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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 FIX THE CITY, INC.,

11 Petitioner/Plaintiff,

12 v.

13 CITY OF LOS ANGELES, et al.,

14 Respondents/Defendants.

CASE NO. BS138580 (related to BS138369
and BS138370)

**RESPONDENTS/DEFENDANTS'
COMBINED OPPOSITION TO
PETITIONERS' OPENING BRIEFS IN
SUPPORT OF PETITIONS**

Judge: Hon. Allan J. Goodman

Dept.: West District, Dept. P

Petition/Complaint filed: July 13, 2012
First Amended Petition/Complaint filed: July 19,
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20 HOLLYWOOD CHAMBER OF
21 COMMERCE,

22 Intervener.

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1 **I. INTRODUCTION**

2 For efficiency, Respondents/Defendants (collectively, the “City”) submit this combined
3 opposition to the opening briefs of Petitioners in all three related cases, *Fix the City v. City*,
4 BS138580 (“Fix the City”), *La Mirada Avenue Neighborhood Association of Hollywood v. City*,
5 BS138369 (“La Mirada”), and *SaveHollywood.org v. City*, BS138370 (“SaveHollywood”). The
6 City is filing the identical brief in all three cases.

7 Petitioners challenge the City’s approval of the Hollywood Community Plan Update
8 (“HCPU”) and its environmental impact report (“EIR”). The HCPU is an update to the General
9 Plan’s Land Use Element that guides, but does not environmentally clear or approve, future
10 project-specific development in the Hollywood area. The HCPU and its EIR follow the principles
11 of the City’s Citywide General Plan Framework (“Framework”), an element of the General Plan.
12 The Framework generally seeks to accommodate growth based on estimates provided by the
13 public entity tasked with preparing regional trends, the Southern California Association of
14 Governments (“SCAG”).

15 Petitioners’ primary dispute is with the City’s decision not to change the EIR’s 2005
16 baseline and 2030 projections, which were based on data in the SCAG 2004 Regional
17 Transportation Plan (“RTP”), following the release of the 2010 Census. They allege this resulted
18 in an under-analysis of impacts and alternatives. In addition: (1) Fix the City and SaveHollywood
19 claim there was no evidentiary support for the 2005 baseline; (2) Fix the City and La Mirada
20 claim that the analysis using the 2010 Census was in error and the EIR should have been
21 recirculated; (3) Fix the City claims that the City failed to mitigate impacts to fire and police
22 services and transportation; and (4) Fix the City and La Mirada claim the HCPU was inconsistent
23 with the General Plan, Framework, and City Charter.

24 Under the substantial evidence standard, however, the City is entitled to rely on its
25 expertise in analyzing impacts and imposing mitigation under the California Environmental
26 Quality Act (“CEQA”). As such, the retention of the 2005 baseline over 2010 Census data for the
27 approval of the HCPU was fully supported by City staff’s expertise and the record, the
28 Framework’s policy to use SCAG estimates for community plan updates, and the CEQA

1 Guidelines, notwithstanding any opinion, expert or otherwise, to the contrary. Moreover, the
2 EIR's alternatives analysis based on SCAG estimates was fully supported, notwithstanding
3 Petitioners' late suggestions about the feasibility of a reduced density alternative.

4 Next, Fix the City and SaveHollywood failed to exhaust during the administrative process
5 the claim that the 2005 baseline lacked evidentiary support by not including the SCAG 2004 RTP
6 in the EIR or record. In any event, CEQA does not require inclusion of the RTP, and the EIR
7 derived its numbers from data received from SCAG rather than the RTP itself, which only
8 summarizes data by city. Similarly, Fix the City and La Mirada failed to exhaust during the
9 administrative process the claim about the inadequacy of responses to late comments on the 2010
10 Census. In any case, those responses use the same thresholds as the EIR, which Petitioners do not
11 challenge and are not based on population change. Recirculation is thus unnecessary.

12 Fix the City alone claims that the EIR's mitigation for fire and police services and
13 transportation impacts was improper. However, fire and police response times and staffing are
14 not CEQA impacts, the mitigation sets forth sufficient performance standards and commitments,
15 and such challenges are barred by res judicata and collateral estoppel. Furthermore, the
16 transportation mitigation complies with the Court of Appeal rulings previously made during
17 challenges to the Framework, and sets definite standards by its incorporation into HCPU policies.

18 Finally, courts defer to the City's interpretation of consistency with its General Plan and
19 Charter, and the Court should uphold the City's reasoned determination there as well.

20 **II. STATEMENT OF RELEVANT FACTS**

21 The Hollywood Community Plan ("HCP") is part of the Land Use Element of the City's
22 General Plan, and provides a long-term planning vision for development in the Hollywood area.
23 (AR 8025.) The first HCP was adopted in 1973, and it was later updated in 1988. (*Ibid.*) In 1996
24 and 2001, the City adopted the Framework element of the General Plan, which guides the update
25 of other General Plan elements and is based on planning principles to encourage development
26 close to transit infrastructure, protect neighborhoods, and improve air quality. (AR 1414, 3044.)
27 The Framework and its EIR were upheld after court challenges. (See *Federation of Hillside &*
28 *Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180 ("*Federation*").)

1 State law requires that each city periodically review and revise its General Plan as
2 necessary. (See Gov't Code § 65103(a); AR 3018.) The City proceeded with the HCPU for
3 several reasons: 1) to update the 1988 HCP to 2030, because the 1988 HCP was intended for
4 development up to 2010 (AR 3018); 2) to accommodate the expected increase in population,
5 housing, and employment through 2030 (AR 3019); and 3) guided by the Framework, to focus
6 development in transit and commercial areas, thereby complying with greenhouse gas emission
7 legislation SB 375. (AR 3019, 3044-3045.) In addition, between 1997 and 2004, a land use
8 survey was conducted and focus group meetings to receive community input. (AR 8101.)

9 The HCPU is comprised of changes to the 1988 HCP in the form of goals, policies,
10 programs, maps, diagrams, and guidelines. (AR 8026.) The HCPU generally focuses growth in
11 the Framework-designated regional centers and near transit infrastructure, while preserving
12 historic, single-family, hillside, and pedestrian-oriented areas. (AR 3047-3048, 8027-8028.)

13 As required by CEQA, in April 2005, the City issued an Initial Study and a Notice of
14 Preparation ("NOP") of an EIR. (See AR 2416-2452.) The Initial Study determined that the
15 HCPU had the potential to result in significant adverse impacts to the following areas, to be
16 further studied in an EIR: Land Use; Population, Employment and Housing; Public Services;
17 Utilities; Transportation and Circulation; Air Quality; Noise; Geology; Cultural and
18 Archaeological Resources; and Safety and Risk of Upset. (AR 3013.) The City determined that a
19 programmatic EIR was appropriate with a time horizon of 2030, consistent with the SCAG 2004
20 RTP time horizon. (*Ibid.*) As a programmatic EIR, the HCPU EIR does not approve any specific
21 development, as all future projects will require their own approvals. (AR 8031.)

22 The City held public hearings and meetings about the HCPU, including a 2005 CEQA
23 scoping meeting, two 2006 workshops, and a community "walkabout" in 2007 to survey street
24 function in Hollywood. (AR 8101.) The City released a draft of the HCPU text in 2009, and an
25 updated draft along with all components of plan changes in 2010. (*Ibid.*) In December 2010, the
26 City made a presentation of the HCPU to the City Planning Commission ("CPC"). (*Ibid.*)

27 After these public communications, the City completed and released the Draft EIR in
28 March 2011 and circulated it for 90 days for public review. (*Ibid.*) During this period, City staff

1 attended eight neighborhood council meetings and answered questions about the HCPU and the
2 Draft EIR, and also attended other meetings with neighborhood and business groups. (*Ibid.*)

3 Among other things, the Draft EIR described an existing 2005 EIR baseline related to
4 population, employment, and housing. The 2005 baseline was derived from the SCAG 2004
5 RTP, the 2000 Census, Los Angeles building permit data, and County assessor data. (AR 3099-
6 3100.) SCAG is the planning organization for the six-county Southern California region
7 mandated by federal and state law to prepare the RTP to address regional growth, air quality, and
8 other issues. (AR 3018.) The 2005 baseline estimated that there were 224,426 people, 100,980
9 jobs, and 100,600 housing units in the HCPU area. (AR 3099, 3104.)

