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FILED / ENDORSED

JUL 28 2011

Christa Beebout
By Christa Beebout, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

**CAPAY VALLEY COALITION and
YOLO COUNTY FARM BUREAU,**

Petitioners,

v.

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION, RANDELL H.
IWASAKI, Director, and DOES 1
through 10,**

Respondents.

Case No. 34-2010-80000414-CU-WM-GDS

**RULING ON SUBMITTED MATTER:
ORDER GRANTING IN PART AND
DENYING IN PART PETITIONERS
CAPAY VALLEY COALITION AND
YOLO COUNTY FARM BUREAU'S
PETITION FOR WRIT OF MANDATE**

Petitioners Capay Valley Coalition and Yolo County Farm Bureau filed a Verified Petition for Writ of Mandate ("Petition") challenging Respondents' December 7, 2009 certification of the Final Environmental Impact Report for State Route 16 Safety Improvement Project ("FEIR").¹ Petitioners contend Respondents' approval of the Project is invalid and void because the FEIR fails to satisfy the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 *et seq.*, and the CEQA Guidelines, sections 15000 *et seq.* of Title 14 of the California Code of Regulations ("CCR").²

¹ The United States Department of Transportation, Federal Highway Administration, originally named as Real Party in Interest, was dismissed on May 3, 2010.

² "In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 n.5.)

1 On April 14, 2011, the Court issued a Tentative Ruling ordering the parties to appear on
2 April 15, 2011, to address certain issues related to the merits of the Petition. At the conclusion of
3 the hearing, during which all parties appeared, the Court ordered the parties to submit
4 supplemental briefs addressing the following issue: "How did the agency determine that the
5 impact on adjacent agricultural land was 'insignificant' in light of the uncertainty of the road base
6 elevation and the potential slope from the road base to the adjacent agricultural lands?" The Court
7 took the matter under submission on April 29, 2011, after receipt of the parties' briefs. The Court,
8 having heard oral argument, read and considered the written argument of all parties, and read and
9 considered the documents and pleadings in the above-entitled action, now rules on the Petition as
10 follows:

11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 As part of the State Route ("SR") 16 Safety Improvement Project (the "Project"),
13 Respondents and the Federal Highway Administration propose to widen shoulders and realign
14 curves on SR 16 in Yolo County from Brooks to Interstate 505. (SAR at 164.) The Project begins
15 just east of Brooks near the Cache Creek Casino Resort, passes through Capay, Esparto, and
16 Madison, and ends just west of I-505. Within the Project limits, SR 16 is a two-lane conventional
17 highway with 12-foot lanes and shoulders from 0- to 2-feet in width. (SAR at 164.) From Brooks
18 to Capay, SR 16 winds through rolling terrain, while the highway east of Capay to I-505 crosses
19 through low lying farmland that is subject to winter flooding. (SAR at 164.) Numerous
20 intersections with no access control also exist along SR 16. (SAR at 164.)

21 The stated purpose of the Project is to improve safety and provide a facility that can
22 remain open during a 100-year flood event. (SAR at 165.) As part of the Project, Respondents
23 seek to improve the safety of SR 16 by constructing 8-foot shoulders and removing fixed objects
24 within a 20-foot clear recovery zone ("CRZ"). The Project also will provide left-turn
25 channelization and intersection improvements at various public road connections, vertical and
26 horizontal alignment improvements, and improved flood protection between Esparto and I-505.
27 (SAR at 164.) The Project will not make any improvements in the Towns of Capay and Esparto.
28 Respondents divided the Project into six segments with approximate locations as follows:

1 **Segment 1:** From County Road ("CR") 78 to CR 78A, near the Casino.

2 **Segment 2:** From CR 78A to CR 80.

3 **Segment 3:** From CR 80 to CR 81, near Taber's Corner.

4 **Segment 4:** From CR 81 to Capay Canal Bridge (gap in the Project at Town of Capay).

5 **Segment 5:** From CR 85 to Parker Street (gap in Project at Town of Esparto).

6 **Segment 6:** From CR 86A to South Fork Willow Slough Bridge.³

7 (SAR at 164.)

8 A Draft EIR/EA for the Project was circulated for public review and comment from
9 December 8, 2005, to January 23, 2006. (SAR at 136, 142.) After receiving comments from the
10 public and reviewing agencies regarding the Project's alternatives and environmental impacts,
11 Respondents reexamined the Project. (SAR at 136, 142.) Respondents circulated a new Draft
12 EIR/EA that included a refined Project alternative and additional discussion of environmental
13 impacts for public comment between May 6, 2009, and June 8, 2009. (SAR at 136, 142.) A public
14 meeting was held on June 8, 2009, and approximately 150 participants attended the meeting.
15 (SAR at 142.) Ninety-seven comments were received during public circulation, some from the
16 public meeting, and others via mail. (SAR at 142.) The FEIR was certified on December 2, 2009.
17 (SAR at 2.) Respondents issued a Finding of No Significant Impact that same day. (SAR at 6-8.)
18 On December 7, 2009, Respondents filed a Notice of Determination under Public Resources Code
19 § 21152 with the State of California, Office of Planning and Research. (SAR at 1.)

20 Shortly thereafter, Petitioners filed their Petition challenging Respondents' certification of
21 the FEIR on numerous grounds. Petitioners contend Respondents committed a prejudicial abuse
22 of discretion and failed to proceed in a manner required by law by relying on an EIR that fails to
23 comply with CEQA. More specifically, Petitioners contend:

- 24 1. The Project Description is inadequate insofar as it: (a) is vague and unstable
25 due to Respondents' failure to define what constitutes "improved" safety; (b)
26 misstates the need for and fails to specifically identify the objectives of the
27 Project; and (c) fails to specifically identify how SR 16 will be raised to
28 withstand a 100-year flood event.

³ The proposed flood improvements are to be constructed within Segment 6. (SAR at 169-70.)

2. The impacts analysis is inadequate because it fails to: (a) identify the Project's inconsistencies with the Yolo County General Plan and Capay Valley General Plan; (b) adequately disclose, analyze, and/or mitigate the Project's impacts associated with raising and elevating SR 16 to withstand a 100-year flood event; (c) adequately disclose, analyze, and/or mitigate the Project's growth-inducing impacts and land use patterns; and (d) adequately disclose, analyze, and/or mitigate the Project's impact to agriculture.
3. The FEIR fails to adequately address the Project's cumulative impacts, including identification of the planning documents used in the cumulative impacts analysis.
4. The alternatives analysis is inadequate because: (a) it fails to analyze a reasonable range of alternatives; (b) it fails to include a reduced impact alternative; (c) Respondents' rejection of the Spot Improvements alternative is not supported by substantial evidence; (d) Respondents' rejection of the Reduced Shoulders alternative is not supported by the Project description or substantial evidence; (e) Respondents' rejection of Alternative B is not supported by substantial evidence; and (f) it fails to include feasible alternatives to the Project presented by the public.
5. Respondents failed to properly respond to public comments.⁴

II. DISCUSSION

A. "The EIR is the heart of CEQA."

"CEQA generally provides that, before a public agency carries out or approves any discretionary project – i.e., any activity that requires the exercise of agency judgment or deliberation and foreseeably may cause physical damage to the environment – the agency must first assess the project's potential environmental effects." (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 498 (citations omitted); Pub. Res. Code § 21061.) If the project may have significant environmental effects,⁵ the agency "must prepare or obtain, and

⁴ Petitioners also contend Respondents' findings violate CEQA because they fail to identify the changes or alterations that are required to avoid or substantially lessen the Project's significant environmental effects, are not supported by substantial evidence, fail to adopt a mitigation monitoring program, and fail to specify the location and custodian of the record of proceedings. Petitioners fail to substantively address these contentions. The Court therefore considers these arguments waived. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 877 ("A . . . reviewing court is not required to make an independent, unassisted study of the record in search of error . . . and may treat an issue as waived when an appellant makes a general assertion, unsupported by specific argument . . .") (citations and internal quotations omitted); see also *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-35 ("As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden") (citation omitted).)

⁵ "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment." (Pub. Res. Code § 21068; *id.* at § 21100.) "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, noise, objects of historic or aesthetic significance." (Pub. Res. Code § 21060.5; CEQA Guidelines § 15360 ("Environment"

1 consider, an EIR that assesses the potential environmental impacts of the project as proposed, sets
2 forth any feasible, less harmful alternatives to the project, and identifies any feasible mitigation
3 measures.” (*Stockton Citizens, supra*, 48 Cal.4th at 498; Pub. Res. Code § 21061.)

4 “‘The EIR is the heart of CEQA,’ and the integrity of the process is dependent on the
5 adequacy of the EIR.” (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190
6 Cal.App.4th 316, 327 (citation omitted).) “‘The EIR is the primary means of achieving the
7 Legislature’s considered declaration that it is the policy of this state to ‘take all action necessary
8 to protect, rehabilitate, and enhance the environmental quality of the state.’” (*Id.* at 328 (citation
9 omitted).) “‘The EIR . . . is the mechanism prescribed by CEQA to force informed decision
10 making and to expose the decision making process to public scrutiny.” (*Planning & Cons. League*
11 *v. Dept. of Water Res.* (2000) 83 Cal.App.4th 892, 910.)

12 “‘The fundamental purpose of an EIR is “to provide public agencies and the public in
13 general with detailed information about the effect which a proposed project is likely to have on
14 the environment.”’” (*Center for Bio. Diversity v. County of San Bernardino* (2010) 185
15 Cal.App.4th 866, 882 (citation omitted).) “‘For the EIR to serve these goals it must present
16 information in such a manner that the foreseeable impacts of pursuing the project can actually be
17 understood and weighed, and the public must be given an adequate opportunity to comment on
18 that presentation before the decision to go forward is made.”’ (*Comm. for a Better Env. v. City of*
19 *Richmond* (2010) 184 Cal.App.4th 70, 82 (citation omitted).)

20 **B. Standard of Review**

21 “Where an EIR is challenged as being legally inadequate, a court presumes a public
22 agency’s decision to certify the EIR is correct, thereby imposing on a party challenging it the
23 burden of establishing otherwise.” (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523,
24 530.) “To establish noncompliance by the public agency in a [CEQA] [] proceeding, an opponent
25 must show there was a prejudicial abuse of discretion [], which occurs when either the agency has

26 means the physical conditions which exist within the area which will be affected by a proposed project including land,
27 air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved
28 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”).)

1 not proceeded in a manner required by law or if the determination or decision is not supported by
2 substantial evidence.” (*Ibid.*; *Sunnyvale West Neighborhood Ass’n v. City of Sunnyvale City*
3 *Council* (2010) 190 Cal.App.4th 1351, 1371 (citations omitted); Pub. Res. Code § 21168.5.) “In
4 reviewing an agency’s actions under CEQA, we must bear in mind that ‘the Legislature intended
5 the act “to be interpreted in such manner as to afford the fullest possible protection to the
6 environment within the reasonable scope of the statutory language.”’” (*Cherry Valley, supra*, 190
7 Cal.App.4th at 328 (citation omitted).)

8 “Our Supreme Court has counseled that ‘[i]n evaluating an EIR for CEQA compliance, . .
9 . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on
10 whether the claim is predominantly one of improper procedure or a dispute over the facts.’”
11 (*Communities for a Better Environment, supra*, 184 Cal.App.4th at 82 (citing *Vineyard Area*
12 *Citizens, supra*, 40 Cal.4th at 435).)

13 “[Q]uestions concerning the proper interpretation or application of the requirements of
14 CEQA are matters of law.”⁶ (*Cherry Valley Pass, supra*, 190 Cal.App.4th at 327 (citation
15 omitted).) “The existence of substantial evidence supporting the agency’s ultimate decision on a
16 disputed issue is not relevant when one is assessing a violation of the information disclosure
17 provisions of CEQA.” (*Communities for a Better Environment, supra*, 184 Cal.App.4th at 82
18 (citation omitted).) “If a final environmental impact report [] does not “adequately apprise all
19 interested parties of the true scope of the project for intelligent weighing of the environmental
20 consequences of the project, ‘informed decision making cannot occur under CEQA and the final
21 EIR is inadequate as a matter of law.’” (*Id.* at 82-82 (citations and internal quotations omitted).)
22 “In other words, when an agency fails to proceed as required by CEQA, harmless error analysis
23 is inapplicable. . . . [I]n such cases, the error is prejudicial.” (*Cherry Valley, supra*, 190
24 Cal.App.4th at 328 (citation omitted).)

