>
Subject: Comments from VWW Neighborhood Association on Item 8b, Project Update: Bicycle Transportation Paln

Dear Members of the Glendale City Council:

The Verdugo Woodlands West Neighborhood Association asks you to support the Bicycle Transportation Master Plan. We also have a question and recommendation.

It benefits everyone—drivers and pedestrians as well as cyclists—to have a comprehensive approach to bicycle safety and clearly identified bike paths within the city. We appreciate that the BTMP also considers pedestrian safety, which is a significant priority for us and our members, in its recommendations.

One ambiguity: It appears from Exhibit 1 that both Verdugo Road and Canada Blvd. are to be Class IV (protected) bike lanes where the streets run parallel to each other. However, in the figure on page 7 of the Staff Report, it appears from the color-coding that only Verdugo Blvd. is proposed to be Class IV, and that Canada Blvd. would be a Class II (conventional) bike lane. We believe that given the very close proximity and similar orientation of these streets, the proposal represented in the Staff Report figure makes a lot more sense than having two protected north-south lanes, which would largely be a duplicative effort. Cyclists should be encouraged to ride along Verdugo Road to allow a safe cycling route while ensuring that the cars by which the vast vast majority of Glendale residents travel can move

through the city for the foreseeable future in an orderly manner along Canada Blvd.

Thank you for your consideration of these comments.

Best wishes,
Catherine Jurca, for the Board of the Verdugo Woodlands West Neighborhood Association.

From:	Abajian, Suzie
To:	Golanian, Roubik
Cc:	Garcia, Michael; Calvert, Bradley; Cortes, Karen
Subject:	FW: In Support of Glendale"s Bike Plan
Date:	Thursday, August 1, 2024 12:25:50 PM
Attachments:	image001.png image003.png

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From: Tammy O'Connor <tamoconnor3@gmail.com>
Sent: Tuesday, July 30, 2024 10:49 AM
To: Najarian, Ara <ANajarian@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>; Asatryan, Elen <EAsatryan@Glendaleca.gov>; Gharpetian, Vartan <VGharpetian@Glendaleca.gov>
Cc: Abajian, Suzie <SAbajian@Glendaleca.gov>
Subject: In Support of Glendale's Bike Plan

Dear Respected Council Members,

I've lived in Glendale for more than three decades now. I used to be an avid cyclist, until I was hit by a car.

I was lucky. I lived and fully recovered from my injuries.

That experience made me realize that there is no such thing as "safe biking" if a cyclist is near a car. The trick is to diminish the risk, and the answer to that are protected bike lanes. The City's Proposed Bike Network is exciting and forward thinking. With the state's demand for more housing, clearly the downtown area will become more dense. Biking must fit into the long-term goals for livability and sustainability. This plan is for future generations.

At tonight's council meeting, I suspect you will hear a lot of upset residents who will yell and scream about the temporary installation on North Brand Blvd. and equate their narrow view of failure to the large-scale goals of the proposed bike network.

Don't let them fool you. The installation needs work, for sure, but with time, more community engagement and built in incentives, it will work.

We need 90 miles of infrastructure and more. Council needs to do their best to change Glendale's obsession with autos and only autos. Clearly, not an easy fix!

Please support the 2024 Bicycle Master Plan.

Thank you,

Tammy O'Connor
NW Glendale

From: Abajian, Suzie
To: Golanian, Roubik
Cc: Garcia, Michael; Calvert, Bradley; Cortes, Karen
Subject: FW: Item 8.b. Bicycle Transportation Plan July 30, 2024 City Council Meeting
Date: Thursday, August 1, 2024 12:27:24 PM
Attachments: image001.png
image003.png

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From: Lisa Morris <ljbmorris@sbcglobal.net>
Sent: Monday, July 29, 2024 7:58 PM
To: Asatryan, Elen <EAsatryan@Glendaleca.gov>; Gharpetian, Vartan <VGharpetian@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Najarian, Ara <ANajarian@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>
Cc: Golanian, Roubik <RGolanian@Glendaleca.gov>; Calvert, Bradley <BCalvert@Glendaleca.gov>; Abajian, Suzie <SAbajian@Glendaleca.gov>; Lisa Morris <ljbmorris@sbcglobal.net>
Subject: Item 8.b. Bicycle Transportation Plan July 30, 2024 City Council Meeting

I'm not sure I can make it in person to this meeting, so thought it best I send in my written comments. I have attended an outreach or two, and I've reviewed the Staff Report.

