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San Francisco County Superior Court

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GORDON PAHK-LI, Clerk

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Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, UNLIMITED JURISDICTION
COUNTY OF SAN FRANCISCO
DEPARTMENT 301

505509

COALITION FOR ADEQUATE REVIEW;
NINETY-NINE PERCENT; AND ROB
ANDERSON,

Petitioners,

v.

CITY AND COUNTY OF SAN
FRANCISCO; AND DOES 1 THROUGH
10, INCLUSIVE,

Respondents.

**ORDER GRANTING PETITION FOR
PEREMPTORY WRIT OF MANDATE**

I. INTRODUCTION

This matter came before the Honorable Peter J. Busch on September 19, 2006, in Department 301 of the San Francisco Superior Court, on the Petitioners' First Amended Complaint for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. Mary Miles, Attorney at Law, appeared for the Petitioners. Audrey Williams Pearson and Marlana Byrne, Deputy City Attorneys, appeared for Respondent City and County of San Francisco ("City"). The Court took the matter under submission. Having reviewed the proposed orders, briefs and other papers submitted by counsel, and the arguments of counsel on

1 | September 19, 2006, the Court GRANTS the Petitioners' request for a Peremptory Writ of
2 | Mandate, and finds and orders the following.

3 | **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 | The Petitioners claim that the City's exemption from environmental review of the
5 | "San Francisco Bicycle Plan" ("Bicycle Plan") and its adoption and implementation of the
6 | Bicycle Plan violated the California Environmental Quality Act ("CEQA"), California Public
7 | Resources Code §§21000 *et seq.*

8 |
9 | The Bicycle Plan originated in the City's Department of Parking and Traffic ("DPT")
10 | as a complex, far-reaching plan to alter streets in San Francisco to accommodate San
11 | Francisco residents who ride bicycles. To achieve the Bicycle Plan's goal of increasing the
12 | number of the City residents who ride bicycles, the Bicycle Plan mandates a number of
13 | actions including: eliminating traffic lanes and street parking throughout the City to create
14 | bicycle lanes (15 AR 3461, 3465-3467), requiring that cars, buses and trucks "share" lanes
15 | with bicyclists regardless of speed (15 AR 3484-85, 3603-05, 3612-37), allowing bicycles
16 | inside Muni and other public transit vehicles (15 AR 3518-24, 3526-27), eliminating parking
17 | in existing and newly constructed buildings (15 AR 3509, 3514), allowing bicycles in
18 | exclusive bus lanes (15 AR 3476-77), installing physical impediments to motorized traffic or
19 | "traffic calming" (15 AR 3482), allowing bicycling on sidewalks (4 AR 498, 648, 686-90,
20 | 703-06, 749, 763; 15 AR 3499), and closing streets to vehicles to create exclusive "bicycle
21 | boulevards" (E.g., 4 AR 707, 710 (Cesar Chavez, 25th and 26th); 774 (Townsend), 15 AR
22 | 3596.). The Bicycle Plan also contemplated the City doing away with established Level of
23 | Service ("LOS") measurement of traffic impacts in CEQA analysis, (15 AR 3481-82), and
24 | requiring that CEQA review of any proposed project in the City must resolve any "traffic
25 | impacts or conflicts of parking access" by giving "full or partial priority for bicycles," (15
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1 AR 3572), that any proposed Area Plan in the City must be “consistent” with the Bicycle
2 Plan, and that automatic amendments of the City’s General Plan will roll in “[a]s changes to
3 the network occur.” (15 AR 3465, 3570.)

4 **THE 1997 SAN FRANCISCO BICYCLE PLAN**

5 San Francisco first adopted a bicycle plan in March 1997 (“1997 Plan”). (8 AR 1729-
6 30.) Prior to that, the Transportation Element of the San Francisco General Plan contained
7 numerous goals and policies related to facilitating safe and convenient use of bicycles,
8 increasing bicycle lanes on City streets, and improving bicycle parking. (8 AR 1729.) The
9 1997 Plan – adopted by resolution of the San Francisco Board of Supervisors (“Board”) –
10 had one goal: to “provide a comprehensive guide for efforts that will make San Francisco a
11 more ‘bicycle-friendly’ city.” (1997 Plan at ii.) Within that overall goal, the 1997 Plan
12 contained four objectives: 1) improve facilities for bicycles; 2) improve bicycle safety; 3)
13 promote bicycling in the City; and 4) increase funding for bicycle projects. (Id.)