25 On the other hand, the Court “accord[s] greater deference to an agency’s substantive
26 factual conclusions.” (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538,

27 ⁶ Courts may not interpret CEQA or the CEQA Guidelines “in a manner which imposes procedural or substantive
28 requirements beyond those explicitly stated” in CEQA or the CEQA Guidelines. (Pub. Res. Code § 21083.1.)

1 1546 (citation omitted).) “The substantial evidence standard is applied to conclusions, findings
2 and determinations. It also applies to the challenges to the scope of an EIR’s analysis of a topic,
3 the methodology used for studying an impact and the reliability or accuracy of the data upon
4 which the EIR relied because these types of challenges involve factual questions.”⁷ (*San Joaquin*
5 *Raptor Rescue Center v. County of Merced* (1994) 149 Cal.App.4th 645, 654 (citation omitted).)
6 “Substantial evidence is defined in the CEQA Guidelines as ‘enough relevant information and
7 reasonable inferences from this information that a fair argument can be made to support a
8 conclusion, even though other conclusions might also be reached.’ [Citation.] Substantial
9 evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion
10 supported by facts. [Citation.] It does not include argument, speculation, unsubstantiated opinion
11 or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic
12 impacts which do not contribute to, or are not caused by, physical impacts on the environment.”
13 (*Ibid.*; 1 Kotska & Zisehke, Practice Under the Cal. Environmental Quality Act (“Practice Under
14 CEQA”) (Cont.Ed.Bar 2d 2011 Update) § 23.34, p. 1173 (“A reviewing court is limited to
15 determining whether the record contains relevant information that a reasonable mind might accept
16 as sufficient to support the conclusion reached”).)

17 A court “does not pass upon the correctness of the EIR’s environmental conclusions, but
18 only upon its sufficiency as an informative document.” (*Sunnyvale, supra*, 190 Cal.App.4th at
19 1371 (citations and internal quotations omitted).) The Court may not “set aside an agency’s
20 approval of an EIR on the ground that an opposite conclusion would have been equally or more
21 reasonable. . . . We may not, in sum, substitute our judgment for that of the people and their local
22 representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA
23 requirements.” (*Cherry Valley, supra*, 190 Cal.App.4th at 328-29 (citation omitted).)

24 “The courts [] have looked not for perfection but for adequacy, completeness, and good
25

26 ⁷ As quoted in Footnote 1, *infra*, “[a]s with all substantial evidence challenges, an appellant challenging an EIR for
27 insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do
28 so is fatal. A reviewing court will not independently review the record to make up for appellant’s failure to carry his
burden.” (*Tracy First, supra*, 177 Cal.App.4th at 934-35 (citation omitted); see also *Cal. Native Plant Society v. City*
of Rancho Cordova (2009) 172 Cal.App.4th 603, 626.)

1 faith effort at full disclosure.’ [] The overriding issue on review is thus ‘whether the [lead agency]
2 reasonably and in good faith discussed [a project] in detail sufficient [to] enable the public [to]
3 discern from the [EIR] the ‘analytic route the . . . agency traveled from evidence to action.’” (*Cal.*
4 *Oaks Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 262 (citations omitted).)

5 **C. The Project Description**

6 Petitioners contend the Project Description is legally inadequate because it: (a) is vague
7 and unstable due to Respondents’ failure to define what constitutes “improved” safety; (b)
8 misstates the need for and fails to specifically identify the objectives of the Project; and (c) fails
9 to specifically identify how SR 16 will be raised to withstand a 100-year flood event.

10 **1. The Project Description is neither vague nor unstable with respect to**
11 **the Project’s intended safety improvements.**

12 Petitioners contend the Project Description is vague and ambiguous due to Respondents’
13 failure to define “improved safety.” Respondents disagree, contending Section 1.4 of the FEIR,
14 entitled “Purpose and Need,” does in fact set forth how the Project would improve public safety.

15 “To fulfill its role of ensuring the lead agency and the public have enough information to
16 ascertain the project’s environmentally significant effects, assess ways of mitigating them, and
17 consider project alternatives, an EIR must provide “[a]n accurate, stable and finite project
18 description”” (*Sierra Club, supra*, 163 Cal.App.4th at 533 (citation omitted).) CEQA
19 requires that a Project Description contain “[a] general description of the project’s technical,
20 economic, and environmental characteristics,” among other required items,⁸ “but should not
21 supply extensive detail beyond that needed for evaluation and review of the environmental
22 impact.” (CEQA Guidelines §§ 15124(a), (c).) “‘General’ means involving only the main features
23 of something rather than details or particulars.” (*Dry Creek Citizens Coalition v. County of Tulare*
24 (1999) 70 Cal.App.4th 20, 28 (citing Webster’s New Internat. Dict. (3d ed. 1986) p. 944).) “On
25

26 ⁸ “With respect to an EIR’s project description, only four items are mandatory: (1) a detailed map with the precise
27 location and boundaries of the proposed project, (2) a statement of project objectives, (3) a general description of the
28 project’s technical, economic, and environmental characteristics, and (4) a statement briefly describing the intended
uses of the EIR and listing the agencies involved with and the approvals required for implementation.” (*Cal. Oaks*
Found., supra, 188 Cal.App.4th at 269 (citing CEQA Guidelines § 15124).)

1 the other hand, a curtailed or distorted description of the project ““may stultify the objectives of
2 the reporting process.”” [] The degree of specificity required depends on the type of project. There
3 must be sufficient information to understand the environmental impacts of the proposed project.
4 [] The EIR must achieve a balance between technical accuracy and public understanding.”” (*Ibid.*)

5 Here, the Court concludes the Project Description is neither vague nor ambiguous with
6 respect to the Project’s intended safety improvements. The FEIR clearly establishes that one of
7 the Project’s primary goals is to improve the overall safety of SR 16 by reducing the number of
8 run-off-road and rear-end collisions that occur within the Project area. The Project Description
9 specifically provides the Project will improve the safety of SR 16 “by constructing 8-ft shoulders
10 and removing fixed objects within a 20-ft clear recovery zone (CRZ), which includes the 8-ft
11 shoulder area. The project will also provide left-turn channelization and intersection
12 improvements at various public road connections, vertical and horizontal alignment
13 improvements” (SAR at 164.) The EIR notes the Project was initiated in response to a high
14 number of collisions in the Project area. (SAR at 165.) Although minor interim safety
15 improvements have been constructed within the Project area, there continues to be a higher than
16 average number of collisions. (SAR at 165, 166.) The EIR states:

17 The majority of collisions within the project limits are run-off-road and rear-end
18 type collisions. Improving the horizontal and vertical alignment, widening
19 shoulders, and providing a clear recovery zone would reduce the potential for
20 running off the road and would provide drivers an opportunity to recover if they
21 leave the road. The left-turn pockets, shoulders, and improved sighting distance
22 would provide for safer turning movements, reducing the potential for rear-end
23 collisions. Farm equipment and other oversized or slow moving vehicles could
24 use the shoulders to allow queued traffic to pass.

25 (SAR at 166.)

26 Respondents provide additional detail regarding the Project’s technical components
27 relating to improved safety in the Alternatives section of the FEIR. (AR at 167-170; see Practice
28 Under CEQA at § 12.5, p. 579 (stating location of a project description within an EIR is not
governed by any particular CEQA requirement).) There, Respondents again address the Project’s
technical safety improvement components in general terms and engage in a segment-by-segment
discussion of the contemplated safety improvements. (*Ibid.*)

1 Petitioners also contend the Project Description is unstable due to Respondents' failure to
2 define "improved safety" – a contention that also fails. In *County of Inyo v. City of Los Angeles*,
3 (1977) 71 Cal.App.3d 185, upon which Petitioners rely, the Third Appellate District addressed the
4 sufficiency of an EIR drafted by the City of Los Angeles that referred to the project differently
5 throughout the EIR. The court held that "[t]he incessant shifts among different project
6 descriptions do vitiate the city's EIR process as a vehicle for intelligent public participation."
7 (*County of Inyo, supra*, 71 Cal.App.3d at 197.) The court continued: "A curtailed, enigmatic or
8 unstable project description draws a red herring across the path of public input" (*id.* at 198) and
9 reiterated that "an accurate, stable, and finite project description is the *sine qua non* of an
10 informative and legally sufficient EIR" (*id.* at 199). Here, Petitioners fail to point to any evidence
11 demonstrating that the FEIR incessantly shifts between different descriptions of the Project.⁹
12 Indeed, the "defined project and not some different project" [appears to] be the EIR's bona fide
13 subject." (*Id.* at 199.)

14 **2. The FEIR adequately outlines the Project's objectives.**

15 Petitioners criticize the FEIR for failing to "specifically identify the Project's objectives."
16 Petitioners state: "The FEIR identifies the Purpose and Need, but does not provide a separate list
17 of objectives." Respondents counter that the Project sufficiently outlines the "Purpose and Need"
18 for the Project, thereby fulfilling CEQA's requirement that an EIR contain a statement of
19 objectives. The Court agrees. In both the Project Description and the Purpose and Need sections
20 of the FEIR, Respondents outline the Project's objectives, which are to "improve safety and
21 provide a facility that can remain open during a 100-year flood event". (SAR at 165; see *Cal.*
22 *Oaks Found., supra*, 188 Cal.App.4th at 273-74 (approving EIR's broadly stated project
23 objectives).)

24
25 ⁹ During oral argument, Petitioners pointed out counsel for Respondents' assertion that Segment 1 is not part of the
26 Project. Petitioners contended Respondents' counsel's comment was contrary to the Project Description contained in
27 the FEIR. Although the comments do seemingly conflict with the information provided in the FEIR, the FEIR itself
28 is consistent in describing the Project as including Segments 1 through 6, but explaining that Segment 1 does not
 qualify for funding pursuant to the State Highway Operation and Protection Program (SHOPP) 201.010 Safety
 Improvement Program. Accordingly, although a part of the Project, Segment 1 will not actually be constructed unless
 other sources of funds are made available. (SAR at 165.)

1 3. **The need for, and objectives of, the Project are not supported by**
2 **substantial evidence in the record.**

3 Petitioners argue substantial evidence in the record does not support Respondents'
4 conclusions regarding the need for, and objectives of, the Project. Petitioners first challenge
5 Respondents' failure to provide the public with the raw data supporting the FEIR's summary of
6 collision rates for the Project, which information forms the basis for the Project.

7 In Section 1.4 of the FEIR, Purpose and Need, Respondents address the collision rates
8 from September 1, 2005, through August 31, 2008, for the portion of SR 16 included in the
9 Project. (AR at 165.) In Table 1, Respondents separately summarize the collision data for
10 Segment 1, but collectively summarize the collision data for Segments 2 through 6. (AR at 165.)
11 Respondents explain the summary of collision data was calculated from data contained in a
12 "report known as the Traffic Accident Surveillance and Analysis System (TASAS) Selective
13 Accident Calculation Reports, also known as the Table B Reports." Respondents explain how the
14 collision data is collected, but admit the actual reports themselves are not included in the
15 administrative record. Respondents argue the Table B Reports are not subject to disclosure
16 pursuant to 23 U.S.C. § 409 and *Department of Transportation v. Superior Court*, (1996) 47
17 Cal.App.4th 852. The Court disagrees.

18 23 USC § 409 provides:

19 Notwithstanding any other provision of law, reports, surveys, schedules, lists, or
20 data compiled or collected for the purpose of identifying evaluating, or planning
21 the safety enhancement of potential accident sites, hazardous roadway conditions,
22 or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title
23 [23 USCS §§ 130, 144, and 148] or for the purpose of developing any highway
24 safety construction improvement project which may be implemented utilizing
25 Federal-aid highway funds shall not be subject to discovery or admitted into
26 evidence in a Federal or State court proceeding or considered for other purposes
27 in any action for damages arising from any occurrence at a location mentioned or
28 addressed in such reports, surveys, schedules, lists, or data.