10 The Draft EIR also calculated the SCAG 2004 RTP forecast for 2030 to be 244,602
11 persons, 119,013 jobs, and 113,729 housing units in the HCPU area, as compared to the capacity
12 of the existing 1988 HCP of 235,850 persons, 105,782 jobs, and 108,722 housing units. (AR
13 3104.) To ensure sustainable urban development, the HCPU as analyzed by the EIR
14 accommodated a slightly higher level of growth than the SCAG 2030 forecast, estimated at
15 249,062 persons, 130,203 jobs, and 114,868 housing units. (AR 3100-3101, 3104.) The Draft
16 EIR set forth the methodology for the calculations. (AR 3099-3101, 3104-3109.)

17 The Draft EIR analyzed two alternatives to the proposed project: 1) the CEQA-required
18 no-project alternative that would not make any changes to the then-existing 1988 HCP, and 2) the
19 "SCAG 2030 Forecast," which would include fewer land use designation changes than the
20 proposed plan and accommodate growth at or about the projected level set forth in the SCAG
21 2030 forecast. (AR 3024-3025; AR 3308-3317.)

22 Among other things, the Draft EIR found that the HCPU would lead to significant impacts
23 on fire protection and police services, but that the recommended mitigation measures would
24 reduce the impacts to less than significant. (AR 3110-3121.) The Draft EIR also analyzed
25 transportation impacts for the existing 2005 baseline, 2030 conditions with the no-project
26 alternative, 2030 conditions with the proposed plan, and 2030 conditions with the proposed plan
27 as mitigated by the Transportation Improvement Mitigation Plan ("TIMP"). (AR 2794-2803,
28 3200-3209.) The TIMP is a program of transportation strategies, transit improvements, and non-

1 motorized transportation alternatives to reduce impacts. (AR 3204, 3206.) The Draft EIR found
2 that transportation impacts under all studied scenarios would result in unavoidable significant
3 impacts. (AR 3209.) The EIR found that as capacity in Hollywood streets is freed up by the
4 TIMP, the cut-through traffic originating outside Hollywood would fill up the resulting added
5 capacity. (AR 3208-3209.)

6 After publication of the Draft EIR, 2010 Census data became available. (AR 6171.)
7 According to the 2010 Census, there were an estimated 198,228 persons and 103,187 housing
8 units in the general HCPU area in 2010. (AR 5247, 5341.)

9 In October 2011, the City released the Final EIR. (AR 8031.) The Final EIR noted
10 concerns about the 2005 baseline and 2030 population forecast in light of the 2010 Census. (AR
11 5247-5253.) The Final EIR responded that: 1) CEQA normally requires the baseline to be set at
12 the time of the NOP (2005), 2) the Census numbers do not exactly align with the community plan
13 boundaries, 3) the Census sample sizes are too small to yield acceptable margins of error, 4) the
14 SCAG forecasts are required by federal and state law and are based on several demographic
15 estimates, 5) the Census numbers indicate net growth in the City, and 6) the Census numbers
16 indicate net growth in several population components in the HCPU area, including tracts near the
17 transit stations and an increase in population of persons between 45 and 64. (AR 5247-5248.)
18 The Final EIR also provided additional clarification on impacts using 2010 Census population
19 numbers to respond to comments. (AR 5341-5354.)

20 The City held two open houses and public hearings in November 2011 in the Hollywood
21 community, with staff meeting with eight neighborhood councils and other community groups
22 prior to these hearings. (AR 8102.) The HCPU was then presented to the Central Area Planning
23 Commission on November 22, 2011, for commission comment with a public hearing. (AR 8104.)

24 In November 23, 2011, the City released a staff report to the CPC recommending
25 certification of the EIR and approval of the HCPU. (See AR 8021-8104.) The staff report
26 recommended, in response to public testimony and additional staff analysis, slight reductions in
27 the scale and scope of proposed zone changes in selected areas that would result in a reasonable
28 expected housing population capacity of 245,833 (as opposed to the 249,062 analyzed in the

1 EIR.) (AR 8033.) The CPC conducted a public hearing and recommended that the City Council
2 certify the EIR and approve the staff recommendation, with a few minor changes. (AR 7-8.)

3 The City Council Planning and Land Use Management Committee (“PLUM”) took public
4 comment on the HCPU on March 27 and April 17, 2012. (AR 981-982.) On May 8, 2012,
5 PLUM forwarded the CPC recommendations to the City Council for consideration without
6 recommendation. (*Ibid.*)

7 On May 18, 2012, in response to comments submitted after the public comment period of
8 the EIR, the City issued a First Addition to the Final EIR consisting of responses to public agency
9 comments. (See AR 6148-6150.) On June 14, 2012, the City issued a Second Addition to the
10 Final EIR (“Second Addition”) consisting of responses to non-public agency comments. (See AR
11 6153-6187.) That same day, the City provided special email notice of the Second Addition to
12 persons who had specifically requested special notice. (AR 21202-21204.)

13 Among other things, the Second Addition included as a response to comments a summary
14 of analysis performed using the 2010 Census as the baseline. (AR 6171-6174.) This clarified
15 that there was no change in conclusions in significance of impacts. (*Ibid.*) The Second Addition
16 also clarified the City’s responses to the additional comments about alternatives and mitigation
17 measures. (AR 6157-6161.)

18 On June 19, 2012, the City Council heard public comment, certified the EIR, adopted
19 revised findings, and approved the HCPU. (AR 977-982, see AR 1412-1466, 12215-12297.) The
20 adopted findings included that the HCPU was consistent with the City’s Charter and General
21 Plan, including the General Plan’s Framework element. (See AR 1413-1428.)

22 **III. ARGUMENT**

23 **A. Applicable Standard Of Review**

24 **1. The Substantial Evidence Standard Applies To The CEQA Claims**

25 Under CEQA, the applicable standard of review extends “only to whether there was a
26 prejudicial abuse of discretion,” which is established “if the agency has not proceeded in a
27 manner required by law or if the determination or decision is not supported by substantial
28 evidence.” (Pub. Resources Code § 21168.5.) Under the substantial evidence standard, the court

1 must uphold the agency's actions where there is "enough relevant information and reasonable--
2 inferences...that a fair argument can be made to support a conclusion, even though other
3 conclusions might also be reached." (14 Cal. Code Regs. ("CEQA Guidelines") § 15384(a).)

4 In reviewing for substantial evidence, the court "may not set aside an agency's approval of
5 an EIR on the ground that an opposite conclusion would have been equally or more reasonable,
6 for, on factual questions, our task is not to weigh the conflicting evidence and determine who has
7 a better argument." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*
8 *Cordova* (2007) 40 Cal.4th 412, 426, 435 (citations omitted).) "Thus, the reviewing court does
9 not pass upon the correctness of the EIR's environmental conclusions, but only upon its
10 sufficiency as an information document" and courts may not "substitute our judgment for that of
11 the people and their local representatives." (*Citizens of Goleta Valley v. Bd. of Supervisors*
12 (1990) 52 Cal.3d 553, 564.) Even if the petitioner had qualified experts disputing the agency's
13 conclusions, disagreement among experts does not invalidate an EIR, and the substantial evidence
14 standard allows an agency to rely on its experts. (See CEQA Guidelines § 15151, *Greenebaum v.*
15 *City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.)

16 Under the substantial evidence standard, an agency's decisions are given substantial
17 deference and are presumed correct, and the petitioner bears the burden of proving the contrary.
18 (See *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 723.) Moreover, the
19 petitioner's failure to describe the evidence favorable to the agency and show why it is lacking is
20 fatal to its challenge. (See *id.*, at p. 749 (petitioners "are required to set forth in their brief all the
21 material evidence on the point and not merely their own evidence") (citations omitted); *Markley*
22 *v. City Council* (1982) 131 Cal.App.3d 656, 673 (petitioner must set forth a "fair and adequate
23 statement of the evidence which is claimed to be insufficient"; reviewing court is not "required to
24 undertake an independent examination of the record," and petitioner's failure to fairly state the
25 evidence is "deemed tantamount to a concession that the evidence supports the findings")
26 (citations omitted).)

27 Fix the City acknowledges that substantial evidence is the applicable standard of review
28 for the CEQA claims herein, and it briefs all claims raised by Petitioners. (Fix the City Brief 4-

1 5.) La Mirada and SaveHollywood allege that the substantial evidence standard does not govern
2 for all CEQA claims. (La Mirada Brief 2-3, SaveHollywood Brief 3-5.) However, to the extent
3 the cases La Mirada and SaveHollywood cite conflict with the governing substantial evidence
4 standard of review, the Second District Court of Appeal has held that CEQA challenges “to the
5 scope of the analysis, the methodology for studying an impact, and the reliability or accuracy of
6 the data present factual issues, so such challenges must be rejected if substantial evidence
7 supports the agency’s decision...” (*Federation*, 83 Cal.App.4th at p. 1259.)

