

Submission by Appellant JASON HENDERSON to BOARD of SUPERVISORS

Certification of Final Environmental Impact Report ONE OAK STREET (1500-1540 MARKET STREET)

2009.0159

Build Inc. proposes to build 40-story tower with 304 market-rate condominiums and 136 underground valet parking spaces at the northwest corner of Van Ness and Market. The Market and Octavia Better Neighborhoods Plan permits 73 parking spaces at the site. Planning approved a near-doubling of parking to 136 spaces. The entrance and exit are on Oak Street.

The area around Van Ness and Market is the jugular for citywide circulation.

- Nine important **Muni** bus lines, six Muni light rail lines, and one Muni streetcar line traverse the corridor, carrying almost 14,000 passengers in the weekday am peak hour and 13,500 in the weekday pm peak hour. One Oak DEIR, Table 4.C.3.
- Key Muni lines serving Districts 2, 3, 4, 5, 6, 7, 8, 9, 10 & 11 converge in this area. Based on the SFCTA Communities of Concern map the Board adopted this year, these Muni lines serve tens of thousands of low-income people of color in almost every District in the city. Exhibit 1a & 1b.
- Vehicle and transit capacity is strained at this location. At Van Ness/Market 3,700 motor vehicles cross in every direction in the am peak hour. Almost 4,000 traverse the intersection in the pm peak hour. Exhibit 2a & 2b. **Transit is at capacity** or is approaching capacity, as demonstrated in *One Oak DEIR*, capacity utilization metric Table 4.C.3.
- Every weekday thousands of **cyclists** use Market Street, with 1,400 in the two-hour pm peak period alone. One Oak DEIR, 4.C.22. These cyclists commute from Districts 1, 4, 5, 6, 8, 9, 10 & 11.
- The Van Ness/Market area is hazardous to cyclists, with a mix of traffic and strong winds accelerated by tall buildings.
- The intersection of Van Ness/Market/South Van Ness is critical to **pedestrians** including passengers on Muni surface lines and Muni Metro. At peak times vehicles frequently block crosswalks as well as accelerate at yellow light phases, undermining **Vision Zero** goals.
- Over the past decade massive amounts of commercial development has shifted to mid-Market with development of millions of square feet of commercial space, including **tech**

industry offices and hotels. Thousands of units of **new housing**, predominantly market rate condos, have been built or are proposed along or near the length of Van Ness.

- In the Van Ness/Market area, now deemed **The Hub**, the most recent pipeline reporting shows almost 6,300 existing or entitled new units, and 8,300 proposed. Exhibits 3 & 4. Planning Department estimates **5,469 parking spaces**, bringing a massive influx of more cars into this already congested area.
- Traffic has shifted as the **Central Freeway came down in 2003**, routing vehicles onto Mission and north onto Van Ness, US 101.
- Dozens of **private buses to Silicon Valley tech campuses** carry reverse commute passengers to housing in San Francisco pouring additional traffic onto Van Ness.
- On-demand vehicles such as **Uber**, which has its headquarters at 11th/Market, and Lyft, have flooded the Van Ness/Market area. Uber and Lyft use Van Ness to circulate between the northern part of the city and the Mission/ Upper Market. Exhibit 5.
- The Van Ness/Market intersection is a top **Vision Zero** location identified by the city as a priority to make safer for pedestrians and cyclists.
- The SFMTA is investing millions of dollars in **Van Ness Bus Rapid Transit**, as well Mission 14 and Haight 6 & 7 busses as part of **Muni Forward**. Bicycle and pedestrian conditions are addressed in Vision Zero, the San Francisco Bicycle Plan, and the forthcoming Better Market Street Plan.
- These plans involve reducing roadway capacity for automobiles and trucks. There will be less room to add additional cars from One Oak and other nearby new developments.

Faulty analysis > significant impacts not identified > no mitigation required

The EIR for the One Oak proposal is inadequate and ignores all of the above concerns. It relies on antiquated data, and does not adequately analyze traffic and impacts on pedestrians, cyclists, and Muni. Specifically:

- The primary method for transportation analysis is 15-years old. It does not consider or lead to mitigation of the conditions described above.
- The analysis of commuting patterns is **37-years old**.
- Based on data from 1990 & 2002, *One Oak EIR* misses the volume of traffic that would likely go to and from Silicon Valley using the nearby 101 Freeway. Using 1990 data does not reflect two tech booms and the internet-based economy to the South of the City.
- The EIR does not adequately study traffic for One Oak. It does not study traffic impacts on pedestrians, bicyclists, and transit because it relies on inappropriate use of a thresholds

of significance. It does not consider reasonable alternatives to the proposed excess parking for the project.

- Despite the capacity constraints, the EIR did not study how to expand Muni capacity.
- Despite evidence of hazardous winds in this area, the EIR does not include a study of impacts on bicycles and mitigations to make cycling safe.
- Despite evidence of the proliferation of Uber and Lyft vehicles in this area, the EIR ignores their swarming in this area and does not consider mitigation.
- Despite evidence of new e-commerce delivery vehicle patterns, the EIR uses old data to underestimate deliveries, and does not mitigate.

If One Oak moves forward in the current form, it will increase congestion and crowding, frustrating people using Muni. Low-income Muni riders will be burdened with longer commutes, and wealthier passengers may shift to driving or Uber/Lyft, further contributing to an inequitable downward spiral.

Bicycling and walking will become more hazardous and discouraging, conflicting with citywide goals.

Specific Inadequacy of One Oak EIR

Traffic Impact on Pedestrians, Bicyclists, and Transit

The EIR does not adequately study traffic. It does not study traffic impacts on pedestrians, bicyclists, and transit because it relies on antiquated data, it relies on inappropriate use of thresholds of significance, and it does not consider reasonable alternatives to the proposed parking ratio.

The City acknowledges it uses outdated data that needs to be updated. Exhibit 6.

The basis for the EIR analysis uses antiquated data for analysis of traffic impacts. Based on **1990** trip distribution data in LCW Consulting's *2016 One Oak Transportation Impact Study*, the volume of car traffic that would likely go to and from Silicon Valley using the nearby 101 Freeway is underestimated. Using 1990 data does not reflect two tech booms and the internet-based economy to the South of the City.

Based on existing patterns of development in this part of San Francisco, a substantial portion of the residents of One Oak will be employed in high-paying tech jobs in Silicon Valley. This means more commuting to Silicon Valley, with a large share by car.

The LCW transportation study also shows that **cars are still the largest mode share** of the project, adding 131 new car trips in the am peak, and 171 car trips in the pm weekday peak. Exhibit 7. Yet by using old trip distribution data (from 1990) this begs the question: Where do these cars go in the am peak and where do they come from in the pm peak? **1990 trip distribution estimates are not adequate to answer that.**

The planning department states intent to update the trip distribution approach used for traffic analysis. Response to Comments on One Oak DEIR 4.19-4.20. Planning acknowledges using old data. Exhibit 6. The department is just getting around to upgrading how transportation is studied. **This admission is damning.**

It suggests that updates will occur sometime after 2018, but the city needs to know impacts in order to adequately mitigate One Oak.

Consider that since **1990**:

- The Central Freeway was removed in 2003
- Private commuter buses have proliferated since 2005
- Uber and Lyft have proliferated since 2011
- The City has adopted a new Bicycle Plan in 2009
- The City adopted Vision Zero goals in 2014
- New patterns of e-commerce delivery have emerged instead of storefront retail
- Mid-Market and Market and Octavia have added housing for thousands of new residents
- 5,469 new parking spaces have been, or might be built in the Hub

With respect to the transportation impacts of One Oak, Planning is punting on due diligence.

Inappropriate Use of a Threshold of Significance

Central to transportation analysis in the One Oak EIR is use of regional number of vehicle miles traveled (VMT) per day per person. San Francisco is part of a 9-County Bay Region which has regional per capita daily VMT of 17.2 miles. San Francisco adjusts this and considers 14.6 miles/day as the norm for the City.

The city is broken-down into specific areas known as transportation analysis zones (TAZ). Detailed transportation analyses are only required for an EIR when a project is located in an area with more than 14.6 VMT. **If an area currently has less than 14.6, no transportation study is done.**

One Oak is located in the 5-block triangle bounded by Oak, Market, Gough, and Van Ness. Up until 2015 this TAZ, like the Market and Octavia Better Neighborhoods Plan area, has been characterized by mostly older, pre-automobile era buildings and rental housing. There are very low rates of car ownership and buildings with little to no parking. In this part of the Market and Octavia Plan Area, per capita daily VMT is roughly 4 miles.

The Citywide standard of 14.6 would be a substantial increase in traffic.

The Van Ness/Market area is a huge regional and city corridor. It carries traffic for (and intersects with):

- MUNI and regional transit public buses
- Trucks and cars, including those using surface US route 101 to/from the freeway
- Private buses, including to/from Silicon Valley
- Uber and Lyft

Several planning commissioners and members of the public stated concern over the usefulness of the threshold of significance and asked for deeper analysis. Response to Comments 4.10-4.15. Instead of providing that information the EIR hid behind the technicality of VMT for this site.

Reliance on VMT has been misapplied in the One Oak EIR. In doing so the One Oak EIR violated CEQA. A public agency cannot apply a threshold of significance or regulatory standard in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect. Exhibit 8 *Mejia v. City of Los Angeles*, 130 Cal.App.4th 322 (2005)

California courts also remind us that the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant. Exhibit 9: In *East Sacramento Partnership for a Livable City v. City of Sacramento*, 5 Cal.App.5th 281 (2016)

This appeal does not challenging the threshold per se. Using the VMT threshold of significance is in itself inappropriate for studying One Oak because it is set too high and fails to capture significant effects. **The standards are not appropriate to the site.**

This is a part of the city where the tolerance for more VMT is zero.

Because of roadway and transit capacity constraint, most transportation demand from development like One Oak must be oriented towards walking and bicycling. The *One Oak EIR* acknowledges none of this.

Planning acknowledges that different levels of parking lead to different levels of VMT. Response to Comments 4.17. They further admit that more parking leads to more VMT. There is considerable evidence, based on the research of Professor Donald Shoup in his *High Cost of Free Parking*, that parking generates car trips. The SFMTA acknowledges this in Exhibit 10. The Market and Octavia Better Neighborhood Plan acknowledges this and permits zero parking throughout the plan *for that reason*.

The One Oak Project is in an area of the Market and Octavia Plan where the permitted parking is 0.25:1 Zero parking is permitted. If the project complies with the planning code, it would have no more than 73 parking spaces. Instead Planning gave the development **MORE** parking – allowing 136 spaces.

Planning also claims they are absolved from studying different parking ratios for One Oak. Studying different parking ratios would have provided deeper analysis.

The *One Oak EIR* must analyze how parking impacts VMT, traffic, and the impacts on pedestrians, cyclists, and transit, and must consider reasonable alternatives which would be zero parking and a 0.25:1 parking ratios.

Additionally, the One Oak EIR does not discuss the VMT **impacts of valet parking** for residents. With excess parking above what is permitted (136 spaces instead of 73), and easy access to cars via Valet and two elevators, there could be much more driving because of the ease of access to cars by residents. Residents might order their cars in advance and easily access them. Residents will also find it easy to drop their cars off and not have to worry about queues or waiting times.

The *LCW One Oak Transportation Impact Study* suggests Oak Street loading zones will be used by Valets to store cars as residents come and go. New Apps and other methods will be used by residents to have easy access to their cars. The valet renders parking stackers and dependently-accessible parking a useless deterrent to driving.

Wind Impacts on Bicyclists

Market and Van Ness is one of the windiest intersections in the City. The existing conditions, especially in spring and summer afternoons, are hazardous to cyclists. The 40-story One Oak tower will make it more hazardous. The issue of wind was raised in the Jan 5 public comment on winds. Response to Comments 4.6-4.64.

Planning's response to the wind/bicycle issue is that the methodology "does not explicitly include any criteria that is specifically applicable to cyclists." Response to Comments 4.65.

Wind impacts on cyclists are dealt with in a cavalier manner by Planning.

One Oak EIR contains an extensive discussion of potential impacts of wind on pedestrians and public transit passengers waiting for buses at nearby bus stops. It completely omits analysis of the impact of wind on the thousands of cyclists using Market and other nearby streets. Because the EIR does not study wind impacts on bicycling, appropriate mitigation is omitted.

Consequently, *One Oak EIR* does not analyze how the increased wind might affect other citywide goals seeking to increase bicycle mode share and make cycling safer such as the 2009 Bicycle Plan, the Market and Octavia Better Neighborhoods Plan, or the forthcoming Better Market Street Plan.

The SFMTA's strategic plans *all* seek to increase cycling, especially on Market Street. This EIR does not analyze how these citywide goals might be undermined by the wind hazards from One Oak.

Since the *One Oak EIR* only discusses pedestrian impacts of winds it only proposes mitigation of canopies that disperse the wind away from sidewalks– but disperse where? Into the street? Into bicycle lanes on Market?

In the January 5 hearing on the *One Oak DEIR* several planning commissioners requested more thorough analysis of wind impacts. Response to Comments 4.6. In the Response to Comments the EIR admits to having no understanding of wind impacts on cyclists. Response to Comments 4.65.

There is no idea of impacts. There is no idea how to mitigate impacts on cyclists.

Planning suggests that the community must offer a methodology to study wind impacts on bicycles, stating “none of the comments offer an alternative methodology or scientific studies supporting a different methodology or threshold of significance.” Response to Comments 4.65. This is tantamount to the City of Richmond telling neighbors of the Chevron refinery that the burden is on *them* to come up with a methodology to measure air pollution from the refinery, and not the city or air district.

The One Oak EIR needs to study the following:

- Impacts of wind on bicycles, especially downwash winds.
- Impact of One Oak downwash wind and wind canopies on bicyclists on Market and surrounding streets.
- Impact of the proposed canopies deflecting wind directly into Market and into bike lanes on Market and Polk.
- Adequate mitigations to make cycling safe and comfortable on Market, such as fully-separated cycle tracks and other infrastructure that make it less likely a cyclist collides with motor vehicles or buses when wind conditions are hazardous for bikes.

On-demand Car Service (TNCs) & Deliveries

The EIR does not include present-day trends of on-demand for hire car service such as Uber and Lyft (aka Transportation Network Companies, TNCs). It also omits new e-commerce retail delivery patterns.

The EIR does not consider the localized swarming of Uber & Lyft that already occurs in this area. Uber & Lyft are omitted from the city’s transportation analysis despite upwards of 45,000 vehicles operating in the city every day. The EIR admits there are more on-demand car services and that the **City does not know how to study them**. “It is difficult if not impossible to know the TNC impacts.” Response to Comments 4.18.

No understanding of impacts means they cannot mitigate. The Board should do more.

The One Oak EIR underestimates the volume of daily deliveries to 304 condominiums at this site. The explosion of e-commerce deliveries is missing in the EIR.

The methodology for estimating daily e-commerce deliveries to 304 condos must be updated to reflect change. Based on **2002** transportation guidelines, One Oak's **700 residents** will receive **13 truck deliveries per day**. Exhibit 11. This is an underestimate.

The One Oak EIR must study and discuss stronger mitigation of loading impacts for residential e-commerce

At the January 5, 2017 DEIR hearing, a Planning Commissioner raised concerns about e-commerce and residential deliveries and the new "retail landscape." Response to Comments 4.34.

This included concerns about the city's lack of understanding of loading after 5pm. Planning response was that the methodology only analyzes deliveries between 8am-5pm because *pizzas* are delivered after 5pm. Response to Comments 4.36. **Today much more than pizza is delivered after 5pm.**

Planning also states that studying deliveries after 5pm is not necessary because it is outside of commute times. This is inaccurate. In the Van Ness/Market area weekday commute traffic occurs after 5pm, and often well past 7pm.

Concern was also expressed regarding the new role of TNCs in deliveries. Response to Comments 4.36. These kinds of deliveries occur after 5pm on weekdays.

Plaza renderings for One Oak are always shown with people milling about, with no cars, or at most one car. This is not reality. On-demand car services and e-commerce deliveries are not adequately studied and not mitigated.

Cumulative Impacts

The Board and the City must have an understanding of cumulative impacts. The proposed 10 Van Ness project is directly across Market from One Oak. The cumulative impacts study in the One Oak EIR does not include the traffic, wind impacts on bicycles, and TNC/delivery impacts on pedestrians, bicyclists and transit that will occur with **both projects** cumulatively, especially with over 500 parking spaces proposed at 10 Van Ness. Exhibit 12.

The One Oak EIR must also acknowledge that based on the planning department's own estimate, the current foreseeable projects in the "Hub" are estimated at 5,469 parking spaces. Like One Oak many of these future projects will be requesting a CU for more than the permitted parking.

This geographically-small, transit rich, bicycle and pedestrian neighborhood will be overwhelmed with more cars. One Oak EIR must include cumulative impacts of all of this potential future parking on VMT, and on pedestrian, bicycle, and transit systems in the area.

Moreover, the cumulative impacts must include all past, present, and future buildings in the HUB.

Requested Board Action on September 5

The EIR for the One Oak is inadequate. It fails as an informational document.

There is pressure on this Board to approve the One Oak EIR and the development. This appeal does not intend to set this project back while a new EIR is written.

The Board should still address serious concerns raised in this appeal.

The Board of Supervisors must approve a **General Plan amendment** before One Oak can move forward. **The Board should make two immediate changes to that amendment to reduce impacts from development of One Oak:**

- Set the parking ratio of One Oak to 0.25:1 as required by Planning Code, Market and Octavia Better Neighborhoods Plan.
- Discourage condominium residents from driving to work - and adding traffic - during Muni peak hours by restricting parking valet operation on weekdays from 7am-10am and 4pm-7pm.

Van Ness/Market/South Van Ness are crucial to citywide MUNI route operations. Supervisors from Districts throughout the city must make decisions with the best information available. Information is missing from the One Oak EIR.

In addition to changing the General Plan Amendment, the Board should direct Planning to:

- Study traffic impacts of current e-commerce delivery patterns and the shift from retail storefront to truck delivery to residence.
- Study the explosion of TNCs like Uber and Lyft. Update traffic analysis to understand potential mitigations such as regulating curb and off-site loading zones.
- Study the traffic impacts of private commuter buses, such as "Google buses" travelling on Van Ness and nearby streets.
- Conduct deeper traffic and transportation impacts analysis in the Hub regardless of the adopted threshold of significance for VMT.
- Study wind impacts on cyclists in all future environmental impact analysis in San Francisco including how sudden gusts might push cyclists into traffic.

On September 5 the Board should introduce legislation to adopt interim controls to limit parking in all developments in the Hub to 0.25:1 maximum with no Conditional Use allowed for excess parking.

The evidence is clear that parking generates car trips. Most of issues raised in this appeal relate to traffic impacts and car trips. Developments of thousands of condos are coming to the Hub. The **Hub** planning process is scheduled to conclude in **2019** but most projects will likely already be approved or at some stage of planning.

Finally the Board should contract an independent study of the relationship between providing parking, housing affordability, and the feasibility of new housing in the urban core of San Francisco.

The area around Van Ness and Market Street is the jugular for citywide circulation. The Board of Supervisors should keep Van Ness and Market area - traffic and Muni operations - from being overwhelmed and further congested. The General Plan Amendment required for One Oak is an unprecedented opportunity to get One Oak right, and to initiate truly sustainable infill development for the Hub and the rest of the City.

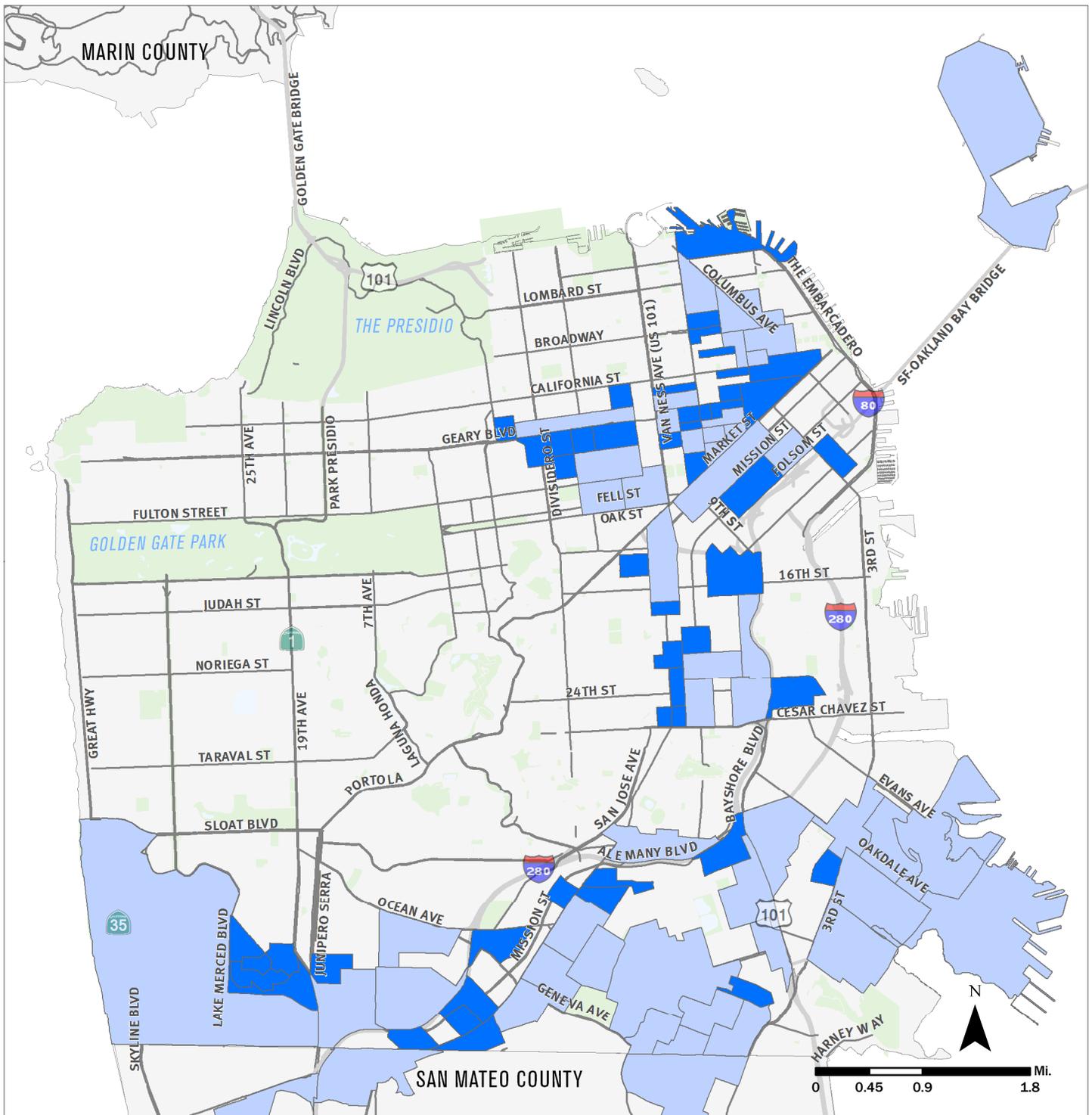
The Board should not miss this opportunity.

Jason Henderson

Jason Henderson
Professor, Geography and Environment
San Francisco State University
Chair, Market & Octavia Community Advisory Committee
Chair, Hayes Valley Neighborhood Association, Transportation & Planning Committee
Member, HVNA Board of Directors
Member, San Francisco Bicycle Coalition

Index of Exhibits

- Exhibit 1a SFCTA Map Proposed SF Communities of Concern 2017
- Exhibit 1b SFCTA Map Proposed SF Communities of Concern 2017 (Amended by author showing main Muni corridors converging on Van Ness/Market area)
- Exhibit 2a LCW Consulting Existing Traffic Volumes –Weekday Am Peak Hour
- Exhibit 2b LCW Consulting Existing Traffic Volumes –Weekday Pm Peak Hour
- Exhibit 3 Proposed HUB area - Parking & Housing Pipeline in the Hub, 8/22/17
- Exhibit 4 Proposed HUB area - Soft Sites & Sites in Play, 6/7/16
- Exhibit 5 SFCTA TNC Study, Profile of SF Transportation Network Company Activity, June 2017
- Exhibit 6 Planning Department, Transportation Impact Analysis Guidelines for Environmental Review -Update <http://sf-planning.org/transportation-impact-analysis-guidelines-environmental-review-update>
- Exhibit 7 LCW Consulting Proposed Project Trip Generation by Mode
- Exhibit 8 Mejia v City of Los Angeles, 130 Cal.App.4th 322 (2005)
- Exhibit 9 East Sacramento Partnership for a Livable City v City of Sacramento, 209 Cal.Rptr 3d 774 (2016)
- Exhibit 10 SFMTA, Moving SF, The Growing Case for a New Approach to SF's Parking Problem, 4/26/16 <https://www.sfmta.com/about-sfmta/blog/growing-case-new-approach-sfs-parking-problem>
- Exhibit 11 LCW Consulting Proposed Project Delivery/Service Vehicle-Trips and Loading Space Demand
- Exhibit 12 10 South Van Ness, Availability of Notice of Preparation of EIR & Public Scoping Meeting, 7/12/17



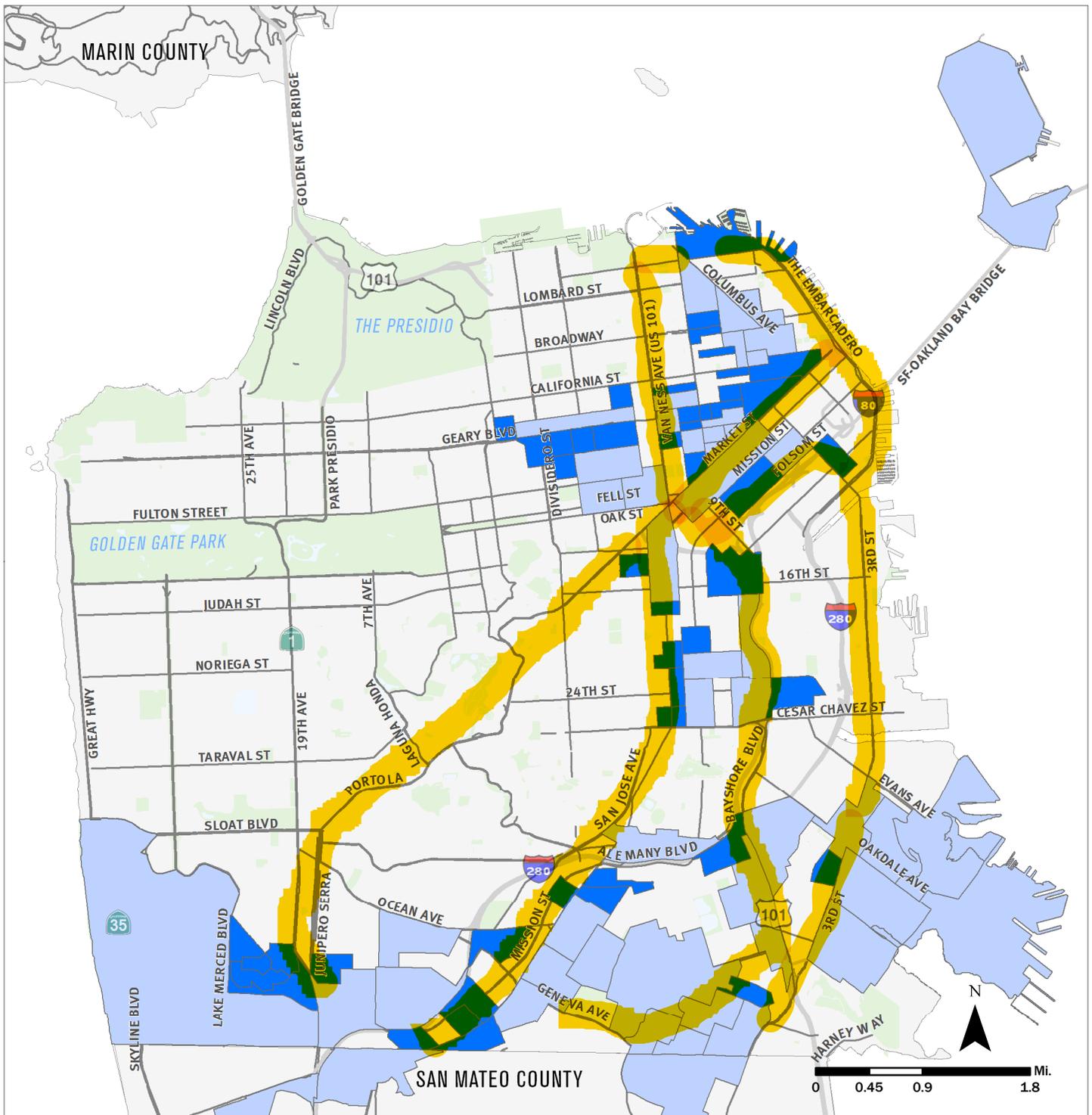
Proposed San Francisco Communities of Concern 2017

- SFCTA 2017 supplemental Communities of Concern Boundaries
- MTC 2017 Communities of Concern (Modified)
- Parks and Open Space



SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY
 1455 Market Street, 22nd Floor, San Francisco, CA 94103
 TEL 415.522.4800 FAX 415.522.4829
 EMAIL info@sfcta.org WEB www.sfcta.org

Credits, sources, or footnotes for the map. Credits, sources or footnotes for the map. Credits, sources, or footnotes for the map. Credits, sources, or footnotes for the map
 © 2012, San Francisco County Transportation Authority. Unauthorized reproduction prohibited. This map is for planning purposes only.