25 The plain language of 23 U.S.C. § 409 offers some, but not extensive, assistance in
26 interpreting the scope of the statute. It is unclear whether the phrase "in any action for damages"
27 qualifies both the "in a Federal or State court proceeding" component of the statute and the
28 "considered for other purposes" component or just the latter. However, the use of the phrase "in

1 any action for damages” within the statute does lend some insight to the Congressional intent
2 behind its adoption. A review of the statute and its history confirms that 23 U.S.C. § 409 precludes
3 the discovery or admission into evidence of covered documents only in actions for damages.

4 Relatively few cases touch on the issue of whether 23 U.S.C. § 409 applies to all federal
5 and state proceedings or only to actions for damages. The United States Supreme Court’s opinion
6 in *Pierce County v. Guillen*, (2003) 537 U.S. 129, is instructive, and supports the restriction of 23
7 U.S.C. § 409 to actions for damages. In interpreting the scope and constitutionality of 23 U.S.C. §
8 409, the Supreme Court noted that “23 U.S.C. § 409[] protects information ‘compiled or
9 collected’ in connection with federal highway safety programs from being discovered or admitted
10 in *certain* federal or state trials,” thus implying a limitation on the scope of the statute. (*Guillen*,
11 *supra*, 537 U.S. at 133 (emphasis added).)

12 Delving into the history of the statute, the *Guillen* court began: “Beginning with the
13 Highway Safety Act of 1966, Congress endeavored to improve the safety of our Nation’s
14 highways by encouraging closer federal and state cooperation with respect to road
15 improvements.” Congress thus adopted several programs to assist the states in identifying
16 highways that were in need of improvements, some of which required the states to collect
17 information regarding various roads that may constitute a danger to motorists, pedestrians, and
18 bicyclists. The court continued:

19 Not long after the adoption of the Hazard Elimination Program, the Secretary of
20 Transportation reported to Congress that the States objected to the absence of any
21 confidentiality with respect to their compliance measures According to the
22 Secretary’s report, the States feared that diligent efforts to identify roads eligible
23 for aid under the Program would increase the risk of liability for accidents that
24 took place at hazardous locations before improvements could be made. [Citation.]
25 In 1983, concerned that the States’ reluctance to be forthcoming and thorough in
26 their data collection efforts undermined the Program’s effectiveness, the United
27 States Department of Transportation (DOT) recommended the adoption of
28 legislation prohibiting the disclosure of information compiled in connection with
the Hazard Elimination Program. [Citation.]

To address the concerns expressed by the States and the DOT, in 1987, Congress
adopted 23 U.S.C. § 409

(*Id.* at 133-34; see also *In the Matter of Newsday, Inc.* (2005) 5 N.Y.3d 84 (holding 23 U.S.C. §
409 did not prevent disclosure of covered documents in response to Freedom of Information Law

1 request).)

2 *Department of Transportation, supra*, upon which Respondents rely, offers little support
3 for Respondents' argument. In *Department of Transportation*, the First Appellate District agreed
4 with the Department regarding the preemptive effect of 23 U.S.C. § 409:

5 We agree. Section 409 provides that "[n]otwithstanding any other provision of
6 law" enumerated categories of information "shall not be subject to discovery or
7 admitted into evidence in a Federal or State court proceeding or considered for
other purposes." [Citation.] To the extent that section 409 applies to state court
proceedings, its language is clearly and expressly preemptive.^[10]

8 (*Dept. of Trans., supra*, 47 Cal.App.4th at 855.) However, the *Department of Transportation* case
9 is factually distinguishable in that it involved an "action for damages." There, the plaintiffs were
10 involved in an automobile accident when a vehicle driven by a third party crossed over the
11 centerline and struck the plaintiffs' vehicle. (*Id.* at 854.) The plaintiffs alleged dangerous
12 highway conditions contributed to the accident and sought the production of various documents
13 related to the safety of the highway, which the Department contended were protected from
14 disclosure by 23 U.S.C. § 409. (*Id.* at 854-55.) The Court agreed that the statute preempted
15 California discovery laws and generally protected the documents from disclosure; however
16 ordered the production of the requested documents due to the Department's failure to establish
17 that the documents at issue fell within the scope of 23 U.S.C. § 409. (*Id.* at 856.)

18 Also weighing in favor of the disclosure of the Table B Reports is the informational nature
19 of CEQA. It is incongruous for Respondents to rely on the Table B Reports as the basis for the
20 Project and to then refuse to disclose the reports to the public. The failure to disclose the Table B
21 Reports precludes "'informed public participation, thereby thwarting the statutory goals of the
22 EIR process.'" (*Gray, supra*, 167 Cal.App.4th at 1109 (citation omitted).) Accordingly, it is clear
23 that Respondents prejudicially abused their discretion in failing to make the Table B Reports

24
25 ¹⁰ In confirming the preemptive effect of 23 U.S.C. § 409, the court relied on *Weideman v. Dixie Elec. Mbrshp. Corp*
26 (La. 1993) 627 So.2d 170, *Martinolich v. Southern Pacific Transp.* (La.Ct.App. 1988) 532 So.2d 435, both of which
27 involved actions for damages. In *Weideman*, the plaintiffs were injured in motor vehicle accidents and brought suit
28 against the Department of Transportation and Development alleging that the intersection at which the accident
occurred posed an unreasonable danger to motorists. (*Weideman, supra*, at 171.) The consolidated cases addressed in
Martinolich arose from a collision that occurred between a train owned by Southern Pacific Transportation Company
and a sugar cane truck owned by the plaintiff. (*Martinolich, supra*, 532 So.2d at 436.)

1 available to the public for review.

2 Petitioners also contend the need for the Project is not supported by substantial evidence
3 because the information regarding collision/accident rates on SR 16 provided by Caltrans
4 indicates accident rates have significantly declined since Caltrans implemented various safety
5 improvement measures. Petitioners allege Segment 1 collision/accident rates dropped to .74
6 accidents per million vehicle miles travelled and Segments 2-6 collision/accident rates dropped to
7 1.07 accidents per million vehicle miles. Respondents counter that "the most current data
8 available at the time the FEIR was prepared [] showed that the rates remain above the statewide
9 average in Segments 2 through 6, thus supporting the need for this safety improvement project."

10 Normally, the Court would defer to Respondents' determinations regarding the necessity
11 of the Project if supported by substantial evidence in the record. (See *Citizens of Goleta Valley v.*
12 *Bd. of Supervisors* (1990) 52 Cal.3d 553, 576; *Vineyard Area Citizens, supra*, 40 Cal.4th at 435.)
13 Here, however, Respondents ask this Court to conclude that substantial evidence exists despite
14 the absence of fundamentally key evidence in the record. Respondents' failure to disclose the
15 Table B Reports, the very reports upon which Respondents rely as the "most current data
16 available at the time," undermines both the public's and this Court's ability to determine that
17 substantial evidence in the administrative record supports Respondents' conclusions regarding the
18 necessity of the Project.

19 Petitioners further argue the collision data for the Project contained in the FEIR is
20 inconsistent with the data provided to Petitioners by the California Highway Patrol ("CHP") and
21 Caltrans' Design Office Chief ("DOC"). In comments on the FEIR, Petitioners identified this
22 discrepancy and noted that the CHP/DOC data indicates 28 fewer injuries and 35 fewer non-
23 injuries, as well as one less fatality, than the information reflected in the FEIR. Petitioners
24 criticize Respondents' failure to explain this discrepancy in the FEIR. However, the CHP/DOC
25 data forming the basis of public comments on the FEIR was never provided to Respondents for
26 review in connection with the comments (SAR at 490). It is not part of the administrative
27
28

1 record.¹¹ As a result, in their response to comments, Respondents stated: "Without knowing what
2 information was received from the CHP it is difficult to say why there are discrepancies." (SAR
3 at 277.) Petitioners have failed to sustain their burden of demonstrating Respondents
4 prejudicially abused their discretion.

5 Petitioners also argue that data received from Respondents shows that Segment 6 is a
6 "hotspot" for accidents. In 2009, in response to a request from Petitioners, Respondents provided
7 Petitioners with segment-by-segment accident data from January 1, 1999, to August 31, 2008.
8 According to Petitioners, this data "reveals two definite points: [¶] 1. Speed was 29.8% and
9 improper turn 27.6% for a total of 57.4% of total accidents. [¶] 2. Segment 6 (Esparto to I-505
10 had 168 of a total 445 accidents overall – almost 38% -- and approximately half of the 168
11 occurred at the Migrant Camp parking lot area in Madison." "Thus, Segment 6 is a 'hot spot' for
12 accidents."¹² However, Petitioners concede that neither their data request nor the information
13 allegedly provided by Respondents is part of the administrative record. Although Petitioners
14 indicated they would request Respondents to either augment the record with the data or would
15 move to augment the administrative record with the data themselves, they failed to do so. The
16 Court specifically asked whether this information was part of the administrative record before the
17 Court in its April 14, 2011 Tentative Ruling. During the hearing, Petitioners again conceded the
18 data was not part of the administrative record. The Court therefore declines to conclude
19 Respondents prejudicially abused their discretion on this basis.

20 4. **The Project Description fails to sufficiently describe the raising of SR**
21 **16.**

22 Petitioners also allege the FEIR is legally inadequate because the Project Description fails
23 to include sufficient detail regarding the raising of SR 16 to withstand a 100-year flood event.¹³
24

25 ¹¹ Petitioners have neither moved to augment the record to include the CHP/DOC data nor argued the existing
26 administrative record is somehow incomplete as a result of the omission of the data.

27 ¹² Petitioners also contends this conclusion is supported by the CHP/DOC data, which, however, is not part of the
28 administrative record.

¹³ The FEIR provides additional detail regarding the flood improvements, but Petitioners challenge only the FEIR's
failure to provide more detail regarding the raising of SR 16. (See SAR at 169-70.)

1 Respondents concede “that concerning the flood protection improvements, the ‘Project
2 Description’ section in the FEIR states only that the project ‘will provide improved flood
3 protection between Esparto and I-505.’ (SAR at 164.) It is also true that the FEIR has not
4 discussed detailed engineering and design information concerning the height and other specific
5 aspects of the raised roadway.” Respondents argue, however, “that level of detail is not required
6 in the project description, nor have detailed designs for the raised roadway, including the height,
7 been finalized at this point.”

8 CEQA Guidelines § 15124 requires a project description to include “a general description
9 of the project’s technical, economic, and environmental characteristics, considering the principal
10 engineering proposals if any and supporting public service facilities.” (CEQA Guidelines §
11 15124(c).) However, “[t]he description of the project shall contain the following information but
12 should not supply extensive detail beyond that needed for evaluation and review of the
13 environmental impact.” (CEQA Guidelines § 15124.) CEQA also recognizes that “[a]n EIR on a
14 construction project will necessarily be more detailed in the specific effects of the project than will
15 be an EIR on the adoption of a local plan or comprehensive zoning ordinance because the effects
16 of the construction can be predicted with greater accuracy.” (CEQA Guidelines § 15146(a).)

17 Although various aspects of the contemplated flood improvements are addressed in
18 several places in the FEIR, the FEIR indeed fails to provide any detail regarding the raising of SR
19 16 beyond the mere statement that SR 16 will be raised to withstand a 100-year flood event.
20 Respondents argue, in part, the information Petitioners seek could not be included in the FEIR
21 because it is not currently available. In response to public comments, Respondents stated SR 16
22 could be raised anywhere from 4 feet to 8 feet in height, but the exact height will not be known
23 until negotiations with property owners for flood easements are complete.

