Statement of Decision on Petition and Complaint
Writ of Mandate: Denied
Declaratory and Injunctive Relief: Denied

FRIENDS AND FAMILIES FOR MOVE CULVER CITY v. CITY OF CULVER CITY, CITY COUNCIL OF THE CITY OF CULVER CITY; and Real Party CITY OF CULVER CITY TRANSPORTATION PLANNING, Case no. 23STCP03833

This litigation concerns a Pilot Project to redesign lanes for vehicle, bus and bicycle traffic on Culver Blvd. and Washington Blvd. in Culver City.

Before March 2020, the City had two lanes of traffic in each direction along Culver and Washington Boulevards. There were no dedicated bus or bicycle lanes.

On February 1, 2021, the City Council approved a Pilot Project to redesign the lanes of traffic on Culver Blvd. and connecting to Washington Blvd. The Pilot Project reduced the two vehicle lanes to one lane on Culver Blvd. connecting to Washington Blvd. for a distance of 1.3 miles, thereby creating space to designate an adjacent bus lane and a separate bicycle lane in each direction. At some locations on the Culver/Washington corridor, a third lane was created by eliminating on-street parking in the curb lane. The City staff report summarizes: "The (Original Project) was installed in November 2021…the number of traffic lanes was reduced from two or three to one in each direction, dedicated bus and dedicated bicycle lanes were added where there was sufficient street width to allow for the separate bus and bicycle lanes, and shared bus/bicycle lanes where there was not, along Culver Boulevard …and on Washington Boulevard." A.R. 9.

The Pilot Project was implemented using quick-build structures and re-striping. Quick-build materials are temporary "such as vertical delineators and lane channelizers made out of plastic and not designed to stop vehicles or withstand impacts." Ans., para. 21. The City and its consultants evaluated the traffic re-design after the installation was completed and reported their findings to the City Council. A.R. 44219-48278.

On September 11, 2023, the City Council voted (3-2) to modify the Pilot Project by restoring the one lane previously designated for bus use to vehicle use on Culver Blvd. connecting to Washington Blvd. so that there were again two traffic lanes, while combining the bus lane with the bike lane into a shared bus/bicycle lane in each direction." AR 29-32 (Res. 2023-061).

The Pilot Project is titled the MOVE Culver City Tactical Mobility Lane Pilot Project ("MOVE Culver City"). The modifications voted by the City Council on September 11, 2023 are known as "Modified MOVE Culver City." The "Project," as that term is used in the CEQA statute, are the modifications to the Pilot Project approved on September 11, 2023.

The September 11, 2023 modifications of the Pilot Project have not been implemented: this lawsuit intervened.

On October 17, 2023, Petitioner filed its Verified Petition and Complaint seeking a preemptory writ of mandate to set aside and void the approvals granted by the City Council on September 11, 2023, alleging they violate the California Environmental Quality Act ("CEQA"), Public Resources Code ("PRC") section 21000 et seq.

The City of Culver City and its City Council (collectively "the City") allege in their answer that its Pilot Project, as well as its modifications, are exempt from the CEQA statute. because they are modifications to "existing highways and streets" that are CEQA exempt under Guidelines section 15301 and, separately, under PRC section 21080.25(b)(8). On September 13, 2023, the City filed a notice of the exemption for the modification of the Pilot Project, as it had earlier for the Pilot Project itself. A.R. 1-16.

There are other proposed modifications to the Pilot Project that are not yet implemented (and are awaiting the completion of this litigation). The City's answer alleges that "the final, approved plans for the Modified MOVE Pilot Project include numerous pedestrian enhancements, including but limited to twelve new high-visibility cross-walks, one intersection with an all pedestrian phase (which allows pedestrians to cross in any direction), Leading Pedestrian Intervals at ten intersections, and pedestrian recall (pedestrian phase activates without having to press crosswalk button) throughout the Project corridor."

Ans., para. 24. Petitioner does not challenge these approved but yet to be implemented modifications.

BASIS FOR CEQA EXEMPTIONS AND EXCEPTIONS AT ISSUE

The City claims that the re-designation of one lane of traffic within an existing roadway is categorically exempt from CEQA review. A categorical exemption, if compliant with CEQA, is absolute. *Berkeley Hillside Preservation v. Superior Court* (2015) 60 Cal.4th 1086, 1101. The Supreme Court in *Berkeley Hillside* explained (Italic original):

> Collectively, these provisions indicate that the Legislature intended to establish *by statute* "classes of projects" that "have been determined not to have a significant effect on the environment," to *require* OPR [Office of Planning and Research] and the Secretary to apply their expertise and identify those "classes" by mak[ing] a finding" that the projects they comprise "do not have a significant effect on the environment," and to "exempt" from CEQA proposed projects with the classes the OPR and the Secretary have identified.

A. THE CEQA EXEMPTIONS CLAIMED BY CULVER CITY FOR PROJECT

The City argues the modification of the Pilot Project is a Class 1 categorical exemption as defined in Guidelines section 15301.[1] Subsection (c) has a specific exemption for existing streets, that reads "[e]xisting highways and streets … and other alterations such as the addition of bicycle facilities, including … bicycle lanes, transit improvements such as bus lanes … that do not create additional automobile lanes." Section 15301 provides a further condition in its preamble. The preamble states: "Existing Facilities" are a "minor alteration of an existing public … structure …involving negligible or no expansion of an existing or former use."

