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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BAY AREA CITIZENS, a non-profit corporation, Petitioner, v. ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers agency; METROPOLITAN TRANSPORTATION COMMISSION, a local area planning agency; and DOES 1 through 50, Respondents.	Case No. RG13690631 **RESPONDENTS' OPPOSITION BRIEF** Department: 31 Judge: Evelio Grillo Hearing Date: June 12, 2014

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I. INTRODUCTION

In challenging the Environmental Impact Report ("EIR") prepared by the Association of Bay Area Governments ("ABAG") and the Metropolitan Transportation Commission ("MTC") (collectively referred to herein as the "Agencies") for the 2040 Regional Transportation Plan and Sustainable Communities Strategy known as Plan Bay Area (the "Plan"), Petitioner Bay Area Citizens ("Petitioner") misapprehends both the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.) and the Sustainable Communities and Climate Protection Act of 2008 ("SB 375").

Petitioner's main contention, dominating each of its arguments, is as follows: in calculating the greenhouse gas emissions reductions attributable to the Plan, the Agencies should have accounted for the separate and distinct mandates for vehicle and fuel technologies rather than resorting to transit-oriented development. Petitioner's argument is contrary to the statutory structure governing the State's greenhouse gas emissions reductions goals and conflicts with substantial evidence in the administrative record.

Technological improvements in vehicles and fuels are an essential part of the multi-faceted effort to combat climate change. (AR 1690, 8789-8790.)[1] However, without efforts to achieve more efficient land use patterns connected to more extensive public transit systems, like the Plan Bay Area, it will be difficult to reduce vehicle miles traveled and maximize greenhouse gas reductions. (AR 1690, 54162-54179.) Importantly, the emissions reductions from the Plan's combined land use and transportation pattern will complement, not supplant, the technology-based reductions expected from federal and State regulatory programs to increase the efficiency of cars and fuels. In other words, the combined land use and transportation pattern reductions are in addition to the greenhouse gas reductions from advanced vehicle and fuel technologies. (AR 43260-43261.) Petitioner fails to understand this basic principle.

By way of analogy, reducing emissions from cars and light trucks should be thought of as a "three-legged stool." (AR 54165.) One leg involves greater fuel efficiency from new vehicles – as

[1]/ The citation "AR" refers to the Administrative Record on file in this case.

required by former Assembly member Fran Pavley's AB 1493. The second leg involves reducing the carbon content of fuels – as required under former Governor Arnold Schwarzenegger's low-carbon fuel emissions standards. The third leg of the stool calls for changes in the growth pattern that reduce overall driving, or "vehicle miles traveled." SB 375 addresses this third leg through the combined regional transportation plan and sustainable communities planning process. (Gov. Code, § 65080, et. seq.) Just as each leg of the stool is required to keep it standing, each of the three strategies for reducing emissions from cars and light trucks is required to meet the State's goals for reducing greenhouse gas emissions.

Here, Petitioner essentially argues the Agencies should have relied on just two legs – an approach contrary to statute and substantial evidence in the record. In fact, the agency tasked with adopting regulations to meet the State's emissions reduction goals, the California Air Resources Board (CARB), explicitly approved of the methodology used by the Agencies to assess whether Plan Bay Area would achieve the reduction targets. (AR 43029 [the Agencies have "appropriately not included . . . emissions reductions from the technology and fuel programs adopted by [CARB]"].) Petitioner's challenges to Plan Bay Area must fail.

II. STATEMENT OF FACTS

A. Legal Framework

California first addressed climate change in 1988 with AB 4420, which directed the California Energy Commission to study global warming impacts and to develop an inventory of greenhouse gas emissions sources. (AR 8774.) Since then, the State has enacted several measures, discussed below, to reduce emissions. Many of these measures are aimed at the transportation sector, which is the largest contributor with 38 percent of the State's total greenhouse gas emissions. (AR 8781.)

1. The Pavley Laws

In 2002, AB 1493 (referred to as the "Pavley" legislation) was signed into law, requiring CARB to develop regulations to reduce greenhouse gas emissions from passenger vehicles, light-duty trucks, and non-commercial vehicles sold in California. (Health & Saf. Code, §43018.5; AR 8774.) Pursuant to AB 1493, CARB approved regulations to reduce emissions from new motor vehicles, establishing one average emission standard for passenger cars and light trucks, and another standard

for heavy trucks. (AR 763, 8808-8811.) The regulations took effect in January, 2006, and set near-term emission standards for new cars, phased in from 2009 through 2012, and mid-term standards, phased in from 2013 through 2016 ("Pavley I"). (AR 763.) The "Pavley II" regulations set additional standards to be phased in for car model years 2017 to 2025. (AR 40340.)

2. The Low Carbon Fuel Standard

In 2007, Executive Order S-01-07 established the Low-Carbon Fuel Standards ("LCFS"), which requires the carbon intensity of California's transportation fuels be reduced by at least 10 percent by 2020. Under Order S-01-07, CARB established carbon intensity standards and regulations requiring providers of transportation fuels to report on the mix of fuels they provide and demonstrate that they meet the LCFS intensity standards annually. (AR 764, 8816-8817.)

3. Greenhouse Gas Reduction Goals and Assembly Bill 32

In 2005, then-Governor Schwarzenegger signed Executive Order S-3-05, calling for the State to reduce its overall greenhouse gas emissions to 1990 levels by 2020 and to reduce overall emissions to 80 percent below 1990 levels by 2050. The 2020 goal is an aggressive, but achievable, mid-term target, and the 2050 goal represents the level scientists believe is necessary to reach levels that will stabilize climate change. (AR 8774.) In September 2006, California enacted AB 32, the Global Warming Solutions Act (Health and Safety Code section 38500 et seq.), establishing the greenhouse gas emissions reduction goal of achieving 1990 levels of emissions by the year 2020. This change, estimated to require a 30 percent reduction from "business as usual" emission levels projected for 2020, is to be accomplished through an enforceable statewide cap on emissions. (Health & Saf. Code, § 38550; AR 445, 8775.) AB 32 also directs CARB to develop and implement regulations to reduce statewide greenhouse gas emissions from stationary sources and address greenhouse gas emissions from vehicles. (Health & Saf. Code, §§ 38560, 38561.)