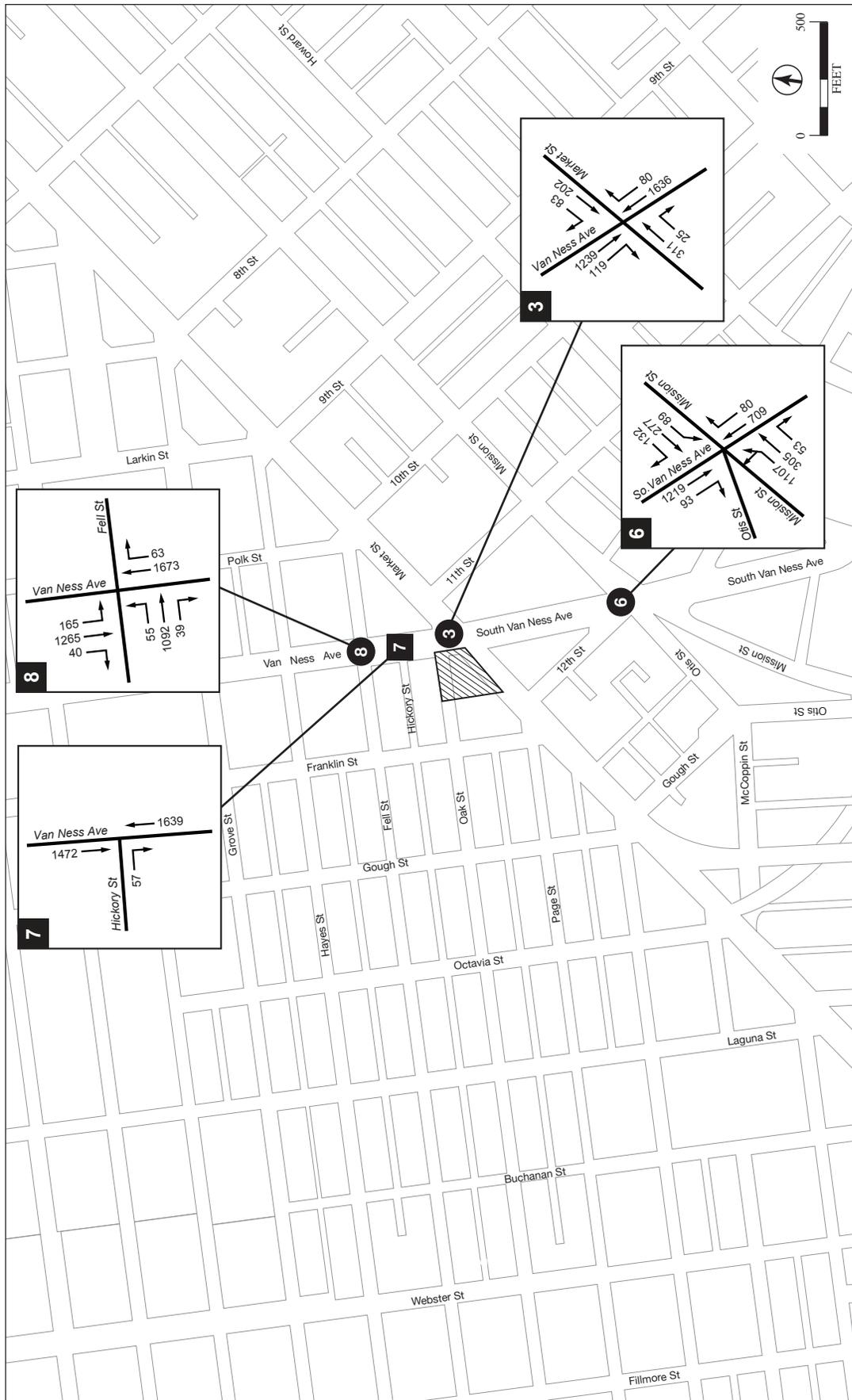
Proposed San Francisco Communities of Concern 2017

- SFCTA 2017 supplemental Communities of Concern Boundaries
- MTC 2017 Communities of Concern (Modified)
- Parks and Open Space

 SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY
 1455 Market Street, 22nd Floor, San Francisco, CA 94103
 TEL 415.522.4800 FAX 415.522.4829
 EMAIL info@sfcta.org WEB www.sfcta.org

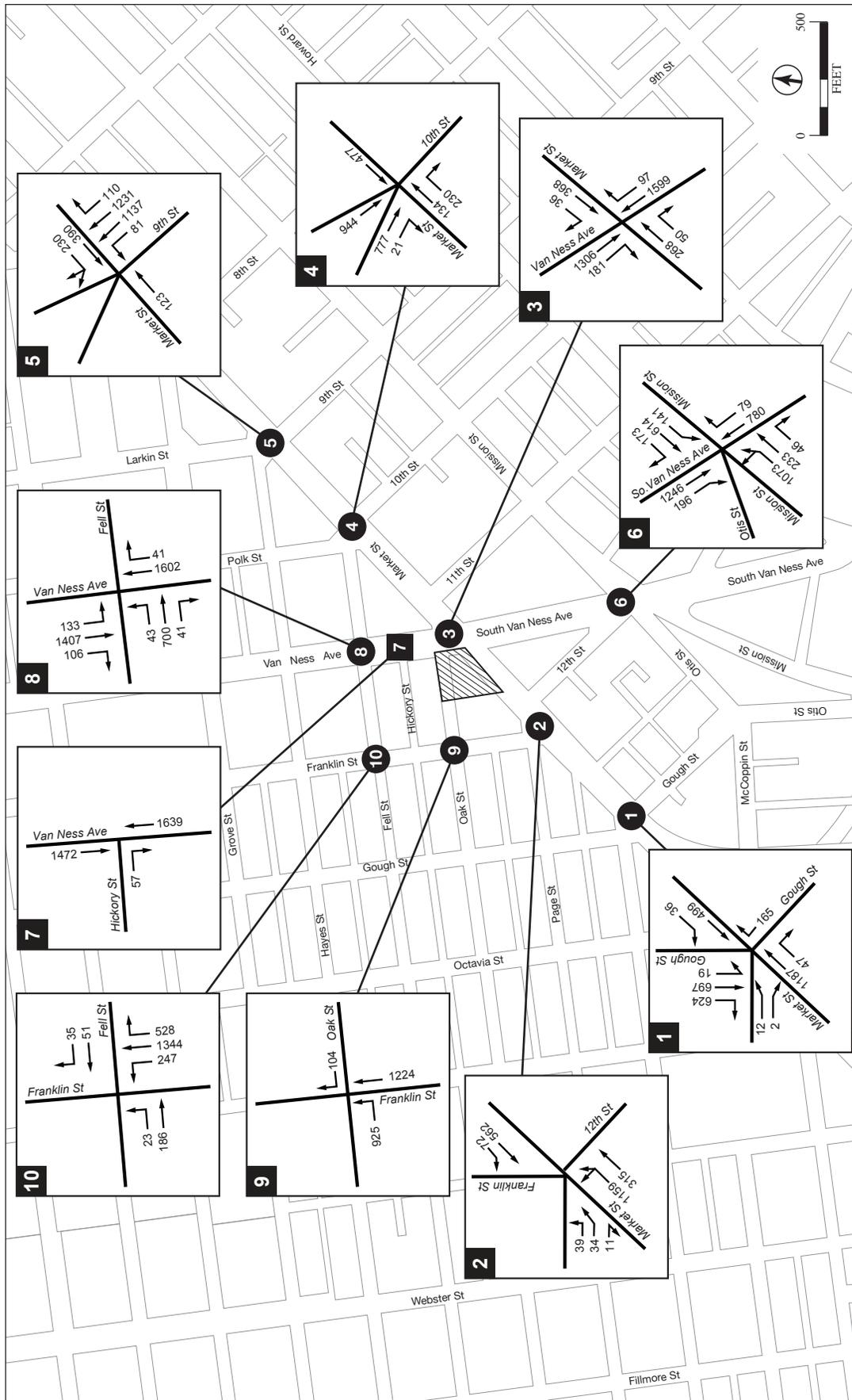
Credits, sources, or footnotes for the map. Credits, sources or footnotes for the map. Credits, sources, or footnotes for the map. Credits, sources, or footnotes for the map
 © 2012, San Francisco County Transportation Authority. Unauthorized reproduction prohibited. This map is for planning purposes only.

Exhibit 1b SFCTA Map Proposed SF Communities of Concern 2017 (Amended by author showing main Muni corridors converging on Van Ness/Market area)



SOURCE: LCW Consulting

ONE OAK PROJECT TRANSPORTATION IMPACT STUDY
FIGURE 7A: EXISTING TRAFFIC VOLUMES - WEEKDAY AM PEAK HOUR

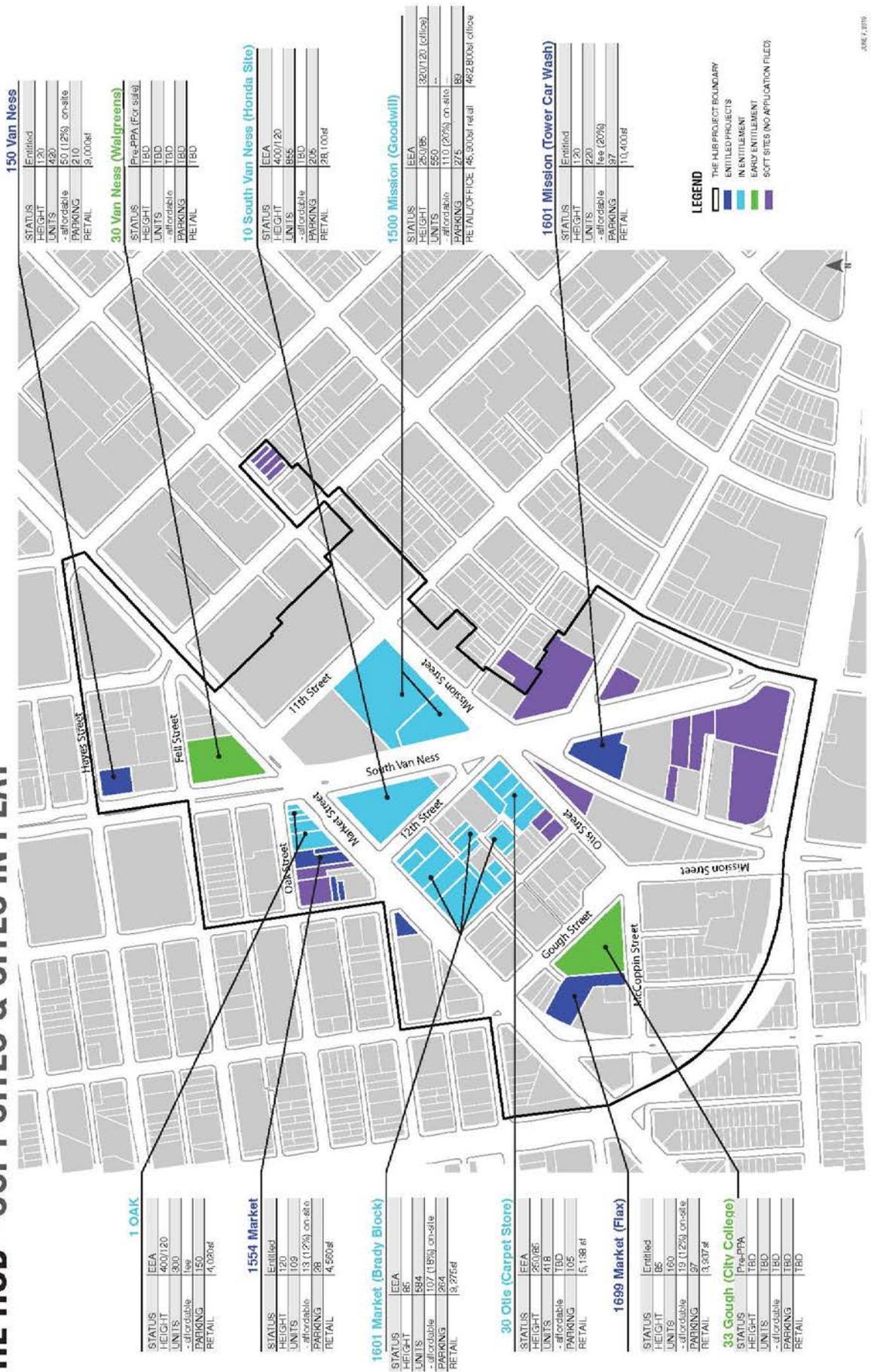


ONE OAK PROJECT TRANSPORTATION IMPACT STUDY
FIGURE 7B: EXISTING TRAFFIC VOLUMES - WEEKDAY PM PEAK HOUR
 LCW CONSULTING
 2009.0159E

Entitled	Height		Parking ratio			Units		Zoning	
	Existing Tower	Proposed Tower / Podium	Existing Zoning, Max with CU Ratio	Max with CU Amount	Hub Proposal / Approved / Requested Ratio	Existing	Proposed	Existing	Proposed
1700 Market		85	.75	32	.00	42	42	NC	C3
150 Van Ness		120	.50	215	.50	429	429	C3	C3
1554 Market		120	.50	55	.26	109	109	C3	C3
22 Franklin		85	.50	12	.00	24	24	C3	C3
1601 Mission		120	.50	110	.44	220	220	C3	C3
1699 Market		85	.75	120	.51	160	160	NC	C3
1740 Market Street		85	.75	75	.00	100	100	NC	C3
1500 Mission	250	400	.50	275	.50	550	550	C3	C3
1 Oak	400	120	.50	152	.44	304	304	C3	C3
TOTAL				1,045		1,938	1,938		
In Entitlement									
1601-1637 Market		85	.75	438	.45	584	584	NC	C3
42 Otis		50	.75	18	.50	24	24	NC	C3
10 South Van Ness	400	120	.50	405	.50	810	984	C3	C3
30 Otis	250	85	.50	177	.25	354	354	C3	C3
TOTAL				1,038		1,772	1,946		
Early entitlement (filed a PPA)									
30 Van Ness	400	120	.50	345	.25	691	927	C3	C3
Walgreens		50	.75	212	.25	283	577	P	C3
City College		85	.50	69	.25	138	433	C3	C3
98 Franklin / 57 Oak		85	.50	626	.25	1,111	1,937		
TOTAL				1,664		2,883	3,883		
TOTAL In entitlement & early entitlement									
Other Sites (no active project)									
99 South Van Ness	0	120	.50	257	.25	360	514	C3	C3
Storage facility		250	.50	50	.25	70	99	C3	C3
101 South Van Ness		85	.75	429	.25	400	572	NC	C3
Mix of small lots		120	.75	325	.25	304	434	NC	C3
Discount Builders Supply		120	.75	14	.25	14	18	NC	C3
Cash and Carry		85	.75	119	.25	83	158	NC	C3
170 South Van Ness		120	.75	124	.25	87	165	NC	C3
Modern Studio/ Tokyo Moto		50	.50	647	.25	945	1,294	C3	C3
Tap Plastics		85	.75	1964	.25	2,263	3,255		
154 South Van Ness		120	.75	114	.25	153	153	NC	C3
City Office Building		85	.50	42	.25	84	84	C3	C3
160 South Van Ness		120	.50	17	.25	34	34	C3	C3
MTA	400	120	.50	22	.25	43	43	C3	C3
TOTAL				1,964		2,263	3,255		
Other Sites (no height changes)									
1707 Market		85	.75	114	.25	153	153	NC	C3
Travelodge		120	.50	42	.25	84	84	C3	C3
1600 Mission		160	.50	17	.25	34	34	C3	C3
Enterprise		160	.50	22	.25	43	43	C3	C3
Industrial building		160	.50	21	.25	42	42	C3	C3
1337 Mission		160	.50	15	.25	30	30	C3	C3
Office Building		160	.75	37	.25	37	49	C3	C3
1339 Mission		160	.75	528	.25	704	704	NC	C3
1345 Mission		160	.75	796	.25	1,127	1,139		
Office Building		85	.75	285	.25	627	827		
former church		85	.75	5,469	.25	6,273	8,277		
1349 Mission		160	.75	176	.25	285	285		
1661 Mission Street		85	.75	285	.25	3,051	3,051		
Various small sites		85	.75	285	.25	3,051	3,051		
TOTAL				796		1,127	1,139		
SUBTOTALS				5,469		6,273	8,277		

Exhibit 3 Proposed HUB area - Parking & Housing Pipeline in the Hub, 8/22/17

THE HUB - SOFT SITES & SITES IN PLAY



150 Van Ness

STATUS	Entitled
HEIGHT	120
UNITS	420
-affordable	50 (12%) on-site
PARKING	210
RETAIL	9,000sf

30 Van Ness (Walgreens)

STATUS	Pre-PPA (For sale)
HEIGHT	180
UNITS	180
-affordable	180
PARKING	180
RETAIL	180

10 South Van Ness (Honda Site)

STATUS	EEA
HEIGHT	400/120
UNITS	855
-affordable	150
PARKING	326
RETAIL	28,100sf

1500 Mission (Goodwill)

STATUS	EEA
HEIGHT	250/85
UNITS	550
-affordable	110 (20%) on-site
PARKING	225
RETAIL/OFFICE	145,900sf retail / 462,800sf office

1601 Mission (Tower Car Wash)

STATUS	Entitled
HEIGHT	120
UNITS	220
-affordable	fee (20%)
PARKING	87
RETAIL	110,400sf

LEGEND

- THE HUB PROJECT BOUNDARY
- ENTITLED PROJECTS
- IN-ENTITLEMENT
- EARLY ENTITLEMENT
- SOFT SITES (NO APPLICATION FILED)

1 OAK

STATUS	EEA
HEIGHT	400/120
UNITS	300
-affordable	fee
PARKING	150
RETAIL	4,020sf

1554 Market

STATUS	Entitled
HEIGHT	120
UNITS	109
-affordable	13 (12%) on-site
PARKING	28
RETAIL	4,590sf

1601 Market (Brady Block)

STATUS	EEA
HEIGHT	85'
UNITS	1594
-affordable	107 (19%) on-site
PARKING	264
RETAIL	13,276sf

30 Otis (Carpet Store)

STATUS	EEA
HEIGHT	250/85
UNITS	418
-affordable	TBD
PARKING	105
RETAIL	5,138 sf

1699 Market (Flax)

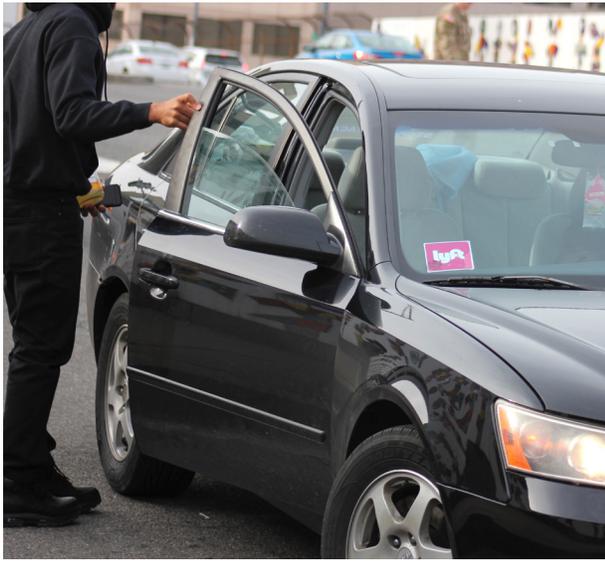
STATUS	Entitled
HEIGHT	85
UNITS	160
-affordable	19 (12%) on-site
PARKING	87
RETAIL	13,537sf

33 Gough (City College)

STATUS	Pre-PPA
HEIGHT	TBD
UNITS	TBD
-affordable	TBD
PARKING	TBD
RETAIL	TBD

Exhibit 4 Proposed HUB area - Soft Sites & Sites in Play, 6/7/16

DRAFT

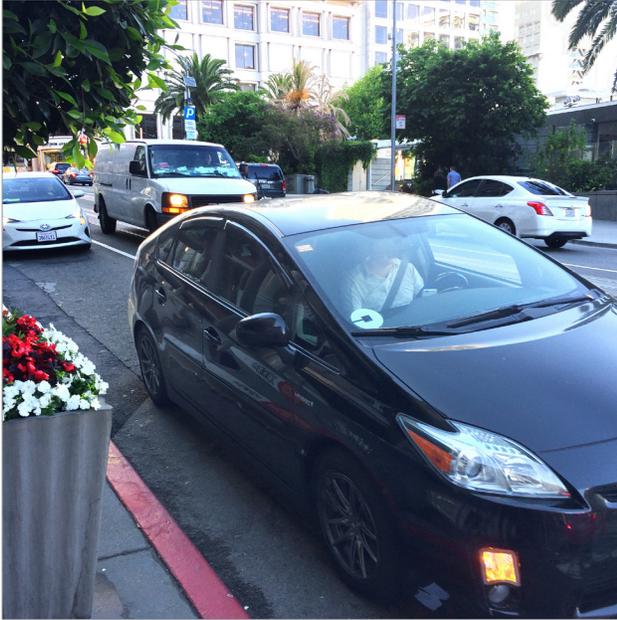


TNCs Today

A Profile of San Francisco Transportation Network Company Activity



JUNE, 2017



Contents

Executive Summary	1
Introduction	3
Purpose	4
Methodology	5
Research Questions	7
How many TNCs operate in San Francisco today?	7
How many TNC trips are occurring in San Francisco?	8
When are TNC trips occurring in San Francisco?	9
Where are TNC trips occurring in San Francisco?	11
How much VMT do TNCs generate within San Francisco?	15
Do TNCs provide good geographic coverage throughout the entire city?	17
Future Research	18
For More Information	18
Bibliography	19
Glossary	19

ACKNOWLEDGEMENTS

We wish to thank the following individuals who contributed to the development of this report:

PROJECT TEAM

JOE CASTIGLIONE, SFCTA

TILLY CHANG, SFCTA

DREW COOPER, SFCTA

JEFF HOBSON, SFCTA

WARREN LOGAN, SFCTA

ERIC YOUNG, SFCTA

BILLY CHARLTON, Because LLC

CHRISTO WILSON, Northeastern University

ALAN MISLOVE, Northeastern University

LE CHEN, Northeastern University

SHAN JIANG, Northeastern University

PHOTO CREDITS

Uncredited photos are from the Transportation Authority photo library. The photographers cited below, identified by their screen names, have made their work available for use on flickr Commons: Follow the link for use and licensing information.

Cover top left: Elvert Barnes, <https://flic.kr/p/RnBh3W>

Cover top right: Sergio Ruiz, <https://flic.kr/p/TcdmM8>

p. 4: Melies the Bunny, <https://flic.kr/p/hF62Dc>

REPORT DESIGN: Bridget Smith, SFCTA



SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY

1455 Market Street, 22nd Floor, San Francisco, CA 94103

TEL 415.522.4800 FAX 415.522.4829

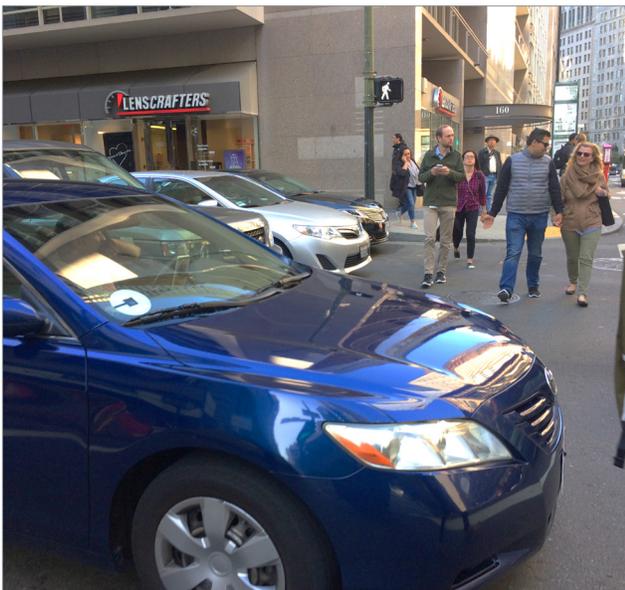
EMAIL info@sfcta.org WEB www.sfcta.org

Executive Summary

Transportation network companies (TNCs) such as Uber and Lyft are an increasingly visible presence on San Francisco streets, but there has been no comprehensive data source to help the public and decision-makers understand how many TNC trips occur in San Francisco, how much vehicle travel they generate, and their potential effects on congestion, transit ridership, and other measures of system performance. The California Public Utilities Commission (CPUC) regulates TNCs and requires data reporting by TNCs, **but will not share** these data with local jurisdictions and the public.

The purpose of this report is to provide information on TNC activity in San Francisco, in order to help the San Francisco County Transportation Authority (Transportation Authority) fulfill its role as the Congestion Management Agency for San Francisco County. The report is also intended to inform the Transportation Authority board which is comprised of the members of the San Francisco Board of Supervisors, as well as state and local policy-makers in other arenas, and the general public, on the size, location and time-of-day characteristics of the TNC market in San Francisco.

The information presented is a profile of estimated local TNC usage (**trips made entirely within San Francisco**) from mid-November to mid-December of 2016. The TNC data was originally gathered by researchers at Northeastern University from the Application Programming Interfaces (APIs) of Uber and Lyft and then shared with the Transportation Authority. The Transportation Authority's data team cleaned and analyzed the data for presentation here.



While this document provides a broad range of descriptive information about TNC trips, it does not evaluate the effects of these TNC trips on the performance of the San Francisco transportation system, nor does it explain TNC customer trip purposes, demographic characteristics, or longer term effects on vehicle ownership and residential and employment location. This report does not identify the extent to which TNCs affect congestion. Many factors contribute to increased congestion—population and employment growth, construction activity, increased delivery and other transportation services, and TNCs.

Subsequent reports and studies by the Transportation Authority and others will address these important analytic and policy topics in depth, including the effects of TNCs on roadway congestion, public transit operations and ridership, disabled access, and equity.

The report is structured around six primary questions:

HOW MANY TNCs OPERATE IN SAN FRANCISCO TODAY?

- The San Francisco Treasurer's Office estimates that **45,000 Uber and Lyft drivers** may operate in San Francisco, and in 2016 sent notices requiring them to register their business with the city.
- Almost **21,000 drivers** are estimated to have complied with the requirements to register their business with the city. Of that number, only 29% are San Francisco residents.
- On a typical weekday, over **5,700 TNC vehicles operate on San Francisco streets at peak times**, with the peak period occurring between 6:30pm and 7:00pm. On Fridays, over **6,500 TNC vehicles are on the street during the peak of 7:30pm to 8:00pm**. This is over 15 times the number of taxis on the street at these times of day.

HOW MANY TNC TRIPS ARE OCCURRING IN SAN FRANCISCO?

- On a typical weekday, TNCs make over 170,000 vehicle trips within San Francisco, which is approximately 12 times the number of taxi trips, **and 15% of all intra-San Francisco vehicle trips**. This represents a conservative estimate of total TNC trips in San Francisco because the study's dataset does not include trips with a regional origin or destination.
- Assuming TNC occupancy rates are similar to taxi occupancy rates, it is estimated that at least **9% of all San Francisco person trips use TNCs**.

WHEN ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

- Significant numbers of TNC vehicle trips occur on both weekdays and weekends, with the highest number on **Fridays** with over 222,500 trips, and the lowest number on Sundays with approximately 129,000 trips.
- On weekdays, TNC usage is concentrated during the AM and PM peak periods when congestion is greatest, and extends into the evenings on Friday. Saturday and Sunday TNC trips occur primarily in the afternoon and evening.

WHERE ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

- TNC trips are **concentrated in the densest and most congested parts of San Francisco including the downtown and northeastern core of the city. At peak periods, TNCs are estimated to comprise 25% of vehicle trips in South of Market.**
- TNC trips are concentrated on the busiest arterials, yet also operate extensively on neighborhood streets, including along major public transit lines.

HOW MANY VEHICLE MILES TRAVELED (VMT) DO TNCs GENERATE WITHIN SAN FRANCISCO?

- Intra-SF TNC trips generate approximately 570,000 vehicle miles of travel (VMT) on a typical weekday, comprising as much as **20% of intra-SF-only VMT**, at

least **6.5% of average total weekday VMT citywide, and may account for more than 10% of weekend VMT, primarily during the AM peak, PM peak, and early evening time periods.** These estimates include both in-service and out-of-service vehicle miles.

- Approximately 20% of total TNC VMT are out-of-service miles. This is significantly lower than the more than 40% of taxi VMT that are out-of-service miles. The greater efficiency of TNCs is likely due to the higher number of TNC vehicles and more efficient technology.