The City separately claims as an independent CEQA exemption the statutory exemption provided in PRC section 21080.25(b)(8).

B. THE CEQA EXCEPTIONS CLAIMED BY PETITIONER TO DEFEAT A CLAIM OF A CLASS 1 CATEGORICAL EXEMPTION FOR THE PROJECT

CEQA provides exceptions to the categorical exemptions. Petitioner argues that the exceptions provided in Guidelines section 15300.2, subd. (b)

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[1] CEQA has 33 categorical exemptions. See, Guidelines section 15300. The "Existing Facilities" that includes existing streets is found in Guidelines section 15301. It is called a "Class 1 exemption," probably because it is the first exemption in the Guidelines list of 33 categorical exemptions.

and (c) apply to defeat any claim of a categorical exemption for the modified Project. Section 15300.2, subd. (b) and (c) read as follows:

> (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
>
> (c) Significant Effect. A categorical exception shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The parties agree that the Supreme Court in its *Berkeley Hillside* decision expansively defined the exception provided in section 15300.2, subd. (c) by stating: "[A]n agency may not apply a categorical exemption without considering evidence in its files of potentially significant effects regardless of whether that evidence comes from its own investigation, the proponent's submissions, a project opponent or some other source. *Id.* at1103. *Berkeley Hillside* defines two avenues available to an objector when arguing an "unusual circumstances" exception under Guidelines 15300.2, subd. (c), saying at 1105:

> A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location…. Alternatively, under our reading of the guideline, a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect. That evidence if convincing, necessarily also establishes "a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

Petitioner in applying the *Berkeley Hillside* analysis argues that there will be increased vehicle traffic on the Culver/Washington corridor if a second vehicle traffic lane is restored and that additional traffic "will cause substantial adverse effects on human beings, either directly or indirectly." Petitioner lifts this "substantial adverse effects on human beings" language from CEQA provisions that would obligate a lead agency, absent an exemption, to initiate a CEQA analysis. The language is found in PRC section 21083 (relevant part quoted below) and also in Guidelines section 15065 (not quoted as containing duplicative language):

> The guidelines [prepared by OPR] shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if one or more of the following conditions exist: [ ]

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Finally, Petitioner also makes an argument that "environmental justice" overrides the Class I exemption claimed by the City for the modifications of this Pilot Project. No CEQA provision nor judicial decision has recognized an "environmental justice" exception to a Class 1 exemption.

STANDARDS OF REVIEW FOR THE CITY'S APPROVALS FOR MODIFICATIONS TO THE PILOT PROJECT

The City Council in approving the modifications to the Pilot Project on September 11, 2023 was acting in a quasi-legislative capacity. This Court's review is conducted as a traditional mandamus proceeding under CCP section 1085. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 568. Judicial review of a quasi-legislative determination is deferential to the decision made by the lead agency, here the City.

The determination of whether the Project qualifies for an exemption—whether categorical or statutory--presents a question of law. The City has the burden to establish a project qualifies for an exemption by substantial evidence. PRC 21168.5; *Berkeley Hillside, supra* at 1110; *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App. 4th 832, 850-852.

Petitioner must establish its claim of an exception by substantial evidence. *Berkeley Hillside, supra*, at 1105.

Each party, therefore, has the burden to establish its case by substantial evidence. Substantial evidence is defined in Guidelines section 15384, quoted below:

(a) "Substantial evidence" … means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantial opinion or narrative, evidence that is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

EXCLUSIONS FROM THE ADMINISTRATION RECORD OF DOCUMENTS FROM PETITIONER'S DECLARATION AND REQUEST FOR JUDICIAL NOTICE

The parties must establish their merit contentions by substantial evidence found in the administrative record. *Western States, supra*, at 573-574.

PRC section 21167.6 prescribes the documents that are to be included in the administrative record. The parties' counsel cooperated to prepare the administrative record. The administrative record was certified and filed on March 8, 2024. However, less than one month later, when it filed its Opening Brief, Petitioner sought to introduce new documents into the administrative record.

On April 5, 2024, in filing its Opening Brief, Petitioner asked the Court to receive into the administrative record nine exhibits (marked as Exhibits 3-11) attached to the declaration of its counsel, Ellis Raskin; and another six exhibits submitted through a Request for Judicial Notice (RJN). These 15 exhibits comprise 670 sheets of paper. The late filed Raskin declaration and RJN both require the Court to rule on the admittance of the 15 exhibits into the administrative record under the principles articulated under *Western States*.

The Court, for the reasons discussed below, excludes three hyperlinked documents from the administrative record, namely, Exhibits 6 and 10 from the Raskin declaration and Exhibit 2 from the RJN.

A. COURT SUSTAINS THE CITY'S OBJECTIONS AND EXCLUDES FROM THE ADMINISTRATIVE RECORD EXHIBITS 6 AND 10 OF THE RASKIN DECLARATION

Petitioner in its Opening Brief at p. 31, fn. 10 asks the Court to receive into the administrative record documents attached to the Raskin declaration that are identified in footnotes to attorney comment letters as being available on a U.R.L. web site.

The City filed objections to the Raskin Motion. (See, Resp. Obj. to Pet. Evid., filed May 7, 2024.) The Court will grant the City's motion to exclude two exhibits (Nos. 6 and 10) from the nine that Mr. Raskin offered for inclusion into the Administrative Records under *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 724.