4. Senate Bill 375

In addition to the above-referenced improvements to vehicles and fuels, the Legislature enacted SB 375, which establishes a process for setting regional targets to reduce greenhouse gas emissions by reducing vehicle miles traveled. Under SB 375, regions must integrate development patterns and the transportation network to attempt to achieve the targeted reduction in greenhouse gas emissions. (AR

8817.) SB 375 requires CARB to adopt regional targets for reducing greenhouse gas emissions associated with the automobile and light truck sector by September 30, 2010. (Gov. Code, § 65080, subd. (b)(2)(A); AR 8817.) Metropolitan planning organizations ("MPOs") were then required to include a Sustainable Communities Strategy ("SCS") in their regional transportation plan ("RTP") to demonstrate how the region can achieve these regional greenhouse gas emissions reductions targets through an integrated land use and transportation plan. (AR 765, 55631.) Importantly, SB 375 further states that nothing in an SCS may "be interpreted as superseding the exercise of the land use authority of cities and counties within the region." (Gov. Code, § 65080, subd. (b)(2)(K).)

5. CARB's Scoping Plan

In response to AB 32, and with SB 375 in mind, CARB adopted its Climate Change Scoping Plan ("Scoping Plan") in 2008 as a roadmap to achieve the required statewide greenhouse gas reductions. The Scoping Plan identifies measures that will reduce emissions by nearly 30 percent, or 174 million metric tons of carbon dioxide equivalent emissions (MMTCO2E), in the year 2020 as compared to projected "business as usual" emissions levels of 596 MMTCO2E. (AR 8779, 764.) The Scoping Plan sets 427 MMTCO2E as the 2020 statewide reduction target, and includes measures to "put the state on a path to meet the long-term 2050 goal of reducing California's greenhouse gas emissions to 80 percent below 1990 levels." (AR 8785; 764, see also Executive Order S-3-05 with 2050 goal.)

CARB evaluated "a comprehensive array of approaches and tools" to achieve emissions reductions in each of eight sectors: transportation, electricity, commercial and residential, industry, recycling and waste, high global warming potential gases, agriculture, and forest net emissions. (AR 8783, 8785.) Key elements of the strategy include: (1) establishing targets for transportation-related greenhouse gas emissions for regions throughout California (pursuant to SB 375), (2) adopting and implementing measures pursuant to Pavley I and II standards, *and* (3) the Low Carbon Fuel Standard – the three-legged stool. (AR 8786, 8787.) The Scoping Plan assigns greenhouse gas reductions for each sector to achieve a total reduction of 174 MMTCO2E – 31.7 MMTCO2E reduction for Pavley standards, (AR 8811), 15 MMTCO2E reduction for the Low Carbon Fuel Standard (AR 8817), and 5 MMTCO2E reduction for "Regional Transportation-Related GHG Targets," which represents CARB's

estimate of emissions reduction to be achieved through the combined SCS/RTP process (AR 8821), as shown in the chart from the Scoping Plan attached hereto as "Exhibit A." (AR 8787, 8791, see also 11545.) As is clear from the chart, these measures are separate and complementary.

6. CARB Target Setting Under SB 375

Following adoption of the Scoping Plan, CARB commenced SB 375's target setting process to establish the "Regional Transportation-Related GHG Targets" for each MPO under the Scoping Plan. (AR 8787; Gov. Code, § 65080, subd. (b)(2)(A).) As required by SB 375, CARB appointed a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting the regional targets. (Gov. Code, § 65080, subd. (b)(2)(A)(i), AR 9370-9434.) CARB also consulted with MPOs and regional air districts to exchange technical information and receive recommendations on the appropriate targets. (Gov. Code, § 65080, subd. (b)(2)(A)(ii), AR 11343-11349.) CARB set the targets for the nine-county San Francisco Bay Area as a 7 percent per capita emission reduction from 2005 levels by 2020, and a 15 percent per capita reduction from 2005 levels by 2035. (AR 1689, 11625-11626, 43509-43510.)

B. Plan Bay Area

Plan Bay Area is the combined RTP and SCS for the nine-county San Francisco Bay Area, and relies on a strategy of focusing growth around the region's existing and planned public transit system, primarily through the Priority Development Area (PDA) framework, to achieve the targets for reduction of greenhouse gas emissions. (AR 457, 1690.)

1. Priority Development Areas

PDAs are nominated by local jurisdictions on a voluntary basis and more than half of the Bay Area's local jurisdictions have at least one PDA. In order to designate a PDA, the local jurisdiction must identify an area where new homes and jobs could be located in close proximity to transit. If the location meets criteria adopted by ABAG, the local agency may adopt a resolution nominating the area as a PDA. ABAG then reviews the designation and makes a final determination about whether the area qualifies. The PDAs are the core of Plan Bay Area. (AR 1711, 55658-55660.)

2. Achieving the Greenhouse Gas Targets through Land Use Planning

Plan Bay Area's focused growth pattern and associated investments in public transit result in

93 percent more transit boardings and 6 percent fewer vehicle miles traveled per capita by year 2040. (AR 563, 1690.) These changes in passenger travel patterns, resulting from the land use pattern and other transportation and climate program investments, are projected to reduce per capita light-duty vehicle greenhouse gas emissions by 16 percent between 2005 and 2035, thus achieving the 15 percent reduction target set by CARB. (AR 789, 1690, 55693.)

Local jurisdictions are ultimately responsible for the manner in which their communities build out and retain their discretion to carry out or deny projects regardless of consistency with the Plan. (Gov. Code, § 65080, subd. (b)(2)(K); AR 1675.) The Plan merely provides a transportation and land use vision for the region that "*if implemented*, [would] achieve the greenhouse gas emission reductions targets." (Pub. Resources Code, § 21155, subd. (a) (emphasis added).)

C. Public Review of Plan Bay Area

1. The Initial Vision Scenario and Development of the Plan

Plan Bay Area included a robust process of developing alternatives with an iterative "visioning" and alternatives analysis. (AR 447-448, 1192.) The Agencies analyzed multiple transportation and land use scenarios between 2010 and 2012, and released the Initial Vision Scenario in March 2011. (*Ibid*.) The Initial Vision Scenario provided a starting point for the Agencies to consult with local governments and Bay Area residents regarding future land use patterns, and long-term transportation investments to serve new growth. (AR 1192.) The Agencies used this input to develop a range of alternative development scenarios, primarily focused around various levels of projected growth in the urban, suburban, and rural areas, as well as various transportation networks. (AR 1192.) This "visioning process" informed development of the Plan, and the Plan alternatives included in the EIR for evaluation. (AR 1192.)