24 It is apparent, however, that Respondents had information available to them that would
25 have enabled them to describe the raising of SR 16 in more detail. The FEIR notes: “The base
26 floodplain (commonly referred to as the 100-year floodplain) is defined as ‘the area subject to
27 flooding by the flood or tide having a one percent chance of being exceeded in any given year.’
28 (SAR at 211.) “SR is currently below the elevation of the 100-year floodplain between the town

1 of Esparto and the I-505 interchange. The road routinely floods during storms.”¹⁴ (SAR at 211.)
2 Appendix P of the FEIR is a map of the Project area that depicts the areas affected by routine
3 flooding. (SAR at 683.) “The map is modeled after a flood that occurred in December 2002 and
4 shows what would happen during a typical flood” once enumerated flood improvements have
5 been implemented, including the raising of SR 16 above the 100-year flood plan using excavation
6 materials that would be used onsite as fill material. (SAR at 169-170.) Respondents clearly have
7 an indication of how high SR 16 would need to be raised in order to withstand a 100-year flood
8 event in light of the routineness with which the highway floods. In fact, Respondents appear to
9 have modeled the raising of SR 16 in Appendix P of the FEIR. Respondents, however, fail to
10 provide any information regarding the measurements utilized in Appendix P to depict flooding in
11 the Project area after the contemplated flood improvements are made.

12 Not until they filed their Supplemental Brief did Respondents finally reveal that their
13 engineering experts concluded that 8 feet would be the maximum additional height SR 16 would
14 need to be raised in order to elevate the roadbed out of the 100-year flood plain. Respondents
15 continue: “The assumption of an 8-foot high road with 4:1 slopes was therefore used in the
16 analysis of the environmental impacts to the land surrounding the raised road bed in Segment 6,”
17 which is consistent with the Caltrans Highway Design Manual (the “Manual”). Respondents,
18 however, fail to cite to any portion of the FEIR that specifically: (1) indicates that 8 feet was the
19 maximum height SR 16 would be raised in order to raise the road bed out of the 100-year flood
20 plain; (2) references the engineering study allegedly used to determine that 8 feet was the
21 maximum necessary height for SR 16; (2) indicates that 8 feet was used as the basis for
22 Respondents’ analysis of the environmental impacts resulting from the flood improvements; or
23 (4) mentions that the Manual was then utilized to calculate the Project footprint.¹⁵ In short,
24

25 ¹⁴ The FEIR notes that “SR 16 is subject to frequent flooding from east of Esparto to I-505 resulting in as many as
26 nine flood-related closures in a year.” (SAR at 169.)

27 ¹⁵ Respondents stress that the Manual is part of the administrative record pursuant to Public Resources Code §
28 21167(e)(10) and therefore substantial evidence exists to support its determination. The Manual, however, is
identified only in the list of “References” upon which Respondents evidently relied in drafting the FEIR, with a link
to the website on which a copy of the Manual may be located. There is no indication that Caltrans included the
Manual as part of the record of proceedings as required by Public Resources Code § 21167.6(e)(10). Respondents fail

1 nothing in the FEIR indicates SR 16 would be raised to a maximum of 8 feet in order to raise the
2 road bed out of the 100-year flood plan and that this 8-foot measurement was subsequently used
3 in Respondents' analysis of the impacts of the Project. The omission of this information precludes
4 the public from discerning the "analytic route the . . . agency traveled from evidence to action"
5 (*Cal. Oaks Found. Supra*, 188 Cal.App.4th at 262 (citation omitted)), thereby precluding
6 informed public participation and the intelligent weighing of the environmental consequences of
7 the Project (*Communities for a Better Environment, supra*, 184 Cal.App.4th at 82; *Gray, supra*,
8 167 Cal.App.4th at 1109).

9 *California Oaks Foundation v. Regents of University of California, supra*, upon which
10 Respondents rely in defense of the FEIR, offers little assistance. There, the appellants challenged
11 the sufficiency of an EIR certified by the Regents of the University of California ("Regents") on
12 the ground the EIR's description of the "Integrated Projects" was inadequate because it lacked the
13 specificity required by CEQA for a project-level EIR. (*Cal. Oaks Found., supra*, 188
14 Cal.App.4th at 269.) The First Appellate District rejected the appellants' challenge to the EIR's
15 description of the Maxwell Family Field parking structure and the Law and Business Connection
16 Building. The EIR not only contained the four items required under CEQA Guidelines §
17 15124(c), but also included detailed design drawings and discussions of the projects' seismic
18 safety and the environmental impacts of anticipated construction and demolition activities,
19 discussed the projects' primary characteristics with respect to circulation, lighting, sound,
20 landscaping, size, capacity, heating and cooling, construction schedules and seismic
21 improvements. The project characteristics were then discussed in greater detail in other chapters
22 of the EIR. (See *id.* at 270.) The court concluded the challenged EIR's project description
23 therefore met the requirements of CEQA Guidelines § 15124. The information provided in the
24 EIR at issue in *California Oaks* stands in stark contrast to the information provided by
25 Respondents in the FEIR regarding the raising of SR 16 to withstand a 100-year flood event.

26 Respondents prejudicially abused their discretion in failing to provide the public with

27 to direct the Court to any citation in the administrative record containing the Manual. There also is no evidence that
28 Respondents properly incorporated the Manual by reference in the EIR pursuant to CEQA Guidelines § 15150.

1 additional details regarding the raising of SR 16 to withstand a 100-year flood event. Although
2 Caltrans adamantly contends the precise details regarding the raising of SR 16 to withstand a 100-
3 year flood event is unavailable at this time, Respondents also admit that 8-feet, with a 4:1 slope,
4 was utilized as the basis for its analysis of the flood improvements. This failure prevented the
5 public from meaningfully understanding the issues raised by the Project.

6 **D. Legally Inadequate Impact Analysis**

7 Petitioners contend the EIR is legally inadequate because it fails to: (a) identify the
8 Project's inconsistency with the Yolo County General Plan and the Capay Valley General Plan;
9 (b) adequately disclose, analyze, and/or mitigate the Project's impacts associated with elevating
10 SR 16 to withstand a 100-year flood event; (c) adequately disclose, analyze, and/or mitigate the
11 Project's growth-inducing impacts and land use patterns; and (d) adequately disclose, analyze,
12 and/or mitigate the Project's impact to agriculture.

13 1. **Respondent fails to adequately address the Project's inconsistency(ies)**
14 **with applicable plans and their consistency determination is not**
supported by substantial evidence.

15 "[T]he propriety of virtually any local decision affecting land use and development
16 depends upon consistency with the applicable general plan and its elements." (*Citizens of Goleta*
17 *Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 570 (citation omitted); *Chaparral Greens v.*
18 *City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 n.7 (an "applicable" plan is one that has
19 been adopted and is legally applicable or enforceable).) Accordingly, the CEQA Guidelines
20 require an EIR to "discuss any inconsistencies between the proposed project and applicable
21 general plans, specific plans and regional plans." (CEQA Guidelines § 15125(d).)

22 The Court reviews an agency's finding of consistency with the general plan pursuant to
23 the substantial evidence standard of review. (See *Cal. Native Plant Society, supra*, 172
24 Cal.App.4th at 637.) "A project is consistent with a county's general plan (and any specific plan
25 adopted to further the objectives of the general plan) if, considering all its aspects, it will further
26 the objectives and policies of the general plan and not obstruct their attainment. [Citation.] A
27 given project need not be in perfect conformity with each and every general plan policy.
28 [Citation.] To be consistent, a [project] must be 'compatible with' the objectives, policies, general

1 land uses and programs specified in the general plan. [Citation.]" (*Sierra Club v. County of Napa*
2 (2004) 121 Cal.App.4th 1490, 1509 (citations and internal quotations omitted).)

3 Petitioners argue Respondents failed to identify the Project's inconsistency(ies) with both
4 the Yolo County General Plan and Capay Valley General Plan. Petitioners farther argue:
5 "Specifically, the Project is inconsistent with the Agricultural Element of Yolo County's General
6 Plan and the policies of the Capay Valley General Plan regarding the protection of agricultural
7 lands and resources. The EIR fails to account for the impact on the land the Project will
8 permanently convert -- and the conversion's effect on surrounding agricultural land." Petitioners
9 also contend Respondents' conclusion regarding the Project's consistency with the applicable
10 plans is not supported by substantial evidence in the record.

11 Although the FEIR fails to specifically identify the agricultural elements of the applicable
12 plans, the FEIR does recognize the agricultural elements in broad terms, noting the plans'
13 emphasis on protecting and conserving agricultural land use. (See, e.g., AR 187 ("All of the
14 planning documents applicable to this area emphasize the importance of farmland and the rural
15 character of the area").) However, in one sentence, the FEIR concludes the Project is consistent
16 with the applicable general plans' policies of preserving agricultural land:

17 Additionally, the County's Zoning Code requires private easements to offset the
18 conversion of agricultural land by providing for conservation easements at a 1:1
19 ratio. As a state agency, Caltrans is not subject to this requirement. However,
20 Caltrans is bound by state and federal environmental laws to ensure to the greatest
21 extent possible that its activities do not result in substantial impacts to the
22 environment. The predominant zoning in the project area is for agricultural uses.
23 ***Since the project would not prevent the continued use of land adjacent to SR 16
as farmland, the project is consistent with local zoning and with plans for this
area.***

24 (SAR at 187 (emphasis added).)

25 Respondents' conclusion, however, is not supported by substantial evidence in the record
26 and also is seemingly contradicted by the language of the FEIR itself. The FEIR designates
27 "Alternative A" as the preferred alternative for the Project. Alternative A "would reconstruct SR
28 16 to include 12 ft lanes and 8 ft shoulders on each side of the highway. The paved width of the
highway would increase from approximately 24-ft to approximately 40-ft." (SAR at 167.) The
FEIR continues:

1 In addition, the proposed project would realign the highway to improve the
2 horizontal and vertical alignment (curves would be straightened and hills would
3 be flattened) to increase the safety of the highway. Throughout the project limits
4 the new highway would be built mostly adjacent to the existing highway for ease
5 of construction and to reduce costs. After the new highway is built, the old
roadbed would be removed and obliterated (ground up) to allow for the planting
of other grasses and other vegetation as appropriate. New right of way (R/W)
would be required to construct this project.

6 (SAR at 167-68.)

7 The Project would thus require the permanent conversion of agricultural land for highway
8 purposes to accommodate the realignment of SR 16 – an issue completely ignored in the FEIR’s
9 analysis of the compatibility of the Project with the agricultural elements of the applicable general
10 plans. Respondents fail to explain how the permanent conversion of agricultural land for the
11 construction of SR 16 is compatible with and furthers the plans’ objectives and policies. Although
12 the FEIR notes the old roadbed would be removed and obliterated to allow for the planting of
13 other grasses and other vegetation as appropriate, this portion of the FEIR fails to specify whether
14 this land would indeed be dedicated for agricultural uses, thereby offsetting the agricultural land
15 taken by the Project.

16 In its Opposition, Respondents appear to rely on its conclusions regarding the Projects’
17 insignificant impacts to agriculture in support of its conclusion the Project is consistent with the
18 agricultural elements of applicable plans. In its discussion regarding the Project’s impacts to
19 farmland, Respondents conclude the Project’s impacts to agriculture were insignificant in light of
20 the small percentage of agricultural land that would be taken out of production to facilitate
21 construction of the Project. Respondents fail to address this issue in the FEIR’s discussion
22 regarding consistency with applicable plans. Moreover, as further discussed below, the Court
23 concludes Respondents’ conclusions regarding the Project’s insignificant impact to agricultural
24 land are unsupported by the record. Therefore, those conclusions may not be used to support
25 consistency of the Project with the agricultural elements of the applicable plans.

26 The Court therefore agrees with Petitioners that Respondents failed to adequately address
27 the Project’s inconsistencies with the agricultural elements of the applicable plans. Respondents
28 also fail to support their conclusions regarding the Project’s consistency with the agricultural

1 elements of the applicable plans with substantial evidence in the record.