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15
16 The 1997 Plan, together with three amendments, was updated and readopted in May
17 2001. (8 AR 1738.) These amendments added major projects recommended in the 1997
18 Plan that had been completed or were currently being implemented, identified and added new
19 potential bicycle facility projects, and added several elements to the 1997 Plan as required by
20 the Streets and Highways Code. (8 AR 1739-40; Exhibit A to the City’s RJN.)

21 **THE 2005 UPDATE TO THE 1997 BICYCLE PLAN**

22 In 2002, San Francisco began to prepare an update to the 1997 Plan. (15 AR 3444.)
23 Initially, the DPT’s Bicycle Program sought to include in the updated plan a list of possible
24 improvements for upgrading the routes on the existing bicycle network (which improvements
25 had generally been identified in the 1997 Plan but not yet implemented), along with seven
26 generalized goals and objectives, and recommended actions for achieving them. (9 AR 1856;
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1 10:2147 ["instead of merely having a list of bicycle network improvements, it will contain
2 detailed ("grant ready") engineering analysis and evaluation of the top 20 bicycle network
3 improvement projects."] Ultimately, the DPT decided to seek approval of only the general
4 policies related to bicycles, [hereinafter "Policy Framework" or "Framework document"] and
5 not to seek approval of the drafted list of route improvements (dubbed the "Network
6 Improvement Document" [hereinafter "Network document"]). (10 AR 2215).

7
8 The DPT set the draft Network document aside for later consideration when designs
9 for each improvement would be further evolved and could be vetted in a public forum, a
10 preferred option could be identified, funding could be obtained, and each route improvement
11 would be detailed enough for environmental review and approval by the various decision
12 makers. (10 AR 2226.)

13
14 In addition to the general goal of improving the network, the Policy Framework
15 included six other goals and related policies: 1) increase safe bicycle use; 2) ensure plentiful
16 bicycle parking; 3) adopt bicycle friendly practices and policies; 4) promote safe bicycling;
17 5) increase enforcement of bicycle related violations; and 6) prioritize and increase bicycle
18 funding. (15 AR 3426.) To implement each goal and objective, the Policy Framework
19 recommended numerous "actions" to be undertaken by various City agencies or officials.
20 The Policy Framework states that these actions are recommendations if the City wanted to
21 "see a major increase in the number of people that use bicycles." (15 AR 3425.)

22 ENVIRONMENTAL REVIEW AND ADOPTION OF THE 2005 POLICY

23 FRAMEWORK

24
25 After deciding that the DPT would not seek approval of a document with "grant-
26 ready" projects, the DPT set aside the draft Network document and submitted the Policy
27 Framework to the San Francisco Planning Department ("Planning Department") for review
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1 | under the California Environmental Quality Act, Public Resources Code section 21000 et seq
2 | (“CEQA”) in May of 2004. (5 AR 855.) After analyzing the update, the Planning
3 | Department determined that it was exempt from further environmental review under CEQA
4 | because there was no possibility that the adoption of the Policy Framework would have a
5 | significant effect on the environment. (1 AR 1-6.) Specifically, the Planning Department’s
6 | analysis noted that the Policy Framework was not significantly different from the 1997
7 | Bicycle Plan and did not specify any direct changes to any particular bicycle route or
8 | recommend any other changes to the environment. (1 AR 5.) The analysis acknowledged
9 | that the improvements in the draft Network document could change the physical environment
10 | and have possible impacts, but that any particular improvement in the draft Network
11 | document was not reasonably foreseeable and indirect impacts from the improvements would
12 | be too speculative to evaluate. (Id.) Thus, the Planning Department concluded that, until and
13 | unless improvements were actually proposed, there was no possibility that there would be
14 | significant environmental effects from just the adoption of the Policy Framework. (1 AR 5-
15 | 6.)