2. CEQA Review

The Agencies issued a Notice of Preparation ("NOP") of a draft program EIR on June 11, 2012 and circulated it for a 30-day period pursuant to CEQA Guidelines sections 15082, subdivision (a), 15103, and 15375. (AR 1375-1387.) The Agencies held five public scoping meetings and received a substantial number of comments, which assisted the Agencies in narrowing the issues and alternatives to be analyzed in the Draft EIR. (AR 44-45, 419.)

The Agencies released the Draft EIR on April 2, 2013 for a 45-day public review period. (AR 45, 4024-4026, 36423-36425.) The Draft EIR includes an analysis of the SB 375 targets and concludes that the Plan will result in a 10.3 percent reduction in per capita passenger vehicle and light duty truck emissions by 2020 and a 16.4 percent reduction by 2035, thus achieving the targets set by CARB. (AR 789.) Importantly, and contrary to Petitioner's assertion, the Draft EIR explains that the analysis does not take into account Pavley and LCFS. (AR 789; POB, pp. 14-15.)[2]

During the public review period, the Agencies held three public hearings on the Draft EIR and nine public hearings on the Plan. (4026, 36423.) The Agencies received approximately 341 written comment letters and numerous oral comments during the public hearings, and continued to receive comments following close of the comment period. (AR 45.) The Agencies evaluated all comments on environmental issues received during the administrative process, including those received after the comment period. (AR 46.) The Agencies prepared a Final EIR, which included written responses to all comments received during the comment period. (AR 46, 4023-4024.)

3. Plan Bay Area Adoption

On July 18, 2013, the Agencies held a public hearing, at the conclusion of which they adopted Plan Bay Area (AR 257-305), certified the Final EIR prepared for Plan Bay Area, and adopted findings pursuant to CEQA. (AR 42-256.) The Agencies filed a Notice of Determination on July 19, 2013. (AR 1-41.) On August 6, 2013, Petitioner Bay Area Citizens filed its lawsuit challenging the Agencies' adoption of the Plan and certification on the EIR, alleging violations of CEQA.

III. STANDARD OF REVIEW

The standard of review of an agency's decision under CEQA is abuse of discretion. (Pub. Resources Code, § 21168; Code Civ. Proc., § 1094.5; *Center for Biological Diversity v. Department of Fish & Wildlife* (Mar. 20, 2014, B245131) 2014 Cal.App.LEXIS 256, *23; *North Coast Rivers Alliance v. Marin Municipal Water District* (2013) 216 Cal.App.4th 614, 622.) Abuse of discretion can be established only if an agency has not proceeded in a manner required by law, or its

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[2]/ The citation "POB" refers to the opposition brief filed in this case by Petitioner entitled "Memorandum of Points and Authorities in Support of Petitioner's Motion for Judgment on Petition for Writ of Mandate."

determinations are not supported by any substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.) Petitioner bears the burden of showing that the Agencies abused their discretion. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.)

A. The Agencies Proceeded in the Manner Required by Law.

In reviewing the Agencies' actions for a prejudicial abuse of discretion, the "court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominately one of improper procedure or a dispute over the facts." (*Vineyard*, *supra*, 40 Cal.4th at p. 435.) Given the required deference to the Agencies' substantive conclusions, Petitioner frames its allegations as procedural failures.[3] As to *failure to proceed* claims generally, however, the failure to comply with CEQA's information disclosure requirements constitutes a prejudicial abuse of discretion *only* if the decision makers or the public are deprived of information necessary to make a meaningful assessment of a project's environmental impacts. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237; see also Pub. Resources Code, § 21005.)

Under *Vineyard*, which distinguishes "procedural" and "factual" issues, the court should not find the omission of information amounts to a failure to proceed "in a manner required by law" unless Petitioner can point to a clearly ascertainable statutory duty that the Agencies violated. (*Vineyard*, *supra*, 40 Cal.4th at p. 426, 447, see also Pub. Resources Code, § 21168.5 ["[a]buse of discretion is established if the agency has not proceeded in a manner *required by law*"] (emphasis added).) "Law" in this context must refer to something a diligent party can ascertain with some certainty. As the court in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986 explained: "An EIR will be found legally inadequate—and subject to independent review for procedural error—where it omits information that is both required by CEQA and necessary to informed discussion." Petitioner fails to identify the omission of information required by CEQA or necessary to a more informed discussion. Finally, the court must presume the Agencies complied with the law. (Pub. Resources Code, § 21167.3; Evid. Code, § 664; *Al Larson*, *supra*, 18 Cal.App.4th at p. 740.) Petitioner

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[3]/ See, e.g. POB, p. 11 [challenging the Agencies' description of Plan objectives as a failure to proceed in the manner required by law].)

has "the burden of showing otherwise." (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 158 (*SCOPE II*).)

B. Substantial Evidence Supports the Agencies' Determinations.

The court must uphold the Agencies' actions if substantial evidence supports such determinations, even if a different conclusion could have been reached. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392-393, 407; *Center for Biological Diversity v. Department of Fish & Wildlife*, *supra*, 2014 Cal.App.LEXIS * 25 [the court must "defer to an agency's resolution of conflicting opinions and evidence"]; *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 207 [even where petitioner "has pointed to contradictory evidence, . . . it is not [the court's] task to weigh this evidence against the evidence relied on by the [agency]"].) The court therefore must give "deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable, for, on factual questions, [the court's] task is not to weigh conflicting evidence and determine who has the better argument." (*Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 944 [citations omitted]; see also Pub. Resources Code, § 21083.1 [courts "shall not interpret [CEQA or its implementing guidelines] in a manner which imposes procedural or substantive requirements beyond those explicitly stated"].)

The "substantial evidence" standard of review applies where, as here, opponents are arguing about factual statements in an EIR or the adequacy or completeness of particular inquiries. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396-1397 [CEQA does not require the lead agency to conduct a particular study or follow a particular methodology merely because a commenter made such a recommendation].) In those situations, a court must uphold an EIR "if there is any substantial evidence in the record to support the agency's decision that the EIR is adequate and complies with CEQA. [Citation.] Further, in such a challenge to the sufficiency of the evidence, petitioners have a duty to "lay out the evidence favorable to the [agency] and show why it is lacking." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) Here, Petitioner repeatedly lays out the record evidence in a manner that is favorable only to itself, in

violation of its obligation to identify and discuss the substantial evidence supporting the Agencies. Petitioner's one-sided presentation of the evidence constitutes a waiver of any claim concerning the substantiality of evidence supporting the Agencies' findings. (*Oliver v. Board of Trustees* (1986) 181 Cal.App.3d 824, 832.)