First, I am a senior and do not ride a bike, so my perspective will be more from a driver's point of view. My concerns/comments:

- I am all for making biking safer. It distresses me, when I hear of an accident that a rider has been seriously injured or even killed.
- If you are considering No Right Turns on red, but only in areas of high bicycle and pedestrian traffic, I can accept that.
- Half a billion dollars over 20 years? You know darn well, there will cost overruns. I acknowledge the cost estimates were shown in both the low and high ends. Nevertheless…. Plus, those cost estimates don't include everything

(Page 146).

- I'm NOT for allowing bicycle riding on sidewalks in a commercial, city area. I worry about someone being hit by a careless or speeding bike rider. OK for a residential area for kids or adults.
- I am opposed to removing auto driving lanes and parking spaces, unless it can be shown they are under-utilized. With the increase in traffic we already have with multiple high density residential buildings in Glendale with even more units planned, we will have traffic jams (like we even presently have on Central Ave. for example), and gridlock to no end. We cannot afford a road diet. Study the other cities where that was done, and it failed.
- I note that crashes involving bicycles are down in Glendale, so I'm not sure the costs justify the Plan.
- Do we really know how many residents could potentially use these biking lanes? It may have been over estimated.
- Streets closed and tore up during the constructions phases will be a thorn in motorists' side, and to the commercial and retail businesses along the route, and will have a negative impact on residential areas too along the route.
- Either Class I or IV bike lanes would be my preference. I understand you may install multiple types, based on the area.
- And what do our emergency services think of all this; the Fire Dept., the GPD? Their professional assessment and opinion should be paramount to the rest of us.

Thank you.

Lisa Morris
2900 Fairway Ave., No. 608
La Crescenta, CA. 91214
818-326-0345

From:	Abajian, Suzie
To:	Golanian, Roubik
Cc:	Garcia, Michael; Calvert, Bradley; Cortes, Karen
Subject:	FW: Item 8b, 7/30/24. Bicycle Safety Plan.
Date:	Thursday, August 1, 2024 1:33:46 PM
Attachments:	image001.png image003.png

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From: grey james <greyrot@gmail.com>
Sent: Sunday, July 28, 2024 4:15 PM
To: Asatryan, Elen <EAsatryan@Glendaleca.gov>; Najarian, Ara <ANajarian@Glendaleca.gov>; Kassakhian, Ardashes <AKassakhian@Glendaleca.gov>; Brotman, Daniel <dbrotman@Glendaleca.gov>; Gharpetian, Vartan <VGharpetian@Glendaleca.gov>; Abajian, Suzie <SAbajian@Glendaleca.gov>
Subject: Item 8b, 7/30/24. Bicycle Safety Plan.

Greetings, Mayor Asatryan and Glendale City Council.

Bike lanes aren't for the 12 cyclists in Glendale, they're already riding their bikes.

Bike lanes aren't partisan. Bike lanes aren't woke. Bike lanes aren't pathways of hate when all other lanes fail.

Bike lanes don't want to make senior citizens starve to death because someone is going to take their car away and now they can't get to Ralph's.

Bike lanes are for people who don't want to drive two or three miles for everyday errands but aren't comfortable navigating traffic realities in Glendale.

Bike lanes are a response to the reason why your car insurance increases when you move to Glendale.

Bike lanes transform streets into neighborhoods. They decompress danger. And they are just one component of more livable neighborhoods for all.

The National Highway Traffic Safety Administration is why your motor vehicles have more airbags and other safety precautions. Since 1984 cyclists have had helmets. Their continued safety is local jurisdictions, like Glendale City Council, on Tuesday night.

You are planning Glendale's mobility. Mobility includes bicycles, scooters, pedestrians, wheelchairs and buses. If you are incapable of creating safe passage for all mobility, you're

very bad at your job.

Please manage neighborhoods, not hyperbole.
Thank you,
Grey James.

JULY 30, 2024

TO: Mayor Asatryan, Councilmembers Brotman, Kassakhian, Gharpetian, Najarian

From Arlene Vidor/South Glendale Resident.

RE: 8b: Bicycle Transportation Plan

Kudos to the City of Glendale for continuing forward with the Bicycle Transportation Plan. It is critical for car drivers to fairly and safely share all roads with cyclists – whose numbers are growing – pedestrians, AND EVEN OTHER DRIVERS (another problem for another discussion). I have heard people grousing about bike lanes and the "dreaded curse of traffic calming" -- lately and specifically complaining about the study being conducted on upper Brand. Please keep your eyes on the prize and do not scrap or slow this program down. Make necessary adjustments based on data and feedback collected. Change is a challenge but progress is essential. I'm confident that when all factors, e.g., traffic light timing, reevaluation of major traffic choke points, number of lanes, widths of the diagonal parking lanes and bike lanes, etc, are considered in aggregate, the world will adapt and embrace this. The citizens of Glendale need to get their collective learning curve on.