DO TNCs PROVIDE A HIGH DEGREE OF GEOGRAPHIC COVERAGE THROUGHOUT THE ENTIRE CITY?

- TNCs provide broader service across the city than taxis, particularly in the western neighborhoods.
- TNCs provide fewer trips per population and employment in southern and southeastern areas of the city, which may reflect the presence of fewer TNC vehicles, or neighborhood preferences or demographics.

For more information, or to obtain a downloadable file of Transportation Authority processed data, visit the TNCs Today website at www.sfcta.org/tncstoday.



Introduction

Transportation network companies (TNCs) such as Uber and Lyft are visible presences on San Francisco's streets, in both the downtown core as well as in the city's neighborhoods. These companies allow people to use a smartphone app to request and pay for rides sourced from a pool of available drivers. These services are taxi-like in that they provide point-to-point transportation primarily in private vehicles. The success of TNCs in attracting rides in San Francisco and other cities reflects the high unmet demand for premium services and the extensive benefits they provide to users who can afford their services. Initially TNCs offered some distinct advantages over taxis including the ability to easily reserve a ride, the ability for both driver and passenger to contact each other and to know the location of the other using GPS, ease of payment, cheaper fares, shorter wait times, and more availability at all times of day due to a larger supply of vehicles. Taxis now offer some of these features, although the supply of taxis is still significantly smaller than TNCs, and taxi fares are higher.

The advantages of TNCs over taxis and other transportation modes are in part a result of the technological innovation of directly connecting travelers and drivers, but are also in part an outcome and reflection of the relatively light regulatory requirements under which TNCs operate, relative to taxis and other for-hire vehicles. The biggest difference between TNCs and other modes is the significantly lower barrier for drivers to enter the market. California state law grants municipalities the ability to regulate taxis, and in San Francisco, the taxi medallion system limits the number of taxi vehicles that can serve the city. In addition, taxis are subject to price controls, must provide access to all areas of the city, must provide service to people with

disabilities, have greater insurance requirements, and are subject to driver background checks and vehicle inspections. In contrast, there is no limit on the number of TNCs that may operate on San Francisco streets, no price controls, no geographic service area requirements, minimal disabled access requirements, limited driver background checks and few vehicle inspection or driver training requirements (TRB 2015).

There is a perception that TNC vehicles now comprise a significant number of the vehicles on San Francisco streets, having increased rapidly since TNCs started operating in the city seven years ago. However, there has been little data to either confirm or refute this perception. The California Public Utilities Commission (CPUC), which regulates TNCs due to the inter-city, non-hail nature of the service they provide, requires TNCs to report to the CPUC an extensive set of information on service provision including where and when trips are starting and ending, the availability of disabled-accessible vehicles, traffic incidents, and hours and miles logged by drivers. However, the CPUC has refused to share these TNC data with San Francisco, stating that it is authorized to withhold official information if disclosure of the information is against the public interest (CPUC Letter to the Transportation Authority, 2017). However, recent SFMTA Travel Decisions Survey results indicate that TNCs are growing in significance as a share of overall San Francisco travel, doubling in mode share served between 2014 and 2015 (SFMTA 2014, SFMTA 2015). In addition, it has been noted that Uber reported an annual tripling of trips in San Francisco (TRB 2015). However, these data sources provide no reliable estimates of the true number of TNC trips occurring in San Francisco, where TNC trips are occurring, or when TNC trips are occurring.





Purpose

The purpose of this report is to provide information on TNC activity in San Francisco, in order to help the San Francisco County Transportation Authority (Transportation Authority) fulfill its role as the Congestion Management Agency for San Francisco County. The report is also intended to inform the Transportation Authority board which is comprised of the members of the San Francisco Board of Supervisors, as well as state and local policymakers in other arenas, and the general public, on the size, location and time-of-day characteristics of the TNC market in San Francisco.

This document provides estimates of how many TNCs are operating in San Francisco during all times of day and days of week, imputes the number, location, and timing of intra-San Francisco TNC trips based on TNC driver trip acceptance information (referred to in this report as pickups) and TNC driver drop off information (referred to as drop-offs). The report estimates the amount of daily vehicle miles travelled (VMT) generated by TNCs, and contextualizes these relative to the other travel modes operating in San Francisco, including private vehicles, public transit, walking and biking. TNC trips between San Francisco and other counties (regional TNC trips) are not included in these estimates, and as a result these numbers represent a lower-bound estimate of the number of actual TNC vehicles and trips operating in San Francisco. Note that the data on which this report is based does not include any information on TNC trip purposes, travel party size, fares paid, traveler attributes such as gender, income, disability, mode choice shifts, or induced travel.

The information presented is a profile of local TNC usage in San Francisco from mid-November to mid-December of 2016, excluding dates around the Thanksgiving 2016 holiday. The TNC data was originally gathered by researchers at Northeastern University from the Application Programming Interfaces (APIs) of Uber and Lyft which show the locations of available vehicles to mobile apps, and then was shared with the Transportation Authority through a research collaboration over the past year. The other data referenced in the report come from a variety of sources including Caltrans, the San Francisco Municipal Transportation Agency (SFMTA), and the Transportation Authority's SF-CHAMP travel demand model.

This document does not evaluate the near-term impacts of TNCs on the performance of the San Francisco transportation system, nor does it explain potential longer-term effects of TNC provision on vehicle ownership or residential and employment location.

This report does not identify the extent to which TNCs affect congestion. Many factors contribute to increased congestion—population and employment growth, construction activity, increased delivery and other transportation services, and TNCs. **Subsequent reports by the Transportation Authority** through this project and the larger Emerging Mobility Services and Technology (EMST) policy framework and the Connect SF long-range planning process, both being undertaken in coordination with other City agencies, will address these important analytic and policy questions in depth.

Methodology

This research team developed and applied multiple procedures to estimate TNC trips within San Francisco. First, the team acquired data on TNC vehicle locations that was gathered from the Uber and Lyft APIs. The research team then cleaned this location data, removing unnecessary, anomalous, or redundant information. Finally, the team identified trips and imputed missing attributes.

DATA COLLECTION

In order to provide real-time information to drivers and passengers, Lyft and Uber expose certain data through public-facing APIs. This information includes nearby vehicle locations, estimated times-to-pickup, and sometimes, estimated costs. The data exposed through the APIs also includes, among other things, a vehicle identifier associated with a sequence of time-stamped coordinates, and the service types associated with that vehicle, such as UberX or UberPOOL. Sending a request to the API returns a text file response containing this information for the nearest available vehicles. When a vehicle becomes unavailable, either because the driver has turned off their app or they have accepted a ride request, the vehicle disappears from the datastream. Similarly, when the vehicle becomes available, either because the driver has turned on their app or they have completed a ride request, it reappears in the datastream. Researchers at Northeastern University implemented a systematic method for collecting this datastream such that it geographically covers all of San Francisco. The Northeastern University researchers collected information on vehicle locations every five seconds for approximately six weeks. The data collection methodology has no impacts on either drivers or riders.

DATA CLEANING

The research team collected data by sampling available TNC vehicles using a geographic grid that covers all of San Francisco. This sampling procedure means that any available Uber or Lyft vehicle may be detected by multiple sampling locations. Furthermore, because data is being collected almost continuously in time for each sampling location, the same vehicle will often appear repeatedly in the datastream for each individual sampling location. The first step in the data preparation process involved cleaning the information in the datastream. In addition, the raw data may at times contain anomalous data, which was also screened out to ensure the reasonableness of the GPS traces. The result was a set of unique GPS traces for each TNC vehicle.

TRIP IDENTIFICATION, TRIP MATCHING AND ATTRIBUTE IMPUTATION

Cleaning resulted in a set of unique “pre-trip” vehicle trajectories that reflect when a vehicle became available (due to the driver dropping off a passenger or starting a shift) and when the vehicle became unavailable (due to the driver accepting a passenger or ending a shift). Once pre-trips and pickup and drop-off locations were defined, “trips” were imputed by linking the pickup and trip drop-off locations. Lyft trips were created first because the Lyft API reveals a persistent vehicle identifier, with which it is possible to build an aggregate matrix of Lyft flows from pickup locations to dropoff locations by detailed time-of-day. This matrix of flows is used to estimate the vehicle miles traveled generated by TNCs. Uber’s API does not have persistent identifiers that are necessary to connect pickup and dropoff locations, so the research team used the Lyft matrix of pickup and dropoff flows by travel analysis zone (TAZ) and time-of-day as a starting point, and then proportionally fitted the matrix to match Uber trip pickup locations and drop-off locations by time-of-day.

A unique aspect of the Uber and Lyft driver labor market is that drivers may drive for both services simultaneously. As a result, these driver vehicles may appear in both the Uber and Lyft datastreams. It is necessary to identify these “matched pre-trips” in order to avoid double-counting of TNC pre-trips and trips. Matched pre-trips were identified by comparing the start and end times of the pre-trips and selecting only those pre-trips whose start and end times both occurred within a limited time window, as well as selecting only pre-trips that traversed the same set of network links in the same sequence. The pre-trip (and associated trip) were then assigned to either Lyft or Uber, based on which pre-trip ended first, representing the first platform on which a driver accepted the trip.

For pre-trips, out of service travel times and distances could be calculated directly from the cleaned and processed datastream. For Lyft trips, trip travel times could be derived from the datastream. Because the datastream does not contain the information on the actual paths used by TNCs on trips, it was necessary to impute distances between observed pickup and dropoff locations using information from the Transportation Authority’s SF-CHAMP model. For Uber trips, both travel times and distances were imputed from the model system.

DATA LIMITATIONS

It must be emphasized that the TNC information documented in this report does not represent direct observa-

tion of TNC trips. Trips and pre-trips are imputed based on the changes in the supply of Uber and Lyft vehicles as revealed by each company's API. Requests to the CPUC and to Uber and Lyft for data that could be used to validate these findings were declined.

However, as documented in subsequent sections of this report, the summaries of how the time and location of imputed TNC trips vary across time and space are generally consistent with overall travel patterns within the city.

There are a number of other limitations to the data as revealed by the APIs. Pickup locations and drop-off locations are not true trip origins and trip destinations. Instead, they represent where drivers accept rides (which

are assumed to be a few minutes from true trip origins) and where drivers are available again (which are assumed to be near true trip destinations). In addition, no information on the specific TNC products used (such as UberX or LyftLine) can be derived from the datastream. Pooled services like UberPOOL and LyftLine which are designed to encourage users to share rides may not show up in the datastream. No information on TNC vehicle occupancy or traveler demographics is available, nor is consistent information on costs. Finally, these estimates are a lower bound on TNC trips in San Francisco, as all trips with one or more end outside the city (regional and through trips) are excluded from the analysis.

Research Questions

HOW MANY TNCs OPERATE IN SAN FRANCISCO TODAY?

Two measures of TNC supply are the number of TNC drivers who regularly drive in the city and the number of TNC vehicles that operate in the city at peak times.

There are no definitive observed data of the number of TNC drivers who regularly drive in San Francisco. It has been estimated that as many as 45,000 TNC drivers may operate in San Francisco, based on the number of letters sent by the **San Francisco Treasurer's** office to potential TNC drivers, notifying them of the requirement to register their businesses with the City. (SF Examiner, 2016). The City's business location database (<https://data.sfgov.org/Economy-and-Community/Registered-Business-Locations-San-Francisco/g8m3-pdis>) provides industrial sector detail and business addresses of individuals who have registered businesses in San Francisco. Based on information from this database, the research team estimates that approximately **21,000 drivers** complied with the City's business registration requirements. In contrast, there are only approximately 1,800 San Francisco taxi vehicle medallions (SFMTA 2016). Table 1 shows the distribution of registered drivers' locations, by county. It appears that only 29% of TNC drivers who work in San Francisco are

COUNTY	PERCENTAGE
Alameda	21%
Contra Costa	12%
Marin	2%
Napa	0%
San Francisco	29%
San Mateo	16%
Santa Clara	6%
Solano	2%
Sonoma	1%
Outside Bay Area	10%
TOTAL	100%

Source: San Francisco Registered Business Location Database, accessed 2017 May 12

based in the city, indicating that **vast majority of TNC drivers are coming in the city from other Bay Area counties and beyond.**

Figure 1 shows the estimated number of TNC vehicles that are on San Francisco streets on a typical weekday, by time-of-day, while Figure 2 (next page) shows the number of TNC vehicles on a typical Friday. These data show that on weekdays, the peak number of TNC vehicles occurs between 6:30pm and 7:00pm, when approximately 5,700 TNC vehicles are on San Francisco streets. On Fridays, the peak occurs between 7:30pm and 8:00pm, when an estimated 6,500 TNC vehicles are on the street.

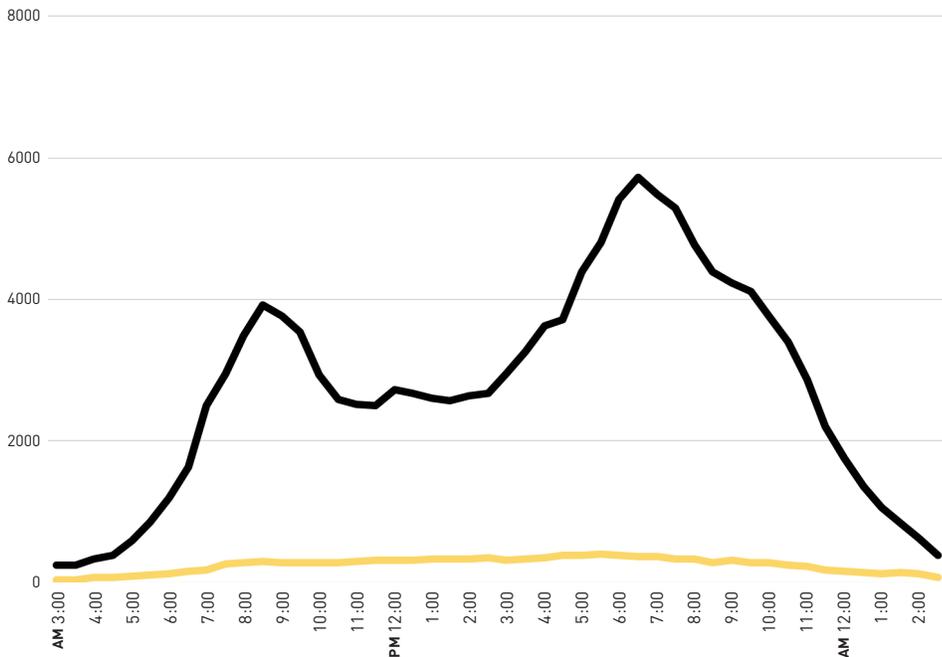
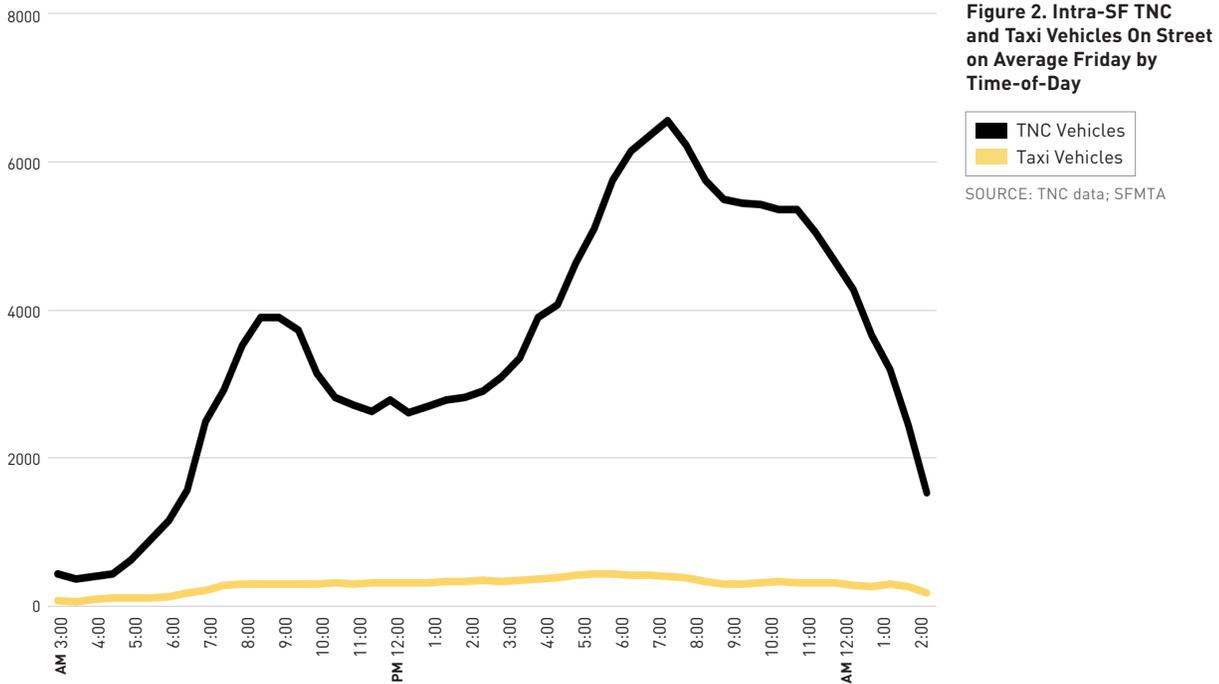


Figure 1. Intra-SF TNC and Taxi Vehicles On Street on Average Wednesday by Time-of-Day

Legend:
 TNC Vehicles
 Taxi Vehicles

SOURCE: TNC data; SFMTA



HOW MANY TNC TRIPS ARE OCCURRING IN SAN FRANCISCO?

Two types of TNC trips were estimated: vehicle trips and person trips. The number of TNC vehicle trips is important because more vehicle trips generally leads to increased congestion and conflicts with other street users, while more person trips may indicate enhanced mobility. Again, only those trips with both pickup and drop-off location within San Francisco are considered in the following summaries.

“Vehicle trips” in Table 2 refers to movements by motor vehicles with origins and destinations entirely within San Francisco. Vehicles may carry different numbers of people, or may be public transit vehicles or taxis. Trucks are excluded. Approximately 170,000 TNC vehicle trips are estimated to occur within San Francisco during a typical weekday. This represents approximately 15% of all weekday vehicle trips that both start and end within the city, as shown in Table 2. There are approximately 12 times as many TNC trips as taxi trips during a typical weekday.

Figure 3. Average Wednesday Intra-SF Vehicle Trips by Mode

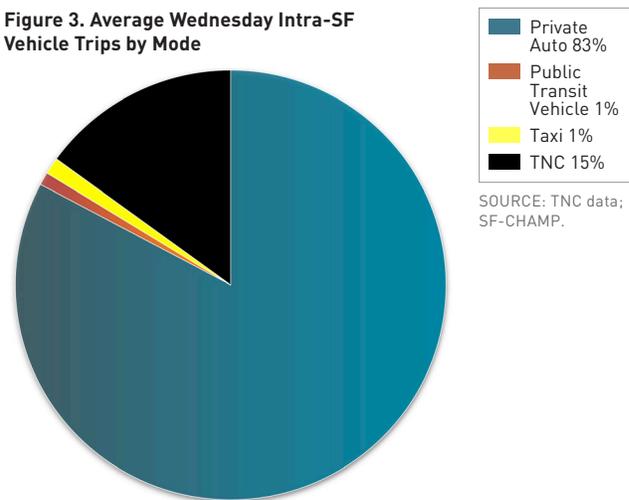


Table 2. Weekday Intra-SF Vehicle Trips by Mode

MODE	VEHICLE TRIPS	%
Private Auto	940,000	83%
Public Transit Vehicle	11,000	1%
Taxi	14,000	1%
TNC	170,000	15%
TOTAL	1,135,000	100%

Source: TNC data; SF-CHAMP travel model, SFMTA

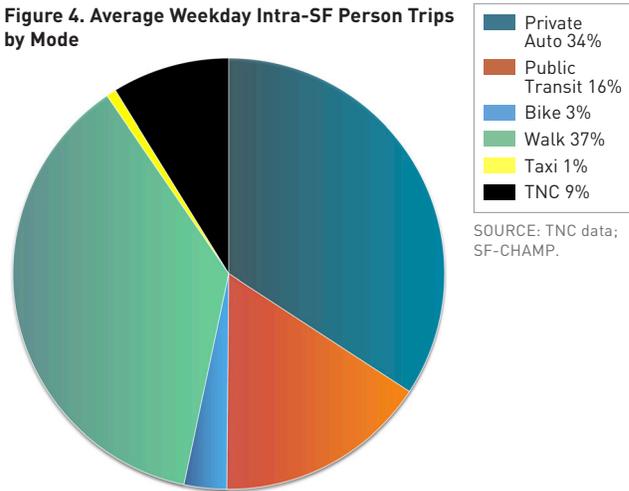
Person trips refers to movements by people with origins and destinations in San Francisco. Person trips are different than vehicle trips because person trips include walking and biking trips (which don't require motor vehicles), and also because private vehicles, public transit vehicles and taxis may carry more than one person. For TNCs and taxis, vehicle trips were converted to person trips using an assumed occupancy rate of 1.66, based on observed taxi data (Schaller, 2017). This assumed occupancy rate affects the TNC share of overall travel. Use of a lower occupancy rate would result in lower TNC person trip mode shares. Approximately 290,000 TNC person trips are estimated to occur within San Francisco during a typical weekday. This represents approximately 9% of all weekday person trips within the city, as shown in Table 3.

Table 3. Weekday Intra-SF Person Trips by Mode

MODE	PERSON TRIPS	%
Drive	1,099,000	34%
Public Transit	512,000	16%
Bike	103,000	3%
Walk	1,193,000	37%
Taxi	24,000	1%
TNC	283,000	9%
TOTAL	3,214,000	100%

Source: TNC data; SF-CHAMP travel model, SFMTA

Figure 4. Average Weekday Intra-SF Person Trips by Mode



SOURCE: TNC data; SF-CHAMP.

WHEN ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

The timing of TNC trips is important because trips that occur during peak periods and weekdays are more likely to exacerbate congestion and delay on roads, affecting both general traffic, surface public transit as well as conflicts with bicycles and pedestrians.

Figure 5 shows the total number of estimated TNC vehicle trips and taxi trips by day-of-week. It shows that TNC trips increase as the week progresses, reaching their peak volume on Friday and hitting their lowest volume on Sunday. This indicates that TNCs are serving both the weekday and

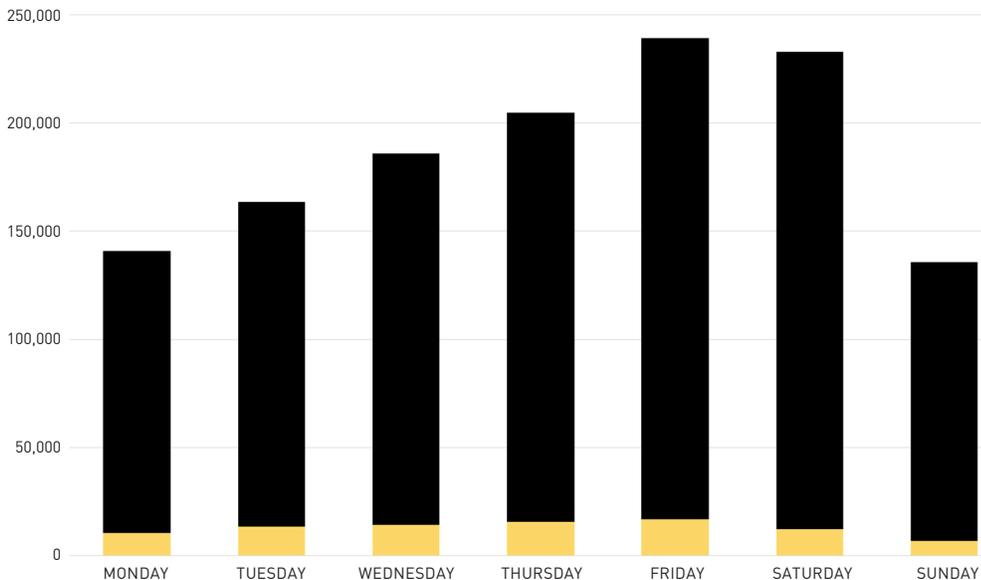


Figure 5. TNC and Taxi Intra-SF Trips by Day-of-Week

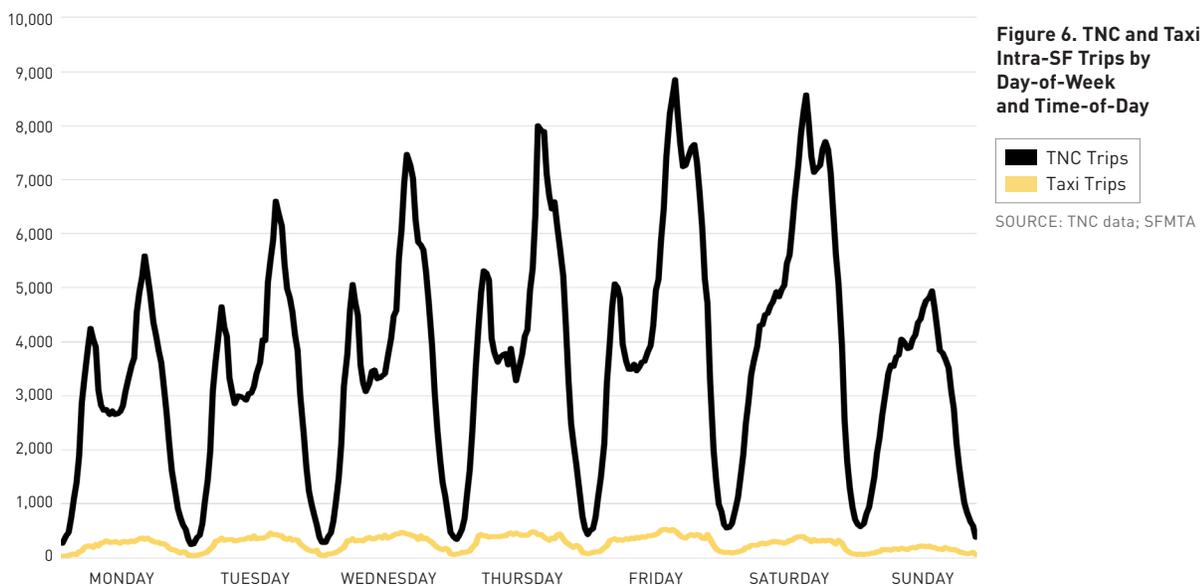
Legend:
 ■ TNC Trips
 ■ Taxi Trips

SOURCE: TNC data; SFMTA

weekend travel markets, and that TNCs have strong discretionary trip market demand.

Figure 6 provides additional detail on the timing of TNC trips by showing the estimated number of trips by half-hour and by day of week. This figure indicates that during the weekdays, TNCs have a clear pattern of peak usage that coincides with the existing AM and PM peak periods. Peak periods typically have the highest availability of other

forms of transportation, and are also the times when added traffic has the highest negative effect on other transportation system users. Figure 6 also shows that on Fridays and Saturdays usage of TNCs extends later into the evening, suggesting that TNCs may also provide additional options for travelers at times when other modes such as public transit, biking or walking may be less attractive due to reduced service or safety concerns.



WHERE ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

The location of TNC trips is important because trips that occur where there is already significant traffic are more likely to exacerbate congestion and conflicts with other road users, while trips that occur in less congested areas may reflect lower transportation impacts.

Figures 7 through 9 provide geographic detail on the locations of TNC pickups on weekdays, Saturdays and Sundays. In these figures, TNC trip pickups have been aggregated to travel analysis zones (TAZs), which are a basic spatial unit used by the Transportation Authority for transportation analyses (dark colors indicate more daily TNC trips, and light colors indicate fewer daily TNC trips). TAZs are approximately the size of US Census block groups in most of the city, and the size of Census blocks in the core downtown area. Figure 7 illustrates clearly that the vast majority of TNC trips are occurring in San Francisco's northeast quadrant, which is the most congested area of the city, as well as the area that is most well served by public transit, bicycling and walking facilities. South of Market, the Mission Street corridor, the Van Ness Avenue corridor, Pacific Heights and the Marina all show relatively higher intensities of TNC usage.

To a lesser extent, TNC usage is also high along the Geary Street corridor, Panhandle, and Inner Sunset, and Stonestown/San Francisco State University area.

Figure 8 illustrates that the even greater levels of TNC trip-making that occurs on Saturday is also highly concentrated in these same areas, along with more trips from Golden Gate Park and along the Geary Avenue corridor. Figure 9 shows the significantly lower level of TNC trip-making on Sundays, particularly in the northern neighborhoods.

Figures 10–12 (next page) provide an alternative detailed visualization of the locations of TNC drop-off locations. Rather than aggregate the drop-off locations to TAZs, the drop-off point locations are used to directly map the intensity of drop-offs on the roadway network. This provides insights into which specific streets and transit corridors are likely being affected most by TNC activity. The patterns are broadly similar across weekdays, Saturdays and Sunday. The Market Street spine, and areas north and south of Market show high levels of TNC drop-off activities at all times of day. Many other streets clearly stand out as well, including nearly all downtown and SoMa streets, Columbus Ave, Geary Blvd, Mission and Valencia Streets, 19th Avenue, 3rd Street, and San Bruno Avenue.