IV. ARGUMENT

A. The Agencies Correctly Interpreted the Requirements of SB 375.

Consistent with SB 375, the Agencies did not include the emissions reductions attributable to the Pavley and LCFS regulations when determining emission reductions expected from the combined land use and transportation pattern under the Plan and whether those reductions would achieve the targets set by CARB. (AR 789.) SB 375 explicitly states that emissions from cars and light trucks "can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. *However, even taking these measures into account*, it will be necessary to achieve significant *additional* greenhouse gas reductions from changed land use patterns and improved transportation." (SB 375, § 1, subd. (c) (emphasis added).) Under SB 375, therefore, the reductions attributable to the combined land use and transportation pattern under the Plan must be considered as additional to the reductions attributable to the new vehicle technologies under Pavley and the new fuel technologies under LCFS. In other words, an SCS must demonstrate how its land use pattern and regional transportation systems together further reduce greenhouse gas emissions *beyond* those reductions anticipated under Pavley and LCFS.

Petitioner fails to understand this three-legged approach to reducing greenhouse gas emissions. Petitioner instead relies exclusively on language in SB 375 requiring CARB, in establishing the regional emissions reduction targets, to "take into account" emission reductions that will be achieved by Pavley and LCFS. (Gov. Code, § 65080, subd. (b)(2)(A)(iii); POB, pp. 11, 12, 16.) Petitioner conflates CARB's target setting obligation with the Agencies' obligation to achieve those targets. Petitioner argues that this language required the Agencies to include those emissions reductions in their analysis of reductions attributable to the Plan. Substantial evidence in the record supports the Agencies' interpretation that the opposite is true; the reductions attributable to the Plan are required to be *in addition to* those reductions attributable to improved vehicle and fuel technologies.

1. Petitioner failed to exhaust its administrative remedies for its arguments related to CARB's target setting.

Petitioner participated in the more than three-year administrative process leading to Plan adoption, yet Petitioner never raised its specific argument that the "take into account" language of SB 375 required Pavley and LCFS to be included in the calculation of required emission reductions under the Plan. Petitioner's argument is barred by the exhaustion doctrine.

To be entitled to seek judicial review of agency actions for alleged violations of CEQA, aggrieved parties must first exhaust their administrative remedies, where such remedies exist, by presenting, either orally or in writing their specific objections to the agency decisions in question. (Pub. Resources Code, § 21177, subd. (a).) Petitioner cannot rely on "generalized environmental comments at public hearings" to satisfy the exhaustion doctrine. (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197.) Basic principles of fairness to the Agencies and the court are at the core of the exhaustion doctrine. (*Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 237 ["The doctrine is premised on the notion that the agency 'is entitled to learn the contentions of interested parties before litigation is instituted.' [Citation.]"]; *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 291 ["The basic purpose for the exhaustion doctrine is to lighten the burden of overworked courts . . . . because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency."].) Because the arguments regarding CARB's regional target setting process were not raised at the administrative level, the court should ignore the arguments raised for the first time in Petitioner's Opening Brief.

2. The reductions from SB 375 planning must be in addition to those reductions from vehicle and fuel measures.

Petitioner focuses exclusively on SB 375's requirement that CARB, in establishing the greenhouse gas emission reduction target, "take into account" the reductions achieved by Pavley and LCFS under the Scoping Plan. Petitioner ignores the language in SB 375 stating that *additional* reductions are required by the MPOs in their planning efforts to achieve the AB 32 targets. (SB 375, § 1, subd. (c) [even taking reductions from Pavley and LCFS into account, *additional* reductions from changed land use patterns and improved transportation are necessary].) As further clarified in SB 375,

"[w]ithout improved land use and transportation policy, California will not achieve the goals of AB 32." (SB 375, § 1, subd. (c).) Petitioner also ignores the substantial evidence in the record supporting this interpretation. By selectively referencing evidence in the record to support only its own claims, Petitioner ignores its duty to "lay out the evidence favorable to the [agency] and show why it is lacking." (*Defend the Bay*, *supra*, 119 Cal.App.4th at p. 1266.)

a. The Scoping Plan provides substantial evidence supporting the Agencies' interpretation of SB 375.

The Scoping Plan identifies SCS implementation pursuant to SB 375 as the primary action necessary to obtain an estimated 5 MMTCO2E in reductions to achieve the "Regional Transportation-Related GHG" target.[4] (AR 8817-8821.) To meet this target, the Agencies followed CARB mandates to exclude other policy initiatives in its greenhouse gas modeling. (AR 8787, 8811, 8817, 8821.) Otherwise, as Petitioner itself points out, the Agencies could have simply concluded the Bay Area meets its emissions reduction targets solely through the statewide clean technology initiatives.[5] (POB, p. 20.) Such an approach would completely undermine the mandate of SB 375 and CARB to achieve regional emission reduction targets through improved regional land use and transportation planning policies. In other words, to account for Pavley and LCFS reductions in the modeling for the Plan would result in double counting under the Scoping Plan – vehicle and fuel measures would be credited under the Regional Transportation-Related GHG Targets, as well as the California Light-Duty Vehicle Greenhouse Gas Standards (Pavley) and the LCFS. (AR 1689, 8787.) Such double counting is contrary to the Scoping Plan and SB 375. (AR 1689, 8787, 8808-8811, 8816-8821.)

b. CARB's target setting process provides substantial evidence supporting the Agencies' interpretation of SB 375.

Contrary to Petitioner's arguments, the target setting undertaken by CARB did "take into

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[4]/ Note that the 5 MMTCO2E is an estimate of what may be achieved from local land use changes and acts as a placeholder number until CARB sets the regional targets for each MPO pursuant to SB 375. (AR 8787.)