The nine exhibits offered through Mr. Raskin's declaration are hyperlinks that supposedly can be downloaded as paper documents from web sites that are identified in an attorney's comment letters to the City Council. Mr. Raskin in his declaration explained his reasons for submitting paper copies of hyperlinked documents as follows (Raskin decl., p. 2.):

> There are various documents in the administrative record that include hyperlinks (or URLs) to various references or sources. The documents and webpages that can be accessed through these hyperlinks are part of the administrative record. (See *Consolidated Irrigation District v. Superior Court of Fresno County*, 205 Cal.App.4th 697, 724.) Because it may not be possible to access the hyperlinks when reviewing paper copies of the record documents, I have attached copies of the hyperlinked reference documents from footnotes 3 through 7 in the April 10, 2023 coalition letter (at AR 3688-3694).

Whether hyperlinked documents should be included in an administrative record as evidence to support a CEQA challenge presents an evidentiary question. Our Supreme Court has held "extra record evidence is <u>not</u> admissible in a CEQA traditional mandamus action alleging that an agency abused its discretion within the meaning of [PRC 21168.5]." *Western States, supra*, 9 Cal.4th at 573 (underling added). The reason is that, because the question to be decided is whether there is substantiality of evidence to support an agency's decision, the answer must be based on the evidence that was before the agency when it made its decision. In requiring that an agency's finding to be supported by evidence in "the whole record" CEQA can only be referring to documents that were in the record when the agency decision was made. The *Western States* decision holds that:

> Accordingly, a court generally may consider only the administrative record in determining whether a quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources Code section 21168.5. This conclusion is a logical extension of *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.... *Id.* at 573.

The Supreme Court, in its *Laurel Heights* decision, held that extra record evidence is not admissible to show abuse of discretion under PRC 21168.5 because that evidence was not before the decision-makers:

> "A court's task is not to weigh conflicting evidence and determine who has the better argument.... We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of law permitted us to do so." (Id at 573-574, quoting the *Laurel Heights* decision.)

The immediate question, therefore, is whether the hyperlinked documents that were identified in an attorney comment letter to the City Council and are now offered for inclusion in the administrative record through the Raskin declaration, should be considered as extra-record evidence and,

thus, excluded from an administrative record and, accordingly rejected as evidence to support Petitioner's arguments on the merits.

Petitioner cites a single authority for the inclusion of documents derived from hyperlinks into the administrative record in a CEQA case, that being *Consolidated Irrigation District v. Superior Court, supra, 205 Cal.App.4th* at 724. See, Op. Br., p.31, fn. 10.

In *Consolidated* the question was whether documents the petitioner cited to a lead agency as accessible from a hyperlink to specific web site were submitted to the agency, in a manner so that the agency had to consider them under PRC section 21167.6, subd. (e)(7). The hyperlinked documents under consideration had content "tending to prove or disprove the existence of an alleged fact." *Consolidated*, supra, at 721. The *Consolidated* court made a distinction between documents that "will appear on the computer screen and no further searching is required" and other documents that "require a search for the document once the website is accessed." The *Consolidated* court held that a trial court should receive into the administrative record documents in the first category but <u>not</u> documents in the second category. *Ibid.*

Petitioner in its merits argument often cites as "facts" information that is supposedly to be found through a hyperlinked web site but that web site when accessed cannot be utilized to find the supposed facts. The admissibility of hyperlinked documents, therefore, is important in evaluating whether the merits agreement is supported by substantial evidence. The *Consolidated* decision provides an extensive discussion of the topic, a part of which is quoted below:

> As a result, the parties dispute over the scope of section 21167.6 subdivision (e)(7) will turn on whether the documents referenced in the comment letters were "submitted to" City. [ ]
>
> We conclude that the term "submitted to"—which generally means presented or made available for use or study—is concerned with the effort that must be expended by the lead agency in using or studying the "written evidence" presented. (sec. 21167.6, subd. (e)(7).) Consequently, we think that the term should be interpreted and applied pragmatically to fairly allocate the burden of handling the written evidence. Applying the term too broadly could place an unacceptable burden on lead agency personnel by requiring them to expend time and limited resources tracking down information that could have been provided more efficiently by the commenter. Based on considerations regarding the allocation of burden, we conclude that "written evidence" has been "submitted to" the lead agency for purposes of section 211687.6, subdivision (e)(7)) when

> the commenter has made the document readily available for use or study by lead agency personnel. [ ]
>
> We do not doubt that some documents can be found easily if a general Web site is given. Conversely, other documents will be difficult to locate. In view of the potential variation from document to document, it is best to adopt a rule that will avoid subjecting the lead agency personnel to potentially time-consuming efforts. We conclude, therefore, that the two documents referenced with a citation to general Web pages … were not made readily available to City and, therefore, are not part of the record of the proceedings under section 21167.6, subdivision (e)(7).

Consolidated Irrigation District, supra, 205 Cal.App.4th at 722-725.

Petitioner's briefs give no consideration to this distinction made in the *Consolidated Irrigation* decision. Two of the documents provided in the Raskin declaration (Nos. 6 and 10) are not available from the hyperlink reference to specific web site and therefore are not admissible under *Consolidated*.