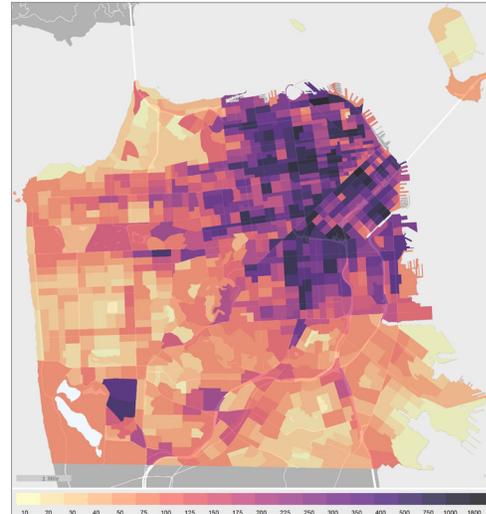


Figure 7. Average Weekday Intra-SF TNC Pickups by Travel Analysis Zone

SOURCE: TNC data

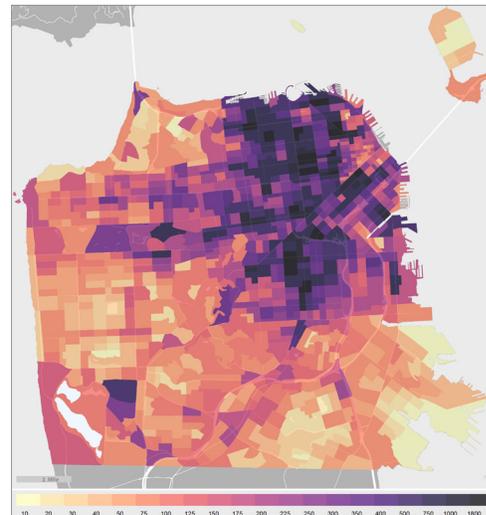


Figure 8. Average Saturday Pickups by Travel Analysis Zone

SOURCE: TNC data

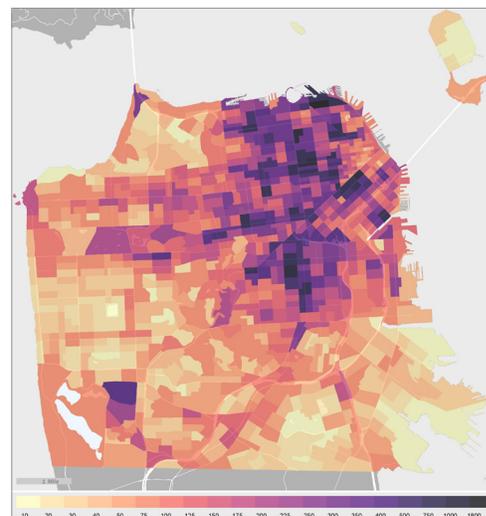


Figure 9. Average Sunday Pickups by Travel Analysis Zone

SOURCE: TNC data

The locations with the highest levels of TNC pickups and drop-offs include:

- Union Square
- Market/Van Ness
- Caltrain (4th and King)
- Transbay Terminal (2nd and Market to Harrison/Beale)
- Chinatown
- Marina
- 9th/Brannan
- Fell/Oak/Divisadero
- Embarcadero Center (Clay/Front)
- Clay/Van Ness

Figure 13 summarizes the percentage of all vehicle trips starting in each of the supervisorial district that are TNC vehicle trips. This provides information on how the overall share of 15% of daily vehicle trips as TNC trips varies by time of day and location. In District 6, the research team estimates that more than 25% of AM peak and PM peak period vehicle trips are by TNC.

Figures 14–16 (next page) show the average number of TNC pickups and drop-offs by San Francisco supervisorial district by day-of-week. Figure 14 shows that, as noted above, District 6 absorbs the greatest number of weekday TNC trips, followed closely by District 3 and more distantly by Districts 2 and 5. This likely reflects the significant employment and public transit hubs found in Districts 3 and 6, combined with higher parking supply restrictions and parking costs. Interestingly, Figure 15 indicates that the greatest number of Saturday TNC trips occur in District 3 instead, followed by District 6, possibly reflecting a greater concentration of entertainment and dining opportunities in District 3. Finally, Figure 16 shows the overall lower number of TNC trips occurring across all districts on Sunday, while the relative distribution by district is very similar to that observed on weekdays and Saturdays.



Figure 10. Weekday Pickup Hotspots
SOURCE: TNC data



Figure 11. Saturday Pickup Hotspots
SOURCE: TNC data



Figure 12. Sunday Pickup Hotspots
SOURCE: TNC data

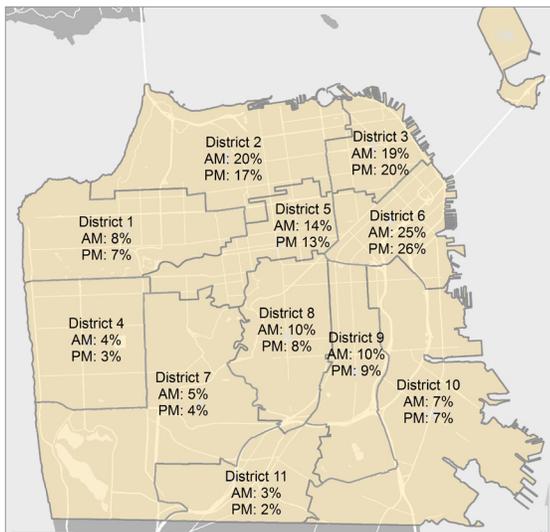
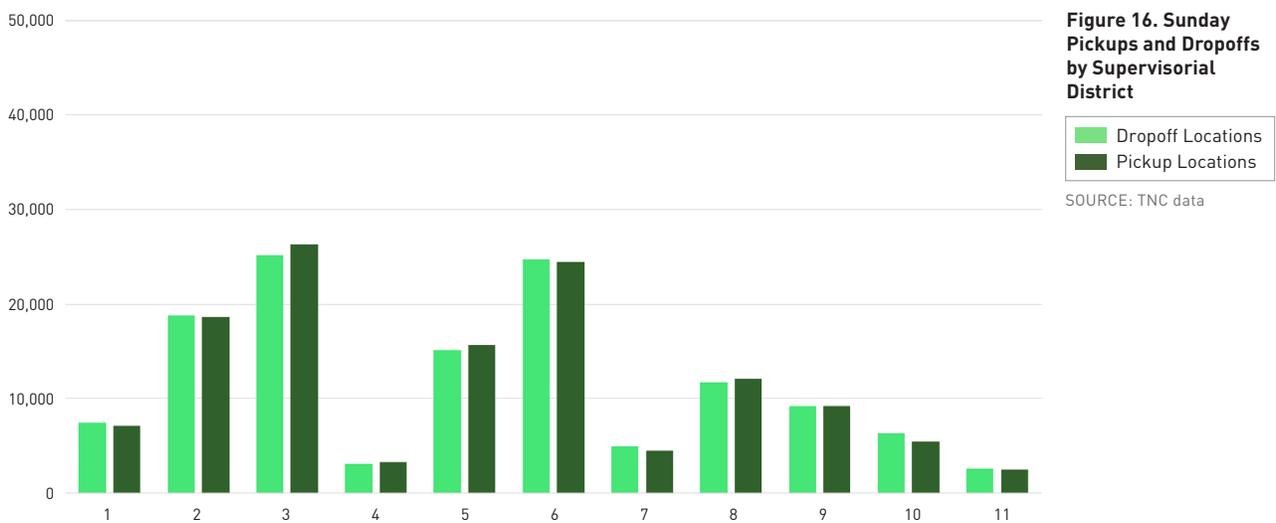
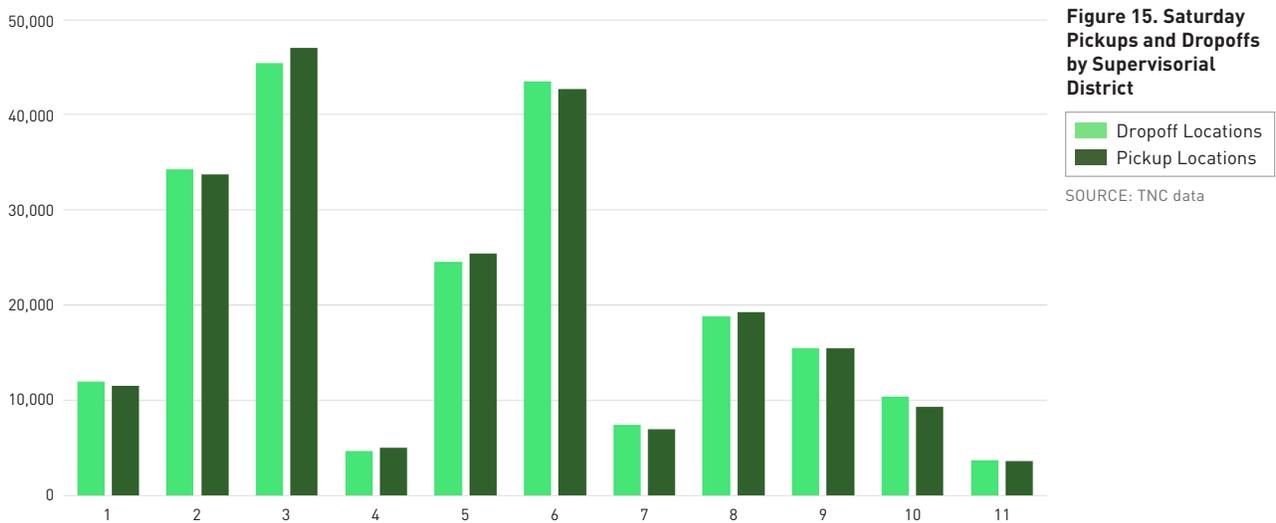
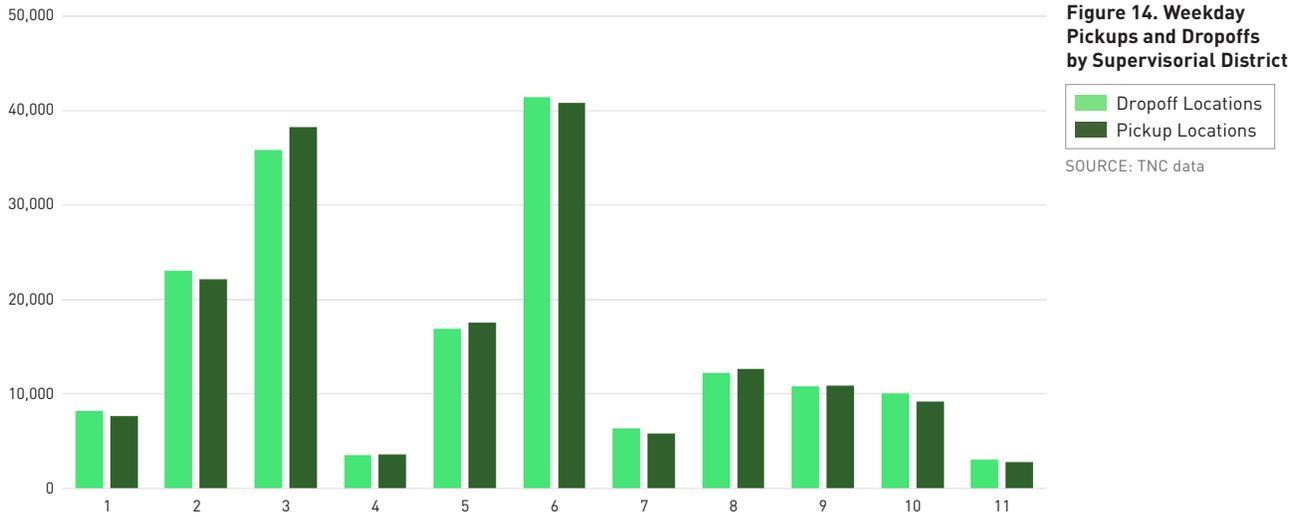


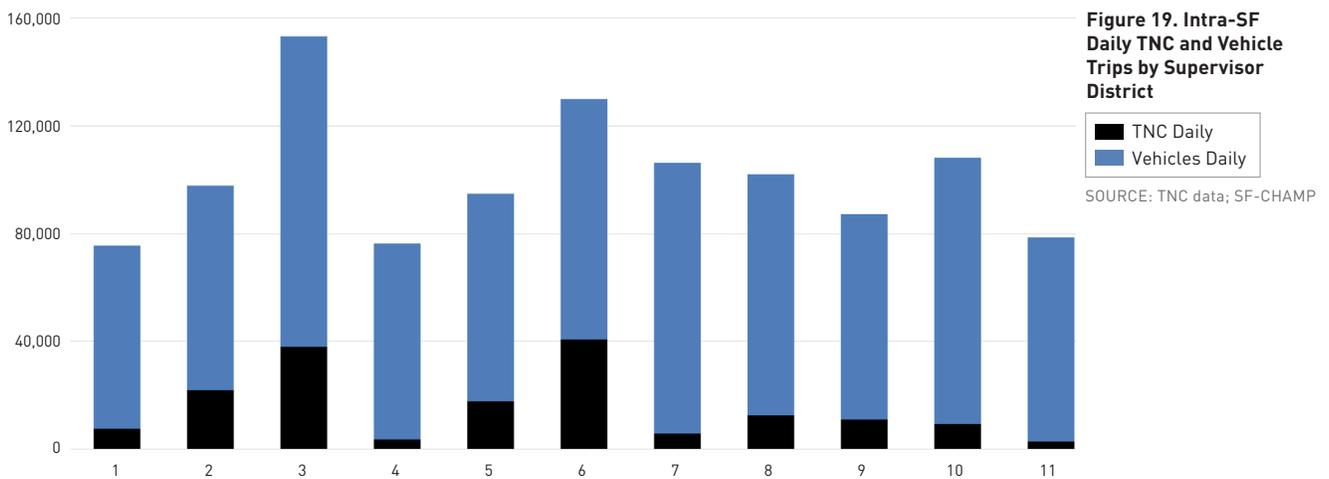
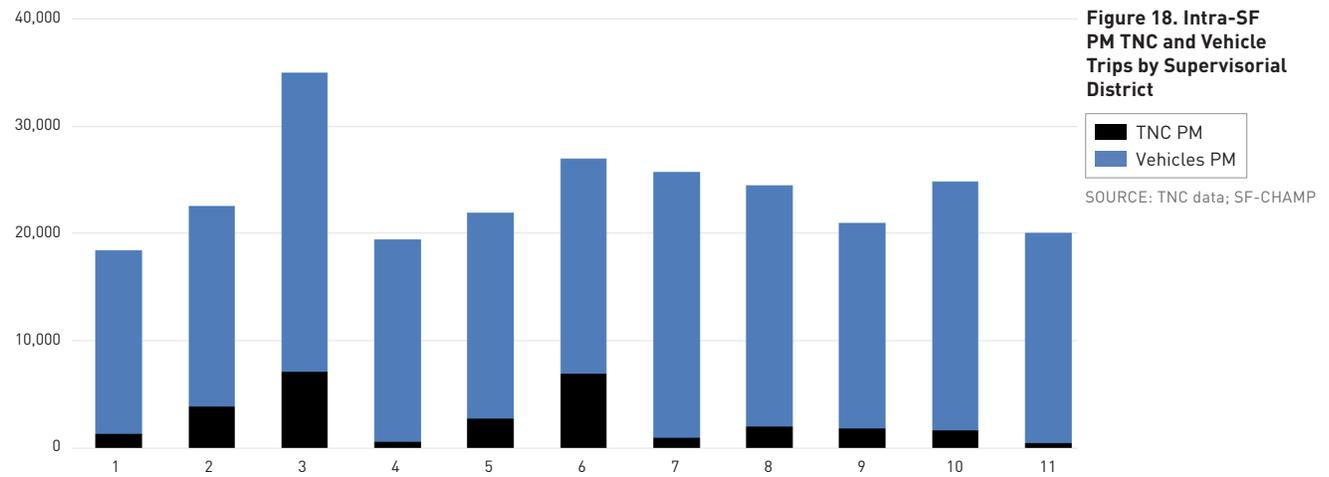
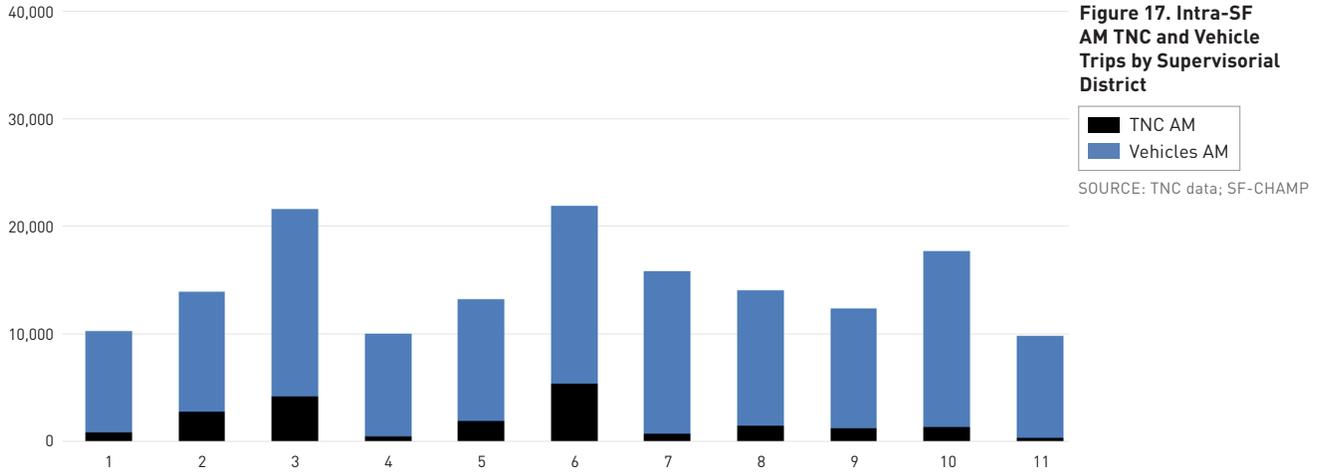
Figure 13. TNC AM and PM Vehicle Shares by Supervisorial District

SOURCE: TNC data



Figures 17–19 further illustrate the total number of TNC and non-TNC vehicle trips by supervisorial district and time of day. These show overall higher levels of TNC vehicle

trips in the PM peak than in the AM peak, and that District 3 and District 6 have the greatest levels and the greatest shares of TNC vehicle trip-making.



HOW MUCH VMT DO TNCs GENERATE WITHIN SAN FRANCISCO?

The amount of VMT, or vehicle miles travelled, that is generated by TNCs is important because VMT is a fundamental measure of transportation system performance. Higher levels of VMT are associated with greater levels of emissions of greenhouse gases such as CO₂ as well as other pollutants. In addition, higher levels of VMT are also associated with greater roadway congestion and conflicts. For TNCs and taxis, two types of VMT are important, in-service VMT and out-of-service VMT. In-service VMT refers to the vehicle miles traveled when transporting a passenger. Out-of-service VMT refers to the vehicle miles traveled while circulating to pickup a passenger.

Tables 4–6 show the total trips, total VMT, average total trip length, in-service trip length, out-of-service trip length, and percent out-of-service trip length by day-of-week for local TNCs and taxis. These tables indicate that TNCs and taxis are generally similar in terms of average in-service trip length. However, a notably smaller share of TNCs’ total trip lengths are out-of-service miles, while a significant share of total taxi trip length (over 40%) are out-of-service miles. The greater efficiencies of TNCs, as reflected in a lower share of out-of-service miles, are likely primarily a reflection of the larger fleets of TNC drivers operating on the road at any given time, enabling shorter distances to pickup locations. In addition, TNCs’ routing software may be more efficient than the taxi dispatch systems. Most critically, Table 4 indicates that the estimated TNC total VMT on a typical weekday is approximately 570,000 VMT, and this estimate is clearly conservative given that it:

- Includes only intra-SF TNC trips (such as trips to and from San Francisco International Airport).
- Underestimates out-of-service VMT because it excludes the additional distance from acceptance location to where the passenger is actually picked up.
- Excludes VMT associated with TNC drivers commuting to SF from non-SF home origins.

This TNC VMT estimate indicates that intra-SF TNCs generate as much as 20% on weekday VMT for intra-SF vehicle trips and at least 6.5% of total weekday VMT in San Francisco, given Caltrans’ most recent estimate of weekday VMT traveled on San Francisco streets and highways (Caltrans 2014). Saturday roadway volumes are lower than weekday volumes, yet Saturday TNC VMT is even greater than average weekday TNC VMT. It is possible that TNCs may account for approximately 10% of VMT on Saturdays.

Table 4. Average Weekday Intra-SF Trip Lengths

	TNCS	TAXIS
Trips	170,400	14,400
VMT	569,700	65,900
Average Total Trip Length	3.3	4.6
Average In-service Trip Length	2.6	2.6
Average Out-of-service Trip Length	0.7	2.0
% Out-of-service Trip Length	21.0%	43.6%

Table 5. Average Saturday Intra-SF Trip Lengths

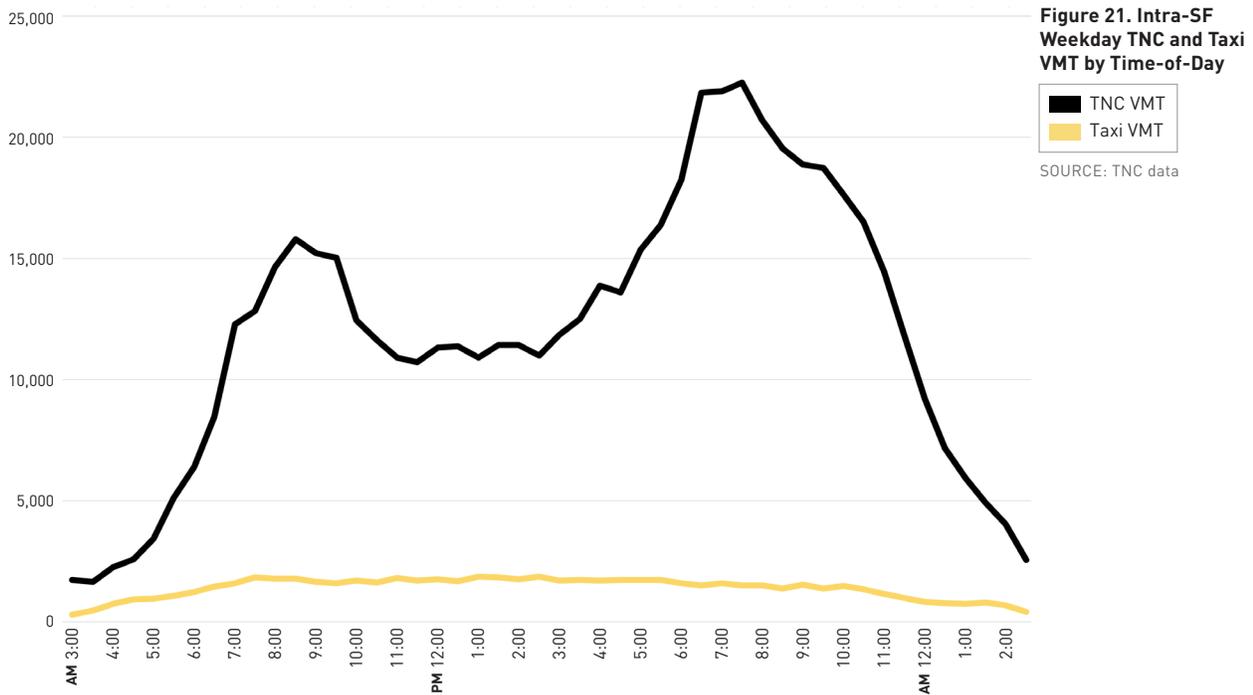
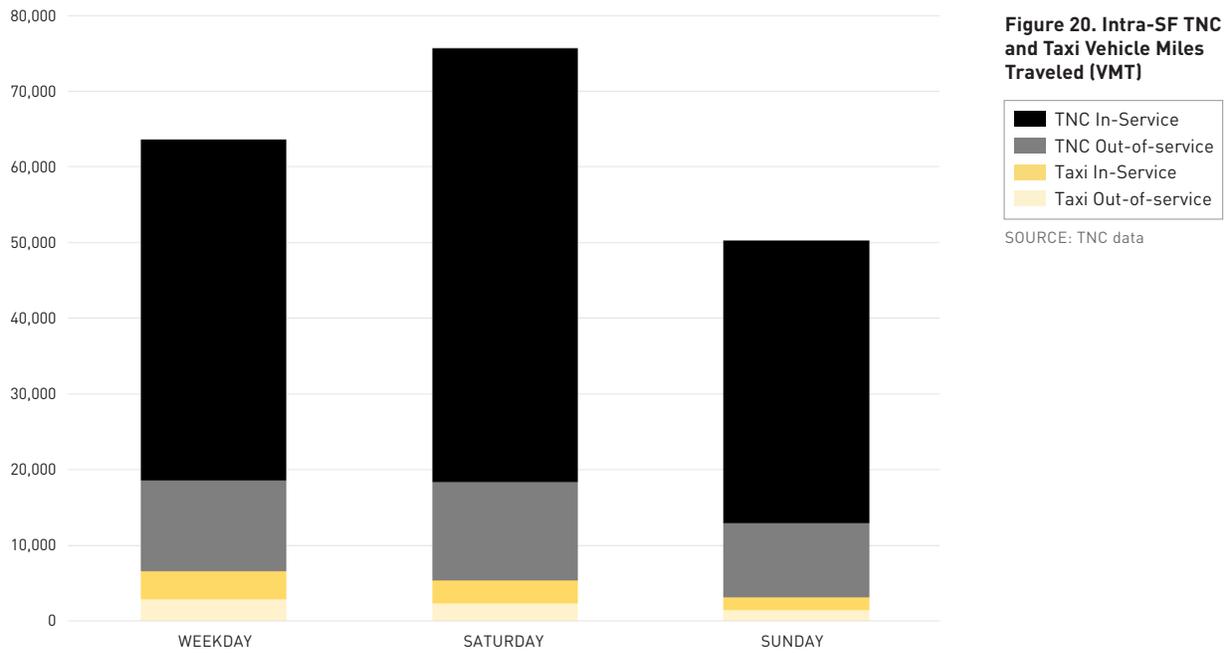
	TNCS	TAXIS
Trips	220,700	12,300
VMT	703,600	53,600
Average Total Trip Length	3.2	4.4
Average In-service Trip Length	2.6	2.4
Average Out-of-service Trip Length	0.6	1.9
% Out-of-service Trip Length	18.6%	44.1%

Table 6. Average Sunday Intra-SF Trip Lengths

	TNCS	TAXIS
Trips	129,100	6,700
VMT	471,200	31,900
Average Total Trip Length	3.7	4.8
Average In-service Trip Length	2.9	2.6
Average Out-of-service Trip Length	0.8	2.2
% Out-of-service Trip Length	20.7%	45.5%

Figure 20 (next page) illustrates the amount of estimated in-service and out-of-service VMT generated by local TNCs and taxis for typical weekdays, Saturdays and Sundays. TNCs generate more than 10 times as many VMT as taxis on a typical weekday, while generating 12 times as many trips.

Figure 21 (next page) shows the distribution of weekday VMT by time-of-day for TNCs and taxis. It indicates that most of the VMT generated by TNCs occurs during the AM peak and PM peak hours, with significant VMT also occurring during the evening hours, following the PM peak. VMT generated during periods of peak demand likely exacerbates existing peak period congestion.



DO TNCs PROVIDE GOOD GEOGRAPHIC COVERAGE THROUGHOUT THE ENTIRE CITY?

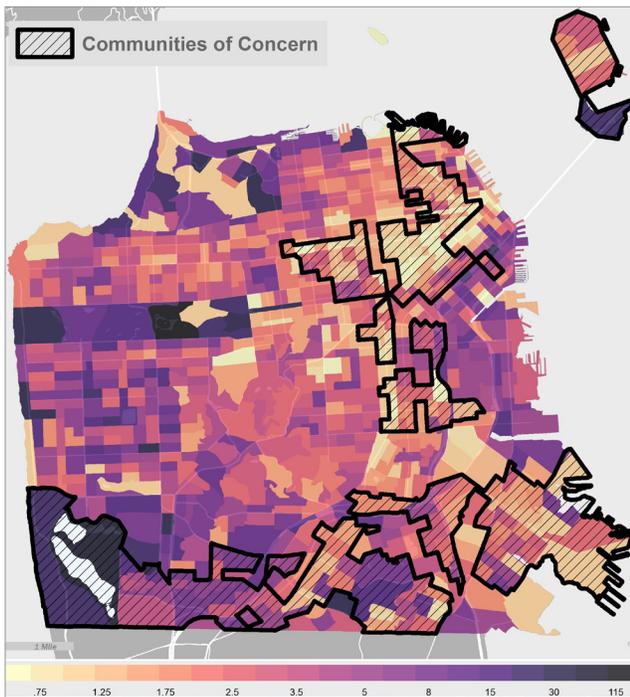
It is important to ensure that all areas of the city have access to transportation alternatives, while also acknowledging that different communities may have different needs and abilities to pay for mobility services. Due to their flexibility, TNCs should be able to provide reasonable geographic coverage to all areas of the city. In order to assess whether TNCs are serving all neighborhoods, two metrics are used: the number of TNC pickups per taxi pickup in each TAZ and the number of TNC pickups per combined population and employment in each TAZ.