[5]/ CARB specifically rejected this approach during the target setting process. According to CARB, including Pavley and LCFS would mean that achieving the targets would simply be a matter of the MPOs adjusting their models; "in effect, [the MPOs] would not have to implement any changes to business-as-usual planning practices." According to CARB, this "would defeat the purpose of setting reduction targets." (RJN, Exhibit C, p. 53 of response to comments; see also RJN, Exhibit C, p. 4 of Kern Council of Governments September 17, 2010 comment letter.)

account" the reductions from increased vehicle and fuel efficiency to determine what *additional* reductions would be necessary from the combined land use and transportation planning process. (POB, pp. 12-13.) As stated in the RTAC Recommendations, "California's strategy for reducing greenhouse gas emissions from passenger cars includes three elements: vehicle technologies, low-carbon fuel technologies, and reduced vehicle use through changed land use patterns and improved transportation." (AR 9378.) Thus, RTAC recommended that CARB provide MPOs with information on the anticipated emission reductions under the Pavley and Low Carbon Fuel Standard regulations to "enable the MPOs to account for these benefits" when determining what additional emission reductions will be achieved under the SB 375 plans. (AR 9399.)

The documents submitted by Petitioner in its Request for Judicial Notice[6] (RJN) make clear that the regional greenhouse gas targets under SB 375 are "only one part of the statewide effort to achieve overall greenhouse gas emissions reductions from the transportation sector . . . ." (See e.g., RJN, Exh. C at p. 4.) CARB's Resolution adopting the greenhouse gas targets explicitly acknowledges that they "are part of the Scoping Plan's integrated approach to reducing greenhouse gas emissions from the transportation sector, *along with* implementation of other measures including but not limited to a low carbon fuel standard and passenger vehicle emissions standards." (RJN, Exh. C at p. 4 (emphasis added).) CARB's Resolution goes on to state that the "combined effect of the [targets], together with improved vehicle emission standards and low carbon fuel standard adopted by [CARB], will result in substantial greenhouse gas reductions from the transportation sector." (RJN, Exh. C at p. 9.)

Petitioner makes much of the fact that the CARB staff report on the draft regional targets includes a footnote stating that the targets do not include Pavley and LCFS, whereas the CARB staff report on the final regional targets does not include the same footnote. (POB, p. 13, RJN, Exh. D at 4, RJN Exh. E at 25-26.) The absence of this footnote does not mean that CARB "rejected the interpretation that the Agencies advance." (POB, p. 13.) It simply means that the text previously included as a footnote was moved into the text of the final staff report. (See RJN, Exh. E at 3 [CARB

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[6]/ While CARB's target setting process was done outside the scope of the Agencies' approval of Plan Bay Area, the Agencies do not oppose Petitioner's Request for Judicial Notice.

"is proposing per capita greenhouse gas reductions of 7 to 8 percent in 2020, and between 13 and 16 percent in 2035 for each of California's largest urban areas through regional land use and transportation strategies. These benefits are magnified when California's vehicle and fuels programs to reduce greenhouse gases are taken into account."].) CARB's target setting process provides substantial evidence to support the Agencies' conclusion that these programs were not to be included in the calculation of emission reductions attributable to the Plan.

c. CARB's review of Plan Bay Area provides substantial evidence supporting the Agencies' interpretation of SB 375.

At a hearing on the methodology used to develop the draft Plan, CARB's air pollution specialist explained that CARB reviewed the emissions reductions methodology with a focus "on the accounting of greenhouse gas emission reductions as described in [the] July 2011 technical methodology paper," which CARB used to evaluate the SCS prepared by the Agencies, as well as the plans prepared by other MPOs. (AR 43526, see also AR 43508.) After conducting a thorough analysis of the Agencies' modeling system, CARB staff concluded that the Plan's methodology was sound and, "if implemented, Plan Bay Area would at least meet the 2020 and 2035 targets of 7 and 15 percent [greenhouse gas] per capita reductions from 2005, respectively." [AR 43013, see also 43525-43527, 43608.)

Further, CARB's Technical Evaluation of the regional modeling and analyses supporting the greenhouse gas quantification for the Plan, notes that the Agencies "followed advanced modeling practices . . . and used reasonable model inputs and assumptions." (AR 43033.) CARB's Technical Evaluation goes on to specifically state that the Agencies "[have] appropriately not included [greenhouse gas] emissions reductions from the technology and fuel programs adopted by [CARB], such as the Low Carbon Fuel Standard and [Pavley I and II]." (AR 43029.) CARB explained that this is because "the targets adopted by [CARB] in 2010 do not include reductions from these statewide technology and fuel programs, but rather focus on reductions from strategies implemented at the regional and local levels." (AR 43029.) CARB's Technical Evaluation provides substantial evidence that the Agencies correctly interpreted SB 375. (*Center for Biological Diversity*, *supra*, 2014 Cal.App. LEXIS *25; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th

1018, 1042 [agency decision supported by substantial evidence is entitled to deference, particularly where the agency is interpreting its statutory obligations].)

3. Petitioner's argument related to the modeling of emissions is without merit.

During the public comment period, Petitioner argued the analysis of greenhouse gas emissions was faulty because the computer program developed by CARB and used by the Agencies to model emissions (known as EMFAC2011) has not been updated to include the emissions reductions expected under Pavley II. (AR 3123.) In response, the Agencies acknowledged that EMFAC2011 does not include Pavley II and noted that the Draft EIR clearly documents this fact. (AR 3648-3649, 591-592.) The Agencies also stated that, although Pavley II received final approval in December, 2012, as of the date of the Final EIR, it had not been integrated into the modeling tools used for the EIR analysis. (AR 3648.) Thus, the Agencies were not required to independently adjust the EMFAC model to account for Pavley II. (CEQA Guidelines § 15204, subd. (a) ["CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors."].) In any event, even if Pavley II had been integrated into the EMFAC model, as explained above, it would not have changed the analysis for purposes of determining whether the Plan would meet the SB 375 targets. As stated in the Final EIR, "the benefits of Pavley I, Pavley II, . . .and the Low Carbon Fuel Standard cannot be included as part of the emissions reduction calculation." (AR 3648.)

B. The Agencies Properly Defined the Plan Objectives.

Petitioner's argument that the Plan objectives were not properly described is based on its core misunderstanding of the requirements of SB 375. Here, Petitioner argues that the Plan objective to reduce greenhouse gas emissions should have included consideration of the reductions expected from Pavley and LCFS. As discussed in Section IV.A, *infra*, Petitioner's interpretation is erroneous. The EIR description of the Plan's objectives complies with CEQA.