The Court GRANTS the City's objections and declines to receive into the administrative record Exhibits 6 and 10 from the Raskin Declaration. The Court agrees with, and quotes verbatim, the City's arguments from its Objections to Pet.'s Evidence, page 3 as to why Exhibits 6 and 10 are not admissible:

> "[W]hile *Consolidated Irrigation District* … does hold that where a comment letter provides a web hyperlink to the *exact source document* being referred to (as opposed to a hyperlink to a general web page that would require additional searching to locate the referenced document), that hyperlinked document may be included within the AR, at least 2 of the hyperlinks at issue here (footnote 6 re: UC Berkeley Transportation Injury Mapping System ("TIMS") hyperlinked in the AR at AR 3691 and found on the internet at https://tims.berkeley.edu/, and footnote 10 re: UC Davis California Induced Travel Calculator ("ITC") hyperlinked at AR 3692 and found … at https://travelcalculator.ncst.ucdavis.edu/) do not meet the *Consolidated Irrigation District* test as they do NOT take you directly to a document with the referenced facts.
>
> "Indeed, the TIMS hyperlink takes you to a generic home page that requires you to first register for an account before you can even begin to search for alleged crash data and thus neither supports Petitioner's claim that there were 21 collisions between cars and bikes and 19 between cars and pedestrians in the "project area" between 2011 and 2020 let alone allows one to easily verify that alleged crash data. Similarly, the ITC hyperlink takes you to an even more generic home page that requires a user to input myriad data like year, roadway type and length, and county

> before some behind the scenes calculation is made regarding the alleged amount of vehicle miles traveled ("VMT") that will be induced by the addition of a new roadway lane associated with those inputs. Further, the VMT data provided by the website at the ITC hyperlink is not relevant as it uses 2019 as the base year, when the MCC Pilot Project corridor had two and sometimes three vehicle travel lanes in each direction, so it cannot be used to draw VMT conclusions since the base year dataset includes the conditions the Project is claimed to "induce."

Petitioner did not respond to the City's objections either in its Reply Brief or at the June 5 hearing. (See, Trans., pp.13-14.) Petitioner's lack of a response is a concession that two of the hyperlinked documents—Exhibits 6 and 10—cannot be directly accessed from the hyperlinked websites and, therefore, are not admissible under *Consolidated.* Under *Western States* that is an appropriate ruling: the documents were not available in the record available to the City Council when it approved the modifications to the Pilot Project. Under the authority and reasoning of *Consolidated* this Court excludes Exhibits 6 and 10 from the administrative record. The excluded documents submitted by the Raskin declaration are:

> Exhibit 6, the UC Berkeley Transportation Injury Mapping System ("TIMS") hyperlinked in the AR at AR 3691; and
>
> Exhibit 10, the UC Davis California Induced Travel Calculator ("ITC") hyperlinked at AR 3692.

The Court, under *Consolidated*, will receive into the administrative record from the Raskin declaration Exhibits 3, 4, 5, 7, 8, and 9, while refusing to admit into the administrative record Exhibits 6 and 10.

It would have been better, of course, for Petitioner to have moved to augment the record to include the hyperlinked documents before the briefs were filed and the merits argued on June 5, 2024. The Court then would have received briefs that do not argue the significance of inadmissible documents.

B. COURT DENIES PETITIONER'S REQUEST TO INCLUDE EXHIBIT 2 FROM PETITIONER'S RJN INTO ADMINISTRATIVE RECORD

Petitioner also filed with its Opening Brief a RJN to put into evidence six exhibits. Documents may be offered into evidence though a RJN, that is, without foundation (or authentication), under Evid. Code section 451 (mandatory) and section 452 (discretionary). In a CEQA case, the documents should also be appropriately included in an administrative record. PRC section 21167.6.

The City stipulates to receiving five of the six documents identified (and attached to) Petitioner's RJN. The five exhibits that the parties stipulate to be received into evidence are the following:

> Exh. 1: Design Plans for Modified MOVE Culver City Project;
>
> Exh. 3: California NRA's 2018 Updates to CEQA Guidelines;
>
> Exh. 4: Final Statement of Reasons re 2018 Amendments to CEQA Guidelines;
>
> Exh. 5: Circulation Element of Culver City General Plan; and
>
> Exh. 6: Bicycle & Pedestrian Action Plan for Culver City.

The Court accepts the parties' stipulation that judicial notice be taken of Exhibits 1, 3, 5, and 6, and judicial notice is taken of Exhibit 4 under Evid. Code section 452.

There is no stipulation as to Exhibit 2, and, even with a stipulation, the Court would refuse to take judicial notice of Exhibit 2. Petitioner identifies its RJN's Exhibit 2 as a "Definition of the term 'Induced Demand' from Levinson & King (2019) *A Political Economy of Access*." Exhibit 2 consists of seven pages from a college textbook. Petitioner's legal memorandum submitted on April 5, 2024 states: "Courts shall take judicial notice of ' [t]he true significance of all English words and phrases and of all legal expressions.' Evid. Code, section 452, subd. (e)."

Petitioner's citation is off: the quotation comes from Evid. Code section 451, subd. (e). And the term "induced demand" does not fit within section 451, subd. (e). The term "induced demand" is not from a dictionary; it is not an economic law. It is an economic theory used to explain consequences that may (or may not) occur depending on a sequence of events. The very textbook pages submitted as Exhibit 2 shows the term" induced demand" is not a predictor of when greater demand occurs:

> A single sequence of events cannot provide proof for induced demand. [ ] A sequence of events can however disprove induced demand (or supply) as the list above illustrates, there are several cases where construction does not result in demand (we can conclusively disallow induced demand in that case)… (See, RJN, Exh. 2, p. 5.)