18 | On January 6, 2005, the San Francisco Planning Commission adopted a resolution
19 | indicating its intent to initiate amendments to the General Plan to incorporate the Policy
20 | Framework into the General Plan by reference and to amend policies in the General Plan’s
21 | Transportation Element and the Downtown Area Plan related to bicycles. (6 AR 1015-16.)
22 | The Planning Commission noticed and held a public hearing on a motion to adopt the
23 | amendments for January 27, 2005, but continued the hearing until February 3, 2005 in order
24 | to allow the public more time to prepare comments on the amendments. The Planning
25 | Commission adopted the General Plan amendments on February 3, recommended them to the
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1 Board for approval, and found the Policy Framework in conformity with the General Plan.

2 (6 AR 1246-48 [amendments]; 1275-77 [conformity findings].);

3 Petitioners filed an appeal with the Board of the Planning Department's determination
4 that the Policy Framework was exempt from further environmental review. Petitioners
5 alleged that the Policy Framework would have significant impacts due to the changes
6 proposed by the Policy Framework and that the Policy Framework and draft Network
7 document should be considered one project. (7 AR 1351.) The Planning Department
8 responded to the appeal, noting that the goals and policies were already contained in the 1997
9 Plan, that the Policy Framework was a distinct and separate project from the development of
10 the draft Network document, and that adoption of the improvements in the draft Network
11 document could take place independently of the Policy Framework. (7 AR 1389-90.) On
12 April 19, 2005, the Board unanimously upheld the Planning Department's determination that
13 the Policy Framework would not have any impacts on the environment.
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16 The Board of Supervisors adopted the Bicycle Plan's Framework document on June
17 7, 2006, by Ordinance No. 109-05, which amended the City's General Plan, incorporating the
18 Framework document into the General Plan, and directed the City to fund and implement the
19 Bicycle Plan. The Ordinance additionally provides that bicycle access should be provided
20 for on all streets regardless of street classification, except freeways, where bicycle facilities
21 should be reviewed on a case by case basis. Both the Ordinance and the Board's Motion
22 M05-55, adopted the City's CEQA exemption for the Bicycle Plan.
23

24 On June 21, 2005, the Board, sitting as the San Francisco County Transportation
25 Authority, adopted the Bicycle Plan's Network document as its 5-year plan for funding and
26 implementing the Bicycle Plan. The Board's adoption of the Network document committed
27 Proposition K funds to implement the actions described therein.
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1 **SUBSEQUENT ENVIRONMENTAL ANALYSES**

2 Additionally, the City has separately approved projects involving improvements to
3 individual bicycle routes or route portions. These projects have involved route
4 improvements in various parts of the City, such as on Lake Street in the northwest part of San
5 Francisco, North Point between the Embarcadero and Van Ness Avenue in the northeast part
6 of San Francisco, and on Alemany Boulevard, in the southern part of San Francisco.
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8 (Petitioner’s Request to Augment the Record, Ex A-2 (19 AR 4128, 4140, 4144, 4150, 4158,
9 4167, 4148, 4212)). Prior to adoption by the Board, these route improvements received
10 environmental review by the DPT or by Planning Department, including analysis of traffic
11 impacts. For each one, the DPT determined that it was exempt from further environmental
12 review under 14 California Code of Regulations (“CEQA Guidelines”) section 15301(c),
13 which exempts minor alterations to existing streets, or CEQA Guidelines § 15304(h), which
14 exempts the creation of bicycle lanes on existing rights of way. *Id.*

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16 The City also announced it would soon implement a number of other segments of the
17 Bicycle Plan, *e.g.*, Potrero, Alemany Boulevard, 14th Street, Illinois Street, John Muir Drive,
18 Laguna Honda, McCoppin, NorthPoint Street, Sloat Boulevard, and “The Wiggle”
19 (alterations of Duboce, Steiner, Waller, Pierce, Haight, Scott, and Fell Streets to
20 accommodate bicyclists’ desire for flat streets.) (Petitioner’s Request to Augment the
21 Record, Ex A-2 (19 AR 4280.))