2 **2. The FEIR fails to adequately disclose, analyze, and/or mitigate the**
3 **Project's impacts associated with raising and elevating SR 16.**

4 In addition to challenging the adequacy of the Project Description due to its failure to
5 provide information regarding the raising of SR 16, Petitioners also challenge the adequacy of the
6 FEIR's impact analysis due to the FEIR's failure to disclose, analyze, and/or mitigate the
7 Project's impacts associated with raising SR 16. Specifically, Petitioners argue Respondents'
8 failure to disclose how high SR 16 will be raised precludes the public from meaningfully
9 analyzing the Project's impacts, potential alternatives, or mitigation measures. Respondents
10 counter that the FEIR includes "sufficient information" regarding the raising of SR 16 and refers
11 the Court to Respondents' discussion regarding the Project Description.

12 The Court addressed the parties' arguments in Section 2.C.4, *infra*, and will not repeat its
13 discussion here. Respondents' failure to include information regarding the raising of SR 16 in the
14 Project Description clearly impacted Respondents' evaluation of Project alternatives. This is
15 evident by the FEIR's failure to address any Project alternatives related to the contemplated flood
16 improvements. (See Practice Under CEQA at §12.7, p.580 ("The adequacy of an EIR's project
17 description is closely linked to the adequacy of the EIR's analysis of the Project's environmental
18 effects. If the description is inadequate because it fails to discuss the complete project, the
19 environmental analysis will probably reflect the same mistake").) The Court therefore agrees with
20 Petitioners that Respondents prejudicially abused their discussion in failing to adequately disclose,
21 analyze, and/or mitigate the Project's impacts associated with raising and elevating SR 16.

22 **3. The FEIR adequately addresses the Project's growth-inducing**
23 **impacts.**

24 Public Resources Code § 21100 requires an EIR to contain a "detailed statement setting
25 forth" "[t]he growth-inducing impacts of the proposed project" "even if those impacts are not
26 themselves a part of the project under consideration, and even though the extent of growth is
27 difficult to calculate." (Pub. Res. Code § 21100(b)(5); CEQA Guidelines § 15126(d); *Napa*
28 *Citizens for Honest Government v. Napa County* (2001) 91 Cal.App.4th 342, 368.) "Growth-

1 inducing impacts” include “the ways in which the proposed project could foster economic growth
2 or population growth, or the construction of additional housing, either directly or indirectly, in the
3 surrounding environment.” (CEQA Guidelines § 15126.2(d).) “Included in this are projects which
4 would remove obstacles to population growth” (*Ibid.*)

5 “It does not follow, however, that an EIR is required to make a detailed analysis of the
6 impacts of a project on housing and growth. Nothing in the Guidelines, or in the cases, requires
7 more than a general analysis of projected growth. The detail required in any particular case
8 depends on a multitude of factors, including, but not limited to, the nature of the project, the
9 directness or indirectness of the contemplated impact and the ability to forecast the actual effects
10 the project will have on the physical environment.” (*Id.* at 369.)

11 Petitioners challenge the FEIR’s conclusion that the “Project is not growth inducing as it is
12 simply a safety project and will not eliminate any of the existing obstacles.” (Memorandum at
13 27:14-15 (citing SAR at 188).) Petitioners contend: “Contrary to Caltrans’ determination, the
14 Project does eliminate an obstacle to growth as it will shorten commute times and make the Capay
15 Valley more attractive as a bedroom community.”

16 The Court concludes the FEIR adequately addresses the growth-inducing impacts of the
17 Project. In response to Petitioners’ criticism regarding the shortening of commute times and the
18 increased attractiveness of the Capay Valley as a bedroom community, the Court notes the
19 Project, in the most general sense, involves reconstructing SR 16, and Petitioners fail to point to
20 any evidence in the record indicating the new SR 16 alignment will increase the potential for
21 traffic. The FEIR states the Project “would not increase the roadway’s capacity or increase the
22 speed on SR in the project area.” (SAR at 189.) “Widening the shoulders and applying current
23 design standard to correct sight-distance problems, fix non-standard curves, and intersections will
24 not appreciably contribute to any anticipated increase in traffic volumes on SR 16.” (SAR at 189.)

25 Petitioners also speculate about a “link between this safety improvement project and any
26 current or future expansion of the Cache Creek Casino facilities.” (SAR at 188.) Petitioners cite
27 the County-Tribe Agreement in support of their argument, which provides: “The Tribe and the
28 County will jointly exercise their best efforts to ensure that the capacity enhancements to State

1 Route 16 necessitated by the Casino Expansion and Hotel Project are funded by the State or
2 federal governments” Plans for the casino expansion, however, have been cancelled.
3 Additionally, the Project is being implemented independently of any proposed casino expansion
4 and Petitioners present no evidence to the contrary. Moreover, Respondents are not parties to the
5 County-Tribe Agreement and the FEIR clearly indicates the Project is separate and independent
6 from plans to expand the casino and construct related capacity enhancements along SR 16.¹⁶
7 Respondents’ 2004 State Route 16 Transportation Concept Report specifies that at the time the
8 FEIR was prepared, “the ultimate concept for SR 16 within the project limits is a 2-lane
9 conventional highway and passing lanes where feasible,” and Respondents had “no planned
10 projects to increase the capacity of SR 16.” (SAR at 188.)

11 Respondents also point out that the Project does not remove the additional obstacles to
12 growth in the area, which include the Yolo County General Plan, changes in zoning designations,
13 annexation of land, and release of Williamson Act contracts.¹⁷ Other impediments to growth
14 remain, including the lack of water and wastewater infrastructure.

15 **4. Respondents’ conclusion regarding the Project’s insignificant impacts**
16 **to agriculture are not supported by substantial evidence.**

17 The lead agency is responsible for determining whether a project will have a significant or
18 less than significant impact on the environment. (CEQA Guidelines § 15064(b).) “In exercising
19 its discretion, a lead agency must necessarily make a policy decision in distinguishing between
20 substantial and insubstantial adverse environmental impacts based, in part, on the setting.
21 [Citation.] Where the agency determines that a project impact is insignificant, an EIR need only
22 contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, §
23 15128.)” (*Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th

24
25 ¹⁶ As Respondents note, the County of Yolo will presumably act as lead agency in drafting an EIR intended to
address any capacity enhancements along SR 16 as a result of the expansion of the casino.

26 ¹⁷ In *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 157, the Fifth Appellate District
27 determined that the fact that the surrounding land is subject to Williamson Act land contracts and is zoned for
28 agriculture is not determinative of whether a Project will have growth-inducing impacts. The Court agrees. Here,
however, the existing obstacles to growth, combined with the fact the Project maintains the width, number of lanes,
and speed limit of SR 16 leads this Court to agree with Respondents’ analysis.

1 357, 376 (citations omitted); Pub. Res. Code § 21100(c).)

2 With respect to the Project's agricultural impacts, the FEIR explains in part "[t]he
3 proposed project would acquire approximately 166 acres of farmland," which represents "0.03%
4 of the total farmland available in Yolo County." The Natural Resource Conservation Service
5 ("NRCS") requested, and Respondents agreed, to utilize the Farmland Conversion Impact Rating
6 for Corridor Type Projects Form NRCS-CPA-106 ("CPA-106 form") to analyze the Project's
7 impacts to farmland. After thoroughly describing the CPA-106 form, the FEIR notes that
8 Alternative A – the Project – received a score of 148, which is far below the 160 point score at
9 which the Farmland Protection Policy Act recommends looking at ways to offset the impact to
10 farmland.

11 The FEIR concedes that no safety improvements would be possible without the
12 acquisition of some Williamson Act lands. The Project would require the use of approximately 91
13 acres out of 418,935 acres of land currently subject to Williamson Act contracts in Yolo County.
14 The Project's impacts on specific Williamson Act parcels is outlined in Table 6 of the FEIR. This
15 discussion is sufficient to satisfy the requirements of CEQA. (See *Protect the Historic Amador*
16 *Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 113 (holding that "[t]he
17 assertion that riparian habitat will ""continue to thrive along local streamcourses if canal leakage
18 is eliminated"" constitutes a valid statement of reasons for the Agency's significance
19 determination").)

20 Based on the above-outlined analysis, Respondents concluded the Project's impacts to
21 agriculture are insignificant. Unfortunately, Respondents' analysis is unsupported by substantial
22 evidence in the record, as demonstrated by the parties' supplemental briefs. As previously stated,
23 the Court will not repeat its discussion regarding Respondents' failure to provide the public with
24 more detailed information regarding the raising of SR 16. The omission of this information
25 precluded the public from discerning the ""analytic route the . . . the agency traveled from
26 evidence to action."" (Cal. Oaks Found., *supra*, 188 Cal.App.4th at 262 (citations omitted).)

27 Petitioners identify an additional issue regarding the FEIR's failure to address the
28 Project's impacts to agricultural equipment. In addition to its analysis of direct effects, an FEIR is

1 required to address the “indirect significant effects of the project on the environment”
2 (CEQA Guidelines § 15126.2(a).) “An indirect physical change in the environment is a physical
3 change in the environment which is not immediately related to the project, but which is caused
4 indirectly by the project.” (CEQA Guidelines § 15064(d)(2).) “Indirect or secondary effects
5 which are caused by the project and are later in time or farther removed in distance, but are still
6 reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and
7 other effects related to induced changes in the pattern of land use, population density or growth
8 rate, and related effects on air and water and other natural systems, including ecosystems.”
9 (CEQA Guidelines § 15358(a)(2).) “An indirect physical change is to be considered only if that
10 change is a reasonably foreseeable impact which may be caused by the project.” (CEQA
11 Guidelines § 15064(d)(3).)

12 Petitioners argue “the FEIR fails to address certain specific details, such as the proposed
13 elevation of the roadway, the height and location of new levees, and location and manner of
14 access to the elevated SR 16 roadway from surrounding agricultural operations and fields.”
15 During the course of public comments, various concerns were raised regarding the Project’s
16 impacts to agricultural equipment, including the ability of large pieces of agricultural equipment
17 to access SR 16 and adjacent agricultural properties. “Agricultural equipment is moved in and out
18 of fields during the entire season and continued easy access is imperative.” In response to these
19 comments, Respondents simply referred the commenters to the Surface Transportation Assistance
20 Act (STAA) standards (for large trucks) and offered to meet “with the Farm Bureau to discuss
21 this project further if desired.” (SAR at 289; AR at 68794.)

22 The Project’s impacts to agricultural equipment constitute a potentially significant impact
23 on the agricultural environment that must be addressed by Respondents in detail in the FEIR. If
24 the Project’s design precludes the effective use of SR 16 by agricultural equipment to access
25 surrounding agricultural fields, the Project may effectively preclude the use of agricultural land
26 for agricultural purposes.

27
28 ///

1 **E. The Cumulative Impacts discussion.**

2 **1. The FEIR adequately addresses the Project's cumulative impacts.**

3 Petitioners challenge Respondents' cumulative impacts discussion on the grounds it fails
4 to include any detail, analysis, or evaluation of reasonably foreseeable future projects or other
5 closely related projects that are currently under environmental review.¹⁸ More specifically,
6 Petitioners allege Respondents were aware of expansion plans for the Cache Creek Casino and
7 five residential projects currently proposed for the Esparto area. Petitioners characterize these
8 projects as "probable future projects" that Respondents were required to analyze as part of their
9 cumulative impacts discussion. Petitioners fault the FEIR for providing "no details, analysis, or
10 evaluation of any impacts" from these probable future projects. The Court disagrees.

11 "An EIR shall discuss cumulative impacts¹⁹ of a project when the project's incremental
12 effect is cumulative considerable, as defined in section 15065(a)(3)." (CEQA Guidelines §
13 15130(a).) "'Cumulatively considerable' means that the incremental effects of an individual
14 project are significant when viewed in connection with the effects of past projects, the effects of
15 other current projects, and the effects of probable future projects." (CEQA Guidelines §
16 15065(a)(3).) "Where a lead agency is examining a project with an incremental effect that is not
17 'cumulatively considerable,' a lead agency need not consider that effect significant, but shall
18 briefly describe its basis for concluding that the incremental effect is not cumulatively
19 considerable." (CEQA Guidelines § 15130(a); Practice Under CEQA at §13.40, p.649 ("No
20 analysis is required if the impact is insignificant or the project's incremental contribution is not
21 cumulatively considerable"); *City of Long Beach v. L.A. Unified School Dist.* (2009) 176
22 Cal.App.4th 889, 909.)