Petitioner uses the term "induced demand" to mean that the City's restoration of the second traffic lane in the project area will significantly increase VMT (vehicle miles travelled) on Culver Blvd. and Washington Blvd. Petitioner, however, offers no empirical evidence that VMT will increase when a vehicle lane is returned to general vehicle use, nor even that VMT decreased

when that vehicle lane was restricted to bus use by the original Pilot Project. Petitioner provides no evidence to indicate that reducing two lanes of vehicle traffic to one lane for a distance 1.3 miles distance has had any effect on vehicle traffic on a 6 mile downtown corridor. Petitioner certainly can argue the issue, but the Court will not receive into evidence a definition of "induced demand" that assumes that the modifications to the Pilot Project will increase vehicle traffic on the Culver/Washington corridor.

The Court also considered whether the RJN Exhibit 2 could be received under subd. (h) of Evid. Code section 452, permitting the admission of "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." The conditions of subdivision (h) do not apply because, as stated above, Petitioner offers no evidence and certainly no expert opinion that the reopening of a former traffic lane will increase the traffic or the speed of traffic on the parts of Culver Blvd. and Washington Blvd. when the bus lane is restored to vehicle traffic.

RJN's Exhibit 2 does not satisfy the Code requirements for admission into evidence. The Court declines to receive RJN Exhibit 2 into evidence.[2]

SUBSTANTIAL EVIDENCE SUPPORTS THE CITY'S DETERMINATION THE PROJECT HAS A CLASS 1 EXEMPTION UNDER SECTION 15301, SUBD. (c)

The City Council when approving the modifications to the Pilot Project determined the work was exempt from CEQA review. The City's Resolution No. 2023-061 (A.R. 29-32) made two specific determinations to qualify the return of one lane to general traffic use (the subject lane) for a Class 1 categorical exemption. Its two principal findings are:

> [T]he Project qualifies for a Class 1 – Existing Facilities Categorical Exemption, pursuant to CEQA Guidelines (14 CCR section 15301), as it consists of improvements on existing highways and streets where there is negligible or no expansion of existing or former use and the addition of shared bus and bicycle lanes that do not create additional automobile lanes,

and

[2] The issue of "induced demand" remains in the case because the comment letters from Petitioner's former counsel to the City Council uses the term (without defining it). The City itself uses the term "induced demand" in its analysis, although it concluded that induced demand did not create more traffic (e.g. did not create more VMT). The Raskin declaration also includes as Exhibit 8 an article from *Wired* that use the term "induced demand" to mean the construction of a new roadway. The lane that will be reopened to vehicle traffic is not new; it returns an existing lane to its "former use."

> [T]he Project does not fall within any of the exceptions to the Class 1 exemption described in CEQA Guidelines Section 15300.2, including finding that there are no unusual circumstances that lead to a potential for any significant environmental impacts and finding that the Project will not result in any significant impacts.

These two determinations are supported by substantial evidence in the administrative record. It is undisputed that that the subject lane in the Culver/Washington corridor was used for general traffic until 2021; that the Pilot Project changed subject lane to bus use in 2021; and that the modified Pilot Project will return the subject lane to general traffic use.

Petitioner contends that the City's restoration of a traffic lane in the Culver/Washington corridor did not return that lane to a "former use" and, therefore, did not qualify as a Class 1 exemption. Petitioner argues rhetorically that the City "created" a traffic lane by returning the subject lane to general traffic use. However, that use is the "former use" that is allowed by section 15301.

Petitioner's argument appears to be that because the bus lane was an intervening use the restoration of the subject lane to general traffic use was not a "former use." This argument is inconsistent with both the language and the purposes of the "former use" provision. The former use provision was amended into section 15301 by the Legislature in 2018. See, RJN, Exh. 3, p. 47. The reasons for the amendment are explained in the 2018 Report from the California Natural Resources Agency that is titled "The Existing Facilities Exemption Appropriately Covers New Uses That Do Not Exceed the Intensity of Either Existing or Former Uses of a Facility." See, RJN, Exh. 4, pp.91-92. The text makes clear that for the "former use" exemption to apply there must be consideration of both an existing and a former use for the roadway. Petitioner's argument disregards that in order to have a former use there must be an existing use that is being changed to a former use.

The 2018 Report goes on to describe reasons for the amendment of section 15301 to add the "former use" exemption. Expressly permitting a public facility to revert former use without CEQA analysis is "consistent with the cases interpreting baseline, it is also consistent with state policy [emphasizing] the importance of infill development, reuse and revitalization before expanding beyond the existing urban fabric." The 2018 Report finds support for a "former use" exemption in Government section 65041.1, which states in its preamble:

> "The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, … shall be … to [p]romote infill development and equity by appropriate reuse and redevelopment of

previously developed … land that is presently served by transit, streets… and other essential services…."

The City Council majority in attempting to obtain the optimal balance for inter-modal traffic on the Culver/Washington corridor correctly determined that the return of vehicle traffic to the subject lane was a "former use" of an existing roadway within the meaning of section 15301.

The Pilot Project redesignation of the subject lane as a general traffic, moreover, was a temporary "try out" so that the changes in lane usages could be evaluated. A.R. 52-74. The bus use implemented by the Pilot Project for the subject lane was not permanent. This is shown by the fact that the changed use was implemented with temporary materials. The bus use was also provisional as it was installed as part of a traffic study. That traffic study when presented to the City Council (A.R. 44219-48278) prompted public debate and led a Council majority in a public vote to direct the return the subject lane to general traffic use. A.R.29-32 (Resolution 2023-061).