8 Similarly, courts specifically hold that the decision whether to update the baseline is
9 reviewed under the substantial evidence standard. (See *Citizens for Open Gov’t v. City of Lodi*
10 (2012) 205 Cal.App.4th 296, 318-319 (citing *Fat v. County of Sacramento* (2002) 97 Cal.App.4th
11 1270, 1272-1273).) Courts also specifically hold that challenges to an EIR’s alternatives analysis
12 are governed by substantial evidence rather than *de novo* review. (See *California Native Plant*
13 *Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 987.)

14 2. The Abuse Of Discretion Standard Applies To The Non-CEQA Claims

15 Both Fix the City and La Mirada, which raise non-CEQA claims, agree those are subject
16 to the test set forth in *Napa Citizens for Honest Gov’t v. Napa Co. Bd. of Supervisors* (2001) 91
17 Cal.App.4th 342, 357, that “a governing body’s conclusion that a particular project is consistent
18 with the relevant general plan carries a strong presumption of regularity that can be overcome
19 only by a showing of abuse of discretion.” (Fix the City Brief 5:21-26, La Mirada Brief 5-6.)

20 B. The EIR’s 2005 Baseline Is Fully Supported

21 The EIR used the default CEQA baseline of conditions at the time of the NOP in 2005,
22 and that baseline was primarily derived using SCAG 2004 RTP data for population. (See CEQA
23 Guidelines § 15125(a), AR 3099-3100.) All Petitioners claim that the City should have changed
24 the EIR’s 2005 baseline due to the 2010 Census, which was issued after the release of the Draft
25 EIR.¹ (Fix the City Brief 10-12, La Mirada Brief 6-9, SaveHollywood Brief 9-12.) The 2010

26 ¹ La Mirada claims that the 2010 Census data was published “prior to the release of the Draft
27 EIR” (La Mirada Brief 7:9-10) (emphasis in original), but Fix the City agrees the Census data was
28 published after release of the Draft EIR (Fix the City Brief 7:16-17). The U.S. Census webpage
states that detailed demographic data was not published until May 2011, after the March 2011
release of the Draft EIR. (See Request for Judicial Notice (“RJN”), filed concurrently, Ex. A.)

1 Census showed a 2010 population of 198,228 persons living in the HCPU area, as compared to
2 the EIR 2005 baseline population estimate of 224,426 persons. (AR 5247.) However, substantial
3 evidence in the record, along with the Framework and CEQA Guidelines, fully support the City's
4 use of the 2005 baseline and SCAG data instead of any subsequent Census information.

5 **1. Substantial Evidence Supports Use Of The 2005 Baseline**

6 The EIR relied on expert opinion in its analysis and conclusions, including expertise from
7 City staff. (See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379-1380 (City staff
8 can be relied on as experts for CEQA purposes).) These expert conclusions, including in setting
9 the baseline, were based on evidence in the record and should not be second-guessed.

10 First, expert City staff did not believe that the Census would be suitable to establish an
11 EIR baseline for community plans such as the HCPU. The Final EIR noted Census data areas do
12 not align exactly with the boundaries of community plan areas, and determined the sample size in
13 the Census was too small to yield acceptable margins of error. (AR 5248.) In contrast, SCAG is
14 tasked by law to calculate regional growth, and its demographic estimates are based on several
15 population dynamics, including fertility, mortality, migration rates, trends in occupied housing,
16 and average household size. (*Ibid.*) SCAG projections, in any event, use available Census data,
17 as the 2004 RTP used by the EIR took into account the 2000 Census. (AR 5250.)

18 Second, Petitioners incorrectly focus solely on the population count in the 2010 Census.
19 However, the other growth metric that the 2010 Census provided, housing units, showed a 2.6%
20 increase in housing units from the 2005 baseline (103,187 units in 2010 versus 100,600 units in
21 2005). (AR 5341, 6170.) Because most of the EIR's significance thresholds were based on the
22 number of housing units (see *infra* Section III.E of this brief for a more complete discussion), the
23 increase in housing units in the 2010 Census results in the 2005 baseline being the more
24 conservative estimate. Indeed, claims by Petitioners that the housing unit increase was irrelevant
25 are contrary to their claims that the HCPU's increased density in the absence of the City's
26 projected growth would lead to more housing units and would be environmentally impactful (see,
27 e.g., Fix the City Brief 4:19-24, La Mirada 23-24, SaveHollywood 13:13:1-3.)

28 Third, City staff concluded, in its expert opinion, that the population estimate decrease

1 from 2005 to 2010 may very well have been temporary due to the economic and housing
2 downturn but would likely recover based on the economic cycle timeframe and other growth
3 factors. (AR 5250, 6170-6171.) Courts have upheld an agency's decision not to change the
4 baseline when, as here, "turmoil in the economy" coupled with other indicia of growth make the
5 baseline a "moving target" and thus retention of the current baseline reasonable. (See *Citizens for*
6 *Open Gov't*, 205 Cal.App.4th at pp. 318-319.)

7 Fourth, the City concluded there were other indicia of growth in the 2010 Census from the
8 2005 baseline, in addition to the key housing unit metric discussed above, including: 1) net
9 population gains in the City of Los Angeles; 2) population growth in three Census tracts where
10 the HCPU proposed to increase capacity; 3) increase in the number of persons between the ages
11 of 45 and 64; and 4) increase in the K-12 student population. (AR 5248, 5345, 6169.) Given
12 these factors, there was substantial evidence for the City to retain the 2005 baseline.

13 Petitioners' contrary arguments, besides being insufficient to overturn the City's baseline
14 decision under the substantial evidence standard, are also misplaced. La Mirada claims the City's
15 CEQA Thresholds Guide requires the Census to be used for baseline purposes. (See La Mirada
16 Brief 9:5-16.) However, the EIR did not directly use the City's CEQA Thresholds Guide, as it is
17 designed for project-specific development. Instead, it used its own thresholds of significance
18 more suitable for programmatic EIRs as allowed by CEQA, and based the significance analysis
19 on SCAG estimates, which uses Census data. (See *North Coast Rivers Alliance v. Marin*
20 *Municipal Water Dist.* (2013) 216 Cal.App.4th 614, 624-625; AR 3100-3102, 5250, 22080.)

21 Similarly, Fix the City incorrectly claims that the EIR's baseline did not sufficiently take
22 into account the effect of vacancy rates. (Fix the City Brief 7 fn. 2.) Rather, the Final EIR
23 explained that vacant units would not be enough to meet the expected growth over the life of the
24 HCPU and SCAG estimates already took such vacancy factors into consideration through
25 analysis of migration rates and trends in occupied housing. (AR 5248, 5250.)

26 Finally, none of the cases cited by Petitioners to support their baseline arguments apply
27 here where substantial evidence supported the City's use of the default NOP baseline. (See *Fat*,
28 97 Cal.App.4th 1270 (agency's use of NOP baseline, like the City did here, upheld even though it

1 incorporated illegal activities); *Citizens for East Shore Parks v. State Lands Comm.* (2011)-202
2 Cal.App.4th 549 and *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190
3 Cal.App.4th 316 (agency's use of higher baseline that decreased project impacts was found to be
4 proper, contrary to what Petitioners allege here); *Madera Oversight Coalition, Inc. v. County of*
5 *Madera* (2011) 199 Cal.App.4th 48 and *Sunnyvale West Neighborhood Ass'n v. City of Sunnyvale*
6 (2010) 190 Cal.App.4th 1351 (agency's use of future baseline, rather than the CEQA Guidelines
7 section 15125(a) baseline the City used here, held to be violative of CEQA); *Mira Monte*
8 *Homeowners Ass'n v. County of Ventura* (1985) 165 Cal.App.3d 357 (court never mentions
9 baseline but instead finds additional analysis needed when a new wetlands area was discovered).
10 More importantly, Petitioners' citation of *Save Our Peninsula Comm. v. Monterey Co. Bd. of*
11 *Supervisors* (2001) 87 Cal.App.4th 99, 127-128 (see Fix the City Brief 11:19, La Mirada Brief 8-
12 9) supports the City's position, as the court held the proper baseline was at the time of NOP, as
13 the City did here, rather than an alternative baseline chosen after a 3 ½-year review process.

14 2. The Framework Supports Use Of The 2005 Baseline

15 In formulating the 2005 baseline, the EIR primarily based its population estimates (as well
16 as its employment estimates) on SCAG data. (AR 3100, 3104.) The Framework, which guides
17 the update of General Plan elements, specifically provides that it is a "strategy for long-term
18 growth which sets a citywide context to guide the update of the community plan and citywide
19 elements." (AR 5252; RJN, Ex. B, p. 2.) Chapter 2 (Growth and Capacity) of the Framework
20 expressly provides that the Framework is "required to utilize the population forecasts provided by
21 SCAG." (RJN, Ex. B, p. 3.)