23 Utilizing the list-of-projects approach (CEQA Guidelines § 15130(b)(1)), the FEIR
24 identifies two past actions, one present action, and seven future actions that, combined with the

25 ¹⁸ Petitioner also argues the "FEIR fails to adequately disclose, analyze and/or mitigate the cumulative impacts
26 associated with the Project such as air quality associated with increased vehicle miles traveled and increased traffic."
27 The Court, however, considers this issue waived due to Petitioners' failure to support this general assertion with
28 specific argument. (See *Friends of the Eel River, supra*, 108 Cal.App.4th at 877.)

¹⁹ "'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or
which compound or increase other environmental impacts." (CEQA Guidelines § 15355.)

1 Project, could contribute to the cumulative impacts of biological resources.” (SAR at 261.)

2 Contrary to Petitioners’ allegations, this list includes the probable future projects Petitioners allege
3 were omitted from consideration in the FEIR. (*Ibid.*) The FEIR analyzes the cumulative impacts to
4 the Swainson’s hawk foraging habitat, the Valley Elderberry Longhorn Beetle, and the giant garter
5 snake and concludes the impacts to these species would not be cumulatively considerable.²⁰ (SAR
6 at 262-63.)

7 The FEIR also analyzes the cumulative impacts to farmland in the area that may result
8 from residential, commercial, industrial, and highway development. (SAR at 263.) The FEIR
9 recognizes the potential impact of the five residential projects currently proposed in the Esparto
10 area, as well as potential projects in Madison. The FEIR notes that “[t]he County’s Zoning Code
11 requires private interests to offset the conversion of agricultural land by providing for
12 conservation easements at a 1:1 ratio.” “It is anticipated that future residential, commercial, and
13 industrial development within Yolo County will be subject to the County’s mitigation
14 requirements.” (SAR at 263, 264.) Also, the Tribal Environmental Impact Report for the Cache
15 Creek Casino expansion concluded that the expansion would have no direct or indirect impact to
16 off-reservation agricultural lands. (SAR at 263.)

17 Accordingly, although the Project would result in the conversion of 166 acres of farmland,
18 representing 0.03 percent of total Yolo County farmland, the Project’s impacts to farmland are
19 not cumulatively considerable even when probable future projects are considered. (SAR at 264.)

20 **2. Respondents did not abuse their discretion in failing to specify the**
21 **location of planning documents.**

22 Petitioners also challenge the FEIR on the ground it fails to specify the planning
23 documents associated with the past, present, and future projects evaluated in the FEIR’s
24 cumulative impacts analysis. Relying on CEQA Guidelines § 15130(b)(1)(B) and *Gray v. County*
25 *of Madera, supra*, Petitioners argue Respondents are required to “specify the location where the
26 public could view the planning documents . . .” and therefore violated CEQA by failing to do so.

27 ²⁰ The proposed mitigation measures for threatened and endangered species are addressed in Section 2.36 of the
28 FEIR.

1 The Court disagrees, and instead agrees with Respondents that Petitioners misconstrue CEQA
2 Guidelines § 15130(b)(1), which provides:

3 (b) The discussion of cumulative impacts shall reflect the severity of the impacts
4 and their likelihood of occurrence, but the discussion need not provide as great
5 detail as is provided for the effects attributable to the project alone. The
6 discussion should be guided by the standards of practicality and reasonableness,
7 and should focus on the cumulative impact to which the identified other projects
8 contribute rather than the attributes of other projects which do not contribute to
9 the cumulative impact. The following elements are necessary to an adequate
10 discussion of significant cumulative impacts:

11 (1) Either:

12 (A) A list of past, present, and probable future projects producing related or
13 cumulative impacts, including, if necessary, those projects outside the control of
14 the agency, or

15 (B) A summary of projections contained in an adopted local, regional or
16 statewide plan, or related planning document, that describes or evaluates
17 conditions contributing to the cumulative effect. Such plans may include: a
18 general plan, regional transportation plan, or plans for the reduction of
19 greenhouse gas emissions. A summary of projections may also be contained in
20 an adopted or certified prior environmental document for such a plan. Such
21 projections may be supplemented with additional information such as a regional
22 modeling program. Any such document shall be referenced and made available
23 to the public at a location specified by the lead agency.

24 Here, Respondents utilized the list-of-projects approach encapsulated in CEQA
25 Guidelines § 15130(b)(1)(A) in addressing the cumulative impacts to the Swainson's hawk
26 foraging habitat, the Valley Elderberry Longhorn Beetle, and the giant garter snake. Respondents
27 did not utilize the summary of projections approach outlined in CEQA Guidelines §
28 15130(b)(1)(B) and for which identification of referenced planning documents, including their
location, is required. Accordingly, Respondents did not abuse their discretion.

Petitioners contend, however, that Respondents utilized a summary of projections
approach in addressing the cumulative impacts to farmland. The Court disagrees. The 2002
Census of Agriculture, the land use policies and County zoning restrictions and/or Zoning Code
are fall outside the scope of CEQA Guidelines § 15130(b)(1)(B) as they are not summaries of
“projections contained in an adopted local, regional or statewide plan, or related planning
document, that describes or evaluates conditions contributing to the cumulative effect.” The only
possible document that contains a “summary of projections” is the tentative revision to the

1 Madison land use plan, which is not an adopted plan and also falls outside the scope of CEQA
2 Guidelines § 15130(b)(1)(B).

3 **F. The FEIR fails to analyze a reasonable range of feasible alternatives.**

4 According to the FEIR, “[t]his project has one build alternative (A) and a ‘no build’
5 alternative.” (SAR at 167.) “Alternative A was chosen as the only build alternative because it was
6 the only feasible alternative.” (*Ibid.*) “Caltrans has determined that there are no other alternatives
7 that would feasibly attain most of the basic objectives of the project and avoid or substantially
8 lessen the environmental effects of the project.” (*Ibid.*) The FEIR then describes in detail
9 Alternative A – the Project – and then addresses the “no-build”²¹ alternative as follows: “The no-
10 build alternative would make no improvements to the existing roadway and would have neither
11 construction nor environmental impacts; however, routine maintenance would still occur as
12 necessary. By not making any improvements, this alternative would fail to deliver the safety
13 improvements the project is intended to generate.” (SAR at 171.)

14 Respondents determined the alternatives would not “feasibly attain most of the basic
15 objectives of the project and avoid or substantially lessen the environmental effects of the
16 project.” (SAR at 171.) These alternatives include:

- 17 a. Alternative B, Widen in Place (Widen equally to both sides of the highway). This
18 alternative would require the same amount of residential displacements and would
19 have fewer impacts to farmland, but would have a number of adverse impacts. The
20 FEIR concludes that Alternative B’s impacts to farmland, the giant garter snake
21 habitat, and Swainson’s hawk foraging habitat would be less, however, widening in
22 place would increase impacts to environmental resources overall. Alternative B also
23 was considered infeasible due to the extraordinary cost increases associated with
24 construction. (SAR at 172-173.)
- 25 b. New Alignment. The FEIR concludes that a new roadway on a new alignment would
26 be the most expensive and disruptive alternative because it would require the greatest
27 amount of right of way acquisition and would have the largest environmental
28 footprint. The new alignment would not meet the purpose and need of the Project
because it is not expected that reducing the volume of traffic would reduce the need
for the proposed safety improvements. (SAR at 173.)
- 25 c. Reduced Shoulders. This alternative was rejected because constructing 4-ft shoulders
26 instead of 8-ft shoulders would reduce the collision reduction factor from 30% to 15%
27 in the traffic safety index calculation, disqualifying the Project as a safety project and
28 from SHOPP funding. Additionally, the FEIR outlines a number of reasons why 4-ft

²¹ Pursuant to CEQA Guidelines § 15126.6(e), an EIR must also address the no project alternative.

1 shoulders are not recommended for a route that is handling an average of 20,000 cars
2 per day. (SAR at 173.) Four-foot shoulders also would not reduce collisions as
3 effectively as 8-ft shoulders and, therefore, the reduced shoulders would not feasibly
4 attain the basic objectives of the Project.

- 5 d. Spot Improvements. The FEIR recognized that the number of collisions within the
6 Project area had dropped with recent spot improvements, but still remained above the
7 statewide average. The FEIR notes that collisions are distributed throughout the
8 Project area and not limited to particular locations. Therefore, spot improvements
9 would fail to address the overall safety concerns of the current highway. Any
10 reduction in the scope of the proposed project would dilute the safety benefit and
11 would be inconsistent with the project's purpose and need. The spot improvement
12 alternative would therefore fail to attain the basic objectives of the Project and was
13 eliminated from further discussion.

14 Petitioners challenge the FEIR on the grounds Respondents failed to consider a reasonable
15 range of potentially feasible alternatives as required by CEQA, including a reduced impact
16 alternative. Petitioners also argue Respondents' rejection of the various alternatives is not
17 supported by substantial evidence in the record.

18 Respondents, on the other hand, contend they considered a reasonable range of alternatives.
19 "Caltrans considered several different alternatives to the project during the scoping phase of
20 environmental review, with input from a Value Analysis Team, the Project Development Team,
21 and the public. [] After looking closely at six alternatives, Caltrans determined that four of these
22 alternatives, 'Alternative B: Widen in Place,' 'New Alignment,' 'Reduced Shoulders,' and 'Spot
23 Improvements' were infeasible. [] Caltrans explained in detail the reasons why these alternatives
24 were infeasible, and carried forward two alternatives, 'Alternative A' and 'No-Build.'"

25 The Court concludes Respondents' rejection of the Spot Improvements alternative and the
26 Reduced Shoulder Alternative is not supported by substantial evidence in the record. The Court
27 does conclude that Alternative B is supported by substantial evidence in the record. In sum, the
28 Court concludes Respondents prejudicially abused their discretion in failing to consider a
reasonable range of feasible alternatives as required by CEQA. The evaluation of only the Project
and one alternative, the no-build alternative required to be analyzed pursuant to CEQA, fails to
satisfy the "'the rule of reason' that requires the EIR to set forth only those alternatives necessary
to permit a reasoned choice." (CEQA Guidelines § 15126.6(f).)

///

1 **1. Applicable standards**

2 The California Legislature expressly declared “that it is the policy of the state that public
3 agencies should not approve projects as proposed if there are feasible alternatives or feasible
4 mitigation measures available which would substantially lessen the significant environmental
5 effects of such projects, and that the procedures required by this subdivision are intended to assist
6 public agencies in systematically identifying both the significant effects of proposed projects and
7 the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen
8 such significant effects.” (Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3),
9 15126.6(b).)

10 “The lead agency is responsible for selecting a range of potential alternatives for
11 examination and must publicly disclose its reasoning for selecting those alternatives.” (CEQA
12 Guidelines § 15126.6(a); *Citizens of Goletta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553,
13 569.) An agency’s evaluation of the reasonable range of alternatives is the “core” of an EIR. (*Id.*
14 at 564.) “‘The basic framework for analyzing the sufficiency of an EIR’s description of
15 alternatives is set forth’ in the statute, in the CEQA Guidelines, and in [*Goletta, supra.*]” (*Cal.*
16 *Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 980 (citation omitted).)

17 “There is no iron clad rule governing the nature or scope of alternatives to be discussed
18 other than the rule of reason.” (CEQA Guidelines § 15126.6(a).) The “rule of reason” thus
19 requires an EIR “to set forth only those alternatives necessary to permit a reasoned choice.”
20 (CEQA Guidelines § 15126.6(f); *id.* at § 15126.6(a) (an EIR “must consider a reasonable range of
21 potentially feasible alternatives that will foster informed decisionmaking and public
22 participation”); (*Goletta, supra*, 52 Cal.3d at 566 (“CEQA establishes no categorical legal
23 imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated
24 on its facts, which in turn must be reviewed in light of the statutory purpose”) (citations omitted).)
25 “The EIR should briefly describe the rationale for selecting the alternatives to be discussed.”
26 (CEQA Guidelines § 15116.6(c); *id.* at § 15126.6(a).)