Figure 22 shows the number of TNC pickups per taxi pickup. Areas defined as “communities of concern” are also identified. Darker areas indicate where TNCs are providing

broader service than taxis. However, the figure also suggests that southeastern neighborhoods may not be well served by TNCs.

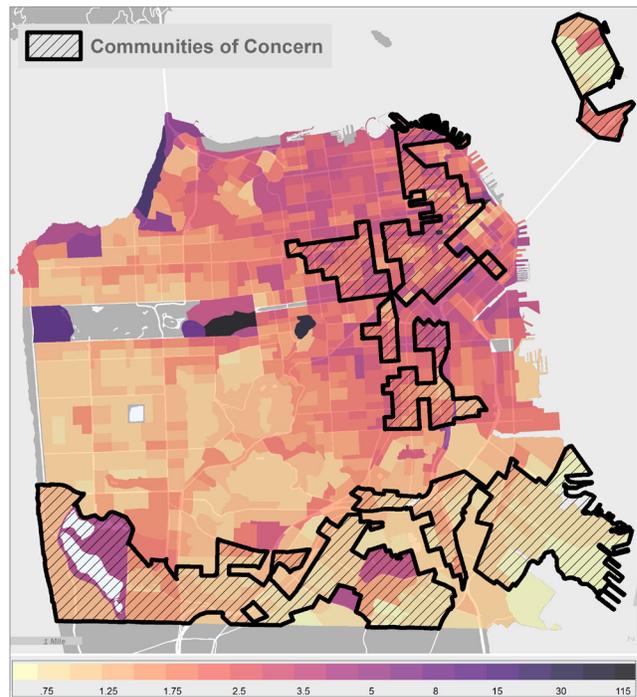
Figure 23 shows the number of TNC pickups per combined population and employment by TAZ. This shows that the northeastern core and northern parts of the city are generally well served by TNCs. Southeastern and southern neighborhoods do not appear to be as well served. This may reflect either a lack of vehicles available in this area, or may reflect inability of residents of these areas to use TNCs, or some combination of these or other factors. Additional data is required to better understand this pattern.

Figure 22. Weekday TNC Pickups per Taxi Pickup



SOURCE: TNC data

Figure 23. TNC Pickups per Population and Employment



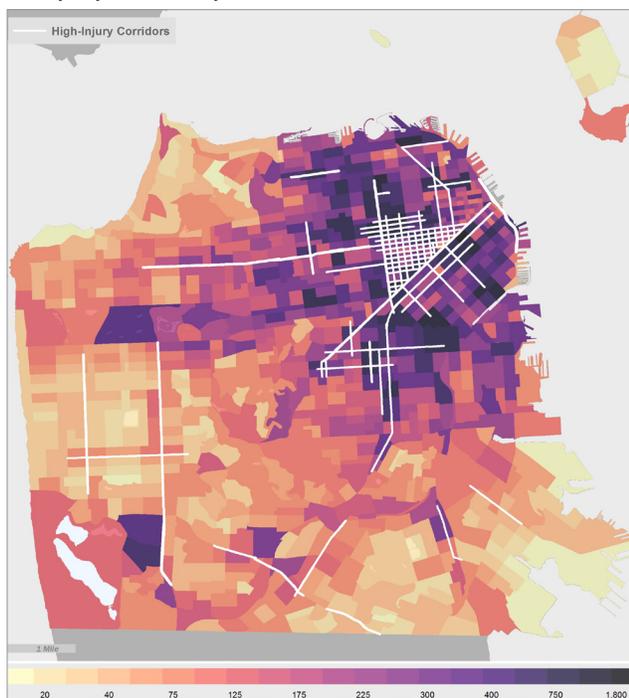
SOURCE: TNC data

Future Research

The report provides a profile of estimated TNC usage from mid-November to mid-December of 2016. This document does not evaluate the impacts of TNCs on the performance of the San Francisco transportation system, nor does it recommend any policy responses. Subsequent reports by the Transportation Authority and others will address important analytic and policy questions in depth, including:

- **TNC POLICIES.** What is the role of government in regulating TNCs? What TNC regulatory frameworks exist in other US cities or internationally?
- **TNC BEST PRACTICES.** What potential impacts of TNCs have other agencies identified, and what policies have they enacted in response? How have agencies partnered with TNCs?
- **TNCS AND STREET SAFETY.** How do TNCs affect the safety of people who use the roads, including public transit riders, bicyclists and pedestrians? How can TNCs help San Francisco achieve its VisionZero goals?
- **TNCS AND TRANSIT DEMAND.** How do TNCs complement, compete with, or otherwise affect public transit ridership and mode share?
- **TNCS AND PUBLIC TRANSIT OPERATIONS** How do TNCs affect public transit service operations?

Figure 24. High Injury Corridors with Average Weekday Intra-SF TNC Pickups by Travel Analysis Zone



SOURCE: TNC data

- **TNCS AND CONGESTION.** How do TNCs affect roadway congestion, delay and travel time unreliability? How do TNCs affect air quality?
- **TNCS AND DISABLED ACCESS.** To what extent do TNCs serve people with disabilities?
- **TNCS AND EQUITY.** Can TNCs be accessed by all San Francisco residents including communities of concern and those without smartphones or credit cards? Are all neighborhoods served equitably?
- **TNCS, LAND USE AND CURB MANAGEMENT.** What are the best practices for loading/curbside/roadway space allocation? How do TNCs affect parking demand? Is TNC demand associated with certain land uses? What are the effects of TNCs on location choices and auto ownership?

Additional data collection will be necessary in order to help answer these questions. We are seeking/open to research collaborations to obtain further information, including data to validate or enhance these findings, TNC vehicle occupancy information, traveler demographics and travel purposes, travel costs, TNC fleet composition data, and a range of other data items.

For More Information

The Transportation Authority makes available aggregate travel analysis zone (TAZ) level summaries of TNC pickups and drop-offs by hour of day, which can be downloaded at the Transportation Authority website (www.sfcta.org/tncstoday). In addition, an interactive visualization of the TAZ-level TNC data can be found at <http://tncstoday.sfcta.org>. The Transportation Authority will not provide detailed telemetry data or processed pre-trip and trip information due to the potential to contain personally identifiable information. Parties interested in the detailed telemetry data may contact the Northeastern University researchers to request access. Further information on ongoing emerging mobility services and technology work being performed by the Transportation Authority can be found on the Transportation Authority website (www.sfcta.org/emst).

Bibliography

California Department of Transportation. “2014 California Public Road Data: Statistical Information Derived from the Highway Performance Monitoring System.” <http://www.dot.ca.gov/hq/tsip/hpms/hpmslibrary/prd/2014prd/2014PublicRoadData.pdf>

California Public Utilities Commission, Letter to San Francisco County Transportation Authority, May, 2017.

Corey, Canapary & Galanis Research. “Travel Decisions Survey 2014—Summary Report.” Prepared for San Francisco Municipal Transportation Agency. <https://www.sfmta.com/sites/default/files/reports/2015/Travel%20Decision%20Survey%202014%20Summary%20Report.pdf>

Corey, Canapary & Galanis Research. “Travel Decisions Survey 2015—Summary Report.” Prepared for San Francisco Municipal Transportation Agency. https://www.sfmta.com/sites/default/files/reports/2016/Travel%20Decision%20Survey%202015%20Report_Accessible.pdf

Hara Associates. “Best Practices Studies of Taxi Regulation: Managing Taxi Supply.” Prepared for San Francisco Municipal Transportation Agency, 2013.

Rayle L, Dai D, Chan N, Cervero R and Shaheen S. “Just a better taxi? A survey-based comparison of taxis, transit, and ridesourcing services in San Francisco.” *Transport Policy* 45, 2016.

Schaller, B. “Entry Controls in Taxi Regulation: Implications of US and Canadian experience for taxi regulation and deregulation.” *Transport Policy* 14, September 2007.

Transportation Research Board. “TRB Special Report 319: Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services.” National Academies Press, Transportation Research Board, 2015.

Glossary

APPLICATION PROGRAMMING INTERFACE (API): Programming code that allows interaction with software, or between software components. It is a tool that a developer of an app uses to communicate with data from a central server.

IMPUTE: Refers to any method to estimate an unknown or missing value in a dataset based on known values or information.

PERSON TRIPS: A trip by one or more people in any mode of transportation.

TELEMETRY: A remotely collected continuous series of GPS points with associated time and other information that forms a path.

TRANSPORTATION NETWORK COMPANY: Uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles.

TRAVEL ANALYSIS ZONE (TAZ): A geographic unit used for transportation analysis. The Transportation Authority uses a roughly 1000-zone system with average sizes of 1 block in the downtown area and several blocks for outer areas.

Planning Department

Transportation Impact Analysis Guidelines for Environmental Review - Update

San Francisco Planning will issue a series of memos in 2017 and 2018 providing updates to the Transportation Impact Analysis Guidelines.



Receive notifications when memos are released by subscribing here. Unsubscribe at any time.

Update Announcements

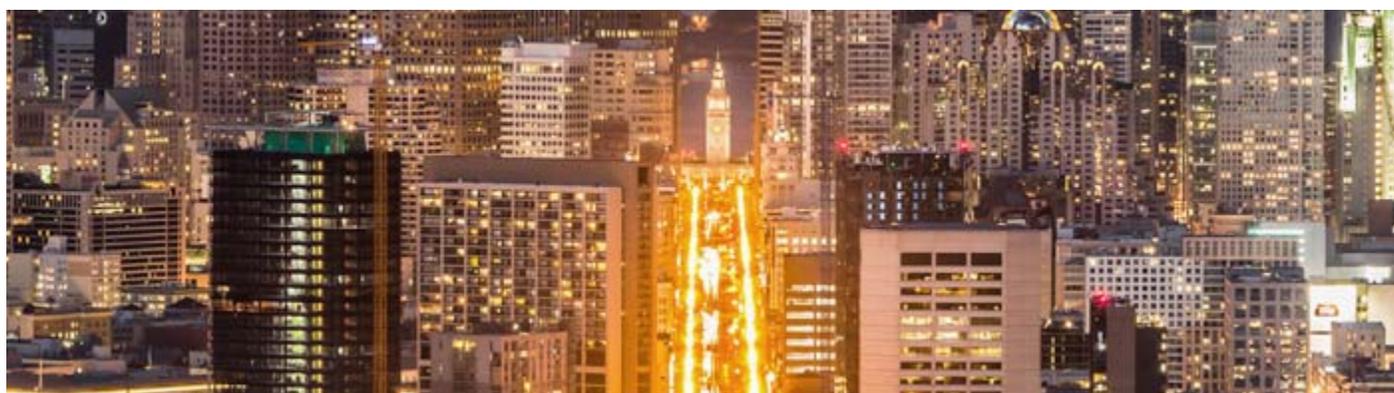
Department staff will present an informational item to the Planning Commission regarding updates to the Transportation Impact Analysis Guidelines on September 28, 2017. **These Guidelines, last updated in 2002,** serve consultants and City staff in the preparation of transportation impact studies used in environmental review. Please tune in or attend the hearing to learn more and provide verbal or written comments regarding its scope.

Thursday, September 28, 2017 – Planning Commission Hearing (starting at 12:00pm)

City Hall, Commission Chambers, Rm 400, 1 Dr. Carlton B. Goodlett Place

Watch live at sfgovtv.org

Please direct all inquiries to: CPC.TransportationReview@sfgov.org [Get Alerts link above.](#)



Overview

The Environmental Planning division within the Planning Department reviews projects for potential impacts on **Exhibit 6 Planning Department, Transportation Impact Analysis Guidelines for Environmental Review -Update**

the environment, a process known as environmental review. The Planning Department conducts environmental review pursuant to the California Environmental Quality Act (CEQA). As part of environmental review, the Planning Department reviews background technical studies, such as transportation impact studies, to assess a project's effects on the physical environment.

These background technical studies support the conclusions of the environmental impact evaluation and guide decision-makers during project approval. To assist in the preparation of transportation impact studies, the Planning Department provides to consultants and city staff a guidance document, the [Transportation Impact Analysis Guidelines](#). The Planning Department periodically updates the guidelines, with the last update in 2002.

Since that time, the Planning Department has instituted various updates to the conditions, data, and methodology within the guidelines. Records of these updates exist in various materials. One substantial example of updates that occurred was a [March 2016 Planning Commission resolution](#) that removed automobile delay from CEQA and added vehicle miles traveled as a transportation criterion (known as "Align").

The Planning Department is in the midst of updating the guidelines comprehensively. The purpose of the update is to achieve high quality deliverables, meaningful analysis, efficient reviews, and better project outcomes through clear standards, methodology, and criteria; understandable, transparent, and predictable process; updated mitigation measures, designs, outcomes, and policies; user-friendly figures; and illustrative examples of project analysis.

For this effort, substantial data collection and analysis is currently underway, primarily at newer development sites. This data collection will result in the creation of refined estimates of how many trips people in newer developments take, the ways they travel, and their common destinations.

Resources

Document

Date

[Transportation Impact Analysis Guidelines](#)

Stay tuned for future update memos!

10/01/02

Updates - TBD

[Align – removal of automobile delay and addition of vehicle miles traveled](#)

03/03/16

Table 11 summarizes the weekday PM peak hour trip generation by mode for the Proposed Project. As noted above, the credit for the existing uses on the project site that would be displaced (i.e., the All Star Café, a 30-car surface parking lot, and a partially-occupied commercial building described above) is also presented for the PM peak hour.

Table 11 Proposed Project Trip Generation by Mode Weekday AM and PM Peak Hours						
Peak Hour/Land Use	Person-Trips				Total	Vehicle Trips
	Auto	Transit	Walk	Other ¹		
AM Peak Hour						
Residential	170	136	51	41	398	130
Restaurant	3	2	6	1	12	2
New Trips	173	138	57	42	410	132
PM Peak Hour						
Residential	200	160	60	48	468	153
Restaurant	31	13	47	12	103	18
	231	173	107	60	571	171
Credit for Existing uses	38	20	60	16	134	11
Net-new Trips	193	153	47	44	442	160

Note:

¹ "Other" mode includes bicycles, motorcycles, taxi/TNC vehicles, and other modes.

Source: SF Guidelines, LCW Consulting, 2016.

130 Cal.App.4th 322
Court of Appeal, Second District, Division 3,
California.

Maria MEJIA, Plaintiff and Appellant,
v.
CITY OF LOS ANGELES, Defendant and
Respondent;
California Home Development, LLC, Real Party in
Interest and Respondent.

No. B174453.
|
May 27, 2005.

Synopsis

Background: Resident of affected area filed petition for writ of mandate, challenging city’s approval of residential development project under California Environmental Quality Act (CEQA). The Superior Court, Los Angeles County, No. BS081904, David P. Yaffe, J., denied petition. Resident appealed.

[Holding:] The Court of Appeal, Croskey, J., held that substantial evidence supported fair argument that project would have significant, unmitigated environmental impacts on animal wildlife and traffic, and thus preparation of environmental impact report (EIR) was required.

Reversed with directions.

West Headnotes (12)

- [1] **Environmental Law**
 - ☛ Constitutional Provisions, Statutes, and Ordinances**Environmental Law**
 - ☛ Duty of Government Bodies to Consider Environment in General

In enacting the California Environmental Quality Act (CEQA), the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing

environmental damage when carrying out their duties; accordingly, CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.

Cases that cite this headnote

- [2] **Environmental Law**
 - ☛ Assessments and Impact Statements

Courts should afford great weight to the administrative guidelines relating to the California Environmental Quality Act (CEQA) except when a provision is clearly unauthorized or erroneous under CEQA. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15000 et seq.

Cases that cite this headnote

- [3] **Environmental Law**
 - ☛ Purpose of Assessments and Statements**Environmental Law**
 - ☛ Proceedings**Environmental Law**
 - ☛ Proceedings; Certification and Approval

The environmental impact report (EIR) is the heart of the California Environmental Quality Act (CEQA), the purpose of which is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made; thus, since the EIR protects not only the environment but also informed self-government, public participation is an essential part of the CEQA process. West’s Ann.Cal.Pub.Res.Code §§ 21000 et seq., 21061.

1 Cases that cite this headnote

- [4] **Environmental Law**
 - ☛ Mitigation Measures

For purposes of the California Environmental Quality Act (CEQA), a project may have a significant effect on the environment, and thus a mitigated negative declaration may be appropriate, if there is a reasonable probability that the project will have a significant environmental impact. West's Ann.Cal.Pub.Res.Code §§ 21064.5, 21080(c)(2); 14 CCR § 15382.

11 Cases that cite this headnote

Application of the fair argument test for preparation of an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) is a question of law for de novo review on appeal; the appellate court does not defer to the agency's determination, except on legitimate, disputed issues of credibility, and the agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

3 Cases that cite this headnote

[5] **Environmental Law**
🔑Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

There is a low threshold requirement under the California Environmental Quality Act (CEQA) for preparation of an environmental impact report (EIR), and a preference for resolving doubts in favor of environmental review. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15064(f).

Cases that cite this headnote

[8] **Environmental Law**
🔑Record of Administrative Proceeding

Administrative record on appeal from trial court's denial of mandate petition filed by resident of affected area challenging city's approval of residential development project under California Environmental Quality Act (CEQA) was incomplete; for purposes of CEQA provision governing administrative record, "project" encompasses not only final version of project approved by public agency, but also prior versions constituting substantially same overall activity, and thus record was deficient in failing to include project application materials, staff reports, correspondence, and biotic assessment pertaining to prior versions of project. West's Ann.Cal.Pub.Res.Code § 21167.6(e).

2 Cases that cite this headnote

[6] **Environmental Law**
🔑Significance in General

Under the California Environmental Quality Act (CEQA), an environmental impact report (EIR) must be prepared whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact, even if there is substantial evidence to the contrary. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15064(f).

4 Cases that cite this headnote

[9] **Evidence**
🔑Records and Decisions in Other Actions or Proceedings

Given inadequacy of administrative record on appeal from trial court's denial of mandate petition filed by resident of affected area challenging city's approval of residential development project under California Environmental Quality Act (CEQA), Court of Appeal would take judicial notice of index of administrative record in prior proceeding, as had

[7] **Environmental Law**
🔑Assessments and Impact Statements

been requested by resident in trial court. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

1 Cases that cite this headnote

[10]

Environmental Law

🔑 Record of Administrative Proceeding

Environmental Law

🔑 Preservation of Error

On appeal from trial court's denial of mandate petition filed by resident of affected area challenging city's approval of residential development project under California Environmental Quality Act (CEQA), resident's failure to file noticed motion to supplement administrative record pursuant to local court rule did not preclude her from challenging inadequacy of such record, as her request for judicial notice of additional materials in trial court was equivalent of such motion, and developer and city were not prejudiced by any procedural inadequacy. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

2 Cases that cite this headnote

[11]

Environmental Law

🔑 Land Use in General

Substantial evidence supported fair argument that residential development project would have significant, unmitigated environmental impacts on animal wildlife, and thus preparation of environmental impact report (EIR) was required under California Environmental Quality Act (CEQA); in light of evidence that project area was home to a number of bird species, including golden eagles, Cooper's hawks, and loggerhead shrikes, which had been designated as species of special concern by Department of Fish and Game, and that portion of property appeared to offer minor movement corridor to area carnivores, and absent current biotic assessment, conclusions and explanations provided in initial study did not preclude reasonable possibility that development of site might have significant impact on animal wildlife. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

See 4 Witkin, Summary of Cal. Law (9th ed. 1989) Real Property, § 59B; Cal. Jur. 3d, Pollution and Conservation Laws, § 502; Annot., Validity, Construction, and Application of Statutes Requiring Assessment of Environmental Information Prior to Grants of Entitlements for Private Land Use (1977) 76 A.L.R.3d 388.

11 Cases that cite this headnote

[12]

Environmental Law

🔑 Land Use in General

Substantial evidence supported fair argument that residential development project would have significant, unmitigated environmental impacts on traffic, and thus preparation of environmental impact report (EIR) was required under California Environmental Quality Act (CEQA); city improperly relied on threshold of significance standard for traffic impact despite substantial evidence supporting fair argument of significant impact, including public comments expressing concerns about dangers to equestrians, pedestrians, and vehicle riders, who enjoyed shared use of main thoroughfare, and underdeveloped reports by city engineers and planners describing this thoroughfare as collector street which was designed to accommodate traffic from other streets. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR §§ 15064(b), 15064.7(a).

16 Cases that cite this headnote

Attorneys and Law Firms

**790 Maria Mejia, in pro. per., for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann and Jack L. Brown, Assistant City Attorneys, for Defendant and Respondent.

Law Offices of L. Douglas Brown and L. Douglas Brown for Real Party in Interest and Respondent.

Opinion

CROSKEY, J.

*326 Maria Mejia challenges the approval by the City of Los Angeles of a residential development project in the Sunland area and the city's adoption of a mitigated negative declaration under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.). She appeals a judgment denying her petition for writ of mandate, arguing several grounds for error. We conclude that substantial evidence supports a fair argument that the project will have significant, unmitigated environmental *327 impacts on animal wildlife and traffic, so a mitigated negative declaration was improper. We therefore reverse the judgment with directions to the superior court to grant the petition and issue a writ of mandate ordering the city to vacate its project approval and mitigated negative declaration and to cause an environmental impact report (EIR) to be prepared.

FACTUAL AND PROCEDURAL BACKGROUND

1. Application for a Tentative Tract Map and Project Approval

California Home applied to the city in June 1999 for approval of a tentative tract map to subdivide 17 acres of land along Wheatland Avenue in the Shadow Hills community. The property consists of rolling hills and flat land, is predominantly undeveloped, and is surrounded by single-family residential homes on large lots with equine appurtenances. The city previously approved a project involving the construction of 28 single-family homes on the site in June 1990, but the homes were never built. California Home's application in June 1999 stated that the new proposed project was the "same project" as the one previously approved.

**791 The city's advisory agency conducted a public hearing on the application, and in December 1999 approved the tentative tract for development of 28 single-family homes subject to conditions, and approved a mitigated negative declaration. A group of homeowners appealed the decision to the city planning commission. The city planning commission reduced the approved number of homes to 23 and revised the conditions. The Planning and Land Use Management Committee affirmed the decision by the planning commission. The city council approved the project in June 2000 and adopted a mitigated negative declaration.¹

2. Set Aside of the Project Approval

Mejia filed a petition for writ of mandate in the superior court challenging the project approval under CEQA. The court granted the petition in July 2001 and set aside the project approval. The judgment stated that the court granted the petition because the city "failed to give proper notice of the City's intent *328 to adopt a Mitigated Negative Declaration," and ordered the city to "proceed with a properly noticed hearing" on the application for a tentative tract map.

3. Further Proceedings and Project Approval

The city planning department prepared an initial study and proposed mitigated negative declaration in September 2001. The initial study determined that the project would have several potentially significant environmental impacts, but found that the impacts could be mitigated. The advisory agency conducted a public hearing on the application in March 2002. Several neighborhood residents expressed concerns and opposition in writing, and some did so orally at the hearing. The advisory agency concluded at the end of the hearing that the planning department should reconsider the potential environmental impacts, including "height, construction hours, loss of wildlife, speeding on Wheatland, problems with picking up trash and going along Wheatland ... drainage, grading," that California Homes should provide an updated tree report, and that the city department of transportation should "take another look at the traffic generation from the 23-lot development."

The planning department prepared a new initial study and proposed mitigated negative declaration in May 2002. The planning department prepared another initial study and proposed mitigated negative declaration in September 2002 reflecting a reduction in the number of homes from 23 to 21. The initial study determined that the project would have several potentially significant environmental impacts, but found that the impacts could be mitigated. The planning department gave public notice of its intent to adopt a mitigated negative declaration, stating that it would receive comments on the proposal for 30 days, until October 21, 2002. The planning department did not notify the Department of Fish and Game of its intent to adopt a mitigated negative declaration. The advisory agency conducted another public hearing on October 24, 2002. Several neighborhood residents expressed concerns and opposition in writing, and some did so orally at the hearing. The advisory agency concluded at the end of the hearing that the mitigated negative declaration should be approved with two modified conditions. The advisory agency

formally approved the tentative tract and mitigated **792 negative declaration with conditions in November 2002.

Several residents, including Mejia, appealed the decision to the planning commission. The planning commission conducted a public hearing in December 2002 and approved the tentative tract and mitigated negative declaration. The Planning and Land Use Management Committee conducted a public hearing on two days in February 2003 and approved the tentative tract and mitigated negative declaration with 10 additional conditions. The city council *329 approved the tentative tract in February 2003 and adopted the mitigated negative declaration.

4. Trial Court Proceedings

Mejia filed a petition for writ of mandate in the superior court challenging the project approval under CEQA and on other grounds. The city prepared an administrative record. Mejia requested judicial notice of numerous documents not included in the administrative record. She made several arguments in support of the petition, including the argument that the mitigated negative declaration was improper because the project may have significant impacts on wildlife and traffic despite the mitigation. After a hearing on the merits, the court issued a minute order granting judicial notice of two documents and denying the petition. The court entered a judgment denying the petition in February 2004.

CONTENTIONS

Mejia contends (1) the project may have significant, unmitigated impacts on animal wildlife, traffic, planning and land use, and cumulative impacts, so a mitigated negative declaration was improper; (2) a mitigated negative declaration was improper because California Home agreed to mitigation measures after the public release of a proposed mitigated negative declaration, rather than before; (3) the city failed to notify the California Department of Fish and Game of its intention to adopt a mitigated negative declaration, as required; (4) the city failed to make all pertinent documents available for review during the public comment period; (5) the city's planning department failed to consider some public comments; (6) the project is inconsistent with the community plan; (7) the tentative tract map fails to disclose private easements, as required by the Los Angeles Municipal Code; and (8) the administrative record prepared by the city in connection with this litigation is incomplete.

DISCUSSION

1. CEQA Requirements

^[1] “CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to *330 be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

^[2] An EIR is required for any project that a public agency proposes to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code, §§ 21100, subd. (a), 21151, subd.(a); Guidelines,² **793 § 15064, subd. (a)(1).) An EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (Pub. Resources Code, §§ 21100, subd. (b), 21151; Guidelines, §§ 15124, 15125.) “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061.)

^[3] “We have repeatedly recognized that the EIR is the ‘heart of CEQA.’ [Citations.] ‘Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR “protects not only the environment but also informed self-government.” [Citations.]’ To this end, public participation is an ‘essential part of the CEQA process.’ [Citations.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal.Rptr.2d 231, 864 P.2d 502.)

A negative declaration is a written statement that briefly explains why a project will not have a significant environmental impact and therefore will not require an EIR. (Pub. Resources Code, § 21064.) A negative

declaration is proper only if the agency determines based on an initial study that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Resources Code, § 21080, subs. (c)(1), (d); Guidelines, §§ 15063, subd. (b)(2), 15070, subd. (a).) If an initial study shows that the ***331** project may have a significant effect on the environment, a *mitigated* negative declaration may be appropriate. A mitigated negative declaration is proper, however, only if project revisions would avoid or mitigate the potentially significant effects identified in an initial study “to a point where clearly no significant effect on the environment would occur, and ... there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Pub. Resources Code, § 21064.5; accord, § 21080, subd. (c)(2).)

[4] “ ‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.) The Guidelines define “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”³ (Guidelines, § 15382.) A ****794** project “ ‘may’ ” have a significant effect on the environment if there is a “ ‘reasonable probability’ ” that the project will have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83, fn. 16, 118 Cal.Rptr. 34, 529 P.2d 66.) “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.” (Guidelines, § 15064, subd. (b).)

“Substantial evidence” under CEQA “includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” (Pub. Resources Code, § 21080, subd. (e)(1).) “Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the

***332** environment.” (*Id.*, § 21080, subd. (e)(2); accord, *id.*, § 21082.2, subd. (c).) The Guidelines define “substantial evidence” as “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, unsubstantiated opinion or narrative, evidence which 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.” (Guidelines, § 15384, subd. (a).) “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (*Id.*, § 15384, subd. (b); accord, *id.*, § 15064, subd. (f)(5).)

[5] [6] These legal standards reflect a preference for requiring an EIR to be prepared. “There is ‘a low threshold requirement for preparation of an EIR’ (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84 [118 Cal.Rptr. 34, 529 P.2d 66]), and a ‘preference for resolving doubts in favor of environmental review’ (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316–1317 [8 Cal.Rptr.2d 473]). An EIR must be prepared ‘whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact’ (*No Oil, Inc.*, *supra*, at p. 75 [118 Cal.Rptr. 34, 529 P.2d 66]), even if there is substantial evidence to the contrary (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1346 [125 Cal.Rptr.2d 140]; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 [165 Cal.Rptr. 514]).” (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580–581, 18 Cal.Rptr.3d 814; see Guidelines, § 15064, subd. (f).)