22 The Framework and its EIR were upheld after court challenges. (See *Federation*, 126
23 Cal.App.4th 1180.) Most recently, the implementation of the Framework was upheld in another
24 challenge brought by Fix the City, La Mirada, and others. (See *Saunders v. City of Los Angeles*,
25 Court of Appeal Case No. B232415, 2012 Cal.App.Unpub.LEXIS 6965, RJN, Ex. C.²)

26 The EIR complied with the Framework's policies by utilizing SCAG data in formulating
27

28 ² Rules of Court 8.1115(b)(1) permits citation of unpublished opinions where it is relevant for res
judicata or collateral estoppel (discussed in more detail *infra* Sections III.G.1 and III.H.3).

1 the 2005 baseline and the SCAG 2030 forecast for the HCPU. The EIR would be inconsistent
2 with the Framework if it used 2010 Census data instead of SCAG data, as Petitioners urge.
3 Indeed, Petitioners separately emphasize that the HCPU and the EIR must be consistent with the
4 Framework. The Court should thus uphold use of the 2005 baseline as reasonable.

5 **3. CEQA Supports Use Of The 2005 Baseline**

6 Consistent with CEQA, the EIR set its baseline at the time of the NOP in 2005. CEQA
7 Guidelines section 15125(a) provides that the EIR baseline is “normally...at the time the notice of
8 preparation is published.” This was recently affirmed by the California Supreme Court in
9 *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48
10 Cal.4th 310, 320-321, 328.

11 Significantly, CEQA Guidelines section 15125(e), which specifically governs the CEQA
12 review of changes (such as the HCPU) to an already adopted plan (such as the 1988 HCP)
13 provides that the CEQA analysis “shall examine the existing physical conditions at the time the
14 notice of preparation is published” without use of the word “normally.” As the plain language of
15 a provision controls over other interpretations (see *In re Hoddinott* (1996) 12 Cal.4th 992, 1002),
16 this fully supports use of the 2005 NOP baseline. Indeed, such a baseline limitation to the NOP
17 year for plan changes makes common sense, as existing conditions for community plans, with
18 long term planning horizons, would become more impacted as a whole over time
19 (notwithstanding Petitioners’ argument that one specific metric, population, may have fluctuated).
20 Therefore, the NOP year is the most conservative assumption and is reasonable.

21 **C. The EIR’s Alternatives Analysis Is Supported By Substantial Evidence**

22 All Petitioners claim that the EIR did not analyze a reasonable range of alternatives and
23 should have analyzed a reduced development alternative. (Fix the City Brief 15-19, La Mirada
24 Brief 15-20, SaveHollywood Brief 13-19.) However, CEQA only requires analysis of feasible
25 alternatives, and in some instances there are no alternatives because none are feasible. Because
26 the City properly relied on SCAG 2030 estimates for impacts and analyzed the feasible
27 alternatives that would accommodate those estimates, substantial evidence in the record supports
28 the City’s alternatives analysis.

1 CEQA Guidelines section-15126.6(a) provides that an EIR “shall describe a range of
2 reasonable alternatives to the project...which would feasibly attain most of the basic objectives of
3 the project...An EIR is not required to consider alternatives which are infeasible.” (Emphasis
4 added.) Thus, where there are no feasible alternatives, the result may be an EIR without an
5 analysis of any alternatives. (See *Mount Shasta Bioregional Ecology Center v. County of*
6 *Siskiyou* (2012) 210 Cal.App.4th 184, 198-199 (EIR indicating no alternatives were found to be
7 potentially feasible upheld); *Citizens for Open Gov’t*, 205 Cal.App.4th at p. 313 (EIR stating there
8 were no alternatives that would feasibly attain objectives and avoid or significantly reduce
9 impacts upheld).) Accordingly, Petitioners’ arguments that CEQA requires more alternatives to
10 be analyzed are misplaced. Indeed, the burden is on the petitioner to demonstrate that the
11 alternatives analysis was deficient, not on the agency to demonstrate a range of alternatives. (See
12 *California Native Plant Society v. City of Santa Cruz*, 177 Cal.App.4th at p. 987.)

13 Here, Petitioners allege that the City’s alternatives analysis was improper because it was
14 predicated on a false population baseline. (See, e.g., *La Mirada* Brief 18-19.) However, the
15 converse of that – that the EIR’s alternatives analysis was supported by substantial evidence in
16 the record because the EIR’s population baseline was also supported by substantial evidence – is
17 true. Indeed, as shown *supra* Section III.B, substantial evidence supports the EIR’s use of SCAG
18 2004 RTP data over the 2010 Census to set the 2005 baseline. That SCAG 2004 RTP data, in
19 addition to building permit data for housing estimates, shows a population, employment, and
20 housing forecast for 2030 of 244,602 persons, 119,013 jobs, and 113,729 housing units, which
21 would exceed the capacity of the then-existing 1988 HCP. (AR 3100, 3104.)

22 In fact, the City could not use Census data for the 2030 projection, because: 1) the
23 Framework requires use of SCAG estimates, as set forth *supra* in Section III.B.2, and 2) the
24 Census only produces one count every ten years (here, for 2010). (AR 5249-5250.) Petitioners’
25 assertion that the 2030 projection would change based on the 2010 Census numbers is not based
26 on any recognized demographic projection but rather on legal argument (*Fix the City* Brief 18:2-
27 5), “reasonable inference” (*La Mirada* Brief 19:10-12), and general studies and lay opinion
28 (*SaveHollywood* Brief 17-19). However, even assuming Petitioners’ lower 2030 population

1 projection were supportable, this would simply be a differing opinion insufficient to overturn the
2 EIR under the substantial evidence standard.

3 Having supported increased population, employment, and housing estimates for 2030, the
4 EIR analyzed, in addition to the required no-project alternative (per CEQA Guidelines section
5 §15126.6(e)), the “SCAG 2030 Forecast” Alternative. (AR 3308-3317.) Contrary to La Mirada’s
6 claim that the SCAG 2030 Forecast Alternative was identical to the project (La Mirada Brief 17-
7 18), the SCAG 2030 Forecast Alternative would require “fewer land use designation changes”
8 and “would not be subject to the same controls” as the proposed project, but would accommodate
9 the anticipated level of growth by 2030. (AR 1456, 3314.)

10 The HCPU alternatives would need to meet most EIR project objectives, including to
11 “[p]rovide a range of employment and housing opportunities,” “[m]ake streets walkable,”
12 “[e]ncourage sustainable land use in proximity to transit,” and “[e]xpand mobility options.” (AR
13 1454, 3047.)³ The SCAG 2030 Forecast Alternative would meet the goals of providing
14 employment and housing by accommodating the SCAG 2030 forecast and directing growth to the
15 targeted transit areas. (AR 1457, 3309-3312.) However, the City found that the SCAG 2030
16 Forecast Alternative would not fully meet the objectives because it did not have enough controls
17 to promote compatibility and maximize the necessary development around transit. (AR 1457.)

18 Besides the required no-project alternative, the Draft EIR did not analyze an alternative
19 that had less development than the SCAG 2030 Forecast Alternative, as it was the minimum
20 needed to accommodate the growth estimates to provide a range of housing opportunities, one of
21 the most basic objectives of the project. The proposed project represented the recommended level
22 for “flexibility to accommodate more population than the amount forecast by SCAG, in the event
23 that economic trends generate higher population growth than was anticipated.” (AR 3310.)

24 During the official comment period for the Draft EIR, the City received general comments
25 about how there was not a reasonable range of alternatives, but it did not receive any comments

26 ³ La Mirada claims the City changed the EIR project objectives in the final EIR (La Mirada Brief
27 24:2-6), but the objectives, as cited here in the Draft EIR and adopted findings, have remained the
28 same. The land use objectives for the proposed plan were stated similarly by in a little more
detail in the Draft EIR (AR 3022), but the Final EIR clarified that section but revising it to the
same goals and objectives as the project (AR 5339-40).

1 on an alternative with development reduced below levels of the 1988 HCP, as Petitioners urge
2 now. Indeed, the only alternative suggested by the comments was a development moratorium to
3 lessen historic resource impacts, which the City found infeasible. (AR 5297, 5300.)