27 “An EIR shall describe a range of reasonable alternatives to the project, or to the location
28 of the project, which would feasibly attain most of the basic objectives of the project but would

1 avoid or substantially lessen any of the significant effects of the project, and evaluate the
2 comparative merits of the alternatives.” (CEQA Guidelines § 15126.6(a); *id.* at § 15126.6(c)
3 (“Among the factors that may be used to eliminate alternatives from detailed consideration in an
4 EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability
5 to avoid significant environmental impacts”).) “The range of potential alternatives to the proposed
6 project shall include those that could feasibly accomplish most of the basic objectives of the
7 project and could avoid or substantially lessen one or more of the significant effects.” (CEQA
8 Guidelines § 15126.6(c).) Thus, “[w]hen assessing feasibility in connection with the alternatives
9 analysis in the EIR, the question is whether the alternative is *potentially* feasible.”^{22, 23} (*Cal.*
10 *Native Plant Society, supra*, 177 Cal.App.4th at 999.)

11 “Because an EIR must identify ways to mitigate or avoid the significant effects that a
12 project may have on the environment [], the discussion of alternatives shall focus on alternatives
13 to the project or its location which are capable of avoiding or substantially lessening any
14 significant effects of the project, even if these alternatives would impede to some degree the
15 attainment of the project objectives, or would be most costly.” In addressing the range of
16 potentially feasible alternatives, the “EIR shall include sufficient information about each
17 alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.”
18 (CEQA Guidelines § 15126.6(d).) “As with the range of alternatives that must be discussed, the
19 level of analysis is subject to a rule of reason.” (*Cal. Native Plant Society, supra*, 177
20 Cal.App.4th at 588 (citation omitted).)

21 The EIR, however, is “not required to consider alternatives which are infeasible.” (CEQA
22 Guidelines § 15126.6(a).) The EIR must identify those alternatives that “were considered by the
23 lead agency but were rejected as infeasible during the scoping process and briefly explain the
24

25 ²² “Like mitigation measures, potentially feasible alternatives ‘are suggestions which may or may not be adopted by
the decisionmakers.” (*Cal. Native Plant Society, supra*, 177 Cal.App.4th at 999.)

26 ²³ This is in contrast to the question before an agency when making a final decision regarding a project, which is
27 whether the alternatives are *actually* feasible. “At that juncture, the decision makers may reject as infeasible
28 alternatives that were identified in the EIR as potentially feasible.” (*Id.* at 981.) “‘Feasible’ means capable of being
accomplished in a successful manner within a reasonable period of time, taking into account economic,
environmental, and technological factors.”²³ (Pub. Res. Code § 21061.1.)

1 reasons underlying the lead agency's determination." (CEQA Guidelines § 15126.6(c).) An
2 agency's finding of infeasibility with regard to an alternative must be supported by substantial
3 evidence. (*County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141
4 Cal.App.4th 86, 100.) "[W]here potential alternatives are not discussed in detail in the [EIR]
5 because they are not feasible, the evidence of infeasibility need not be found within the [EIR]
6 itself. Rather a court may look at the administrative record as a whole to see whether an alternative
7 deserved greater attention in the [EIR]." (*Goletta*, 52 Cal.3d at 569 (citation omitted).)

8 However, "[a]n adequate record showing the agency's reasoning is particularly important
9 when the lead agency concludes that there are no feasible alternatives meriting evaluation in the
10 EIR. In such a situation, an agency cannot expect the public to accept its determination on blind
11 trust, and the basis for its finding there are no feasible alternatives must be explained in meaningful
12 detail." (Practice Under CEQA at §15.39, p.770.2.)

13 **2. The FEIR's rejection of the Spot Improvements alternative is not**
14 **supported by substantial evidence.**

15 The FEIR explains and rejects the Spot Improvements alternative as follows:

16 The number of collisions has dropped with the recent interim Improvements (see
17 Table 2); however, the collision rate is still above the statewide average. The
18 collisions are distributed throughout the project area and are not limited to
19 particular locations. Therefore, spot improvements would not address the overall
20 safety concerns of the current highway. Any reduction in the scope of the
proposed project would dilute the safety benefit and would be inconsistent with
the project's purpose and need. Spot improvements would not attain most of the
basic objectives of the project and this alternative was therefore eliminated from
further discussion.

21 (SAR at 175.)

22 Petitioners contend the FEIR's rejection of the Spot Improvements alternative is not
23 supported by substantial evidence because "the FEIR did not disclose the location of accidents
24 and when requested Caltrans refused to disclose the location of the accidents." Petitioners also
25 allege "segment 6 has a much higher rate for accidents than all of the other segments. As the
26 accident rate has declined in the last several years, additional improvements in Segment 6 may
27 result in such an alternative meeting the basic objective of the project to improve safety."

28 In response to Petitioners' contention regarding Respondents' failure to disclose the

1 location of accidents along SR 16, Respondents rely on their conclusions regarding the
2 confidentiality of the Table B Reports pursuant to 23 U.S.C. § 409. In response to Petitioners'
3 substantial evidence arguments, Respondents counter that "substantial evidence in the record"
4 supports the FEIR's rejection of the Spot Improvements alternative as infeasible. According to
5 Respondents, "[t]he FEIR makes clear that there are no hotspot areas that could be improved to
6 address the overall safety of the highway. [] The interim improvements already constructed have
7 not reduced the collision rates in those areas to less than the statewide average, demonstrating that
8 hotspot improvements will not meet the safety objectives of the Project."

9 Respondents' failure to publicly disclose the Table B Reports is fatal to Respondents'
10 rejection of the Spot Improvements alternative. As previously discussed, the Table B Reports are
11 not protected from disclosure or otherwise privileged in a CEQA action pursuant to 23 U.S.C. §
12 409. Respondents also fail to demonstrate their rejection of the Spot Improvements alternative is
13 supported by any other evidence, substantial or otherwise, in the record. Although Respondents
14 cite to the FEIR in support of their argument to the contrary, neither the FEIR nor Respondents'
15 pleadings cite to any evidence in the administrative record in support of the statements and
16 conclusions allegedly supporting the rejection of the Spot Improvements alternative.

17 The Court also notes Respondents' inconsistent position regarding segmentation of the
18 Project into six segments, which undermines the validity of Respondents' rejection of the Spot
19 Improvements alternative. According to Respondents, "Caltrans has consistently stated that it is
20 inappropriate to analyze the collision data by segment, although as the project has progressed,
21 such analysis has become common. As Caltrans stated in the FEIR and response to comments, the
22 segments were created based on environmental resources and limitations, and were not intended
23 to be utilized to analyze collision data or other information." Respondents concede, however, they
24 analyzed the collision data for Segment 1 separately, which rendered Segment 1 ineligible for
25 federal funding in part:

26 Some improvements have been made in Segment 1 including a traffic signal and
27 improved access. These have helped to reduce the number of collisions in
28 Segment 1. In addition, the estimated costs to further update Segment 1 in this
project are high due to the need to build a new bridge at Taylor Creek. Based on
the reduced number of collisions and the high costs, Segment 1 does not qualify

1 for funds from the 201.010 Safety Improvement Program. However, Segment 1
2 will remain a part of the project description in the event that other sources of
funds are made available.

3 (Opposition at 14:5-11 (quoting SAR at 165).) Respondents also state:

4 To clarify, funding was not “split” between Segment 1 and Segments 2 through 6;
5 as previously discussed, Segment 1 does not qualify for funding under the Safety
Improvement Program due to reduced accident rates and is therefore no longer
6 planned for construction as part of the safety improvement project. The remaining
project, which encompasses Segments 2 through 6, does qualify for this funding
7 as a unit, because the collision rates for those combined segments are and have
consistently remained above the statewide average.

8 (Opposition at 16:14-22.)

9 Respondents demonstrated an ability to analyze Segment 1 separately. In doing so,
10 Respondents concluded that spot improvements along that particular segment of SR 16
11 successfully reduced collision rates to below the statewide average. For reasons unclear to the
12 Court, Respondents contend it was unnecessary to conduct a similar analysis with respect to
13 Segments 2 through 6. Instead, they simply rejected the Spot Improvements alternative on the
14 ground it would not meet the objectives of the Project. Respondents’ arbitrary refusal to conduct a
15 segment-by-segment analysis of the Project, on top of refusing to disclose the data underlying its
16 collision rate analyses, wholly conflicts with CEQA’s purpose of fostering informed
17 decisionmaking and informed public participation.

18 The Court is also concerned that the basis for the FEIR’s rejection of the Spot
19 Improvements alternative, or any alternative, is too restrictive. As the FEIR makes abundantly
20 clear, there are two – and only two – Project objectives: (1) to improve the safety of SR 16; and
21 (2) to construct flood improvements necessary to allow SR 16 to withstand a 100-year flood
22 event. When strict and absolute compliance with the project objective is the sole criterion, every
23 alternative can be found wanting for its failure to precisely and completely satisfy project
24 objectives. Such an approach substantially undermines a true consideration of alternatives. Even
25 projects that substantially meet the objectives are excluded as alternatives under Respondents’
26 approach.

27 That is precisely what occurred here. When a potential alternative failed to precisely meet
28 a project objective (generally the safety objective), Respondents automatically eliminated the

1 alternative from further consideration because the alternative “would not attain the most basic
2 objectives of the project”²⁴ (SAR at 175.) Thus, the FEIR evaluated only the Project and the
3 “no-build” alternative in the FEIR. This practice is inconsistent with the goals of CEQA and the
4 purpose of the EIR process. “The Purpose of an EIR is to give the public and government
5 agencies the information needed to make informed decisions, thus protecting “not only the
6 environment but also informed self-government.” [Citation.] The EIR is the heart of CEQA, and
7 the mitigation and alternatives discussion forms the core of the EIR.” (*In re Bay Delta, supra*, 43
8 Cal.4th at 1162 (citations omitted).) Under these circumstances, the agency should make a
9 concerted effort to provide the public with adequate information regarding the Project, including
10 a discussion of a reasonable range of alternatives that allow “the public to evaluate the
11 comparative merits of the proposed project.” (*Mira Mar Mobile Comm. v. City of Oceanside*
12 (2004) 119 Cal.App.4th 477, 491; CEQA Guidelines § 15126.6(a).)

13 **3. The FEIR’s rejection of the Reduced Shoulder Alternative is not**
14 **supported by substantial evidence.**

15 With respect to the Reduced Shoulder Alternative, the FEIR states: “4-ft shoulders would
16 not reduce collisions as effectively as 8-ft shoulders. Therefore, reduced shoulders would not
17 feasibly attain most of the basic objectives of the project. 4-ft shoulders would also eliminate
18 project funding and was therefore eliminated from further discussion.” Thus, it appears the FEIR
19 rejected the Reduced Shoulder Alternative on the basis the alternative failed to meet the Project’s
20 objective of improving safety and the economic infeasibility of constructing the Project due to the
21 loss of federal funding.

22 Petitioners challenge the FEIR’s rejection of the Reduced Shoulder Determination on the
23 grounds it is not supported by substantial evidence.²⁵ With respect to the economic feasibility of

24 ²⁴ It is important to bear in mind that “[a]n EIR shall describe a range of reasonable alternatives to the project . . .
25 which would feasibly attain most of the basic objectives of the project” (CEQA Guidelines §§ 15126.6(a), (c),
26 (d).) “[A]n EIR should not exclude an alternative from detailed consideration merely because it ‘would impede to
27 some degree the attainment of the project objectives.’” (*In re Bay Delta, supra*, 43 Cal.4th at 1165 (quoting CEQA
28 Guidelines § 15126.6(b).) “It is virtually a given that the alternatives to a project will not attain *all* of the project’s
objectives.” (*Watsonville Pilots Assoc. v. City of Watsonville* (2010) 182 Cal.App.4th 1059, 1087.)