[7] “Application of the ‘fair argument’ test is a question of law for our independent ****795** review. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617 [49 Cal.Rptr.2d 494]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602 [35 Cal.Rptr.2d 470].) We review the trial court’s findings and conclusions de novo (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, *supra*, 101 Cal.App.4th at p. 1346 [125 Cal.Rptr.2d 140]), and do not defer to the agency’s determination (*Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at p. 1318 [8 Cal.Rptr.2d 473]), except on ‘legitimate, disputed issues of credibility’ (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*,

supra, at p. 1603 [35 Cal.Rptr.2d 470]; *333 *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1349 [272 Cal.Rptr. 372]).” (*Bowman v. City of Berkeley, supra*, 122 Cal.App.4th at pp. 580–581, 18 Cal.Rptr.3d 814.) “Under this standard, deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]” (*Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at pp. 1317–1318, 8 Cal.Rptr.2d 473.)

2. The Administrative Record Is Incomplete

^[8] The petitioner in a CEQA proceeding may file a request for the public agency to “prepare the record of proceedings relating to the subject of the action or proceeding.” (Pub. Resources Code, § 21167.6, subd. (a).) The public agency must prepare and certify the record of proceedings within 60 days after service of a request. (*Id.*, § 21167.6, subd. (b)(1).) The record of proceedings includes a broad range of documents pertaining to the project.

Public Resources Code section 21167.6, subdivision (e), states, “The record of proceedings shall include, but is not limited to, all of the following items:

“(1) All project application materials.

“(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

“(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

“(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

“(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

*334 “(6) All written comments received in response to, or in connection with, environmental documents prepared for

the project, including responses to the notice of preparation.

“(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

**796 “(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

“(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

“(10) Any other written materials relevant to the respondent public agency’s compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency’s files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

“(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.”

The “project” referenced in Public Resources Code section 21167, subdivision (e), includes not only the final version of the project approved by the public agency, but also prior versions of the project constituting substantially the same overall activity. (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 9–10, 6 Cal.Rptr.3d 286.)

The earliest documents chronologically in the administrative record prepared by the city are a tentative decision dated June 15, 2001, by the superior court in the prior proceeding initiated by Mejia, and a judgment and writ of *335 mandate dated July 5, 2001, setting aside the city’s approval of the tentative tract map and directing the city to give proper notice of its intention to adopt a mitigated negative declaration. All other documents in the administrative record, apart from historical maps, postdate

the judgment in the prior proceeding. The city certified that the administrative record includes all the documents in specified files maintained by the city. The city apparently maintains separate files for the project before and after the judgment in the prior proceeding and considers matters concerning the project before the prior judgment as water under the bridge.

The administrative record prepared by the city is incomplete because it excludes documents pertaining to the project that antedate the judgment in the prior proceeding, including project application materials, staff reports, correspondence, environmental studies, and other documents listed in Public Resources Code section 21167.6, subdivision (e), pertaining to prior versions of substantially the same project. We cannot accurately describe the documents missing from the administrative record because most of those documents are not included in the appellate record. Some of the missing documents were the subject of Mejia's request for judicial notice in the superior court. The superior court apparently construed the request as a motion to supplement the administrative record and granted the motion as to only two documents.

^[9] We conclude that the court should have granted the motion as to other documents as well. For purposes of our review, we need address only the project **797 application submitted in June 1999 (see Pub. Resources Code, § 21167.6, subd. (e)(1)), a biotic assessment dated December 1989, and the advisory agency's approval in June 1990 of a prior project on the same site.⁴ The biotic assessment was prepared in connection with the project approved in June 1990. Both that prior project and the project proposed by California Home in June 1999 involved the development of 28 single-family homes, and the application submitted by California Home in June 1999 stated that the proposed project was the "same project" as the one approved in June 1990 but never completed. These documents show that the project approved in June 1990 was a prior version of the project approved in February 2003 and that the projects were substantially the same for purposes of Public Resources Code section 21167.6, subdivision (e). We therefore conclude that the biotic *336 assessment is a mandatory part of the record of proceedings under items (3) and (7) of subdivision (e). Specifically, the biotic assessment is a document submitted to the city relevant to its finding that there will be no impact on animal wildlife (item (3)) and is written evidence submitted to the city concerning compliance with CEQA with respect to the project (item (7)).

^[10] We reject the argument by California Home that Mejia cannot challenge the adequacy of the administrative record on appeal because she failed to file a noticed motion to

supplement the administrative record pursuant to rule 9.24(f) of the Local Rules of the Los Angeles Superior Court.⁵ Mejia's request for judicial notice was the practical equivalent of such a motion. Mejia filed and served the request together with her opening memorandum of points and authorities in support of the petition several weeks before the hearing on the petition. California Home and the city filed a joint objection to the request more than two weeks before the hearing, and California Home and the city were in no way prejudiced by Mejia's failure to properly label her motion.

3. A Fair Argument, Based on Substantial Evidence, Can Be Made That The Project May Have a Significant Impact on Animal Wildlife

^[11] The biotic assessment prepared in December 1989 described the property as "relatively rich in animal life. There were a number of bird species observed that are wintering in the area (flocks of waxwings, yellow-rumped warblers, white-crowned sparrows, and robins). In addition, a red-tailed hawk was seen roosting in the tall **798 trees on the top of the small hill on the property, and barn owl signs (pellets) were quite common on the northern part of the parcel. This northern area also appears to offer a minor movement corridor to the carnivores of the area..." It stated further, "It is likely that a number of other species use the property. Weather conditions and time of year influence the activity, presence, and visibility of vertebrate species. A late spring/early *337 summer study would not only record residents on the property, but bird species that only nest in the area and reptile/amphibian species active on the surface... [¶] No threatened or endangered species of animals were observed on the parcel and, given the location and the small size of the parcel, none are expected to use the property for any significant amount of their yearly needs... [¶] One should expect that any urbanization on the site will have negative impacts on most animal numbers... The small mammal movement corridor on the northern edge of the property would be eliminated."

The biotic assessment included a list of animal species observed on the property or expected to be present. The list included two bird species currently identified by the Department of Fish and Game as species of special concern: Cooper's hawk and loggerhead shrike.⁶ The biotic assessment also stated that the Pacific kangaroo rat was expected to be present on the property, although it also stated that the "high incidence of kangaroo rats" found in barn owl pellets indicated that "the barn owls must be hunting these prey items off the property, but close to their roosting trees."⁷

The initial study prepared in September 2002 stated that the

property “contains approximately 340 trees, mostly ornamental, non-protected species.” The initial study stated that the project would have no impact on animal wildlife and that the cumulative impact on animal wildlife would be less than significant. In response to each question on the initial study checklist concerning animal wildlife, apart from cumulative impacts, the “No Impact” box was checked.⁸ The questions included whether the project would “[h]ave a substantial adverse effect ... on any species identified as a *338 candidate, sensitive, or special status species,” “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors,” or “have the potential to degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish **799 or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal....”⁹

The explanations provided in the initial study for the “No Impact” responses stated: “The site is in close proximity to the Angeles National Forest, Hansen Dam Recreation Area, Big Tujunga Wash, and Verdugo Mountains. [¶] The subject site is surrounded by developed properties to the north, south, east, and west. The site itself is not physically linked to any of the above areas. Due to the surrounding developments, it is reasonable to conclude that the subject site does not constitute appropriate or adequate habitat to support significant, endangered, or threatened species of plants or animals. Furthermore, the subject site has not been identified as having significant habitat for threatened, endangered, or sensitive wildlife, fish, or plant species in any official record.” “Project implementation will not interfere with the movement of any native resident wildlife species; the subject site is surrounded by significant developments. No significant fish or wildlife species are known to use this site as part of a migratory path. Development of this site will not impede the movement of any wildlife species. [¶] Several trees will remain on site and any living tree removals will be replanted. Therefore, any potential impact to a bird habitat is less than significant. [¶] Based on the location, surrounding development, and available reference materials (Community Plans, aerial photographs, land use designation and zoning) the site itself is obviously unsuitable to support significant, self-sustaining habitat for any significant species or serve as a suitable wildlife corridor. Areas to the west, south, and east are substantially developed and contain urban environments that cannot provide for adequate wildlife corridors; these areas are linked to the subject site, thus, it cannot be reasonably concluded that any wildlife corridor exists based on existing surrounding obstacles to wildlife movement to and

from the subject site.” “There are no federally protected fish or wildlife species on site. The project does not threaten to eliminate a plant or animal community, or reduce the number or restrict range of a rare or *339 endangered plant or animal.... The project site is surrounded by developed properties and cannot serve as a wildlife corridor or accommodate significant numbers of sensitive, endangered, or threatened wildlife species. The project will not impact areas containing significant ecological resources.” The initial study did not refer to the 1989 biotic assessment or explain the inconsistencies between the biotic assessment and the initial study. The city did not obtain a current biotic assessment.

Several residents stated in administrative hearings or written comments that they had observed animal wildlife on the property site and expressed concerns that the project would adversely impact animal wildlife. One resident stated that he had observed a family of golden eagles nesting in a tree on the site. The Department of Fish and Game has designated the golden eagle a species of special concern.¹⁰ Other residents referred to golden eagles, owls, hawks, crows, geese, egrets, California quail, and other resident or migratory birds, cottontail rabbits, coyotes, snakes, **800 lizards, and other animals on the property. Mejia noted that the December 1989 biotic assessment had identified several animal species on the property and stated, “A current study should be conducted to determine whether these are candidates, sensitive, or special status species.” Residents emphasized the rural character of the area and stated that some of the terrain surrounding the site is covered with vegetation supporting a wildlife corridor.

The administrative record ordinarily is very limited when there is only an initial study and no EIR. Project opponents who challenge a negative declaration often have no expert studies to rely on. Recognizing this, courts have held that the absence of expert studies is not an obstacle because personal observations concerning nontechnical matters may constitute substantial evidence under CEQA. (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, *supra*, 101 Cal.App.4th at p. 1347, 125 Cal.Rptr.2d 140; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 882–883, 274 Cal.Rptr. 720.) This is particularly true where an expert assessment corroborates to some extent the personal observations, as here.

The mitigation measures set forth in the mitigated negative declaration as conditions of project approval were not designed to mitigate significant impacts on animal wildlife because the city did not acknowledge any *340 potentially significant impact on animal wildlife.¹¹ The two conditions modified by the advisory agency and the 10 conditions

added by the Planning and Land Use Management Committee similarly were not designed to mitigate impacts on animal wildlife.

We conclude that the evidence supports a fair argument that the project may have a significant effect on animal wildlife. In light of the evidence discussed above and absent a current biotic assessment, the conclusions and explanations provided in the initial study do not preclude the reasonable possibility that birds, including species of special concern and others, may roost or nest on the property, that small mammals may use the property as a movement corridor, and that development of the site and elimination of the corridor may have a significant impact on animal wildlife. The proximity of larger wilderness areas does not necessarily compel the conclusion that the site is insignificant to animal wildlife. Contrary to the determinations of the initial study, we conclude that there is a fair argument that the project, in the words of the initial study checklist, may “[h]ave a substantial adverse effect ... on [] species identified as a candidate, sensitive, or special status species” or “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors.”

Our conclusion that a fair argument can be made that the project may have a significant impact on animal wildlife also compels the conclusion that the city was required to consult with the Department of Fish and Game, a trustee agency (Guidelines, § 15386), before conducting an initial study, and subsequently was required to notify the department of the city’s intention to adopt a mitigated negative declaration. **801 (Pub. Resources Code, § 21080.3, subd. (a); Guidelines, §§ 15063, subd. (g), 15072, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1386–1388, 43 Cal.Rptr.2d 170.)

4. *A Fair Argument, Based on Substantial Evidence, Can Be Made That The Project May Have a Significant Impact on Traffic*

^[12] Several residents expressed concerns that the project would exacerbate traffic problems on Wheatland Avenue and increase the dangers for vehicle riders, equestrians, and pedestrians using the road. Residents characterized the community as a haven for equestrians who ride on trails and on *341 Wheatland Avenue. They stated that Wheatland Avenue has no sidewalks; that equestrians and pedestrians share the road with vehicles; that the road is particularly crowded on trash collection day and horse manure collection days (two different days) when refuse cans crowd the road; that vehicles have collided with horses on at least three recent occasions resulting in the

horses having to be killed; and that the increased traffic caused by the additional homes would add to the problem.

A representative of the city Department of Transportation at an advisory agency public hearing in March 2002 acknowledged that Wheatland Avenue is a collector street designed to accommodate traffic from other streets, stating: “So we don’t have a policy that studies a collector street being impacted, because a collector street is designed to handle additional traffic, and all the local streets are supposed to funnel into the collector street, and the collector street is supposed to take them to the major street, which is Sunland. In this case, it’s actually what you have. You have the private streets from the development going to Wheatland Avenue, which is a collector, and the collector street goes down to Sunland, which is the major. So it does follow what it’s designed to be.

“Now, there are other issues with Wheatland that maybe can be resolved, but it may take some winding or something, but many mentioned that it was too narrow or something. Maybe something can be done with that respect, but that has to be looked further into. But as far as significant impact caused by traffic, there’s no significant impact caused by the number of trips generated by this particular development.” The advisory agency stated at the conclusion of the hearing that it would ask the Department of Transportation “to take another look at the traffic generation from the 23–lot development.” After the planning department prepared a new initial study and proposed mitigated negative declaration in September 2002 reducing the number of homes from 23 to 21, the advisory agency approved the project, apparently without further study of potential traffic impacts.

The initial study checklist prepared in September 2002 stated that there would be a less than significant impact in response to the question whether the project would “[c]ause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to ratio capacity on roads, or congestion at intersections).” The explanation stated, “The Los Angeles Department of Transportation has established traffic impact thresholds based on the type and intensity of land use. The threshold for single-family home developments is 40 dwelling units or more; the project involves 23 [sic], low-density, single-family housing units on large lots. Therefore, the project does not meet the threshold criteria *342 for traffic impacts. Furthermore, **802 the project will include street improvements and review by the Department of Transportation and the Bureau of Engineering.” Similarly, the advisory agency at a public hearing before the planning

commission in December 2002 explained, “The threshold for a traffic study in this case would be 40 dwelling units. This project does not meet that threshold.”

A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant. (Guidelines, § 15064.7, subd. (a).)¹² A threshold of significance is not conclusive, however, and does not relieve a public agency of the duty to consider the evidence under the fair argument standard. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108–1109, 11 Cal.Rptr.3d 104; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110–114, 126 Cal.Rptr.2d 441; see Guidelines, § 15064, subd. (b).)¹³ A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment, supra*, at p. 114, 126 Cal.Rptr.2d 441.) We conclude that the city improperly relied on a threshold of significance despite substantial evidence supporting a fair argument that the project may have a significant impact on traffic on Wheatland Avenue. In light of the public comments and absent more careful consideration by city engineers and planners, the evidence supports a fair argument that the increased traffic on Wheatland Avenue as a result of the project would be substantial considering the uses of the road.

5. Other Contentions

In light of our determination that the evidence supports a fair argument that the project may have significant impacts on animal wildlife and traffic, an EIR is required. Accordingly, we need not address Mejia’s other contentions challenging the mitigated negative declaration.

*343 DISPOSITION

The judgment is reversed with directions to the superior court to grant the petition and issue a peremptory writ of mandate ordering the city to vacate its approval of the project and mitigated negative declaration and to cause an EIR to be prepared. Mejia shall recover her costs on appeal.

We Concur: KLEIN, P.J., and ALDRICH, J.

All Citations

130 Cal.App.4th 322, 29 Cal.Rptr.3d 788, 05 Cal. Daily Op. Serv. 5264, 2005 Daily Journal D.A.R. 7181

Footnotes

- 1 The principal documents reflecting these events should have been but were not included in the administrative record in this proceeding, as discussed *post*. (Pub. Resources Code, § 21167.6, subd. (e).)
- 2 All references to Guidelines are to the CEQA Guidelines (Cal.Code Regs., tit. 14, § 15000 et seq.) developed by the Office of Planning and Research and adopted by the California Resources Agency. (Pub. Resources Code, §§ 21083, 21087.) “[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 253 Cal.Rptr. 426, 764 P.2d 278, fn. 2 (*Laurel Heights I*)).
- 3 “ ‘Environment’ means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The ‘environment’ includes both natural and man-made conditions.” (Guidelines, § 15360; see Pub. Resources Code, § 21060.5.)
- 4 The biotic assessment was included in the administrative record for the prior proceeding initiated by Mejia, but the city did not include the document in the administrative record for the present proceeding. We take judicial notice of the index of the administrative record in the prior proceeding, as requested by the Mejia in the trial court.
- 5 “Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate notice[d] motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be

filed concurrently with the filing of petitioner's opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and [reply] memoranda, respectively, regarding the writ. The motion should normally be calendared for hearing concurrently with the hearing on the writ." (Super. Ct. L.A. County, Local Rules, rule 9.24(f).)

- 6 The Department of Fish and Game maintains lists of species of special concern on its website, stating, " 'Species of Special Concern' (SSC) status applies to animals not listed under the federal Endangered Species Act or the California Endangered Species Act, but which nonetheless 1) are declining at a rate that could result in listing, or 2) historically occurred in low numbers and known threats to their persistence currently exist." (<<http://www.dfg.ca.gov/hcpb/species/ssc/ssc.shtml>>.)
- 7 Unlike several other varieties of kangaroo rat, the Pacific kangaroo rat is not designated as endangered, threatened, or a species of special concern.
- 8 The responses in the initial study of May 2002 were identical to those in the initial study of September 2002. The initial study of September 2001, however, stated that the impacts on animal wildlife would be "Less Than Significant," rather than "No Impact," and that the cumulative impact would be "Potentially Significant Unless Mitigation Incorporated," rather than "Less Than Significant." Thus, in response to the concerns expressed regarding the project after the initial study of September 2001, the city revised the initial study by downgrading the stated impacts on animal wildlife, but apparently did not substantially revise the project other than by reducing the number of homes from 23 to 21.
- 9 The last of these questions is a mandatory finding of significance under section 15065, subdivision (a)(1), of the Guidelines. Contrary to the respondents' argument, an impact need not satisfy the requirements of a mandatory finding of significance to be considered a significant impact.
- 10 See footnote 6, *ante*.
- 11 Some of the conditions nonetheless may mitigate impacts on animal wildlife to some degree, such as the condition requiring the replacement of all "desirable trees" on the property. That condition does not expressly require the replacement of trees significant to native or migratory birds, however. Since the initial study concludes that the project will have no impact on animal wildlife even without mitigation, the "desirability" of trees to be replaced presumably may be determined by some measure other than the benefit to animal wildlife.
- 12 "Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will *normally* be determined to be significant by the agency and compliance with which means the effect *normally* will be determined to be less than significant." (Guidelines, § 15064.7, subd. (a), italics added.)
- 13 "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (Guidelines, § 15064, subd. (b).)

5 Cal.App.5th 281
Court of Appeal,
Third District, California.

EAST SACRAMENTO PARTNERSHIP FOR A
LIVABLE CITY, Plaintiff and Appellant,
v.
CITY OF SACRAMENTO et al., Defendants and
Respondents;
Encore McKinley Village, LLC, Real Party in
Interest and Respondent.

C079614

Filed 11/7/2016

As Modified on Denial of Rehearing 12/6/2016

Synopsis

Background: Neighborhood group brought action against city for declaratory, injunctive, and writ relief challenging approval of residential construction project under California Environmental Quality Act (CEQA). The Superior Court, Sacramento County, No. 34-2014-80001851-CU-WM-GDS, Timothy M. Frawley, J., entered judgment for city. Neighborhood group appealed.

Holdings: The Court of Appeal, Duarte, J., held that:

^[1] environmental impact report (EIR) adequately disclosed development agreement;

^[2] the project description was not defective;

^[3] EIR did not engage in improper piecemealing; but

^[4] EIR provided an inadequate explanation for its conclusion that traffic impacts were not significant.

Reversed and remanded with directions.

West Headnotes (45)

^[1] **Environmental Law**
Assessments and impact statements

Under California Environmental Quality Act (CEQA), a court may not set aside an agency's approval of an environmental impact report (EIR) on the ground that an opposite conclusion would have been equally or more reasonable. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

^[2] **Environmental Law**
Preservation of error

Neighborhood group's failure to address the trial court's decision and explain how the trial court erred in denying group's California Environmental Quality Act (CEQA) challenge to city's approval of residential construction project did not forfeit neighborhood group's argument on appeal that the city erred under CEQA in approving the project. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

^[3] **Environmental Law**
Purpose of assessments and statements

Under California Environmental Quality Act (CEQA), an accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient environmental impact report (EIR).

Cases that cite this headnote

^[4] **Environmental Law**
Purpose of assessments and statements

The California Environmental Quality Act (CEQA) reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation,

evoking revision of the original proposal. Cal. Pub.Res. Code § 21000 et seq.

Regs. tit. 14, § 15124(d)(1)(B).

Cases that cite this headnote

Cases that cite this headnote

[5] **Environmental Law**
🔑 Updated or supplemental statements; recirculation

Under California Environmental Quality Act (CEQA), once an agency has prepared an environmental impact report (EIR), no subsequent EIR is required unless substantial changes are proposed in a project that will require major changes in the EIR. Cal. Pub.Res. Code § 21166(a).

Cases that cite this headnote

[8] **Environmental Law**
🔑 Consideration and disclosure of effects

California Environmental Quality Act (CEQA) does not require an analysis in the environmental impact report (EIR) of each and every activity carried out in conjunction with a project. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[6] **Environmental Law**
🔑 Adequacy of Statement, Consideration, or Compliance

A development agreement qualifies as an approval that must be included in an environmental impact report's (EIR) project description under the California Environmental Quality Act (CEQA) Guidelines. Cal. Code Regs. tit. 14, § 15124(d)(1)(B).

Cases that cite this headnote

[9] **Environmental Law**
🔑 Land use in general

City's environmental impact report (EIR) for residential construction project did not need to include analysis of a modification of the development agreement to include a feasibility study for a vehicular tunnel, where the EIR found the tunnel to be infeasible, the city agreed as to this finding of infeasibility, and the tunnel was not part of the project. Cal. Code Regs. tit. 14, § 15262.

Cases that cite this headnote

[7] **Environmental Law**
🔑 Land use in general

The development agreement required for a master parcel map was adequately disclosed prior to city's approval of the environmental impact report (EIR), as required by the California Environmental Quality Act (CEQA) Guidelines, where the EIR stated that a development agreement was required, and the development agreement was included in the notices of the planning and design commission meeting and of the city council meeting on the project. Cal. Code

[10] **Environmental Law**
🔑 Sufficiency

The project description in the draft environmental impact report (EIR) for a residential construction project was not rendered fatally defective by a subsequent modification of the project to increase the number of housing units from 328 to 336, including 24 new two-story attached units, even though the change required rezoning for multi-family units, absent evidence that the analysis in the final EIR was defective. Cal. Code Regs. tit. 14, § 15124.

Cases that cite this headnote

[11] **Environmental Law**
⚡Sufficiency

The project description in the draft environmental impact report (EIR) for a residential construction project was not rendered fatally defective by the omission of the need a variance for driveways four feet narrower than the city standard of 24 feet, where the need for the variance was added in the final EIR, absent evidence of any prejudice from the omission or any significant impact on the environment from the narrower driveways.

Cases that cite this headnote

[12] **Environmental Law**
⚡Scope of project; multiple projects

California Environmental Quality Act (CEQA) mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[13] **Environmental Law**
⚡Major government action

A “project” under California Environmental Quality Act (CEQA) is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[14] **Environmental Law**
⚡Scope of project; multiple projects

Improper piecemealing of California Environmental Quality Act (CEQA) environmental review occurs when the purpose of the reviewed project is to be the first step toward future development or when the reviewed project legally compels or practically presumes completion of another action. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[15] **Environmental Law**
⚡Land use in general

City’s environmental impact report (EIR) for residential construction project did not engage in improper piecemealing in failing to include a proposed vehicular tunnel as part of the project, even though the tunnel would be used only for access to and from the project, and even if the city removed planned construction of a nearby connector road from its general plan, where the tunnel was not a necessary part of the project because the project had two other points of vehicular access, the EIR found the tunnel to be infeasible, the city agreed as to the finding of infeasibility, and any amendment to the general plan would require California Environmental Quality Act (CEQA) review. Cal. Pub.Res. Code § 21000 et seq.; Cal. Code Regs. tit. 14, § 15262.

Cases that cite this headnote

[16] **Environmental Law**
⚡Land use in general

City’s environmental impact report (EIR) for residential construction project did not engage in improper piecemealing in failing to include a half-street closure of a nearby local street as part of the project, even if the city removed planned construction of a nearby connector road from its general plan, since the closure was a modest

change by the city in response to traffic concerns, and any amendment to the general plan would require California Environmental Quality Act (CEQA) review. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

Cases that cite this headnote

[20] **Environmental Law**
🔑 Mitigation measures

[17] **Environmental Law**
🔑 Consideration of alternatives

California Environmental Quality Act (CEQA) requires analysis of a project's potentially significant exacerbating effects on existing environmental hazards, effects that arise because the project brings development and people into the area affected. Cal. Pub.Res. Code § 21000 et seq.

Specific mitigation measures are not required under the statute providing that an environmental impact report (EIR) is not required to reference, describe, or discuss project or cumulative effects on the regional transportation network if the project incorporates mitigation measures in prior environmental documents; the statute only requires that if there are such measures, the project incorporate them. Cal. Pub. Res. Code § 21159.28(a).

Cases that cite this headnote

Cases that cite this headnote

[18] **Environmental Law**
🔑 Consideration and disclosure of effects

In the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence requiring analysis in an environmental impact report (EIR). Cal. Pub.Res. Code § 21000 et seq.

[21] **Environmental Law**
🔑 Land use in general

Environmental impact report (EIR) for residential construction project was not required to reference, describe, or discuss project or cumulative effects on the regional transportation network, since the project incorporated mitigation measures in prior environmental documents, where the project was to be developed consistent with the applicable mitigation measures in the regional transportation network's sustainable communities strategy (SCS) program EIR. Cal. Pub. Res. Code § 21159.28(a).

Cases that cite this headnote

Cases that cite this headnote

[19] **Environmental Law**
🔑 Land use in general

Neighborhood group's vague claim that residential development atop a closed landfill would exacerbate the existing air pollution from the landfill and a nearby road and a railway was insufficient to require review in the project's environmental impact report (EIR), since the claim was not evidence that the project would produce a particular adverse effect. Cal. Pub.Res. Code § 21000 et seq.

[22] **Environmental Law**
🔑 Land use in general

Substantial evidence supported the city's methodology in focusing on intersections rather than road segments, in the traffic analysis of environmental impact report (EIR) for residential construction project, including the EIR's

explanation that roadway capacity was governed by intersections. Cal. Pub. Res. Code § 21000 et seq.

Cases that cite this headnote

unsupported. Cal. Code Regs. tit. 14, § 15151.

Cases that cite this headnote

[23] **Environmental Law**
🔑 Land use in general

City's addition of a new roadway impact to its final environmental impact report (EIR) for residential construction project did not require recirculation of the EIR, since only the level of service designation for the roadway segment changed between the draft EIR and the final EIR, and there was no change in the amount of traffic on the roadway segment between the draft and final EIR. Cal. Pub. Res. Code § 21000 et seq.

Cases that cite this headnote

[26] **Environmental Law**
🔑 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

Compliance with a general plan in and of itself does not insulate a project from the environmental impact report (EIR) requirement, where it may be fairly argued that the project will generate significant environmental effects. Cal. Pub. Res. Code § 21151.

Cases that cite this headnote

[24] **Environmental Law**
🔑 Adequacy of Statement, Consideration, or Compliance

When a challenge is brought to studies on which an environmental impact report (EIR) is based, the issue is not whether the studies are irrefutable or whether they could have been better; the relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the agency's decision. Cal. Code Regs. tit. 14, § 15151.

Cases that cite this headnote

[27] **Environmental Law**
🔑 Consideration and disclosure of effects

In preparing an environmental impact report (EIR), the lead agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect. Cal. Pub. Res. Code § 21151.

Cases that cite this headnote

[25] **Environmental Law**
🔑 Assessments and impact statements

A clearly inadequate or unsupported study used as the basis for an environmental impact report (EIR) is entitled to no judicial deference; the party challenging the EIR, however, bears the burden of demonstrating that the studies on which the EIR is based are clearly inadequate or

[28] **Environmental Law**
🔑 Land use in general

Environmental impact report (EIR) for residential construction project provided an inadequate explanation for its conclusion that traffic impacts that would decrease the level of service (LOS) on some roads and create "significant delays" were less than significant, where the EIR merely stated that the project was consistent with the general plan, and that the LOS thresholds of the City's general plan reflected "community values." Cal.

Pub. Res. Code § 21100(c); Cal. Code Regs. tit. 14, §§ 15064(c), 15151.

plan policy.

Cases that cite this headnote

Cases that cite this headnote

[29]

Appeal and Error

🔑 Defects, objections, and amendments

If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is forfeited.