4 It was only after the close of the comment period that anyone advocated for a reduced
5 development alternative. An agency may choose, but is not required, to respond to late comments
6 (see Pub. Resources Code § 21091(d)(2)(A)), but at minimum whether comments were raised
7 promptly bears on the “reasonableness” of the agency’s decision, as CEQA is not a tool for
8 “obstruction and delay”. (*Citizens of Goleta Valley*, 52 Cal.3d at p. 568.) Because an agency
9 does not have a “legal duty” to respond to late comments, “the inadequacy of the [agency’s]
10 responses to the late comments is not sufficient to render approval of the CEQA project
11 ineffective or contrary to law.” (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1111.)

12 The City responded to these late comments in the Second Addition and explained that a
13 reduced development alternative would be infeasible because, among other things, it would not
14 accommodate the future population, employment, and housing growth forecasted by SCAG, and
15 would not direct additional growth, if it occurs, into transit centers. (AR 6157-6158.) The City
16 gave special email notice of the Second Addition, in addition to Brown Act notice of the HCPU,
17 to interested parties, including Petitioners (AR 21202-21204). Also, numerous parties, including
18 Petitioners, submitted written comments to the Second Addition (see AR 21212-21514) and
19 presented testimony at the City Council hearing (see AR 12215-12297).

20 In any case, Fix the City and SaveHollywood argue there is no evidence that directing
21 growth to transit areas by upzoning would actually work, and therefore other alternatives should
22 have been analyzed. (Fix the City Brief 17-18, SaveHollywood Brief 17-19.) However, the EIR
23 noted that such upzoning is consistent with the goals of the Framework, SCAG, and SB 375 to
24 accommodate growth near transit areas (AR 3044-3045, 5251), and the 2010 Census showed
25 population and housing growth near transit centers that were upzoned. (AR 6156.) Indeed, as
26 stated previously, if increasing density to direct growth did not work, then Petitioners’ main
27 allegations that the HCPU creates significant impacts by increasing density would be incorrect.

28 Finally, Petitioners generally cite to cases describing the rule of reason in assessing

1 whether the range of alternatives analysis is adequate, but these have no specific application to
2 the claims in this case. (See Fix the City Brief 15-16; La Mirada Brief 15-16, SaveHollywood
3 Brief 14-16.) Also, none of the other alternatives cases cited by Petitioners pertain to the issues at
4 bar. (See *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603 (unlike
5 late comments submitted here after comment period, concerning comment about alternatives
6 submitted during Draft EIR comment period); *Uphold Our Heritage v. Town of Woodside* (2007)
7 147 Cal.App.4th 587 (concerning economic or legal infeasibility of alternatives, which are not at
8 issue); *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336 and *Laurel*
9 *Heights Improvement Ass'n. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376 (concerning lack
10 of analysis of alternatives selected in EIR; here, Petitioners are challenging the absence of certain
11 alternatives in the EIR); *Vedanta Society of So. Calif. v. Calif. Quartet, Ltd.* (2000) 84
12 Cal.App.4th 517 (addresses the impact of tie vote by the elected decisionmaking body in
13 certifying an EIR, and not alternatives); *Californians for Alternatives to Toxics v. Dept. of Food*
14 *and Agriculture* (2005) 136 Cal.App.4th 1 (addresses inadequacy of impact analysis, and holdings
15 on alternatives do not appear to be published).)

16 **D. Fix the City And SaveHollywood Did Not Exhaust Claims That The 2005**
17 **Baseline Calculation Lacked Support, And Such Claims Are Misplaced**

18 Fix the City and SaveHollywood raise for the first time the claim that the 2005 baseline
19 calculation lacked evidentiary support by failing to include the SCAG 2004 RTP. (Fix the City
20 Brief 6-10, SaveHollywood Brief 8-9.) However, they do not show where this was specifically
21 raised before the City. This claim fails for failure to exhaust. (See Pub. Resources Code §
22 21177(a); *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 536 (Petitioners bear
23 burden to show exhaustion); *California Native Plant Society v. City of Rancho Cordova* (2009)
24 172 Cal.App.4th 603, 615-619, 629-631 (“exact issue” must be raised to fairly apprise agency for
25 purposes of exhaustion).) SaveHollywood points to a generalized comment which asked for the
26 “underlying predicates” of the 2005 numbers (AR 3387), and the Final EIR responded with the
27 exact basis for those numbers (AR 5247-5248, 5271), including where it was originally found in
28 the Draft EIR (AR 3100, 3104). That generalized comment never mentioned SCAG or the RTP,

1 and was never raised again after the City's response. This does not satisfy exhaustion.

2 Equally important, the City fully disclosed the methodology in formulating the 2005
3 numbers based on SCAG data. (AR 3099-3100.) CEQA only requires citation to sources the EIR
4 is dependent on, not their inclusion. (See CEQA Guidelines § 15148). Regardless, the SCAG
5 2004 RTP, as Petitioners note, only breaks down data by city and would not reveal numbers for
6 the HCPU area. (See Fix the City Brief 8 fn. 3; La Mirada Brief 6 fn. 5.) Thus, inclusion of the
7 SCAG 2004 RTP in the record would not advance a greater understanding of environmental
8 effects. Rather, as disclosed by the EIR, the population numbers used had to be "derived" from
9 data supplied by the SCAG 2004 RTP and calculated by the City's Demographics Unit and
10 Community Plan Update staff. (AR 3099-3100.) This complies with CEQA.⁴

11 None of the cases Fix the City cites pertain to an EIR's lack of inclusion of data sources as
12 alleged here. (See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260 (data
13 discrepancy was in EIR itself, not in opponent's allegations); *Center for Biological Diversity v.*
14 *County of San Bernardino* (2010) 185 Cal.App.4th 866 (no data cited by the agency, but here data
15 source is cited); *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219
16 (no explanation at all for analysis, but here supported explanation is being disputed).) Again, Fix
17 the City cites to *Save Our Peninsula*, 87 Cal.App.4th 99, but again, that case assists the City, as
18 the Court held the NOP baseline, like the City used here, was proper.

19 Finally, the claim regarding evidentiary support for the 2005 baseline does not appear in
20 any of the petitions, and therefore it is waived. (See *infra* Section III.I.)

21 **E. Fix the City And La Mirada Did Not Exhaust Claims About The Second**
22 **Addition's 2010 Baseline Response, And Such Claims Are Misplaced**

23 Fix the City and La Mirada claim for the first time that the Second Addition's response
24 regarding use of the 2010 Census numbers as the EIR baseline was not proper. (Fix the City
25 Brief 12-14, La Mirada Brief 10-13.) However, they do not cite where in the record this was
26 raised, despite having special notice of the Second Addition and comments having been

27 ⁴ Fix the City also notes the EIR lacked building permit data (Fix the City Brief 7 fn. 1), but this
28 was not exhausted and the EIR's disclosure and use of building permit comply with CEQA for
the same reasons as the use of the SCAG estimates.

1 submitted on other issues covered by the Second Addition. (See AR 21202-21204.) These
2 claims are waived for failure to exhaust. (See *supra* Section III.D for authority on exhaustion.)

3 In any event, the Second Addition “does not replace the 2005 analysis” (AR 6172) and
4 was simply an additional response to late comments that does not require recirculation. As stated
5 previously, responses to late comments are optional under CEQA, and in the ordinary course they
6 do not need to be exhaustive but simply reflect good faith, reasoned analysis. (See *Gilroy*
7 *Citizens for Resp. Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 937.) Fix the City and
8 La Mirada do not contend that the Second Addition is inadequate as a response to late comments.

9 Regardless, Fix the City and La Mirada claim that the Second Addition improperly
10 measures impacts by using the increase in housing units, rather than population, from the 2010
11 baseline. However, this is in error. First, an agency has broad discretion to formulate EIR-
12 specific thresholds. (See *North Coast*, 216 Cal.App.4th at pp. 624-625.) Second, the Second
13 Addition used the same thresholds as the Draft EIR. Except for transportation impacts, these
14 were based on: 1) housing unit factors, and/or 2) a significance determination comparing the
15 maximum expected buildout of the proposed project to a standard, rather than comparing the
16 change the maximum expected buildout would have from the baseline to a standard. This makes
17 sense because: 1) as described previously, housing units typically represent the maximum
18 potential impact; and 2) comparing total impacts is more appropriate for plan-level documents
19 like the HCPU that cover all projects in an area, while comparing the increase of impacts is more
20 appropriate for project-specific development in order to exclude the impacts of other projects.

21 Indeed, the Second Addition summarizes the same detailed thresholds set forth in the
22 Draft EIR, which Petitioners do not challenge. (Cf. Second Addition, AR 6172-6174, with Draft
23 EIR, AR 3055-3058 (land use – acreage per category), 3100-3102 (population and housing –
24 exceedance of SCAG 2030 projection), 3110-3113 (fire – fire flow per building type and distance
25 to fire facilities and deterioration in traffic⁵), 3115-3119 (police – Patrol Plan and deterioration in
26 traffic), 3121-3125 (libraries – square feet of library space and volumes of library material per
27

28 ⁵ The deterioration of traffic threshold for fire and police services, as contrasted with
transportation impacts in general, is discussed *infra* Section III.G.1.