The Class 1 exemption was written into CEQA for just this purpose: to permit the local agency to make decisions about the uses made of already existing public facilities, so long as its decision caused no more than a "negligible or no expansion of an existing or former use." When considered in the context of a local traffic study, if the street use is temporary and is afterwards returned to its "former use," the purposes, as well as the conditions, of the Class 1exemption are satisfied.

Under the circumstances of this case, Petitioner's attempt to enjoin the City Council from making changes to the Pilot Project is contrary to state policies that underlie the CEQA statute. Petitioner's challenge usurps the role of the City Council in deciding the best uses for existing public streets in Culver City. Indeed, that CEQA has created an "existing facilities" exemption indicates that the Legislature expects that the local agency shall decide the best use of public facilities so long as that use is consistent with the state-wide policies. Furthermore, a CEQA litigation challenging a Class 1 exemption discourages local agencies from experimenting to obtain a more efficient use of existing public facilities. In this case, Petitioner's argument that the traffic modifications introduced by the Pilot Project can't be changed has stopped progress in the other areas of the Pilot Project, for instance, making pedestrian improvements in the project area and a further extension of the shared bus/bicycle lanes along the Culver/Washington corridor. These improvements, authorized by the City Council on September 11, 2023, are awaiting the outcome of this litigation.

To conclude, Petitioner's interpretation of the "former use" provision in section 15301 is not persuasive under the present circumstances.

Turning to the second of the two findings made by the City Council on September 11, 2023, the City establishes that the exceptions to the Class 1 exemption, namely the "unusual circumstances" or "cumulative impacts," lack merit. The "unusual circumstances" exception requires under the *Berkeley Hillside* decision a discussion of whether the return of the subject lane to its "former use" constitutes "a potential for a significant environmental impact due to unusual circumstances." This exception is discussed in the next section.

The "cumulative impacts" exception is addressed here. The cumulative impacts exception to categorical exemptions requires that the cumulative impacts result from "successive projects of the same type in the same place." Guidelines section 15355, subd. (b). The idea is that an exemption cannot be used to exempt from CEQA review a piecemeal part of larger project "of the same type in the same place." In this case, however, Petitioner has not identified any other project that might be considered as cumulative to the restoration of the subject lane to general traffic use. Nor did Petitioner at the June 5 hearing identify any other City project that would produce GHG or traffic hazard impacts. (See, Trans., pp. 58-59.) The Court finds no evidence to support this argument; and considers this issue waived.

PETITIONER DOES NOT SHOW SIGNIFICANT ENVIRONMENTAL EFFECT "DUE TO UNUSUAL CIRCUMSTANCES" TO SUPORT AN EXCEPTION

Petitioner's main argument is that the modified Project will have significant environmental effect "due to unusual circumstances." Guidelines section 15300.2, subd. (c). Relying on the *Berkeley Hillside* analysis, Petitioner argues that there will be a substantial increase in vehicle traffic on the Culver/Washington corridor if a lane is restored to its "former use" and that such additional traffic "will cause substantial adverse effects on human beings." PRC section 21083; Guidelines section 15065.

Thlis argument relies on a series of assumptions: that the lane restoration for a distance of 1.3 miles on the Culver/Washington corridor will increase traffic on the Culver and Washington Boulevards corridor and on connecting streets; that because of the increased traffic there will be more collisions between vehicles and pedestrians and/or bicyclists; and that the increased traffic will significantly increase greenhouse (GHG) emissions.

Petitioner provides no substantial evidence to support these assumptions.

A. Petitioner offers no substantial evidence that the Project will significantly VMT on Culver and Washington Boulevards.

Petitioner argues that an assumption that the restoration of a single lane of traffic will increase the VMT significantly can be obtained from a calculation made from the UC Davis Induced Travel Calculator (the "ITC"). However,

Petitioner does not provide that calculation (nor the inputs to make the calculation). Petitioner instead relies on a hyperlink to a website footnoted in an attorney's comment letter at A.R. 3692 and referenced in the NRDC letter at A.R.43859.[3] This does not provide substantial evidence for the VMT assumption for two reasons: first, the information found on this particular website is not received into the administrative record; and, secondly, even if it was, a VMT calculation from the ICT depends on the variable inputs inserted into the ITC to make the calculation, and Petitioner provides no information about what was inputted to obtain any ICT calculation.

This was pointed out in the City's brief. The City said (see, Resp. Obj. to Pet. Evid., p.3):

> [T]he ITC … requires the user to input myriad data like year, roadway type, and length, and county before some behind the scenes calculation is made regarding the alleged amount of vehicle miles traveled ("VTM") that will be induced by the addition of a new roadway lane associated with those inputs.

The City's criticism of Petitioner's failure to provide an ITC calculation for the increased VMT that would occur, with the modifications to the Pilot Project, does not go far enough. Petitioner does not provide a VTM calculation for traffic use on the Culver/Washington corridor for its present use, e.g. when one of the two traffic lanes is designated exclusively for bus use. Without a baseline, Petitioner's assertion that the restoration of one lane to general traffic use is speculation, which under the statute can never be substantial evidence. See, PRC section 15384.

Petitioner fails to provide substantial evidence that the re-opening of a single lane on a multi-lane boulevard to vehicle use (its historic use) will meaningfully increase VMT. This flaw in Petitioner's foundational assumption, moreover, is fatal to its contentions that increased VMT will endanger bicyclists and pedestrians and significantly increase GHG emissions.