Cases that cite this headnote

[32]

Zoning and Planning

🔑 Grounds for Grant or Denial; Conformity to Regulations

To be consistent with the general plan, a subdivision development must be compatible with the objectives, policies, general land uses, and programs specified in the general plan, and the nature of the policy and the nature of the inconsistency are critical factors to consider.

Cases that cite this headnote

[30]

Environmental Law

🔑 Land use in general

Neighborhood group failed to establish that city’s proposed mitigation measures for significant traffic impacts of residential construction project, of making fair share contributions to various traffic improvements, were infeasible or ineffective, and thus group failed to establish the environmental impact report (EIR) was inadequate, even if there was no regional network mitigation program such as a traffic fee program, absent evidence that the fair share program for city traffic was infeasible. Cal. Pub.Res. Code §§ 21002.1(a), 21100(b)(3), 21159.28.

Cases that cite this headnote

[33]

Zoning and Planning

🔑 Grounds for Grant or Denial; Conformity to Regulations

A subdivision development’s inconsistencies with the general plan’s vague, general policies that “encourage” actions may not be fatal, but an approval must be set aside, however, where there is an inconsistency with a mandatory policy.

Cases that cite this headnote

[31]

Zoning and Planning

🔑 Conformity of regulations to comprehensive or general plan

Local land use and development decisions must be consistent with the applicable general plan, and a project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment, even if it is not in perfect conformity with each and every general

[34]

Zoning and Planning

🔑 Permits, certificates, and approvals

Zoning and Planning

🔑 Permits, certificates, and approvals

A city’s determination that a project is consistent with the city’s general plan carries a strong presumption of regularity, and this determination can be overturned only if the city abused its discretion, that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence.

Cases that cite this headnote

[35] **Zoning and Planning**
🔑 Decisions of boards or officers in general

When the Court of Appeal reviews an agency’s decision for consistency with its own general plan, it accords great deference to the agency’s determination because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity.

Cases that cite this headnote

[36] **Zoning and Planning**
🔑 Comprehensive or general plan

Because policies in a city’s general plan reflect a range of competing interests, the city must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.

Cases that cite this headnote

[37] **Zoning and Planning**
🔑 Grounds for Grant or Denial; Conformity to Regulations

Court’s role in reviewing city’s decision approving proposed project for consistency with city’s own general plan is simply to decide whether city considered applicable policies and extent to which proposed project conforms with those policies.

Cases that cite this headnote

[38] **Zoning and Planning**
🔑 Mootness

Neighborhood group’s argument on appeal, that residential development project was inconsistent with a provision of city’s general plan requiring improvements to the citywide transportation system as a condition of accepting certain reductions in a road’s level of service (LOS), was rendered moot by an amendment of the general plan that removed the condition requiring improvements to the citywide transportation system.

Cases that cite this headnote

[39] **Zoning and Planning**
🔑 Streets and roads; traffic considerations

Even assuming that city’s residential development project eliminated a dedicated bike lane for one block, the city acted within its discretion in finding that the project was consistent with city’s “Bikeway Master Plan,” where the project reflected a commitment to bicycle transportation.

Cases that cite this headnote

[40] **Zoning and Planning**
🔑 Mootness

Neighborhood group’s argument on appeal, that residential development project was inconsistent with a provision of city’s general plan requiring new neighborhoods to include transit stops within one-half mile of all dwellings, was rendered moot by an amendment of the general plan to state that such transit stops were merely “encouraged.”

Cases that cite this headnote

[41] **Zoning and Planning**
🔑 Other particular considerations

Residential development project was not improperly inconsistent with provisions of city’s general plan designed to promote the health and well-being of the community by protecting the public from the adverse effects of air pollution, noise, and other health hazards, since the provisions were vague and subjective.

Cases that cite this headnote

[42] **Zoning and Planning**
🔑Comprehensive or general plan

Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.

Cases that cite this headnote

[43] **Environmental Law**
🔑Assessments and impact statements

Neighborhood group’s failure to use a separate heading or subheading to raise their arguments on appeal challenging the adequacy of the environmental impact report (EIR) for a residential construction project forfeited those arguments on appeal. Cal. R. Ct. 8.204(a)(1)(B).

Cases that cite this headnote

[44] **Environmental Law**
🔑Other particular subjects and regulations

Under city “Environmental Constraint Policy” stating that projected exterior noise levels for residential development shall be less than listed levels “to the extent feasible,” compliance is tied to feasibility, the policy is not mandatory, and thus an inconsistency does not require an

approval to be set aside.

Cases that cite this headnote

[45] **Zoning and Planning**
🔑Other particular considerations

A reasonable person could have found that residential development project’s exterior noise level from nearby freeway and railway was consistent with city’s general plan requiring noise to be limited to 60 decibels “to the extent feasible,” and thus city acted within its discretion in making that finding, even if outdoor areas other than yards would have noise exceeding 60 decibels, where the project had noise mitigation.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 832 et seq.

Cases that cite this headnote

****780** APPEAL from a judgment of the Superior Court of Sacramento County, Timothy M. Frawley, Judge. Reversed with directions. (Super. Ct. No. 34-2014-80001851-CU-WM-GDS)

Attorneys and Law Firms

Larson Willis & Woodard, Geoffrey Keith Willis; Brown Rudnick and Stephen Robert Cook, Irvine, for Plaintiff and Appellant.

James Sanchez, City Attorney, Brett M. Witter, Supervising Deputy City Attorney, and Jeffrey C. Heeren, Deputy City Attorney for Defendants and Respondents.

Thomas Law Group, Tina A. Thomas, Ashle T. Crocker, Amy R. Huguera, and Meghan M. Dunnagan for Real Party in Interest and Respondent.

Opinion

Duarte, J.

***286** Real Party in Interest Encore McKinley Village, LLC

(Encore) proposed to construct the McKinley Village Project (the Project), a 328-unit residential development on a 48.75-acre site located in East Sacramento and bounded on the south and east by Union Pacific Railroad tracks *287 and on the north and west by the Capital City Freeway. The City of Sacramento certified the Project's environmental impact report (EIR) and approved the Project.

East Sacramento Partnership for a Livable City (ESPLC), a neighborhood group, appeals from denial of its petition for a writ of mandate and complaint for declaratory and injunctive relief to set aside the City's approval of the Project. ESPLC contends the City violated the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 2100 et seq.)¹ when it approved the Project because (1) the Project description is defective; (2) there was illegal piecemealing; (3) the EIR failed to analyze significant health risks; (4) the EIR ignored significant traffic impacts; and (5) the EIR failed to disclose or mitigate methane migration. Further, ESPLC contends the Project is inconsistent with the City's general plan.

We find merit in only the fourth contention. ESPLC challenges the threshold of significance used in the EIR to determine whether traffic impacts are significant. The City relied on policies in its general plan that permit congested traffic conditions within the core area of the City, thus finding no significant impact of congested traffic on neighborhood streets. As we explain in Part I E 2, compliance with a general plan policy does not conclusively establish there is no significant environmental impact, and the City failed to explain why it found none in this circumstance. We reverse the judgment and remand for the City to correct this deficiency in the EIR.

BACKGROUND

The Project

The Project, as finally approved, is a 336-unit residential development with a community recreation center and three parks on a 48.75-acre site. The Project is residential infill, designed to be consistent with the quality and character of the adjoining East Sacramento and McKinley Park neighborhoods. The Project site is roughly football-shaped and sandwiched between Interstate 80 Business Route (Capital City Freeway) to the north and the Union Pacific Railroad tracks to the south. The site meets the City's definition of land targeted for infill development.

**781 To the north of the Project, across the freeway, is the

former 28th Street Landfill, now designated Sutter's Landing Regional Park. To the southwest is a residential neighborhood in midtown Sacramento. To the south, across the railroad tracks, is the Cannery Business Park on C Street. Across C Street is a residential neighborhood in East Sacramento.

*288 There will be two points of access to the Project. The first is the upgrade of the existing A Street Bridge, which will connect the Project to 28th Street in midtown. The second is a new underpass under the Union Pacific railroad embankment to C Street, between 40th Street and Tivoli Way. Both access points will accommodate vehicular, bicycle, and pedestrian traffic.

The EIR

The EIR studied and analyzed the Project's impacts compared to two baselines, the existing conditions (existing plus project) and future or cumulative conditions (cumulative plus project). The cumulative conditions were based on a build-out of the City's 2030 general plan. The EIR found no project specific or cumulative impacts that could not be avoided; all impacts could be mitigated to a less than significant level.

In response to concerns about the health risks to residents of the Project, a health risk analysis accompanied the EIR. This study determined the potential cancer risk to future residents due to diesel particulate matter emissions from diesel trucks and locomotives. The study concluded the cancer risk for the majority of residents was 80 in one million; at one residence, the risk was 120 in one million. These values were within accepted levels.

The primary issue was traffic. The EIR analyzed traffic impacts using the level of service (LOS) method, with a scale of A to F. LOS A is free flowing traffic and LOS F is congested, "stop and go" traffic. The EIR studied 32 intersection and 19 roadway segments. It found significant traffic impacts at some intersections under cumulative plus project conditions and included a number of traffic mitigation measures to reduce those impacts to less than significant.

City Approval and Subsequent Challenge

On April 29, 2014, by a vote of six to three, the City certified the EIR for the Project, adopted the findings of fact, adopted mitigation measures within the City's responsibility and jurisdiction, and adopted the Mitigation Monitoring Program.

The following month, ESPLC filed a petition for writ of mandate and complaint for declaratory and injunctive relief, challenging the City's decision to approve the Project. ESPLC contended there were numerous violations of CEQA, and approval of the Project violated the City's general plan. ESPLC sought a declaration that the Project approval was invalid and an injunction against any further action on the project.

*289 The trial court denied the petition and ESPLC appealed.

DISCUSSION

I

Alleged CEQA Violations

A. Standard of Review

Section 21168.5 provides that a court's inquiry in an action to set aside an agency's decision under CEQA "shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported **782 by substantial evidence." The CEQA Guidelines² define "substantial evidence" as "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." (CEQA Guidelines, § 15384, subd. (a).)

^[1]In applying this substantial evidence standard to an action to set aside an agency's decision under CEQA, we resolve reasonable doubts in favor of the agency's decision. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278 (*Laurel Heights*)). "A 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. [Citation.] A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that 'The purpose

of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' [Citation.]" (*Ibid.*)

^[2]"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not *290 the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues ... by independently determining whether the administrative record demonstrates any legal error by the [City] and whether it contains substantial evidence to support the [City's] factual determinations." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427, 53 Cal.Rptr.3d 821, 150 P.3d 709.)³

B. Adequacy of Project Description

^[3] ^[4] ^[5]"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193, 139 Cal.Rptr. 396 (*County of Inyo*)). However, the "CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal. [Citation.]" (*Id.* at p. 199, 139 Cal.Rptr. 396.) "Under section 21166, subdivision (a), once an agency has prepared an EIR, no subsequent EIR is required unless substantial changes are proposed in a project that will require major changes in the EIR." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936, 231 Cal.Rptr. 748, 727 P.2d 1029.)

The project description in the EIR must include "[a] list of permits and other approvals **783 required to implement the project." (CEQA Guidelines, § 15124, subd. (d)(1)(B).) ESPLC contends the project description omitted numerous City approvals, including a development agreement, a rezoning request to allow multi-family residences, an increase in the number of residential units from 328 to 336, and variances for driveway widths.

"Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).) This court has previously explained, '[a] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed

decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’ [Citations.]” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391, 133 Cal.Rptr.2d 718 (*AIR*)).

*291 1. Development Agreement

^[6]A development agreement qualifies as an approval that must be included in the project description. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 926, 146 Cal.Rptr.3d 12 (*Rialto*)).

^[7]The draft EIR identified a large lot tentative subdivision map as one of the City approvals required. This map is properly called a master parcel map and requires a development agreement. The final EIR changed the terminology to a master parcel map and added that a development agreement was required. The development agreement was included in the notice of the March 13, 2014, planning and design commission meeting and the April 29, 2014, city council meeting on the Project. ESPLC commented on the development agreement. Thus, the development agreement was adequately disclosed both for “informed decisionmaking and informed public participation” before the City certified the EIR and approved the Project. (*AIR, supra*, 107 Cal.App.4th at p. 1391, 133 Cal.Rptr.2d 718.)

^[8]ESPLC contends the City failed to proceed in the manner required by law because the EIR did not analyze the development agreement. CEQA “does not require an analysis in the EIR of each and every activity carried out in conjunction with a project.” (*Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909–910, 19 Cal.Rptr.2d 344.) It is sufficient if the EIR makes reference to the development agreement to alert “persons interested in that document to its relevance in the decisionmaking process.” (*Id.* at p. 909, 19 Cal.Rptr.2d 344.) Similarly, it is sufficient if, as here, the development agreement is included in the notice of the public hearing on the Project before the city council. (*Rialto, supra*, 208 Cal.App.4th at p. 927, 146 Cal.Rptr.3d 12.)

^[9]ESPLC argues the development agreement should have been analyzed in the EIR because it was modified to change the Project and this substantial change was never analyzed.

A major concern regarding the Project was the limited access. Several comments requested a vehicular tunnel at Alhambra Boulevard as a condition of the Project. Several

residents made this point at the city council meeting on approval of the Project. At the beginning of that meeting, Councilman Hansen proposed modifying the development agreement to make a vehicular tunnel at Alhambra Boulevard into a City project. He called the tunnel a “capital improvement project” and couched it as “the most secure way that we can get vehicular access at this project.” The developer had agreed to contribute \$2.2 million for a tunnel, either vehicular or bicycle; the vehicular tunnel would be **784 the City’s top priority and the developer would provide \$100,000 for study of the feasibility of such a tunnel.

*292 Contrary to ESPLC’s argument, the City did not agree to build the Alhambra Boulevard vehicular tunnel or approve it. Rather, it simply expressed a preference for such a tunnel and agreed to study its feasibility. A feasibility study does not require an EIR. (CEQA Guidelines, § 15262.) Further, it is questionable whether a vehicular tunnel at Alhambra Boulevard will be built. The EIR found the Alhambra tunnel to be infeasible due to the cost, estimated at \$28.4 million, the need for approval from Union Pacific, the need to construct temporary tracks, and impact on nearby properties. The City agreed as to this finding of infeasibility. A vehicular tunnel at Alhambra Boulevard was not part of the Project and did not need to be included in the Project description.

2. Expanded Rezoning

^[10]At the time of the draft EIR, the Project included 328 single-family residential units. In response to requests for housing diversity, the number of housing units was increased to 336; the number of single family homes was decreased and a new type of housing was added, the Parkside Flats, consisting of 24 two-story attached units around the Project’s central park. The final EIR noted the necessary rezoning for multi-family units and analyzed the effect of the increased number of units, finding the increase in the number of students would not exceed the capacity of local schools. It also found there would be no significant increase in demand for services, and that the slight increase in traffic would have no significant impact.

ESPLC contends the project description in the draft EIR omitted the necessary rezoning for multi-family units and the increase in the number of units and this omission made the project description fatally defective. This slight change, the addition of eight housing units, is the type of change to be expected during the CEQA process. (*County of Inyo, supra*, 71 Cal.App.3d at p. 199, 139 Cal.Rptr. 396.) ESPLC has failed to show how the analysis in the final EIR was

defective or that the slight increase in housing units precluded meaningful decision making or public comment.

3. Variance for Driveways

^[11]Residences next to the freeway or railroad tracks are in four-house clusters and their driveways are in a T-court configuration. These driveways are 20 feet wide rather than the City standard of 24 feet. The draft EIR did not include the need for a driveway variance as one of the necessary approvals of the Project. It was added in the final EIR.

ESPLC contends “the City failed to proceed in the manner required by law” by failing to include this approval in the project description. ESPLC *293 fails to show any prejudice from the omission or that the narrower driveways had any significant impact on the environment. The contention fails.

C. Piecemealing

^[12] ^[13]“CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. [Citation.] CEQA attempts to avoid this result by defining the term ‘project’ broadly. [Citation.] A project under CEQA is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being **785 approved and which may be subject to several discretionary approvals by governmental agencies. [Citation.]” (*Burbank–Glendale–Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592, 284 Cal.Rptr. 498.)

The process of attempting to avoid a full environmental review by splitting a project into several smaller projects which appear more innocuous than the total planned project is referred to as “piecemealing.” (See *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358, 111 Cal.Rptr.2d 598 (*Berkeley Jets*)). Our Supreme Court set forth the relevant standard: “We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.”

(*Laurel Heights, supra*, 47 Cal.3d at p. 396, 253 Cal.Rptr. 426, 764 P.2d 278.)

^[14]Improper piecemealing occurs “when the purpose of the reviewed project is to be the first step toward future development” or “when the reviewed project legally compels or practically presumes completion of another action.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223, 150 Cal.Rptr.3d 591.) By contrast, an EIR need not analyze “specific future action that is merely contemplated or a gleam in a planner’s eye. To do so would be inconsistent with the rule that mere feasibility and planning studies do not require an EIR.” (*Laurel Heights, supra*, 47 Cal.3d at p. 398, 253 Cal.Rptr. 426, 764 P.2d 278.)

1. Alhambra Boulevard Vehicular Tunnel

^[15]ESPLC contends the City engaged in illegal piecemealing because it failed to analyze the vehicular tunnel proposed at Alhambra Boulevard. As discussed, the City did not approve a vehicular tunnel at Alhambra Boulevard; it *294 approved only studying the feasibility of such a project. A feasibility study does not require an EIR. (CEQA Guidelines, § 15262.) While the tunnel would be used only for access to and from the Project, it is not a necessary part of the Project and the Project was not conditioned upon its construction. There are two other points of vehicular access to the Project: A Street and an extension between 40th Street and Tivoli Way to C Street. Further, construction of the Alhambra vehicular tunnel is not reasonably foreseeable. Rather, it is currently deemed infeasible, due to its considerable expense, the need for Union Pacific approvals, and the difficulties and impacts of construction.

2. Half-Street Closure on 28th Street

^[16]The draft EIR disclosed that the Project would add approximately 1,100 daily trips to 28th Street south of C Street. The draft EIR concluded this increase was not a significant impact, but because 28th Street was a local street in a residential neighborhood, the EIR suggested the City should monitor the traffic volumes to determine if a half-street closure was necessary. The half-street closure would divert traffic to C Street and then to 29th Street. C Street carries less traffic than 28th Street and 29th Street is a larger road. The final EIR noted that several comments supported a half-street closure at 28th and C Streets. It

concluded a half-street closure on 28th Street could be utilized, and “[a]dditional traffic calming measures would most likely be needed at **786 C Street west of 28th Street.” The draft minutes of the city council meeting to approve the Project indicate the council also passed a motion to include a half-street closure at 28th and C Streets. That motion is not cited to by either party and we have not found it in the 55,000–page administrative record.

ESPLC contends the EIR should have disclosed and analyzed the potential impacts of the half-street closure at 28th Street.

The trial court found the half-street closure would result in diverting 114 to 124 vehicles during peak hours from one local road (28th Street) to another that had less traffic (C Street) and then to a major collector road with greater capacity (29th Street). Thus, the effect of the half-street closure would be to reduce the traffic impact on 28th Street and move the traffic to streets better able to handle the increase. This type of minor change does not require a new EIR. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.*, *supra*, 42 Cal.3d at p. 936, 231 Cal.Rptr. 748, 727 P.2d 1029.) This modest change by the City in response to traffic concerns is not illegal piecemealing.

3. Sutter’s Landing Parkway (Connector)

ESPLC contends the failure to analyze the Alhambra tunnel and the half-street closure “are especially troubling given the city council’s decision, *295 also at the last minute, to remove nearby Sutter’s Landing Parkway from its General Plan.” Sutter’s Landing Parkway is proposed construction of a new east-west roadway between 28th Street and Richards Boulevard. Also proposed is an interchange between Sutter’s Landing Parkway and the Capital City Freeway.

As part of the motion authorizing the half-street closure, the city council directed the city manager to “remove the Sutter Landing Connector from the General Plan at the next major update.” As that motion is not in the record, we cannot determine exactly what the City agreed to do. The trial court found that “technically” the City agreed to *consider* removing the connector from the general plan. ESPLC does not explain how the possible removal of Sutter’s Landing Parkway, or the interchange connector, from the general plan makes the failure to discuss the Alhambra tunnel or the 28th Street half-street closure illegal piecemealing. As respondents note, any amendment to the general plan will require CEQA review. (*DeVita v.*

County of Napa (1995) 9 Cal.4th 763, 793, 38 Cal.Rptr.2d 699, 889 P.2d 1019.)

D. Failure to Analyze Significant Health Risks

ESPLC contends the EIR failed to analyze or address the significant health risks posed to future residents of the Project, particularly the increased cancer risk and the risk of methane gas migration.⁴

The Project is bounded by a freeway and railroad tracks, and thus subject to toxic air contaminants (TAC’s), which are airborne pollutants that pose a potential hazard to human health. The Project is also near the former 28th Street landfill, which has the potential for off-site subsurface gas (methane) migration. The northern portion of the Project contains two groundwater monitoring wells and six soil **787 gas probes, used as part of the post-closure monitoring of the closed landfill.⁵

The trial court found, based on decisions of courts of appeal, that CEQA did not require an EIR to analyze the existing effects of the environment on future residents of the Project. The California Supreme Court recently approved that position in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 196 Cal.Rptr.3d 94, 362 P.3d 792 (CBIA). Our high court held: “[A]gencies subject to CEQA generally are not required to analyze the impact of existing environmental *296 conditions on a project’s future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project’s* impact on the environment—and not the *environment’s* impact on the project—that compels an evaluation of how future residents or users could be affected by exacerbated conditions.” (*Id.* at pp. 377–378, 196 Cal.Rptr.3d 94, 362 P.3d 792.) “[N]owhere in the statute is there any provision ... plainly delegating power for the agency to determine whether a project must be screened on the basis of how the environment affects its residents or users.” (*Id.* at p. 387, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

Much of ESPLC’s argument is that the site of the Project is an unhealthy place to live. This argument is similar to that made and rejected in *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 199 Cal.Rptr.3d 600. “Here, a significant part of [project opponent’s] concern was that ‘[a]llowing housing to be built on the Stock Farm property across the street from a heavily used equestrian facility will create untold problems for the City and those residents who would move there. No residential development should be

allowed where such traffic—horses, cars, trucks and trailers—exists.’ [CBIA] holds this type of impact is outside CEQA’s scope. [Citation.]” (*Id.* at p. 582, 199 Cal.Rptr.3d 600.)

^[17]What must be analyzed under CEQA is “a project’s potentially significant *exacerbating* effects on existing environmental hazards—effects that arise because the project brings ‘development and people into the area affected.’ ” (*CBIA, supra*, 62 Cal.4th at p. 388, 196 Cal.Rptr.3d 94, 362 P.3d 792.) The court provided an example. “Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive—now banned by California—that can seep into soil and groundwater. [Citations.] Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks—most notably the contamination of the drinking water supply—are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition—here, the presence of MTBE in the soil—as part of its environmental review. Because this type of inquiry still focuses on the *project’s impacts on the environment*—how a project might worsen existing conditions—directing an agency to evaluate how such worsened conditions could affect a project’s future users or residents is entirely ****788** consistent with this focus and with CEQA as a whole.” (*Id.* at p. 389, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

^[18] ^[19]ESPLC seeks to apply the exacerbation standard to health risks in the Project. It contends “[a]dditional vehicles, residents, visitors, and others ***297** coming to the property because of the Project will undeniably contribute to, and exacerbate, the already bad air quality, traffic, and other environmental conditions.” The traffic concerns of the Project are discussed *post*. Beyond traffic impacts, ESPLC’s vague claim of exacerbation, without any factual support, is insufficient. “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence. [Citations.]” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417, 43 Cal.Rptr.2d 170 (*Gentry*)). “ ‘Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence....’ [Citation.] Thus, ‘project opponents must produce ... evidence, other than their unsubstantiated opinions, that a project *will produce a particular adverse effect.*’ [Citation.]” (*Banker’s Hill, Hillcrest, Park West*

Community Preservation Group v. City of San Diego (2006) 139 Cal.App.4th 249, 274, 42 Cal.Rptr.3d 537.) As to the concern of increased air pollution, we note the Project is an infill residential project and without such projects, development would likely occur in more distant suburban areas, resulting in even more pollution from automobile commuter traffic. (See *CBIA, supra*, 62 Cal.4th at p. 379, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

E. Ignoring Significant Traffic Impacts

1. Impact on Roadways

ESPLC contends the EIR failed to analyze and propose mitigation for the Project’s impact on freeways. “CEQA expressly allows streamlining of transportation impacts analysis for certain land use projects based on metropolitan regional ‘sustainable communities strategies.’ ” (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 230, 195 Cal.Rptr.3d 247, 361 P.3d 342.) The City relied on that streamlining. Under section 21159.28, if a project is consistent with the region’s sustainable communities strategy (SCS), the EIR is not required to reference, describe, or discuss project or cumulative effects on the regional transportation network, provided the project incorporates mitigation measures in prior environmental documents. (§ 21159.28, subd. (a).) Here, the applicable region is the Sacramento Area Council of Governments (SACOG). The Project is consistent with SACOG’s SCS and Metropolitan Transportation Plan (MTP). Nonetheless, the EIR did provide information as to the impact of the project on the Capital City Freeway.

^[20] ^[21]ESPLC asserts there is no regional traffic impact fee and no nonconstruction-related transportation mitigation measures are included in the general plan EIR. Therefore, ESPLC argues, “the intent of [] section 21159.28 is not met here, and the City erred in relying on it as an excuse to ***298** not analyze and address the Project’s significant freeway impacts.” The statute does not require specific mitigation measures, only that if there are such measures, the project incorporate them. The record indicates the Project will be developed consistent with the applicable mitigation measures in the SACOG MTP/SCS Program EIR. ESPLC has failed to show error in the City’s reliance on section 21159.28.

****789** ESPLC next faults the EIR for failing to analyze roadway segments; instead the EIR focused on intersections. The EIR studied 32 intersections. Information on nearly 20 roadway segments was provided but labeled “for information purposes only.”

^[22]The EIR explained that its traffic analysis was focused on intersections rather than roadway segments because roadway capacity was governed by intersections. Under the Traffic Impact Analysis Guidelines, the decision on which to study should be made on an individual project basis. These guidelines further state that in general, intersections rather than roadways should be studied when analyzing in-fill areas. Substantial evidence supports the City's methodology in focusing on intersections.

^[23]ESPLC contends the City was required to recirculate the EIR because the final EIR identified a new roadway segment impact. In the draft EIR, C Street between Alhambra Boulevard and 33rd Street was identified as a major collector road operating at LOS A under both existing and existing plus conditions and at LOS B under cumulative plus project conditions. In the final EIR, the road designation was corrected to a local (rather than major collector) road. Under the local designation, the road segment operates currently at LOS D and at LOS E with the Project, and at LOS F under cumulative plus project conditions.

As we have explained, the EIR focused on impacts to intersections rather than roadway segments, and substantial evidence supported the decision to focus on intersections. Further, although the level of service designation changed in the final EIR due to the correction to the roadway segment's designation, there was no change in the *amount of traffic* on this roadway segment between the draft and final EIR. The impact was not new, only the designation and corresponding LOS classification.

With respect to the " 'for informational purposes' " examination of roadway segments, ESPLC contends the EIR omitted several roadway segments that will be impacted by the Project. ESPLC identifies 29th Street, 30th Street, and 33rd Street, and relies on comments made by its traffic expert. That expert, Hexagon Transportation Consultants, Inc., questioned various assumptions, traffic models, and conclusions of the draft EIR as to the traffic impacts.

^{*299} "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (CEQA Guidelines, § 15151.) "When the evidence on an issue conflicts, the decisionmaker is 'permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.' [Citation.]" (*AIR, supra*, 107 Cal.App.4th at p. 1397, 133 Cal.Rptr.2d 718.)

^[24] ^[25]"When a challenge is brought to studies on which an EIR is based, 'the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part of* the total evidence that supports the' agency's decision. [Citation.] 'A clearly inadequate or unsupported study is entitled to no judicial deference.' [Citation.] The party challenging the EIR, however, bears the burden of demonstrating that the studies on which the EIR is based 'are clearly inadequate or unsupported.' [Citation.]" (^{**790} *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795, 39 Cal.Rptr.3d 189.)

ESPLC has failed to carry its burden to show the traffic studies are inadequate. ESPLC objects to the omission of certain roadway segments, but fails to explain how the analysis of intersections on these same streets in the draft EIR is inadequate to analyze the traffic impact of the Project.

2. *Thresholds of Significance*

ESPLC contends the City failed to properly adjudge the significance of the traffic impacts of the project. In particular, ESPLC faults the EIR for relying on general plan traffic policies, which ESPLC categorizes as non-CEQA standards, to find that LOS E and LOS F conditions on City streets are not significant impacts.