The "project description" for an EIR must include a "statement of objectives sought by the proposed project" and "include the underlying purpose of the project." (CEQA Guidelines, § 15124, subd. (b).) The CEQA Guidelines make clear that the project objectives drive the agency's selection of alternatives for analysis and approval. "A clearly written statement of the objectives will help the

lead agency develop a reasonable range of alternatives to evaluate in the EIR . . . ." (*Ibid*., see also CEQA Guidelines, § 15126.6, subd. (c).)

Here, the Agencies relied on existing legislative policies and goals, including the requirements of SB 375, to define the objectives for the Plan. Under Government Code section 65080, subdivision (b)(2)(B), the Plan must "identify areas within the region sufficient to house all the population of the region" and "set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by [CARB]." Based on these directives, the Plan objectives include reducing "per capita [carbon dioxide] emissions from cars and light-duty trucks by 15% from 2005 levels by year 2035" and housing "100% of the region's projected growth by income level . . . without displacing current low-income residents." (AR 170, 344-345.) The EIR included additional objectives related to goals for healthy and safe communities, provision of open space and agricultural preservation, equitable access to transportation and housing opportunities, increased economic vitality, and maintaining an effective transportation system. (AR 453-454, 170-171.) The objectives were sufficiently broad to enable the Agencies to select a reasonable range of alternatives to the Plan. Nothing more is required under CEQA.

C. The Agencies Correctly Analyzed the No Project Alternative.

Petitioner's challenge to the Agencies' analysis of the No Project Alternative is again based on its misinterpretation of SB 375; here, it argues that the No Project Alternative should have included the emissions reductions that will be achieved through Pavley and LCFS. (POB, p. 20.) In fact, in order to provide meaningful information to the public and decisions makers, the Agencies were required to use the same methodology to assess whether the Plan and all of the alternatives, including the No Project Alternative, could achieve the SB 375 targets without inclusion of the reductions under Pavley and LCFS. (CEQA Guidelines, § 15126.6, subd. (e)(1) [CEQA requires the evaluation of the comparative impacts of the "No Project" alternative].)

The No Project Alternative "shall discuss the existing conditions at the time the [NOP] is published . . . as well as what would be reasonably expected to occur in the foreseeable future if the

project were not approved, based on current plans and consistent with available infrastructure and community services." (CEQA Guidelines, § 15126.6, subd. (e)(2); *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 715). The purpose of the No Project Alternative is to allow government agencies and the public to compare the impacts of the proposed project to what would happen without the project. (CEQA Guidelines, § 15126.6, subd. (e)(1).)

Here, the Draft EIR for Plan Bay Area defined the No Project Alternative, based on substantial evidence, to include: (1) the land uses existing in 2010, plus continuation of existing land use policy as defined in adopted local land use plans and regulations from all jurisdictions in the region, and (2) the 2010 transportation network, plus highway, transit, local roadway, bicycle, and pedestrian projects that had already either received full funding, or were scheduled for full funding and had received environmental clearance by May 1, 2011. (AR 346, 1195, 2235-2236.) As described in the Draft EIR, the No Project Alternative results in less residential and employment density than the Plan due to a greater share of regional growth being directed to greenfield locations outside of the PDAs. (AR 1205, 1691.) Due to the lower-density development pattern and limited investment in new public transit service, the No Project Alternative had significantly less transit ridership (20 percent less) and much greater vehicle delay than the Plan (34 percent more). (AR 3979, 1214-1215, 1691.)

Significantly for purposes of the greenhouse gas analysis, the No Project Alternative showed increased levels of chronic congestion on the region's highway corridors; per capita congested vehicle miles traveled levels were 150 percent higher than under the Plan during the AM peak, 95 percent higher during the PM peak, and 115 percent higher over the course of a typical weekday. (AR 3979.) In addition, per capita vehicle miles traveled were 5 percent greater than under the Plan, resulting in the typical Bay Area resident driving approximately 21 miles per day. (AR 3979.) Given the increase in vehicle miles traveled and decrease in transit use, the No Project Alternative failed to achieve the greenhouse gas reduction target under SB 375. (AR 1249, 1271-1272, 1691.)

Petitioner argues that, even if the Agencies had correctly interpreted the requirements of SB 375 (which they did), the analysis of the No Project Alternative was flawed because it was not based on the currently existing rate of greenhouse gas emissions. (POB, p. 21.) Petitioner's argument conflates the CEQA requirement for including a No Project Alternative with the requirement that the

EIR set an environmental baseline in order to analyze impacts. This is incorrect. (CEQA Guidelines, § 15126.6, subd. (e)(1) ["The no project alternative is not the baseline for determining whether the proposed project's environmental impacts may be significant . . . ."].) In any event, the Agencies properly set the baseline year as 2010, based on substantial evidence that this year provided the most recent data available for land use, transportation, and demographics, consistent with the requirements of CEQA. (AR 347, 532; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445.) The only exception here was for the analysis of whether the Plan and its alternatives meet the SB 375 target, which uses a 2005 baseline, as required by the CARB targets. (AR 347, 532, 789, 43510.)

Petitioner next argues the densities included in the Plan would not be necessary if the Agencies had relied on the greenhouse gas emission levels that exist today. (POB, p. 21.) Petitioner asserts that current greenhouse gas emission levels nationwide are already at or near 1990 levels. Thus, according to Petitioner, the goals of AB 32 have been met and the land use densities identified in the Plan are no longer required. (POB, p. 21.) Petitioner's argument is not based on any evidence regarding the current emission levels in the State of California. In fact, it appears to be more of a policy argument than a legal one. Nor does Petitioner's argument consider the larger goal of Executive Order S-3-05, calling for a reduction in the State's overall greenhouse gas emissions to 80 percent below 1990 levels by 2050. (AR 8785, 763, 11544.) Notwithstanding these flaws in Petitioner's argument, the EIR properly analyzed the No Project Alternative by determining that scenario's greenhouse gas emissions in relation to the 2005 baseline set by SB 375. (AR 1247-1249, 1271-1272.) Petitioner's claims that the analysis of the No Project Alternative was inadequate are without merit.