1 person compared to a standard), 3127-3129 (parks – General Plan acreage requirements), 3146-
2 3151 (water – use per building type), 3154-3161 (energy – same), 3164-3169 (wastewater –use
3 per building type compared to City population), 3172-3177 (solid waste – use per building type),
4 3224 (air – emissions per building type), 3246-3247 (noise – noise per building type and traffic),
5 3262-3263 (geology – changes in land use), 3291-3295 (cultural – location of resource), and 3306
6 (risk of upset – location of land use changes.)

7 Transportation impacts are measured via a traffic model using the difference of maximum
8 expected buildout from the existing baseline traffic conditions (not necessarily related to
9 population). (AR 3200.) However, under the model impacts would only be negligibly different
10 using the 2005 EIR or 2010 Census baseline because as traffic improves in Hollywood due to less
11 traffic and/or mitigation, more regional traffic is attracted to the area form surrounding
12 communities to replace any added capacity. (AR 6173.)

13 Accordingly, the EIR analyzes and mitigates slightly more than the impacts of the SCAG
14 2030 projected growth of 244,602 persons and 113,729 housing units, and the significance
15 conclusions would be the same regardless of whether the baseline was 224,426 people (per the
16 SCAG 2004 RTP) or 198,228 people (per the 2010 Census). Consequently, Fix the City and La
17 Mirada’s citation of an engineer’s wastewater conclusions (Fix the City Brief 13:20-24, La
18 Mirada Brief 11-12) is not applicable, as the engineer used an alternative wastewater threshold
19 not used by the EIR where significance was measured by population increase from baseline.

20 Finally, the challenge to the 2010 baseline response in the Second Addition does not
21 appear in any of the petitions, and therefore it is waived. (See *infra* Section III.I.)

22 **F. Claims By Fix The City And La Mirada About Recirculation Are Duplicative**

23 Fix the City and La Mirada claim that new information about the baseline, alternatives,
24 and the 2010 Census triggered recirculation of the EIR. (Fix the City Brief 26-27, La Mirada
25 Brief 13-14, 20-22.) These claims are duplicative of the other claims above; if the Court upholds
26 the City’s actions above, then recirculation would not be triggered.

27 In any event, Fix the City and La Mirada’s reliance on *Mountain Lion Coalition v. Fish &*
28 *Game Comm.* (1989) 214 Cal.App.3d 1043 is misplaced, because in *Mountain Lion* the agency

1 prepared an EIR in response to deficiencies identified in a writ-but still did not analyze those
2 deficiencies in the Draft EIR. Here, the new information regarding the 2010 Census came after
3 release of the Draft EIR, and the City prepared responses in the FEIR and Second Addition to
4 respond to comments. This is a different factual scenario from *Mountain Lion*.

5 **G. Contrary To Fix the City's Claims, The EIR's Mitigation Is Supported By**
6 **Substantial Evidence**

7 Only Fix the City challenges the EIR's mitigation measures, specifically for police and
8 fire services and transportation. (Fix the City Brief 19-25.) However, the EIR's mitigation
9 measures are fully supported as a matter of law and by substantial evidence in the record.

10 **1. The EIR's Police And Fire Services Mitigation Complies With CEQA**

11 The EIR threshold of significance for both police and fire services, which has not been
12 challenged herein, is that a significant impact would occur if the project would 1) "require the
13 unplanned upgrading or improvements of existing fire protection equipment or infrastructure" or
14 "induce substantial growth or concentration of population beyond the capacities of existing police
15 personnel and facilities"; or 2) "cause deterioration in the operating traffic conditions that would
16 adversely affect...response times." (AR 3113, 3119 (emphasis added).) The City's expert
17 analysis was that the proposed plan would increase development that would: 1) require
18 improvements in fire protection equipment/infrastructure and police personnel and facilities, and
19 2) deteriorate traffic over the life of the HCPU as project level development occurs. (AR 3114-
20 3115.) However, the specified mitigation measures would reduce those impacts to less than
21 significant. (AR 3120-3121.) This analysis is supported by CEQA and substantial evidence.

22 First, Fix the City focuses solely on the alleged CEQA impacts related to response times
23 and police personnel, but these health and safety standards, by themselves, do not equate to
24 CEQA environmental impacts. In *Goleta Union School v. Regents of University of California*
25 (1995) 37 Cal.App.4th 1025, 1032, the court, citing to Appendix G of the CEQA Guidelines,
26 determined that the mere increase in school enrollment resulting from a project was a
27 socioeconomic impact, but not an environmental impact unless it created a need for the
28 construction of additional classrooms. Similarly, Appendix G, Section XIV, which discusses

1 “fire protection” and “police protection” in the same section as the school enrollment impacts
2 ruled on by the *Goleta* court, addresses whether the project would “result in substantial adverse
3 physical impacts associated with the provision of new or physically altered governmental
4 facilities, [the] need for new or physically altered governmental facilities, the construction of
5 which could cause significant environmental impacts, in order to maintain acceptable service
6 ratios, response times or other performance objectives[.]” (emphasis added.)

7 Here, the EIR set forth fire and police service thresholds relating to “fire protection
8 equipment and infrastructure” and police “facilities,” consistent with Appendix G, and the City
9 proceeded to analyze and mitigate impacts under those standards. The EIR’s thresholds also
10 includes police “personnel,” but by using the conjunctive “and” with police “facilities,” the EIR
11 makes clear that impacts from police facilities is a necessary component. Fix the City does not
12 contend that the HCPU will cause an unmitigated significant impact caused by the construction of
13 new or altered fire and police facilities, as required by CEQA and as set forth by the EIR. These
14 issues are waived.

15 Second, Fix the City’s challenge to whether there was a “deterioration in the operating
16 traffic conditions” so as to affect response times is mistaken in that it equates the same thresholds
17 standards for fire and police services as with transportation impacts. However, the threshold for
18 fire and police services is whether the project would cause a “deterioration,” i.e., any worsening
19 of the traffic conditions on local roadways, while the threshold for transportation, as discussed
20 *infra* in Section III.G.2, is tied to volume-to-capacity averages for roadway segments and
21 percentage of specific links operating at unsatisfactory levels using a specific traffic model. (AR
22 3119, 3200.) An exceedance in one threshold may not equate to an exceedance in the other.

23 Here, the EIR found that the TIMP would “improve traffic conditions” for the HCPU and
24 therefore response times would improve. (AR 3114-3115, 3121.) Fix the City does not dispute
25 that the TIMP would mitigate impacts, but alleges that its funding is too contingent to be
26 effective. Fix the City, however, reads the TIMP incorrectly. The TIMP provides that portions of
27 it, specifically the transportation system management strategies like signal improvements and
28 upgrades and certain transportation demand management programs like ridesharing, will be

1 implemented as projects occur. (AR 2854-2855, 2865-2866.) The TIMP's Mobility Policies are
2 also adopted as part of the HCPU to be implemented by project-specific development consistent
3 with these policies. (AR 3200.) Therefore, as the TIMP is implemented as project-specific
4 development occur in the HCPU, traffic conditions would comparatively improve, and the TIMP
5 is sufficient mitigation for fire and police service impacts. (AR 3114-3115, 3121.)

6 Third, to the extent that CEQA recognizes impacts to response times and police personnel
7 (which, as stated above, it does not), the EIR's mitigation still constitutes sufficient plan-level
8 mitigation and sets forth sufficient performance standards. Under CEQA, mitigation measures in
9 a plan-level document like the HCPU need only be consistent with the general nature of the plan,
10 and more specific mitigation measures can be formulated later during subsequent project level
11 approvals so long as the agency commits to specific performance criteria. (See *Rio Vista Farm*
12 *Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376-377.) In addition, the agency
13 need not commit to precisely how the mitigation will be achieved, so long as it commits to
14 mitigating the significant impacts of the project per the performance criteria. (See *North Coast*,
15 216 Cal.App.4th at pp. 629-630, citing *California Native Plant Society v. City of Rancho Cordova*
16 172 Cal.App.4th 603.) The court in *North Coast* specifically distinguished its situation from
17 *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777. The
18 *Endangered Habitats League* case, in turn, serves as the underlying authority for both cases Fix
19 the City cites, *San Joaquin Raptor Center v. County of Merced* (2007) 149 Cal.App.4th 645 and
20 *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70. (Fix the
21 City Brief 23:14-18.) Both cases involve the inapposite situation of improper deferral of
22 mitigation through management plans without performance standards.