22
23 As the City was apparently addressing each of these segments as independent projects
24 and finding those alterations “categorically exempt” from environmental review, Petitioners
25 brought a request for an Order to Show Cause (“OSC”). On May 11, 2006, this Court
26 granted the Petitioners’ request for an OSC, and on June 16, 2006, granted Petitioners’
27 request for a preliminary injunction. The Preliminary Injunction prohibited any alteration of
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1 the physical hardscape of City streets, further removal of public parking and traffic lanes,
2 further installation of bicycle lanes, and permitting bicycles inside Muni vehicles, and other
3 activities related to the Bicycle Plan.

4 **III. STANDARD OF REVIEW**

5 The standard of review on whether a peremptory writ of mandate should issue for
6 noncompliance with CEQA is whether the agency has abused its discretion. Abuse of
7 discretion is “established if the agency has not proceeded in a manner required by law or if
8 the determination or decision is not supported by substantial evidence.” (Pub. Res. Code §
9 21168.5.) When abuse of discretion is established, the error is prejudicial. (*County of*
10 *Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946. Where an
11 agency fails to “proceed in the manner required by law, we do not reach the question whether
12 that decision is supported by substantial evidence.” (*No Oil, Inc. v. City of Los Angeles*
13 (1974) 13 Cal. 3d 68, 75.) “Substantial evidence” means “enough relevant information and
14 reasonable inferences from this information that a fair argument can be made to support a
15 conclusion, even though other conclusions might also be reached.” (CEQA Guidelines §
16 15384(h).)

17 **EXEMPTIONS**

18 An agency fails to proceed in a manner required by law if it fails “to follow the
19 pertinent CEQA Guidelines.” (*Dunn-Edwards Corporation v. Bay Area Air Quality*
20 *Management District* (1992) 9 Cal.App.4th 644, 658, disapproved for other reasons in
21 *Western States Petroleum v. Superior Court* (1995) 9 Cal.4th 559, 570.)

22 Any asserted exemption must apply to the whole project. (*Association for a Cleaner*
23 *Environment v. Yosemite Community College District* (2004) 116 Cal.App.4th 629, 640.)
24 Exemptions may not be asserted by implication but must be expressly stated, after
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1 determination of their applicability. (*Mountain Lion Foundation v. Fish and Game*
2 *Commission* (1997) 16 Cal.4th 105, 124.) “[W]here there is any reasonable possibility that a
3 project or activity may have a significant effect on the environment, an exemption would be
4 improper.” (*Save Our Carmel River v. Monterey Peninsula Water Management District*
5 (2006) 141 Cal.App.4th 677, 689, quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190,
6 205-06.)

7
8 An agency abuses its discretion if it does not conduct an exemption determination
9 with “considered awareness” of applicable law and Guidelines, and only after “careful
10 analysis of the proposed project.” (*East Peninsula Education Council, Inc. v. Palos Verdes*
11 *Peninsula Unified School District* (1989) 210 Cal.App.3d 155, 174.) Applicability of a
12 particular exemption is construed narrowly and may not be expanded beyond its precise
13 language. (*Id.* at 166.)

14
15 If it can be seen with certainty that there will be no significant effect on the
16 environment, a “common sense” exemption will apply. (CEQA Guidelines § 15061(b)(3)
17 [“the general rule [is] that CEQA applies only to projects which have the potential for
18 causing a significant effect on the environment.”].) This exemption, also referred to as the
19 “general rule exclusion” (“GRE”), was adopted to guard against the possibility that an
20 obviously exempt project not found in the enumerated list of categorical exemptions “might
21 be required needlessly to comply with the requirements of CEQA.” (*Myers v. Bd. of*
22 *Supervisors* (1976) 58 Cal.App.3d 413, 425.)

23
24 In the GRE determination, “An agency abuses its discretion if there is no basis in the
25 record for its determination that the project was exempt from CEQA.” (*Davidon, supra* 54
26 Cal.App.4th at 114.) The City must provide substantial evidence in the Record that proves
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1 that when it asserted the GRE, it was certain that there was no possibility of any significant
2 impact from the Bicycle Plan. (*Id.* at 117; CEQA § 15061(b)(3).)