B. Petitioner offers not substantial evidence that the Project will meaningfully increase vehicle collisions with bicycles/pedestrians.

Petitioner offers no substantial evidence for its assumption that the restoration of a single lane of traffic for a distance of 1.3 miles will increase collisions between vehicles and pedestrians or bicycles. Petitioner assertions of an increase in vehicle collisions with bicyclists and pedestrians is based on an extrapolation from the UC Berkeley Transportation Injury Mapping System

[3] The NRDC letter dated April 17, 2023 (A.R. 43858-62) cited repeatedly by Petitioner states: "To develop a preliminary estimate of the increase in VMT, we used the Induced Travel Calculator from the National Center for Sustainable VMT Impacts at UC Davis…."

("TIMS") that is excluded from the administrative record and therefore carries no evidentiary weight.[4] Petitioner also cites accident statistics for Los Angeles County through the year preceding the Pilot Project. If Petitioner wanted to cite relevant statistics it could have provided collision data available from the Culver City Police Department for the period of the Pilot Project.

Petitioner provides not data to support an argument that the Pilot Project modifications will cause a significant increase in collisions between vehicles and bicycles and/or pedestrians.

C. Petitioner offers no substantial evidence that there will be a meaningful increase in GHG emissions.

Petitioner asserts that the restoration of a single lane of traffic for a distance of 1.3 miles will cause "substantial adverse effects on human beings" because GHG emissions will increase significantly. Petitioner offers no evidence that this will occur because without credible evidence that there will be a significant increase in VMT there is no basis for supposing that there will be an increase in GHG emissions.

The assertion in the NRDC letter dated April 17, 2023 at A.R. 43858-62 that the Project will generate a pollution equivalent that is "greater than" the SCAQMD threshold for stationary sources" is outside the record. The source for the NRDC's assertion is a footnoted hyperlink to a document that is a blank page when the web address is accessed. See A.R. 43860. Under *Consolidated Irrigation District*, the footnote and therefore the NRDC conclusions based on the website cited in the footnote are outside the evidentiary record. *Consolidated, supra,* 205 Cal.App.4th at 725.

The argument that Petitioner makes for an increase in GHG emissions crumbles for lack of data to support any such argument.

D. The public comments are not substantial evidence that the restoration of traffic lane will constitute a safety hazard.

Petitioner, in the absence of data, argues the "comments from local residents based on personal experience establish that the original Pilot Project promoted bicycle and pedestrian safety." Op. Br., pp. 12, 19-20. That sidesteps (elides) the issue There is no substantial evidence that the modifications of the Pilot Project will cause "adverse effects on human beings, either directly or indirectly." Petitioner argues that residents gave testimony that "removing these

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[4] Petitioner throughout its Opening Brief exaggerates the sources of its assertions about VMT by saying they are the opinions of a "coalition of transit and mobility experts." (See, Op. Br., pp. 19-20.) These experts are never identified; therefore their credentials, their opinions, and the reasons for their opinions are unknown to the Court.

features [referring to protected bicycle lane and pedestrian safety measures] could present new human health and safety risks." Op. Br., p.19, lines 21-23.

A close review of Petitioner's record citations do not provide evidence that the changes in the Pilot Project will cause "adverse effects on human beings." The personal comments, for the most part, refer to conditions not involving the project area.

Petitioner's testimonials are from people who say that protected bike lanes are good but say nothing about the proposed modifications to the Pilot Project. See A.R. 1255, 1287, 1560, 1569,3663, 3842. Other comments refer to the Pilot Project as having made bike travel more safe, but offer no criticism of the combined bus/bile lanes to be implemented in the modifications to the Pilot Project. These testimonials are at A.R. 1569, 1579, 3663, 3842, 4018, 4043 ("As a mother, I finally feel safe having my teen bike around town"), and 4118 ("MOVE Culver City is making our city safer and saving lives.")

Petitioner cites (Op. Br. 19:23-24) David Metzler at A.R. 1331 giving "personal experience of being injured in an unprotected bike lane and being saved from more serious injury in protected bike lane." Metzler, however, states he was injured when struck by a car "on Ocean Park Boulevard, right next to two schools that I work at," and he was saved from more serious injury because the lane "the driver was turning on to had pylons that are meant to slow cars turning right." A.R. 1331. This incident did not occur in the Project area nor occur under conditions comparable what will be the modified Project. Petitioner cites an email from Annie Cohen to the City Clerk dated April 23, 2023. A.R. 3663. The Cohen letter recites: "On one of my rides in the final days of 2020 after I got off the bike path and started maneuvering through the streets I was hit by a car. I was lucky. … I still bike today and bike lanes play a huge role in my feeling comfortable on a bike. Now one of my favorite places to bike is Culver [Blvd.] because of how bike friendly it is." It is clear that bike accident suffered by Ms. Cohen occurred outside the Project area and before the original Pilot Project was implemented.

Petitioner argues these testimonials are like the personal comments that were found to be substantial evidence (to defeat a negative declaration) in *Keep Our Mountains Quiet v County of Santa Clara* (2015) 236 Cal.App.4th 714.The personal comments in *Keep Our Mountains Quiet*, all of them, related to noise and traffic congestion caused by the County permitting of a wedding chapel in a wilderness area. The citations that Petitioner points to are generalized, referring to bike safety issues, but do not support any argument that a restoration of a single traffic lane for 1.3 miles (in both directions) "will have substantial adverse effects on human beings."