The draft EIR explains the threshold of significance used to determine significant impacts. "The significance criteria used to evaluate the project impacts are based on Appendix G of the CEQA Guidelines, the thresholds adopted by the City in applicable general plans and previous environmental documents, and professional judgment." For intersections, there is a significant impact if traffic generated by the project degrades LOS from an acceptable to unacceptable LOS. If the LOS is already unacceptable, a ^{*300} significant impact occurs when traffic generated by the Project increases the average vehicle delay by five seconds or more.⁶

Under General Plan Mobility Element Policy M 1.2.2, the City allows for flexible LOS standards. In the core area, bounded by C Street, the Sacramento River, 30th Street, and X Street (downtown and midtown), LOS F conditions are acceptable during peak hours. In multi-model districts, characterized by frequent transit service, mixed uses, and high density, LOS A–E shall be maintained and in other areas, LOS A–D shall be maintained. In either case, up to

LOS F conditions may be acceptable to achieve other goals, provided there are improvements to the overall system or non-vehicular transportation is promoted.

Using this general plan policy as the threshold of significance, the EIR found no significant impact on 28th Street or its intersection with E Street under existing plus Project conditions, although the level of service went from LOS C to LOS E for the street, and LOS A to LOS D for the intersection in the morning. The intersection at E Street and 29th Street went from LOS C to LOS E in the morning. The impacts are greater, in some cases LOS F, under the cumulative plus project conditions, but the EIR found no significant impacts.

“CEQA grants agencies discretion to develop their own thresholds of significance (CEQA Guidelines, § 15064, subd. (d)).” (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068, 153 Cal.Rptr.3d 534.) That discretion, however, is not unbounded, as the determination that the Project has no significant environmental impact must be supported by substantial evidence. (§ 21168.5.) In ****791** *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 126 Cal.Rptr.2d 441 (*CBE*), overruled on another ground in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, footnote 3, 184 Cal.Rptr.3d 643, 343 P.3d 834, this court upheld invalidation of a CEQA Guideline that directed an agency to find an environmental impact not significant if it complies with a regulatory standard. We found the guideline “relieves the agency of a duty it would have under the fair argument approach to look at evidence beyond the regulatory standard, or in contravention of the standard, in deciding whether an EIR must be prepared.” (*Id.* at p. 113, 126 Cal.Rptr.2d 441.) A ***301** regulatory standard could not be applied so as to foreclose consideration of substantial evidence showing a significant environmental impact from a project. (*Id.* at p. 114, 126 Cal.Rptr.2d 441.)

^[26]Compliance with a general plan in and of itself “does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.” (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332, 232 Cal.Rptr. 507.) A project’s effects can be significant even if “they are *not* greater than those deemed acceptable in a general plan.” (*Gentry, supra*, 36 Cal.App.4th at p. 1416, 43 Cal.Rptr.2d 170; also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732, 187 Cal.Rptr.3d 96 [EIR required “if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will

not generate noise in excess of the County’s noise ordinance and general plan”]; *Berkeley Jets, supra*, 91 Cal.App.4th at p. 1381, 111 Cal.Rptr.2d 598 [“the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA”].)

The City and Encore cursorily contend these cases are not applicable because they address a threshold of significance in the context of deciding whether to prepare an EIR in the first instance, not in the context of a completed EIR’s application of significance thresholds. But they do not explain why the rule differs with the context.

^[27]In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 11 Cal.Rptr.3d 104 (*Amador Waterways*), this court addressed the two uses of thresholds of significance and found the *CBE* rule applied to both. A threshold of significance is used to determine whether an EIR must be prepared. (*Id.* at pp. 1106–1107, 11 Cal.Rptr.3d 104.) Thresholds of significance are also used in preparing the EIR: “[I]n preparing the EIR, the agency must determine whether any of the *possible* significant environmental impacts of the project will, in fact, be significant. In this determination, thresholds of significance can once again play a role. As noted above, however, the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant.” (*Id.* at p. 1109, 11 Cal.Rptr.3d 104.) “Thus, in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (*Ibid.*)

In *Amador Waterways*, the project at issue was replacement of a 130–year–old canal with a pipeline. Because leakage from the canal contributed to flow in ****792** streams, the pipe would reduce these flows, turning some ***302** streams into seasonally intermittent streams, and significantly reducing the flow in one. (*Amador Waterways, supra*, 116 Cal.App.4th at pp. 1102, 1111, 11 Cal.Rptr.3d 104.) The agency found the reduction in stream flows was insignificant based on the threshold of significance developed from the standardized Appendix G of the CEQA Guidelines, and plaintiff challenged that determination because the threshold of significance did not address reduction in stream flows. (*Id.* at p. 1111, 11 Cal.Rptr.3d 104.) We found the EIR insufficient because the reduction in stream flows was an effect on the environment and the EIR failed to explain why it was insignificant. Section 21100, subdivision (c) requires an

EIR to “contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.” (See also CEQA Guidelines, § 15128.)

^[28]Here, the EIR found traffic impacts at intersections on 28th and 29th Streets that changed conditions from LOS C to LOS E and from LOS A to LOS D under existing plus project conditions.⁷ Under cumulative plus project conditions, several intersections on 28th, 29th, and 30th Streets are at LOS F, with significant delays. The EIR found these impacts to be less than significant based solely on the mobility element in the City’s general plan, without any *evidence* that such impacts were insignificant. Indeed, the Master EIR for the City’s 2030 general plan, which adopted the mobility element at issue, recognized that the impact of traffic increases above LOS D-E were “significant and unavoidable.” Further, the EIR finds similar changes to LOS conditions in East Sacramento, outside the core area, *are* significant impacts and require mitigation. Accordingly, there is evidence of a significant impact on traffic on 28th, 29th, and 30th Streets. As in *Amador Waterways*, the EIR contains no explanation why such increases in traffic in the core area are not significant impacts, other than reliance on the mobility element of the general plan that permits LOS F in the core area during peak times.

In response to a comment questioning the City’s discretion in establishing its own LOS thresholds of significance, the final EIR states that the LOS thresholds of the City’s general plan reflect “community values.” Such “community values” do not, however, necessarily measure environmental impacts. (Cf. *Berkeley Jets*, *supra*, 91 Cal.App.4th at p. 1381, 111 Cal.Rptr.2d 598 [land use noise threshold not determinative for CEQA].) The core area of the general plan covers downtown and midtown Sacramento and includes both busy commercial and quiet residential streets. The CEQA Guidelines caution that “the significance of an activity may vary with the setting.” (CEQA Guideline, § 15064, subd. (b).)

The general plan alone does not constitute substantial evidence that there is no significant impact. “[T]he fact that a particular environmental *303 effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant. To paraphrase our decision in *Communities for a Better Environment*, a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant. [Citation.]” (*Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1109, 11

Cal.Rptr.3d 104.)

Because the EIR fails to explain or provide substantial evidence to support the finding of no significant traffic impact at these intersections, we must reverse the **793 trial court’s denial of ESPLC’s petition for a writ of mandate and remand the case for issuance of a writ directing the City to set aside its certification of the final EIR and to take the action necessary to bring the transportation and circulation section of the EIR into compliance with CEQA. (See § 21168.9 [describing contents of court order after a finding of noncompliance with CEQA].) The City need only correct the deficiency in the EIR that we have just described before considering recertification of the EIR. (See *Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1112, 11 Cal.Rptr.3d 104.)

3. Mitigation

ESPLC contends the mitigation measures proposed for significant traffic impacts are infeasible or ineffective.

An EIR must propose and describe mitigation measures to minimize the significant environmental impacts identified in the EIR. (§§ 21002.1, subd. (a); 21100, subd. (b)(3); CEQA Guidelines, § 15126.4, subd. (a)(1).)

The EIR concluded the Project would exacerbate LOS F conditions at the H Street/Alhambra Boulevard intersection, but the impact would be less than significant if Mitigation Measure 4.9–1 were adopted. That mitigation measure requires Encore to pay the City to monitor and re-time the traffic signal at that intersection. ESPLC contends there is no evidence that mitigation measure will be effective.

^[29]In response to the comment by ESPLC’s traffic consultant questioning the effectiveness of the mitigation measure, the final EIR responded the mitigation measure would improve the delay from 110 seconds to 40.8 seconds and referred to Appendix O (the Traffic Model Output Data) to the draft EIR for technical calculations. ESPLC has not addressed Appendix O or otherwise shown that it does not provide substantial evidence supporting the mitigation measure. “If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is forfeited.” (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951, 56 Cal.Rptr.3d 177.)

^[30] *304 For traffic impacts under cumulative plus project conditions, the mitigation measures required fair share

contributions to various traffic improvements. ESPLC contends this is not legally sufficient mitigation because the City admits it has no fee program. ESPLC cites to a comment claiming freeway impacts should be mitigated to which the City responds there is no *regional network* mitigation program (such as a traffic fee program) for purposes of section 21159.28. ESPLC does not show where the City admitted there is no fair share program for city traffic. Instead, the City describes the program: “Fair share contributions collected from a project are required to be used for the purpose it was collected for and cannot be applied to other purposes. If the project is approved by the City of Sacramento, the fair share contributions, defined as mitigation, will be collected at the plan check review phase. Monies collected for this purpose will be placed in a special fund and will be used to fund improvements required at that location.” ESPLC has not shown these mitigation measures are infeasible.

ESPLC contends one of the mitigation measures, 4.9–6, will result in removal of a bicycle lane on H Street for one block between 30th Street and Alhambra Boulevard and is therefore infeasible because it conflicts with policies of the general plan. We discuss this point in the next section.

II

Consistency with General Plan

ESPLC contends the Project is inconsistent with the City’s general plan. Specifically, ****794** ESPLC contends the Project is inconsistent with transportation policies, transit policies, policies promoting health and well-being, and noise policies.

A. The Law

^[31] ^[32] Local land use and development decisions must be consistent with the applicable general plan. (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336, 74 Cal.Rptr.2d 1 (*FUTURE*)). “A project is consistent with the general plan ‘if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.’” [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be ‘compatible with’ the objectives, policies, general land uses and programs

specified in the general plan.” (*Ibid.*)

^[33] “[T]he nature of the policy and the nature of the inconsistency are critical factors to consider.” (*FUTURE, supra*, 62 Cal.App.4th at p. 1341, 74 Cal.Rptr.2d 1.) Inconsistencies with vague, general policies that “encourage” actions may not be ***305** fatal. (See *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719, 29 Cal.Rptr.2d 182.) An approval must be set aside, however, where there is an inconsistency with a mandatory policy. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783, 32 Cal.Rptr.3d 177 (*Endangered Habitat*)).

^[34] “A city’s determination that a project is consistent with the city’s general plan ‘carries a strong presumption of regularity. [Citation.] This determination can be overturned only if the [city] abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. [Citation.] As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, ‘... a reasonable person could not have reached the same conclusion’ [Citation.]’ [Citation.]” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238, 128 Cal.Rptr.3d 733 (*Clover Valley*)); see also *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18–19, 204 Cal.Rptr.3d 67)

^[35] ^[36] ^[37] “When we review an agency’s decision for consistency with its own general plan, we accord great deference to the agency’s determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. [Citations.] A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.’ [Citation.]” (*Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142, 104 Cal.Rptr.2d 326 (*Save our Peninsula*)).

B. Transportation Policies

^[38] ESPLC contends the Project is inconsistent with Mobility Element M 1.2.2 of the general plan, which

requires the developer to make improvements to the citywide transportation system in exchange for accepting LOS E and LOS F **795 conditions. Since this action commenced, the City has adopted a new 2035 general plan. Under the new general plan, Mobility Element M 1.2.2 has been amended and no longer requires improvements to the citywide transportation system as a condition of accepting LOS E or LOS F conditions. In *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704–706, 179 Cal.Rptr. 261 (*Sierra Club*), a challenge to a zoning ordinance based on *306 inconsistency with the general plan became moot when, during pendency of the appeal, a new general plan was adopted with which the ordinance was consistent. In *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 206 Cal.Rptr.3d 343, the appellate court dismissed as moot a challenge to several exceptions to a neighborhood plan granted for construction of a large store after the city amended the plan to make the exceptions unnecessary. As in *Sierra Club* and *La Mirada*, because the Project is now consistent with Mobility Policy M 1.2.2, this contention is now moot.

^[39]ESPLC contends the Project is inconsistent with the Bikeway Master Plan because Mitigation Measure 4.9–6(a) (prohibiting on-street parking and increasing traffic lanes on H Street between 30th Street and Alhambra Boulevard) eliminates a dedicated bike lane. The City and Encore dispute that a bike lane is eliminated.

The EIR is inconsistent about whether a dedicated bike lane is eliminated. In response to comments challenging the mitigation measures, it asserts this mitigation measure “would not result in the loss of a bike lane.” However, in response to the next comment (which the EIR misreads as only a request to prohibit on-street parking rather than a concern about losing a bike lane), the final EIR states “[t]he bike lane would be shared for a portion of the eastbound travel lane just west of 30th Street.” In any event, a “project need not be in perfect conformity with each and every general plan policy.” (*FUTURE*, *supra*, 62 Cal.App.4th at p. 1336, 74 Cal.Rptr.2d 1.) Given the Project’s commitment to bicycle transportation, the City could reasonably conclude the Project was consistent with the general plan despite the possible loss of a dedicated bike lane for one block. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

C. Land Use and Environmental Policies

^[40]ESPLC contends the project is inconsistent with land use policy 4.5.6 which requires new neighborhoods to include transit stops within one-half mile of all dwellings. This contention is moot because this provision of the

general plan has changed. (*Sierra Club*, *supra*, 126 Cal.App.3d at pp. 704–706, 179 Cal.Rptr. 261.) The 2035 general plan only “encourage[s]” transit stops within one-half mile; it is no longer a requirement.

^[41] ^[42]ESPLC next contends the Project is inconsistent with several policies in the general plan designed to promote the health and well-being of the community by protecting the public from the adverse effects of air pollution, noise, and other health hazards. ESPLC cites to three policies and one goal, but fails to mention—or dispute—the portions of the EIR that found the Project was consistent with these policies and goal. Further, these policies *307 and goal are vague and subjective. In this situation our deference to the City’s finding of consistency is the greatest because the City “in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of **796 competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.” (*Save our Peninsula*, *supra*, 87 Cal.App.4th at p. 142, 104 Cal.Rptr.2d 326.) ESPLC has not shown that “ ‘a reasonable person could not have reached the same conclusion’ ” as to the Project’s consistency with these policies and goal. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

D. Noise Policies

^[43]ESPLC raises three points concerning noise under a single heading challenging the noise impacts as inconsistent with the general plan. It contends first that the exterior noise level at residences near the freeway exceed the 60 dB limit under the general plan; second that the mitigation measures to reduce noise near the railroad tracks are not effective and there is no assurance they will be implemented; and third that the noise analysis fails to properly take into account a future rail line. The second and third points do not challenge the Project’s consistency with the general plan; instead, they relate to the adequacy of the EIR and require a separate heading or subheading. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Failure to follow this rule forfeits the argument. (*San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd.* (2010) 183 Cal.App.4th 1110, 1135, 108 Cal.Rptr.3d 290.)

The environmental noise assessment prepared for the Project studied traffic noise levels at private yards of residences near the freeway. It concluded that after construction of a sound wall atop a four-foot earthen berm, the typical maximum noise levels in the backyard areas

would be 60 dB. That is the highest level of “normally acceptable” noise exposure for single family and duplex residences under the general plan.

ESPLC contends the noise level in some outdoor areas is actually higher. In discussing interior noise and the mitigation required, the draft EIR states the exterior noise at building façades for residences near the freeway are 65–68 dB and less than 70 dB for houses in the second tier. The difference in the noise readings, apparently, is that the noise assessment study measured noise only at the “private yards,” are generally shielded by residences from noise, and there may be higher noise levels in the trash and recycling areas behind the houses that are not designed as “outdoor activity areas.” ESPLC disputes that these areas behind the houses will be used solely for trash and the like and not for outdoor activity.

***308** Assuming that the City noise levels apply to *all* outdoor areas, and that the noise readings conducted for purposes of mitigation of interior noise levels are accurate, we still cannot find an inconsistency with the general plan sufficient to set aside approval of the Project on this ground.

[44] [45] Environmental Constraint Policy 3.1.1 states: “The City shall require noise mitigation for all development where the projected exterior noise levels exceed those shown in Table EC 1, to the extent feasible.” Because compliance is tied to feasibility, the policy is not mandatory, so an inconsistency does not require setting aside the approval. (See *Endangered Habitats*, *supra*, 131 Cal.App.4th at p. 783, 32 Cal.Rptr.3d 177.) Here, the

Project had noise mitigation. Whether further mitigation was “feasible,” such that the policy was violated, was a decision within the discretion of City. The City’s decision to find the noise consistent with the general plan meets the reasonable person standard. ****797** (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to enter a new judgment, consistent with section 21168.9 and this opinion, granting ESPLC’s petition for a writ of mandate. The parties shall bear their own costs on appeal. (See Cal. Rules of Court, rule 8.278(a).)

We concur:

Raye, P.J.

Butz, J.

All Citations

5 Cal.App.5th 281, 209 Cal.Rptr.3d 774, 16 Cal. Daily Op. Serv. 11,866, 2016 Daily Journal D.A.R. 11,152

Footnotes

- 1 Further undesignated statutory references are to the Public Resources Code.
- 2 The regulations implementing CEQA are codified at California Code of Regulations, title 14, section 15000 et seq. and are called the State CEQA Guidelines (14 Cal Code Regs., tit. 14, § 15001). These regulations are hereinafter referred to as CEQA Guidelines.
- 3 Because we review the City’s decision, not the trial court’s, we reject the argument of the City and Encore that ESPLC forfeited its claims by failing to address the trial court’s decision and explain how the trial court erred.
- 4 In the trial court, ESPLC also contended the EIR failed to analyze noise at the Project. ESPLC now reframes the argument relating to noise as a failure to comply with the general plan, see Part II D, *post*.
- 5 New residents in the Project will be given written notice of the former landfill and monthly gas monitoring.
- 6 In Senate Bill No. 743 (2013–2014 Reg. Sess.), the Legislature has recognized the conflict between considering vehicle delay to be an environmental impact and encouraging infill projects to reduce greenhouse gas emissions and traffic-related air pollution. (Stats. 2013, ch. 386, § 5.) New section 21099, subdivision (b)(1) requires the Office of Planning and Research to prepare new guidelines for establishing criteria for determining the significance of transportation impacts of certain infill projects. Once these guidelines are certified, automobile traffic delays, as described solely by LOS or

similar measures, shall not be considered a significant impact on the environment, with some exceptions. (Id. subd. (b)(2).)

- 7 We recognize that the half-street closure at C Street and 28th Street may affect the results of the traffic analysis. That street closure, however, was not analyzed in the EIR.



The Growing Case for a New Approach to SF's Parking Problem

by *Tuesday, April 26, 2016*

People drive more if more parking is provided.

As intuitive as that may sound, until recently there wasn't definitive research showing the link between available parking and driving. And through most of the 20th Century, the policies that shaped cities like San Francisco relied the assumption that parking must be built to meet an inevitable demand.

Now, a growing body of research shows that it works the other way around: available parking is perhaps the single biggest factor in people's decision to drive. The research shows that just building housing on a transit line doesn't reduce automobile use, but reducing parking does.

WELCOME!

[About This Blog](#)

[Comment Guidelines](#)

STAY CONNECTED

[Subscribe to Daily Blog Updates](#)

[Subscribe to Weekly Blog Updates](#)

[Blog RSS](#)

[Follow us on Twitter](#)

[Follow us on Facebook](#)

CATEGORIES

[About this blog](#)

[Bicycling](#)

[Muni](#)

[Neighborhoods](#)

[Parking](#)



Photo: [Dave Glass/Flickr](#)

This information comes as San Francisco is in the midst of one of its [biggest new-housing construction booms in history](#), projected to add [100,000 households and more than 190,000 new jobs by 2040](#). If everyone arrives with a car, that's going to be a recipe for gridlock and economic stagnation. The effects on the environment, quality of life and pedestrian safety will be substantial. The city will grind to a halt.

Fortunately, city officials have been planning for this growth on several fronts, including the [Transportation Sustainability Program](#). This three-part program is designed to [invest more in our transportation system](#), align our environmental rules with policy goals like emissions reductions and smart growth along transit, and shift choices to makes it easier for people to get around by transit, walking, biking, or car-sharing.

The growing research on the link between available parking and people's decision to drive is part of the data the SFMTA, Planning Department, and San Francisco County Transportation Authority are considering as they work on legislation that will help shape future development in the city and provide incentives for people to get around without relying on driving alone in a car.

A study [\[PDF\]](#) published by the national Transportation Research Board analyzed prior research and original data from nine U.S. cities dating back to 1960. Providing parking "in cities is a likely cause of increased driving among residents and employees in those places," the authors concluded.

Another study [\[PDF\]](#), published in the journal *Transport Policy* in 2012, reached similar conclusions in analyzing three boroughs in New York City. Researchers found "a clear relationship between guaranteed

Projects

Taxis

Traffic

Walking

RECENT BLOG POSTS

▼ August 2017 (10)

This Weekend: Treasure Island Flea, the Giant Race and SF Deltas Soccer

Starting the New School Year Off on the Right Foot

Subway Test Closures Complete: Muni's New Trains in the Home Stretch

Solar Eclipse: How to Take Muni to the Best Viewing Spots

SFMTA Board Recap: Aug. 15, 2017

This Weekend: Festa Coloniale Italiana and Sunday Streets

SFMTA Public Meetings, Aug 14 - 28

Hooray for the J: 100 Years on the J Church

Weigh in on Design Details for a Safer 6th Street at Our Open House

Let Cities Save Lives With Automated Speed Enforcement, Says National Safety Board

parking at home and a greater propensity to use the automobile for trips made to and from work, even when both work and home are well served by transit.”

In San Francisco, the early findings are consistent. A study [PDF] led by the SFMTA and the Planning Department last year found that “residents, workers, and visitors of residences, offices, and retail sites that do not have access to parking drive less than those who do have access to parking.”

Providing free parking isn't actually free. The cost of parking spaces is borne by people who shop at that store – even if they can't afford to own a car – because the cost of parking is baked into the price of shampoo, milk or whatever the store sells. Or providing parking comes at the expense of something else, like using the space and investment needed to provide affordable housing in a city with a housing crunch.

That argument has long been made by Donald Shoup, professor emeritus at the University of California, Los Angeles.

In his 2005 book *The High Cost of Free Parking*, Shoup wrote: “Planners mandate free parking to alleviate congestion, but end up distorting transportation choices, debasing urban design, damaging the economy, and degrading the environment.”

This debate isn't new. But as our already traffic-strained city grows in the 21st century, so does the compelling case for a different approach to parking.

LATEST TWEETS

HeadsUp: [#InnerSunset](#)
Streetscape work will require shuttles to provide [#NJudah](#) surface svc on multiple wknds...
<https://t.co/PcWutkTse7> — 32 min 41 sec ago

Attn: 1 Muni elevator out of service; Van Ness — 3 hours 8 min ago

UPDATE: Delay on Third btwn Kirkwood and La Salle has cleared. Southbound [#TThird](#) has resumed service. — 15 hours 27 min ago

Reminder: From 7:30p Fri. 9/8 to start of AM svc on 9/11, shuttles to provide [#NJudah](#) svc btwn Dub./Church & LaPlay...
<https://t.co/OwnU9jDhW8> — 15 hours 32 min ago

ATTN: Southbound [#TThird](#) blocked on Third btwn Kirkwood and La Salle by [#SFPD](#) activity. — 15 hours 33 min ago

BLOG RESOURCES

[SFMTA Press Page](#)

[City and County of San Francisco](#)

[San Francisco County Transportation Authority](#)

[Central Subway Blog](#)

[Peninsula Moves! \(SamTrans & Caltrain\)](#)

[Muni Diaries](#)

[The N-Judah Chronicles](#)

[Akit's Complaint Department](#)

Table 13
Proposed Project
Delivery/Service Vehicle-Trips and Loading Space Demand

Land Use	Daily Truck Trip Generation	Peak Hour Loading Spaces	Average Hour Loading Spaces
Residential	13.1	0.76	0.60
Restaurant	14.5	0.84	0.67
Total	27.6	1.69	1.27

Source: *SF Guidelines*, LCW Consulting.



SAN FRANCISCO PLANNING DEPARTMENT

PUBLIC NOTICE

Availability of Notice of Preparation of Environmental Impact Report and Public Scoping Meeting

Date: July 12, 2017
Case No.: 2015-004568ENV
Project Title: 10 South Van Ness Avenue Mixed-Use Project
Zoning: C-3-G (Downtown-General Commercial)
Van Ness and Market Downtown Residential Special Use District
120-R-2/120/400-R-2 Height and Bulk Districts
Block/Lot: 3506/004 and 003A
Project Sponsor: 10 SVN, LLC
c/o Jim Abrams, J. Abrams Law, P.C. – (415) 999-4402
jabrams@jabramslaw.com
Lead Agency: San Francisco Planning Department
Staff Contact: Rachel Schuett – (415) 575-9030
rachel.schuett@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

A notice of preparation (NOP) of an environmental impact report (EIR) has been prepared by the San Francisco Planning Department in connection with this project. The report is available for public review and comment on the Planning Department's Negative Declarations and EIRs web page (<http://www.sfplanning.org/sfceqadocs>). CDs and paper copies are also available at the Planning Information Center counter on the first floor at 1660 Mission Street, San Francisco. Referenced materials are available for review by appointment at the Planning Department's office on the fourth floor at 1650 Mission Street. (Call (415) 575-9030)

Project Description: The 10 South Van Ness Avenue project site is located at the southwest corner of South Van Ness Avenue and Market Street, in the South of Market neighborhood of San Francisco. The project block is bounded by Market Street to the north, South Van Ness Avenue to the east, and 12th Street to the southwest. The project site has frontages on Market and 12th streets and South Van Ness Avenue. The project site is occupied by a 91,088 gross square foot (gsf), two-story, 30- to 45-foot-tall building, and a small vacant lot. The original building (the northern portion of the existing building) was constructed in 1927, and is considered an individual historical resource because it once housed the internationally-celebrated and iconic music venue, Fillmore West, and because of its association with music promoter, and Fillmore West founder, Bill Graham. The original building and its southern addition are currently occupied by the San Francisco Honda Dealership and Service Center.

The project sponsor, 10 SVN, LLC, proposes to demolish the existing building and construct a mixed-use residential building, with up to 984 residential units, retail space on the ground floor, and two below-grade levels for parking and loading activities accessed from a single curb cut and driveway on 12th Street. Up to 518 vehicle parking spaces and seven freight loading spaces would be provided. In addition 336 class I and 61 class II bicycle parking spaces would be provided.

Exhibit 12 10 South Van Ness, Availability of Notice of Preparation of EIR & Public Scoping Meeting, 7/12/17

Two project design options are being considered: a two-tower design (the “proposed project”) with two separate 41-story, 400-foot-tall towers (420 feet at the top of the elevator penthouses) on top of podiums; and the “single tower project variant” with a single 55-story, 590-foot-tall tower (610 feet at the top of the elevator penthouses) on top of a podium. The proposed project would be approximately 1,071,100 gsf, with approximately 48,150 square feet (sf) of usable open space which would include a 2,975-sf mid-block alley that would provide a pedestrian connection between South Van Ness Avenue and 12th Street. The single tower project variant would be approximately 1,073,000 gsf, with approximately 47,210 sf of open space which would include a mid-block pedestrian alley that would provide a pedestrian connection between Market and 12th streets. A streetscape variant (the “straight-shot streetscape variant”) is also being considered. The straight-shot streetscape variant would extend the eastern sidewalk and pedestrian promenade on 12th Street to 40 feet in width along the project site’s frontage. Both the proposed project’s streetscape design and the straight-shot streetscape variant would comply with the Better Streets Plan and the Better Market Street project. The straight-shot streetscape variant could be developed in conjunction with either the proposed project or the single tower project variant. Additional details regarding the project description are available in the NOP.

The Planning Department has determined that an initial study and EIR must be prepared for the proposed project and variants prior to any final decision regarding whether to approve the project. The purpose of the initial study and EIR is to provide information about potential significant physical environmental effects of the proposed project, and variants, to identify possible ways to minimize the significant effects, and to describe and analyze possible alternatives to the proposed project. Preparation of an NOP, initial study, or EIR does not indicate a decision by the City to approve or to disapprove the project. However, prior to making any such decision, the decision makers must review and consider the information contained in the EIR.

The Planning Department will hold a **PUBLIC SCOPING MEETING** on **August 2, 2017** at 6 p.m. at 1 South Van Ness Avenue, in the Second Floor Atrium. The purpose of this meeting is to receive oral comments to assist the Planning Department in reviewing the scope and content of the environmental impact analysis and information to be contained in the EIR for the project. To request a language interpreter or to accommodate persons with disabilities at this meeting, please contact the staff contact listed above at least 72 hours in advance of this meeting. Written comments will also be accepted until 5 p.m. on **August 11, 2017**. Written comments should be sent to Rachel A. Schuett, San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103.

If you work for an agency that is a Responsible or a Trustee Agency, we need to know the views of your agency as to the scope and content of the environmental information that is relevant to your agency’s statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR when considering a permit or other approval for this project. We will also need the name of the contact person for your agency. If you have questions concerning environmental review of the proposed project, please contact Rachel Schuett at **(415) 575-9030**.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department’s website or in other public documents.