D. The Agencies were not Required to Include Petitioner's Proposed Alternative in the EIR.

Petitioner asserts the Agencies' analysis of alternatives to the Plan was flawed because it did not include an alternative proposed by Petitioner during the Draft EIR comment period. (POB, pp. 22-23.) Petitioner's argument is without merit, and again is based on its faulty interpretation of the requirements of SB 375. According to Petitioner, its proposed alternative would meet the Plan objective of achieving the regional greenhouse gas targets; however, its proposed alternative "relies on the anticipated substantial greenhouse gas reductions that will occur over the planning horizon" as a

result of Pavley and LCFS standards. (POB, pp. 7, 22; AR 3156.) However, these statewide emissions reduction programs cannot be included in the calculation of whether the Plan or an alternative achieves the SB 375 targets. As such, Petitioner's proposed alternative is not really an alternative to the Plan at all. The Agencies properly determined, based on substantial evidence, that the EIR included a reasonable range of alternatives. Because Petitioner's proposed alternative would not achieve the Plan objective to achieve the SB 375 targets and could also result in new significant impacts that would not arise under the Plan, the Agencies properly declined to give it further consideration in the EIR.

1. The EIR included a reasonable range of alternatives to the Plan, in accordance with CEQA.

Under CEQA, an EIR is legally adequate if it analyzes a "reasonable range of project alternatives" and need only set forth alternatives "necessary to permit a reasoned choice." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565-566, 576; CEQA Guidelines, § 15126.6, subds. (c), (f).) CEQA allows considerable flexibility in fashioning a range of alternatives, in that "[n]o ironclad rules can be imposed regarding the level of detail required in the consideration of alternatives." (*Al Larson Boat Shop*, *supra*, 18 Cal.App.4th at p. 745; see also *Goleta II*, *supra*, 52 Cal.3d at p. 566 ["CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR."].)

Here, the EIR included four alternatives to the Plan, including the No Project Alternative, the Transit Priority Focus Alternative, the Enhanced Network of Communities Alternative, and the Environment, Equity, and Jobs Alternative. (AR 1195-1198.) As required under SB 375, none of the alternatives include the emissions reductions from Pavley and LCFS to determine whether the SB 375 targets could be achieved. (AR 1247-1248.) And, as also required under SB 375, none of the alternatives impose land use constraints, contrary to Petitioner's allegation. (POB, p. 23; AR 1193, 1195-1198.) The Transit Priority Focus Alternative includes the potential for more efficient land uses in transit priority project areas (as defined in Public Resources Code section 21155) and would be developed at higher densities than existing conditions to support high quality transit. (AR 1196.) The Enhanced Network of Communities Alternative seeks to provide sufficient housing for all people

employed in the Bay Area with no increase in the rate of in-commuting from other areas, and allows for a more dispersed growth pattern than under the Plan. (AR 1196-1197.) The Environment, Equity, and Jobs Alternative seeks to maximize affordable housing in both urban and suburban areas through incentives and housing subsidies. (AR 1197-1198.)

Thus, the EIR included a "reasonable range" of alternatives and the Agencies were not required to consider the proposed alternative as asserted by Petitioner. (POB, p. 22; AR 3651.) Project opponents can always come up with a permutation of a plan or project different from those analyzed in an EIR. But this possibility does not negate the fact that the EIR met the requirement to consider a reasonable range of alternatives. "An EIR need not consider every conceivable alternative to a project." (CEQA Guidelines, § 15126.6, subd. (a); see also *Laurel Heights*, *supra*, 47 Cal.3d at p. 415 ["[a] project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information"; "[i]t is not for them to design the EIR"]; *Goleta II*, *supra*, 52 Cal.3d at p. 568.)

2. The Agencies properly rejected Petitioner's proposed alternative as infeasible.

While Petitioner does not provide a calculation of expected emissions reductions under its proposed alternative, assuming the less dense land use pattern results in greater greenhouse gas emissions by failing to lower vehicle miles traveled, the alternative would not meet the key Plan objective of achieving the SB 375 targets. Accordingly, the Agencies were free to reject as infeasible Petitioner's alternative. (*California Native Plant Society*, *supra*, 177 Cal.App.4th at p. 998; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [agency may reject as infeasible an alternative that does not *fully* satisfy the project objectives]; see also *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1507-1508 [upholding finding of infeasibility because an alternative met some, but not all, project objectives]; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163 [agencies may eliminate from consideration alternatives that would not "feasibly obtain most of the basic objectives of the project"].)

In addition, because Petitioner's proposed alternative relies on the Pavley and LCFS standards to achieve the greenhouse gas reduction target, its alternative does not comply with SB 375. (POB, pp. 7, 22.) The Agencies were therefore not required to consider the proposed alternative based on its

legal infeasibility. (CEQA Guidelines, § 15126, subd. (f)(1) [among the factors to be taken into account in devising a range of alternatives are "site suitability, economic viability, availability of infrastructure, general plan consistency, *other plans or regulatory limitations*" among other factors.].)

3. The Agencies properly rejected Petitioner's proposed alternative because there was no evidence to show it would reduce significant impacts.

The requirement to discuss project alternatives in an EIR is tied to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. (Pub. Resources Code, §§ 21100, subd. (b)(4), 21002; *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal.App.4th 712, 739 ["in evaluating the scope of alternatives . . . each case must be evaluated . . . in light of CEQA statutory purposes"].) To effectuate this substantive requirement, alternatives must "avoid or substantially lessen one or more of the significant effects [of the project]." (CEQA Guidelines, § 15126.6, subd. (c).) Petitioner asserts that its proposed alternative will reduce impacts, but provides no evidence to support its assertion. (POB, p. 22.) Again, its alternative would be based on a less dense land use pattern and impermissible counting of the Pavley and LCFS regulations in the calculation of Plan emissions. As such, this alternative would likely result in a significant impact associated with greenhouse gas emissions where none had existed under the proposed Plan. (AR 789.) The Agencies were therefore not required to consider the proposed alternative because it would actually create a significant impact by failing to achieve the greenhouse gas reduction target. (CEQA Guidelines, § 15126.6, subd. (c) [lead agency may eliminate an alternative from detailed consideration in the EIR due to an "inability to avoid significant environmental impacts."].)

E. The Agencies Properly Responded to Comments Received on the EIR.

Petitioner argues that the Agencies' response to its proposed alternative was inadequate under CEQA. Petitioner is incorrect. The Agencies evaluated and responded with good faith, reasoned analysis to all public comments received on the Plan EIR during the comment period, including those submitted by Petitioner, as required by CEQA. (Pub. Resources Code, § 21091, subd. (d); CEQA Guidelines, § 15088; *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 46.)