23 Here, the mitigation measures Fix the City alleges as deficient, Mitigation #1 and #2 of
24 fire services (AR 3115) and Mitigation #1-#3 of police services (AR 3121), follow *Rio Vista* and
25 *North Coast*. Specifically, they are general measures that commit to mitigating the significant
26 impacts under a specific performance standard. Like the mitigation upheld in *North Coast* that
27 would "reduce the visual contrast," 216 Cal.App.4th at pp. 629-630, the mitigation measures here
28 commit the City to: 1) identify areas to be "upgraded to established fire protection standards" and

1 “require...adequate fire service capacity” per the standards in the City’s Municipal Code and Fire
2 Protection and Prevention Plan (AR 3110, 3115); and 2) “hire and deploy additional police
3 officers and civilian personnel...pursuant to LAPD hiring and deployment procedures” and
4 “[e]xpand and/or upgrade existing police protection and/or facilities” per the established
5 standards (AR 3121).

6 Also, Mitigation #3 related to police services provides another source of potential funding
7 (“Pursue...funding sources to expand the number of sworn police officers”) (*ibid.*), but
8 Mitigation #1 already sets forth the commitment and standard for sufficient mitigation. As such,
9 Fix the City’s reliance on what it concedes is an inapplicable non-CEQA case in challenging
10 Mitigation Measure #3 (Fix the City Brief 24:1-10) is misplaced. In sum, these mitigation
11 measures, even if tied into the non-CEQA impacts of response times and personnel, are sufficient.

12 Fourth, Fix the City’s claims of insufficient mitigation for police and fire protection
13 services are also barred by res judicata and collateral estoppel through the decisions in *Federation*
14 and *Saunders*. Res judicata, or claim preclusion, bars the relitigation of a cause of action that was
15 or could have been adjudicated in another proceeding between the same parties or parties in
16 privity with them. (See *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011)
17 197 Cal.App.4th 282, 297; *Federation*, 126 Cal.App.4th at p. 1202.) Two proceedings are on the
18 same cause of action if they involve the same primary right, and in a CEQA action the right to
19 ensure compliance with CEQA is a primary right. (See *Silverado*, 197 Cal.App.4th at p. 297-298,
20 citing *Federation*, 126 Cal.App.4th at p. 1203 (res judicata applied where “same project, the same
21 EIR, and substantially the same findings” involved).) Similarly, collateral estoppel, or claim
22 preclusion, bars relitigation of an issue that was litigated in a prior proceeding between the same
23 parties or parties in privity. (See *Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d
24 1292, 1301.) Privity of the parties is shown through the relationship between Fix the City and the
25 appellants in *Federation* and *Saunders* (Fix the City was an actual party in *Saunders* to the non-
26 CEQA claims), all of whom brought their actions on behalf of the public. (See RJN, Ex. D.; see
27 Fix the City First Amended Petition ¶¶ 6, 14, 49, 55, 74.)

28 In *Federation* and *Saunders*, the Courts of Appeal upheld the Framework and its EIR from

1 legal challenge, including allegations about the sufficiency of the mitigation. The Framework
2 planned for, analyzed, and mitigated a Hollywood population forecast of 257,035, which exceeds
3 the range analyzed for the HCPU. (AR 1414, 5253.) The Framework EIR included almost
4 identical mitigation measures and significance conclusions for police services as for the HCPU
5 EIR, and found fire service impacts to be insignificant. (See RJN, Ex. E, pp. 2-3.) To the extent
6 Fix the City seeks to re-litigate these claims and issues, they are barred.

7 Finally, Fix the City's claim that transboundary demand on police and fire services creates
8 a significant cumulative impact is in error. A petitioner's mere recitation of alleged cumulative
9 impacts does not give rise to a fair argument in the negative declaration context – much less a
10 lack of substantial evidence standard that is required here in an EIR. (See *Sierra Club v. West*
11 *Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 702 (“Merely listing, as the [petitioner] does,
12 other projects occurring in the area that may cause significant cumulative impacts is not evidence
13 that the assignments will have impacts or that their impacts are cumulatively considerable”); see
14 also *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358.) Here,
15 Fix the City points to a late assertion that a fire service unit was deployed from another area for a
16 few nights (Fix the City Brief 21:17-18), without analysis of why this would result in significant
17 cumulative impacts. Moreover, to the extent any more Citywide analysis was needed, the
18 Framework and its EIR supplies this analysis consistent with CEQA (see CEQA Guidelines
19 section 15130(e)), and any further challenge to the Framework is barred by res judicata and
20 collateral estoppel.

21 2. The EIR's Transportation Mitigation Complies With CEQA

22 Fix the City claims that reliance on the TIMP as mitigation was improper because of
23 uncertainties in funding. However, the EIR properly mitigates transportation impacts to the
24 extent feasible, but concludes that, with or without the TIMP and despite being consistent with
25 transit oriented development per SB 375, impacts would still be significant because the latent
26 demand for cut-through traffic not related to the HCPU would fill up any added capacity in
27 Hollywood. (AR 1445-1446, 3208-3209.)

28 The same type of EIR analysis of transportation impacts and use of a TIMP was expressly

1 upheld in *Federation*. The *Federation*-court upheld the Framework EIR, which analyzed the
2 Framework project with and without a TIMP; imposed the TIMP to mitigate transportation
3 impacts; but found that transportation impacts would nonetheless be significant. (See 126
4 Cal.App.4th at p. 1191-1192, 1200.) Similarly, here, the HCPU EIR analyzed the project with
5 and without a TIMP (AR 2804-2805, 2839-2843, 2878-2883, 3200-3209); incorporated the TIMP
6 into HCPU mobility policies and imposed them as mitigation (AR 3200, 3209); and found that
7 the transportation impacts would still be significant (AR 1444-1445, 3209). The HCPU EIR is
8 therefore consistent with *Federation*.

9 Apart from compliance with *Federation*, the transportation mitigation measures are also
10 consistent with the general plan-level measures committed to by the agency that were upheld in
11 *Rio Vista* and *North Coast*. The TIMP mitigation measures were expressly incorporated into the
12 HCPU as policies in the Chapter 4 Mobility Plan. (See AR 1265-1277, 3200.) These policies,
13 with which any future project-specific development must be consistent, direct the City to, among
14 other things, conduct the nexus study for impact fees (Policy M.1.1 and Program M.1.1.1),
15 implement transportation system management strategies (Policy M.1.2), implement transit
16 improvements to increase ridership (Policy M.1.18), implement transportation demand
17 management strategies (Policy M.1.55), support and implement various capital improvements
18 (M.1.72 through M.1.85), and implement neighborhood traffic management plans (M.1.86). (See
19 *ibid.*) These are general strategies that commit the City to specified criteria for any future project
20 in the plan area. In addition, pursuant to Public Resources Code section 21081.6(b), because the
21 TIMP strategies were incorporated into the community plan, they are fully enforceable. The
22 transportation mitigation measures, therefore, comply with CEQA.

23 **H. The HCPU Does Not Render The General Plan Internally Inconsistent**

24 A general plan must be internally consistent and correlative. Here, La Mirada and Fix the
25 City have not met their “burden of proof to demonstrate that the amendment to the general plan
26 rendered the plan internally inconsistent.” (*South Orange County Wastewater Auth. v. Dana*
27 *Point* (2011) 196 Cal.App.4th 1604, 1619.)
28

1 **1. La Mirada Cannot Demonstrate That Adoption Of The HCPU**
2 **Renders The General Plan Internally Inconsistent**

3 La Mirada argues the Framework Element of the General Plan is “population growth
4 neutral” and that adoption of the HCPU rendered the General Plan internally inconsistent because
5 the HCPU “provided for substantial excess capacity [that] would be growth inducing” (La
6 Mirada Brief 23:10-11.) This argument fails for several reasons. First, the City’s finding that the
7 HCPU is not growth inducing was supported by substantial evidence in the record, namely the
8 SCAG forecasts. Second, the Framework Element does not say that the General Plan’s policy is
9 one of anti-growth. The Framework Element merely says that the Framework Element *itself* is
10 not intended “to cause any specific level of population growth to occur.” (RJN, Ex. B, p. 3.)
11 Thus, even assuming *arguendo* that the HCPU were growth inducing, the HCPU would not
12 render the General Plan internally inconsistent. Third, while the Framework Element is not
13 intended to “cause any specific level of population growth to occur,” it includes a policy to
14 “[i]ncrease the density generally within one quarter mile of transit stations” (Framework
15 Policy 3.15.3, AR 1420.) Thus, adoption of the HCPU reinforces the cohesiveness of the General
16 Plan by “concentrate[ing] future growth, should it occur as forecast, around commercial centers
17 and corridors supported by transit infrastructure while limiting development in surrounding low-
18 density neighborhoods.” (AR 1415.) Fourth, La Mirada’s inconsistency argument is nothing
19 more than a repeat of its argument that the City should have relied upon the 2010 Census instead
20 of data from SCAG’s 2004 RTP. Yet here the Framework Element specifically states that it is
21 essential to use SCAG’s data in order to comply with State and Federal Regulations that require
22 local plans “be consistent with the Regional Air Quality Plan and the Regional Mobility Plan.”
23 (Framework Element p. 2-1, RJN, Ex. B, p. 3.)