Again, this plan must move forward, advancing to city - wide implementation. This is the future and we need to embrace it.

info copynetwork.com

From: Maureen Palacios <maureen@onceupona.com>
Sent: Tuesday, July 30, 2024 8:51 AM
To: GiGi Garcia
Cc: info copynetwork.com; Connor Grayson; mark@moomoomia.com; Kim Konrad Kelly; Mtnrosegifts; Steve Pierce
Subject: Re: Project Development Team (PDT) for updating the Citywide Bicycle Transportation Plan(BTP) and Vision Zero Plan

And I wanted to say stuff like that but at this late stage I knew it was useless.

On Mon, Jul 29, 2024, 10:30 PM GiGi Garcia <ggmgarcia@hotmail.com> wrote:
This was sent 2 days before Thanksgiving, it was forwarded to us the day before, and then we had our busiest weekend of the year, plaid Friday, small business sat and a tree lighting to boot immediately following Thanksgiving.

We are still business owners first. Board members (volunteers)and MSPA event planners 2nd. I hate to say it, but timing couldn't have been worse. No excuse, but this should have been brought up at a board meeting by the city and or presented after our busiest 30 days of the year. (We were busy bringing in taxes to our city, which I think is still important.....those 30 days are all hands on deck for our businesses, no one can take on extra volunteer positions)

Just saying,
G
Sent from my iPhone

On Jul 29, 2024, at 5:15 PM, Maureen Palacios <maureen@onceupona.com> wrote:

<mtnrosegifts@aol.com>, stevemspa@gmail.com <stevemspa@gmail.com>, victoriamariemspa@gmail.com <victoriamariemspa@gmail.com>

An invitation.

Dale F. Dawson
Mountain Rose Gifts
MSPA Business Administrator/Events Coordinator

-----Original Message-----
From: Kamali, Arezoo <AKamali@Glendaleca.gov>
To: mtnrosegifts@aol.com <mtnrosegifts@aol.com>
Sent: Tue, Nov 22, 2022 3:06 pm
Subject: RE: Project Development Team (PDT) for updating the Citywide Bicycle Transportation Plan(BTP) and Vision Zero Plan

Dale Dawson,
Montrose Shopping Park Association

The City of Glendale is thankful for the level of interest from you and your organization. Attached is an invitation letter to participate in our Project Development Team (PDT) for updating the Citywide Bicycle Transportation Plan(BTP) and Vision Zero Plan. Please let us know if you or your representative will be able to be part of the PDT by responding to this email by the COB of December 12, 2022. Please reply to Arezoo Kamali at:
AKamali@GlendaleCa.gov
DL: 818-937-8311
We are looking forward to working with you in development of these crucial citywide plans. Please don't hesitate to contact Arezoo Kamali if you have any questions.

Thank you,

Arezoo Kamali, Planning Associate • City of Glendale • Community Development Department
633 E. Broadway, Rm. 300, Glendale CA 91206 • (818)937-8311 • akamali@glendaleca.gov

<BTP-Letter to PDT .pdf>

IM

~~Thank You for~~ Reading the following statement from State Senator Anthony Portantino

As many of you know, I am an avid bike rider and often ride from my home in Burbank to my Senate District office in Glendale.

I think it is important for every city to value the quality of life for its residents, with traffic, pedestrian and bike safety all important parts of that conversation. Clearly, no one wants to read about or experience a tragic accident that could have been avoided.

I have had several experiences where I have faced aggressive drivers and unsafe road engineering and just this weekend, I watched in horror as a car deliberately tried to run a bike rider off the road in a very violent rage in nearby Griffith Park. And clearly, like all people who share common public spaces I have a personal responsibility to practice safe behaviors myself, too.

As we search for ways to act neighborly and kind toward one another - one way is to take a moment and slow down, appreciate the best of our communities and each other. Taking moments to be outside is good for our mind, body and soul. And, public places should be safe for all of the public to do so, if they choose.

Slowing down the pace of our lives is also good for pedestrians, bike riders and car passengers. Life shouldn't be about speeding things up or enflaming rage, it should be about more human, calm and caring interactions.

To that end, road, bike and pedestrian safety has always come down to three things, commonly referred to as the 3 E's

Education, Enforcement and Engineering.

It is appropriate for the city to plan and implement bike and pedestrian strategies and I fully support those efforts.

It is also important that we take anger and passion out of something that should be a human, loving and good neighbor discussion -- interacting and sharing public space with one another.

No one wants to read about someone killed in a cross walk or in a public space. I don't know any drivers who want to cause a pedestrian or bike rider bodily harm. We share so much in common, certainly we can harmoniously

share public space for multiple aspects of public transportation and recreation.

Thank you!