As stated in the Final EIR's response to Petitioner's proposed alternative, Plan Bay Area

included a robust process of developing alternatives over many rounds of visioning and alternatives analysis. (AR 3651, see also 447-448, 1192; section II.C.1., *infra*.) This process resulted in the creation of two alternatives designed with significant input from advocacy groups; the Enhanced Network of Communities Alternative, developed in consultation with home builders and land developers, and the Environment, Equity, and Jobs Alternative, developed in consultation with social equity and transit supporters. (AR 346-347.) As noted in the Final EIR, Petitioner had the same opportunities as other individuals and organizations to propose its alternative during the visioning process, but did not. (AR 3651.) Contrary to Petitioner's assertion, the response does not conclude that Petitioner was required to submit its proposed alternative prior to release of the Draft Plan and Draft EIR. (POB, p. 22.) Rather, the response merely notes that Petitioner failed to avail itself of the opportunity to shape the alternatives analysis during the visioning period for the Plan and scoping period for the Plan. (AR 3651.) Moreover, the two alternatives devised in collaboration with other stakeholders achieve the SB 375 greenhouse gas emission reduction targets – there is no evidence the Petitioner's alternative would meet that test.

The response to Petitioner's proposal also explains that many elements of Petitioner's proposed alternative were already included in the range of alternatives assessed by the EIR. (AR 3651.) For example, Petitioner's proposed alternative would include "expansion and improvement of existing transit system" and "major fare reductions" with a "de-emphasis of expansion of . . . rail transit and ferry service." (AR 3156-3157.) The Environment, Equity, and Jobs Alternative studied in the Draft EIR includes "strengthen[ing] public transit by significantly boosting service frequencies in most suburban and urban areas" for transit providers "other than . . . Muni, BART or Caltrain" who all provide rail service. (AR 1198.) This Alternative also considered reducing fares through "free transit passes to youth throughout the region." (AR 1198.) In addition, Petitioner's alternative would "[e]ncourage housing in all parts of the nine county Bay Area, including in the suburban and rural areas, to the extent . . . consistent with local general plans." (AR 3157.) The Enhanced Network of Communities Alternative studied in the Draft EIR "mirrors the land use pattern previously identified in Current Regional Plans/Projections 2011" which was based on local jurisdiction input and allows more growth outside the PDAs. (AR 1196-1197.) Moreover, the Environment, Equity, and Jobs

Alternative "seeks to maximize affordable housing in . . . both urban and suburban areas." (AR 347.)

Under CEQA, responses must describe the disposition of the issues raised in the comments. (Pub. Resources Code, § 21091, subd. (d)(2)(B); CEQA Guidelines, § 15088.) If the agency rejects a recommendation, the response must explain the reasons why. (CEQA Guidelines, § 15088, subd. (c).) Here, the Agencies provided an explanation for their decision to reject the "Bay Area Citizens Transportation and Housing Alternative" proposed by Petitioner. CEQA requires no more. (CEQA Guidelines, § 15204, subd. (a) ["CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors."]; *Society for California Archaeology v. County of Butte* (1977) 65 Cal.App.3d 832, 838-839 [the agency "has discretion to reject a proposal for additional testing or experimentation."].)

F. Petitioner Failed to Name the Correct Parties.

While Petitioner asserts that the Agencies incorrectly applied the regional targets to determine the greenhouse gas emissions of the Plan, the thrust of Petitioner's challenge is really against the target setting process undertaken by CARB. As Petitioner failed to bring a legal challenge against CARB when it issued the regional targets, its claims raising challenges to application of the regional targets should be barred. (Gov. Code, § 11350; CEQA Guidelines, § 15112, subd. (c)(3).)

CARB determined that the Agencies needed to achieve a 7 percent per capita emission reduction from 2005 levels by 2020, and a 15 percent per capita reduction from 2005 levels by 2035 pursuant to the target setting process required by SB 375. (AR 1689; see also Gov. Code, § 65080, subd. (b)(2)(A).) These targets are to be achieved solely through the reduction in vehicle miles traveled that will result under the Plan's combined land use and transportation pattern. CARB was required to "take into account" the emission reductions under statewide programs for improved vehicle and fuel technologies, including Pavley and LCFS. (Gov. Code, § 65080, subd. (b)(2)(A)(iii).) As discussed in section IV.A.2, *infra*, CARB was also required to determine what additional reduction would be needed from MPOs in their regional transportation planning process to achieve the statewide reduction targets established by AB 32. If Petitioner believes the regional targets were set too high because they did not include reductions to account for the benefits of Pavley and LCFS, Petitioner should have complied with the Government Code's express procedure for challenging CARB's target

setting process. (See Gov. Code, § 11350 [describing the process for seeking a judicial declaration concerning the validity of regulations].) Petitioner did not do so.[7]

Further, the time for Petitioner to challenge CARB's regional targets under CEQA has long since run. (CEQA Guidelines, § 15112, subd. (c)(3).) CARB was required to comply with CEQA through its certified regulatory program when it adopted the regional targets.[8] The statute of limitations for challenging CARB's decision to adopt the regional targets under CEQA ran 30 days after CARB filed the notice of decision for its September 23, 2010 decision to adopt the regional targets. (See RJN, Exh. C; CEQA Guidelines, § 15112, subd. (c)(3).) Thus, a CEQA challenge concerning CARB's regional targets would not be timely.

V. CONCLUSION

Each of Petitioner's arguments is premised upon its faulty contention that the Agencies were required to include the greenhouse gas emissions reductions that would be achieved by Pavley and LCFS when assessing the expected reduction in vehicle miles traveled associated with Plan Bay Area. As such, all its claims must fail. The Agencies respectfully request that the Court deny Petitioner's requested relief.

THOMAS LAW GROUP

Dated: April 11, 2014

By: _____ for
Tina A. Thomas
Attorneys for Respondents
METROPOLITAN TRANSPORTATION COMMISSION and ASSOCIATION OF BAY AREA GOVERNMENTS

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[7]/ The regional targets, like all standards, rules, and regulations adopted by CARB were adopted "in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code." (Health & Saf. Code, § 39601, subd. (a).)

[8]/ The Natural Resources Agency certified CARB's regulatory program involving adoption, approval, amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of ambient air quality. (Pub. Resources Code, § 21080.5; CEQA Guidelines, § 15251, subd. (d); *Dunn-Edwards Corp. v. South Coast Air Quality Management Dist.* (1993) 19 Cal.App.4th 519, 532.)