24 Finally, courts have specifically held that a city has “broad discretion to balance the many
25 competing policies expressed in the General Plan” (*Friends of Lagoon Valley v. City of*
26 *Vacaville* (2007) 154 Cal.App.4th 807, 822.) Balance “does not require equivalence, but rather a
27 weighing of pros and cons to achieve an acceptable mix.” (*Ibid.* (quotations and citations
28

1 omitted.) Here, the City Council adopted 16 pages of findings demonstrating that the HCPU will
2 “achieve an acceptable mix” of the General Plan’s goals and policies by targeting growth around
3 transportation infrastructure (AR 1413-1417), preserving the hillside areas (AR 1418),
4 encouraging local-serving, pedestrian-oriented commercial districts (AR 1419), preserving
5 existing industry, particularly in entertainment-related fields (AR 1420), improving the
6 walkability (AR 1421), maintaining historic resources (AR 1421), maintaining appropriate
7 transitions between single-family neighborhoods and adjacent multi-family and commercial areas
8 (AR 1424), minimizing increases in vehicle trip generation (AR 1426), improving air quality (AR
9 1426), and providing open space and recreational facilities (AR 1427). The City complied with
10 the law. (See, e.g., *Friends of Lagoon Valley*, 154 Cal.App.4th at p. 816 (“A reviewing court’s
11 role is simply to decide whether the city officials considered the applicable policies and the extent
12 to which the proposed project conforms with those policies.”) (internal citations omitted).)

13 **2. Fix the City’s Challenges To The City’s Consistency Findings Fail**

14 Fix the City argues that the Court should set aside the HCPU for failing to find the HCPU
15 to be consistent with Framework Element Objective 3.3, which is to “Accommodate projected
16 population and employment growth within the City and each community plan area and plan for
17 the provision of adequate supporting transportation and utility infrastructure and public services.”
18 Fix the City concedes that the City found the HCPU to be consistent with Objective 3.3, but
19 argues that the focus of the City’s discussion was on transportation and did not include an
20 analysis of utilities and other public services. (Fix the City Brief 28:23-29:5.)

21 Fix the City’s argument fails because the City was not required to make a specific finding
22 that the HCPU is consistent with Objective 3.3. The HCPU is an amendment of the pre-existing
23 Hollywood Community Plan, which itself is a part of the General Plan. The “adoption or
24 amendment of a general plan is a legislative act,” and pursuant to state law, “a city need not make
25 explicit findings to support its action.” (*South Orange County Wastewater Auth.*, 196
26 Cal.App.4th at p. 1619.) General Plan amendments are governed by Section 555 of the City’s
27 Charter, which does not require any specific findings. (RJN, Ex. F.)

28 Here, the City did make consistency findings pursuant to Charter Section 556 , but it was

1 only legally required to make such findings for the zone change ordinances the City adopted, not
2 the General Plan Amendments.⁶ (RJN, Ex. G.) Moreover, even where Section 556 applies, it
3 only requires findings “showing that the action is in substantial conformance with the purposes,
4 intent and provisions of the General Plan;” it does not require a separate specific finding of
5 consistency for each of the thousands of policies and objectives contained in the General Plan.
6 (*Ibid.*) The City’s 16 pages of General Plan consistency findings would easily satisfy any
7 requirement Section 556 would impose, if it applied to the HCPU. (AR 1413-1428.)

8 At any rate, the City did make findings concerning the HCPU’s impact on utilities and
9 other City services as part of its discussion of the HCPU’s potential environmental impacts. (See
10 AR 1431-1454.) It makes no difference that the findings are located under an environmental
11 impacts heading instead of under a Section 556 heading. (See, *e.g., Federation*, 126 Cal.App.4th
12 at p. 1195 (substantial compliance governs challenges to general plans, and substantial
13 compliance means actual compliance “in respect to the substance essential to every reasonable
14 objective of the statute, as distinguished from mere technical imperfections of form”).)

15 Fix the City also argues that Charter Section 558 “requires a finding that any plan adopted
16 by the City will not have an adverse effect on the General Plan or any other plans,” and that the
17 City did not satisfy this requirement. (Fix the City Brief 30:6-8.) Again, Charter Section 555
18 governs the amendment of the General Plan, not Section 558. Yet even assuming *arguendo* that
19 Section 558 applied to the HCPU, it would only mandate a finding “regarding the relation of the
20 proposed ordinance, order or resolution to the General Plan” (RJN, Ex. H.) As noted above,
21 the City Council adopted 16 single-spaced pages of findings on the relation of the HCPU to other
22 parts of the General Plan. (AR 1413-1428.)

23 3. Fix the City’s Monitoring Argument Is Barred By Collateral Estoppel

24 Fix the City also argues that the City has “ignore[d] the [Framework Element] policies
25 designed to ensure a continual monitoring of population growth and the ability of infrastructure to
26 support the pace of growth.” (Fix the City Brief at 29:6-18.) This is the same argument that the

27 ⁶ The City adopted one set of findings for both the HCPU and the accompanying zone change
28 ordinances. (AR 1413.) Charter Section 556 clearly states that it only applies to “zoning or other
land use regulations.”

1 Court of Appeal rejected in the *Saunders* case discussed above. The Court of Appeal found that
2 the Framework Element’s monitoring “requirement” was discretionary, not mandatory, and, at
3 any rate, the City was monitoring growth and infrastructure via electronic means. (RJN, Ex. C.)
4 Specifically, the Court of Appeal noted that Chapter 10 of the Framework Element makes clear
5 that not all of the Framework Element’s policies and programs can be achieved in any given
6 action, and that it is up to the decision makers to decide how best to implement the Framework
7 Element’s policies and programs. (See *id.* at p. 6.) The *Saunders* court also noted that the
8 Framework Element specifies that implementation of the monitoring program “is contingent on
9 funding and that initiation dates and the scope of work under a given program can be changed by
10 the Planning Department without first requesting amendments to the Framework Element.” (*Id.*
11 at p. 22.) Under collateral estoppel, Fix the City is bound by that ruling here.

12 Moreover, the City Council’s 54-pages of findings fully analyze how the growth the
13 HCPU will accommodate will impact City infrastructure, and how the HCPU’s policies minimize
14 such impacts. (See AR 1412-1466.) Fix the City may have a different view on how to plan for
15 growth and its impact on infrastructure, but California law is very clear that “the internal
16 consistency and correlation requirements do not require a city or county to limit population
17 growth or provide traffic management measures to ensure that its transportation infrastructure can
18 accommodate future population growth.” (*Federation*, 126 Cal.App.4th at p. 1196.) The City
19 “has broad discretion to weigh and balance competing interests in formulating development
20 policies, and a court cannot review the wisdom of those decisions under the guise of reviewing a
21 general plan’s internal consistency and correlation.” (*Ibid.*)

22 I. **All Claims Not Raised Or Argued In The Petition, Opening Brief, And**
23 **Statement Of Issues Are Waived**

24 All claims by Petitioners not specifically raised and argued in Petitioners’ Petition,
25 Opening Brief, and Statement of Issues are waived. Petitioners must have raised and argued
26 every claim in each of these three, or waiver applies. (See *Adams Point Preservation Society v.*
27 *City of Oakland* (1987) 192 Cal.App.3d 203, 207-208 (waiver based on issue not raised in
28 petition); *Berger v. Godden* (1985) 63 Cal.App.3d 1113, 1119 (waiver based on issue not

1 briefed); *El Morro Community Ass'n v. Cal. Dep't of Parks and Recreation* (2004) 122
2 Cal.App.4th 1341, 1351 (waiver based on issue not in the statement of issues); Local Rule
3 3.232(k) (statement of issues "must be consistent with, and may not expand on, the scope of the
4 pleadings".)

5 **IV. CONCLUSION**

6 For the foregoing reasons, the City respectfully request the Court deny all of Petitioners'
7 Petitions in their entirety.

8 Dated: July 22, 2013

Respectfully submitted,

9
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