Petitioner refers to A.R. 4155 for "video evidence showing dangers of vehicle/pedestrian conflicts coming from all sides on Culver & Main Street when there are multiple general purpose lanes." There is no showing this location is in the Project area, nor when this video was taken, nor whether the Pilot Project modifications would affect the conditions shown on the video.

Petitioner's Opening Brief, at p. 19, fn. 6, refers to a statement made by a Mr. Schaller to the City Council (at A.R. 1267) saying "Traffic accidents are the leading cause of death among children 14 years or younger." Schaller further stated that based on a 13-year study across a dozen cities "protected bike lanes led to a 44 percent decline in fatalities and a 50 percent reduction in serious injuries for all road users." There is no showing this information applies to the modified Project.

Petitioner's collection of personal comments do not constitute substantial evidence that accidents and personal injuries will occur "due to the circumstances of the project." PRC section 15384.

Petitioner also cites a quotation from an FM3 Report, that relies on a generalized statement from the Federal Highway Administration for FM3's opinion that: "the proposed project will increase vehicle speeds which dramatically increases the likelihood that a collision between a car and pedestrian would cause a fatality." A.R.43860. This statement is unconnected to the Project. It also is counterintuitive: why will speeds increase (the posted speed limits will remain the same); on what lanes will the speeds increase; why are pedestrians in more danger, if they are crossing with a light and in a marked cross-walk? There is no showing why the modifications will make these consequences more likely to occur.

SUBSTANTIAL EVIDENCE SUPPORTS THE CITY'S DETERMINATION THE PROJECT IS EXEMPT UNDER PRC SECTION 21080.25

The City also determined that the modifications to the Pilot Project, as well as the Pilot Project itself, are exempt from CEQA requirements under PRC section 2180.25, subd. (b). This exemption applies to projects providing bicycle facilities, transit prioritization projects and transportation demand management programs. PRC section 21080.25, subds. (a)(2); (a)(11); and (a)(12) respectively.

The City determined in its enabling Resolution that the modified Pilot Project was exempt from CEQA under section 21080.25. A.R. 29-32.

Petitioner contends that the conditions for the application of section 21080.25 are not satisfied because (1) the modified Project "induces" single-occupancy vehicle trips and (2) constitutes the addition of an auxiliary lane. Op. Br., p.25-26. See, section 21080.25(c)(2). However, in a full reading of subdivision (c)(2) the provision requires the Project "does not induce single-

occupancy vehicle trips …except for minor modifications needed for the efficient and safe movement of transit vehicles, bicycles, or high-occupancy vehicles."

Petitioner, as demonstrated earlier, does not quantify whether restoring a single lane to vehicle use will increase VMT and consequently does not demonstrate much less quantify that the Project will induce single-occupancy vehicle trips. However, even if that condition is assumed to occur, there is no showing by Petitioner that the increase in single-occupancy vehicle trips was not offset by the Project "efficient and safe movement of transit vehicles, bicycles, and high-occupancy vehicles." Petitioner cannot defeat an exemption by an argument; Petitioner must submit substantial evidence to support its opposition argument, and fails to do so.

As for the prohibition in section 21080.25, subd. (c)(2) against "the addition of any auxiliary lanes," Petitioner does not show the Project creates an auxiliary lane. An "auxiliary" refers to a usage which is subordinate; the term "addition" refers to the inclusion of something new. The restoration of an existing traffic lane to vehicle use does not satisfy the requirement of being "the addition of an auxiliary lane" under the present circumstances.

PETITIONER DOES NOT SHOW THAT THE MODIFIED PILOT PROJECT IS INCONSISTENT WITH THE CITY'S GENERAL PLAN

The City made a finding that the modifications to the Pilot Project were consistent with the City's draft General Plan, short Range Mobility Plan, Bicycle and Pedestrian Master Plan and Action Plan, the City Council's Strategic Pan, and the Transit-Oriented Development Vison Report." A.R. 35.

The Court has reviewed the components of the General Plan that are included as Exhibits 5 and 6 for the RJN, especially the Bicycle and Pedestrian Action Plan (BPAP). The Court does not find any inconsistency with the approved modifications to the Pilot Project and the generalized statements made in the various components of the General Plan (Exhibits 5 and 6 of the RJN).

The Court finds that Petitioner has not established any analysis to void the proposed modifications based on any inconsistency with the General Plan.

COURT GRANTS JUDGMENT TO THE CITY AGAINST ALL CAUSES OF ACTION ALLEGED IN THE PETITION/COMPLAINT

Petitioner argues the detailed provisions of the CEQA statute relating to exemptions and exceptions thereto without providing substantial evidence, or any real evidence, to support its arguments. The Court finds no basis in the administrative record, even as enhanced by admitted seven exhibits from the

Raskin declaration and five admitted exhibits from the RJN, to overturn the City Council's approvals of the modifications of the Pilot Project.

The Court denies relief to Petitioner under all causes of action pled in the Verified Petition and Complaint. The Court finds that the modified Pilot Project is exempt from CEQA review under Guidelines section 15301, subd. (c) and, separately, under PRC section 21080.25(b). The Court specifically finds that the exceptions codified in Guidelines section 15300.2 do not apply to the Project.

The City is to prepare a Judgment and submit same for the Court's signature by August 23, 2024.

DATED: August 13, 2024

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RICHARD L. FRUIN, JR.
Superior Court of California
County of Los Angeles