²⁵ Petitioners also contends, in its subsection heading, that FEIR’s rejection of the Reduced Shoulders Alternative is
not supported by the Project Description. Petitioners fails to substantively address this issue in its pleadings and cites
no authority requiring a FEIR’s rejection of a project alternative to be supported by the Project Description.

1 the Reduced Shoulder Alternative, Respondents contend that “constructing 4-ft shoulders instead
2 of 8-ft shoulders would reduce the collision factor from 30% to 15% in the traffic safety index,
3 thereby disqualifying the Reduced Shoulder Alternative from federal funding.” Respondents also
4 contend, and the Court does not disagree, that economic factors are valid considerations in
5 determining the feasibility of the Project (See Pub. Res. Code § 21061.1). Respondents, however,
6 fail to support their conclusions with substantial evidence in the record. Respondents fail to cite to
7 any portion of the administrative record containing the evidence supporting its conclusions
8 regarding the traffic safety index calculation for the Reduced Shoulder Alternative, which would
9 support Respondents’ claims that the Reduced Shoulder Alternative would not qualify for SHOPP
10 funds. Although the FEIR cross-references its Project Funding discussion (Section 1.3), that
11 section fails to reference any portion of the administrative record containing the relevant
12 information.

13 Respondents’ conclusion that the Reduced Shoulder Alternative would not meet the
14 Project’s safety objective also is not supported by substantial evidence in the administrative record.
15 Although the FEIR references the Highway Design Manual, a National Research Council
16 publication, and unidentified “studies” showing that centerline collisions are reduced by 50% when
17 a roadway has 8-ft shoulders, Respondents fail to direct the Court to where in the administrative
18 record the documents may be located. Both the FEIR and Respondents’ Opposition identify a
19 number of limitations associated with the Reduced Shoulder Alternative, (including difficulty of
20 roadside maintenance and emergency parking, and less effective CHP enforcement), but fail to
21 identify the factual basis for these conclusions in the administrative record.

22 4. **The FEIR’s rejection of Alternative B is supported by substantial**
23 **evidence.**

24 The Court disagrees with Petitioners’ contention that the FEIR’s rejection of Alternative B
25 as infeasible is not supported by substantial evidence. The FEIR’s detailed discussion of
26 Alternative B stands in stark contrast to its discussion of the other alternatives and contains the
27 facts and analysis required by CEQA in an EIR. (*Citizens of Goletta Valley, supra*, 52 Cal.3d at
28 568 (“In general “the EIR must contain facts and analysis, not just the agency’s bare conclusions or

1 opinions") (citation omitted.) The FEIR recognizes that Alternative B "would require the same
2 amount of residential displacements and would have fewer impacts to farmland but would have" a
3 variety of other adverse impacts, including impacts to the Madison Migrant Housing Center,
4 increased impacts to visual resources, increased impacts to cultural resources, increased impacts to
5 wetlands and waters of the U.S., increased impacts to protected species, and increased costs that
6 would jeopardize funding sources. (SAR at 172.) The FEIR then conducts a side-by-side
7 comparison of the Project and Alternative B, concluding that "[a]lthough impacts to farmland,
8 giant garter snake habitat, and Swainson's hawk foraging habitat would be less, widening in place
9 would increase impacts to environmental resources overall. Widening in place is also not
10 considered feasible due to the extraordinary cost increases associated with construction. Therefore,
11 this alternative was eliminated from further discussion." (SAR at 173.)

12 **G. Respondents failed to adequately respond to public comments.**

13 A lead agency is required to consider comments it receives on a draft environmental
14 report, proposed negative declaration, or proposed mitigated negative declaration during the
15 public review period. (Pub. Res. Code § 21091(d)(1).) "With respect to the consideration of
16 comments received on a draft environmental impact report, the lead agency shall evaluate
17 comments on environmental issues that are received from persons who have reviewed the draft
18 and shall prepare a written response" (Pub. Res. Code § 21091(d)(2)(A).) "The written
19 response shall describe the disposition of each significant environmental issue that is raised by
20 commentators." (Pub. Res. Code § 21091(d)(2)(B); CEQA Guidelines § 15088(c).) "In particular,
21 the major environmental issues raised when the lead agency's position is at variance with
22 recommendations and objections raised in the comments must be addressed in detail giving
23 reasons why specific comments and suggestions were not accepted. There must be good faith
24 reasoned analysis in response. Conclusory statements unsupported by factual information will not
25 suffice." (CEQA Guidelines § 15088(c).) As summarized by the First Appellate District in
26 *Friends of the Eel River v. Sonoma County Water Agency*, (2003) 108 Cal.App.4th 859, 878:
27 "The courts have looked not for perfection but for adequacy, completeness, and a
28 good faith effort at full disclosure.' . . . Thus, a lead agency need not respond to
each comment made during the review process, however, it must specifically

1 respond to the most significant environmental questions presented. [Citation.]
2 Further, the determination of the sufficiency of the agency's responses to
3 comments on the draft EIR turns upon the detail required in the responses.
4 [Citation.] Where a general comment is made, a general response is sufficient.
5 [Citation.]”

6 Petitioners take issue with a number of Respondents' responses to public comments
7 regarding the proposed flood improvements. Petitioners contend the responses are “dismissive, do
8 not provide a reasoned analysis, and improperly defer study and analysis until some future date.”

9 The first group of responses challenged by Petitioners relate to the raising of SR 16 as part
10 of the contemplated flood improvements:

11 Comment: Yolo County Flood Improvement Partnership: The project plans to
12 raise SR 16 above the 100 – year floodplain. The EIR does not mention how high
13 they plan to raise SR 16, but in earlier plans it increased from a 2 foot to a 4 foot
14 increase in height. Very little was mentioned in the EIR about the plan to provide
15 flood protection.

16 An earlier plan proposed the State taking the ag field to the north of Highway 16
17 by eminent domain. The field were to become holding ponds, effectively taking
18 them out of agricultural production. None of the landowners were notified of this
19 proposal and only became aware of the plan after we sent them a copy of the
20 proposed maps. Is this the same plan? More information needs to be provided.

21 Response: It is expected the highway will increase in height by 4 feet but may be
22 as high as 8 feet. The exact height cannot be determined until the design is
23 finalized and will be based on negotiations with property owners for flood
24 easements.

25 ***

26 Comment: Raising the road between I-505 and Esparto and turn lanes for and
27 access to and from Highway 16: Our concern about turn lanes for large ag
28 equipment has not been addressed. Large equipment cannot make 90 degree turns,
they need a much longer and larger area than automobiles to make turns. Because
you have not provided information concerning the height of the road and slope the
adjoining driveways we cannot determine if the project will accommodate large
equipment turning from Highway 16 to the adjoining fields. An earlier version of
this project only allowed for turns only paved county roads, not adjoining fields.
This is an unacceptable and huge problem for agriculture. Agricultural equipment
is moved in and out of fields during the entire season and continued access is
imperative. This issue needs to be addressed.

29 Response: Current legal access to the highway (driveways and county roads) will
30 be maintained with the exception of one driveway to Taber's Corner. The access
31 to county roads will be designed using Surface Transportation Assistance (STAA)
32 standards (for large trucks).

33 Comment: YCFB offered to meet with your engineers and provide a tour of farm
34 equipment but no one took us up on the offer.

1 This EIR, although lengthy, did not address the above concerns. YCFB would
2 appreciate your specific answers on how your proposed road changes will
3 accommodate the movements of farm equipment. It is our recommendation that
4 the proposed changes to State Route 16 be re-reviewed and the concerns of
5 agriculture be carefully and fully studied, and then just as carefully and fully
6 addressed.

7 Response: Caltrans appreciates Yolo County Farm Bureau's input, interest, and
8 the comments made on this project. Caltrans would be willing to meet[] with the
9 Farm Bureau to discuss this project further if desired.

10 In light of the Court's prior discussion regarding the FEIR's failure to provide more
11 detailed information on raising SR 16 to withstand a 100-year flood event, the Court agrees with
12 Petitioners that Respondents' responses to the above-quoted comments are insufficient.

13 Petitioners also contend that Respondents failed to adequately respond to comments
14 regarding collision data and the Purpose and Need for the Project:

15 Comment: Collision data presented by Caltrans is different from CHP data
16 obtained locally and accidents are going down. Is there still need for this
17 project[?]

18 Response: When a collision occurs on a city, county or state highway, a police
19 officer, city police, county sheriff, or CHP writes up a traffic collision report
20 (TCR). If the collision is state highway related, which means it happened on a
21 state highway or near a state highway (so many feet from an intersection or ramp)
22 a box gets checked on the form indicating such. TCRs that are marked "state
23 highway related" when completed get sent to Caltrans Headquarters Traffic
24 Operations and the county, route, and post mile get written down on the TCR, for
25 example Yol-16-23.03. Two copies of the TCR are made and one copy is sent to
26 the respective Caltrans District Office and one report gets sent back to the CHP to
27 finish coding all collision information into the Statewide Integrated Traffic
28 Record System (SWITRS). Every few months, the collision data that is marked
"state highway related" is copied from SWITRS and uploaded in the state Traffic
Accident Surveillance and Analysis System (TASAS). From there collision data
is pulled by anybody needing collision data for all state highways including ramps
and intersections.

Numbers are going to vary month by month depending on the timeframe of the
information. Without knowing what information was received from the CHP it is
difficult to say why there are discrepancies. Regardless, Caltrans has determined
that there has been a consistent need for this project.

The Court agrees with Respondents that its response to this comment is sufficient in light
of Petitioners' failure to provide the allegedly conflicting data to Respondents in connection with
their comment or include the data in the administrative record.

Petitioners next challenge Respondents' refusal to disclose the locations and nature of

1 collisions with each of the segments:

2 Comment: Provide the locations and nature of collisions within each of the
3 segments.

4 Response: The following chart gives general collision information. The collisions
5 are spread throughout the project limits. The segments were created based on
6 environmental constraints (see Section 1.6.1 Alternative A) and it is not
appropriate to analyze the collisions per segment. See response 3-3 for more
information. (SAR at 277.)

7 Respondents' response to this comment is inadequate and, in fact, is non-responsive.
8 Additionally, in light of the Court's conclusion that Respondent abused its discretion in failing to
9 disclose the Table B Reports and Respondents' arbitrary refusal to conduct a segment-by-segment
10 analysis, the Court agrees that Respondents' response to this comment is inadequate.

11 III. DISPOSITION

12 For the reasons set forth above, the Petition is GRANTED in part and DENIED in part. A
13 judgment shall be issued in favor of Petitioners, and against Respondents, granting the Petition. A
14 peremptory writ shall issue from this Court to Respondents, commanding Respondents to set
15 aside its approval of the Project and to take any further action especially enjoined on it by law.
16 The writ shall further command Respondents to make and file a return within 60 days after
17 issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves
18 jurisdiction in this action until there has been full compliance with the writ.

19 In accordance with Local Rule 9.16, Petitioners are directed to prepare a judgment,
20 incorporating this Court's ruling as an exhibit, and a peremptory writ of mandamus; submit them
21 to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and
22 thereafter submit them to the Court for signature and entry of judgment in accordance with Rule
23 of Court 3.1312(b).

24
25 DATED: July 28, 2011



26
27
28
Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**CAPAY VALLEY COALITION
and YOLO COUNTY FARM BUREAU**

Case Number: 34-2010-80000414

vs.

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION, RANDELL H.
IWASAKI, DIRECTOR**

**CERTIFICATE OF SERVICE
BY MAILING (C.C.P. Sec. 1013a(4))**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **RULING ON SUBMITTED MATTER** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

DONALD B. MOONEY
LAW OFCS OF DONALD MOONEY
129 C ST #2
DAVIS, CA 95616


NANCY McDONOUGH
KARI E. FISHER
CALIFORNIA FARM BUREAU FED.
2300 RIVER PLAZA DR
SACRAMENTO, CA 95833

JUDITH A. CARLSON
DAVID H. McCRAY
DEPARTMENT OF TRANSPORTATION
1120 N ST MS 57
PO BOX 1438
SACRAMENTO, CA 95812-1438

I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

Dated: July 29, 2011

By: C. BEEBOUT, 
Deputy Clerk