3 IV. ANALYSIS

4 Petitioners challenge San Francisco's adoption of the Bicycle Plan on three grounds.
5 First, Petitioners claim that the City did not properly analyze the Policy Framework under
6 CEQA because 1) the CEQA analysis only covered the Policy Framework and did not
7 include an analysis of the route improvements in the draft Network document; and 2) because
8 the analysis concluded that there would be no environmental impacts from adoption of the
9 policies. Second, Petitioners claim that several recommended actions in the Policy
10 Framework are preempted by provisions of the California Vehicle Code or Government
11 Code. Third, Petitioners claim that the City did not give the public proper notice of the
12 adoption and environmental review of the Policy Framework at the Planning Commission or
13 at the Board of Supervisors.
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16 As discussed herein, this case does not turn on the merits of the Bicycle Plan and the
17 City's attempts to increase the amount of bicycle use in San Francisco, but turns on the
18 City's failure to comply with the procedural requirements of CEQA.

19 **THE PROJECT IS NOT EXEMPT FROM CEQA.**

20 Petitioners claim that the City failed to comply with CEQA because the analysis
21 should have included review of the draft Network document and because the Policy
22 Framework may have environmental impacts. The Court agrees on both counts.
23

24 ***CEQA Overview***

25 To comply with CEQA, lead agencies must first determine whether an activity is a
26 "project." (Pub. Res. Code 21080(a).) The term "project" has two elements: it must involve
27 a direct, or reasonably foreseeable indirect, physical change on the environment; and it must
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1 be an activity undertaken by a public agency or involve the issuance of a permit to a private
2 party. (Pub. Res. Code § 21065.)

3 If the activity is determined to be a “project,” the lead agency must then determine
4 whether an exemption applies. (CEQA Guidelines § 15061(a).) A project could be
5 statutorily excluded from CEQA or could fall into one or more of thirty-three classes of
6 categorical exemptions. Categorical exemptions are types of projects that the State Office of
7 Planning and Research has determined do not have significant effects on the environment.
8 (Pub. Res. Code 21084(a).) These categorical exemptions include both “Class 4(h),” which
9 exempts the creation of bicycle lanes on existing rights-of way, and “Class 1(c),” which
10 exempts minor alterations to streets. (Pub. Res. Code § 21080(b); CEQA Guidelines §§
11 15304(h), 15301(c).)

12
13 If a project is not exempt, the lead agency must then determine whether a project may
14 have a significant effect on the environment. A “significant effect” is not just any effect on
15 the environment, but rather “a substantial, or potentially substantial, adverse change in the
16 environment.” (Public Resources Code §21068.) Thus, beneficial effects on the
17 environment are not considered “significant effects” for the purposes of CEQA, no matter
18 how great of an effect they constitute.
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20 If it can be seen with certainty that there will be no significant effect on the
21 environment the GRE will apply. (CEQA Guidelines § 15061(b)(3).) If there is substantial
22 evidence in light of the whole record before the lead agency that the project may have a
23 significant effect on the environment, the lead agency must prepare an environmental impact
24 report. (Pub. Res. Code § 21080(d).) If the project will not have a significant effect on the
25 environment, or where the significant effect can be mitigated, the lead agency must prepare a
26 negative declaration. (Pub. Res. Code § 21080(c).)
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1 ***The City Improperly Defined the Bicycle Plan.***

2 The GRE may be invoked only “Where it can be seen *with certainty* that there is no
3 possibility that the activity [the Bicycle Plan] in question *may have* a significant effect on the
4 environment.” (CEQA Guidelines § 15061(b)(3) (emphasis added).) Petitioners assert that
5 the City improperly described the Bicycle Plan as the adoption of the Policy Framework
6 without including the list of route improvements in the draft Network document and, thus,
7 that the City improperly segmented the Bicycle Plan. The Court agrees. The City
8 inappropriately defined the scope of the Bicycle Plan as limited solely to the Policy
9 Framework, rather than including both the Policy Framework and draft Network Document
10 in the Bicycle Plan’s scope.
11

12 Under CEQA, a lead agency must review “the whole of an action.” (CEQA
13 Guidelines § 15378(a).) However, where a subsequent activity is independent of, and not a
14 contemplated future part of the first activity, the two activities may be reviewed separately,
15 even though they may be similar in nature. (*Christward Ministry v. County of San Diego*
16 (1993) 12 Cal.App.4th 31; *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690;
17 CEQA Guidelines § 15165 [where one project is one of several similar projects of a public
18 agency, but is not deemed a part of a larger undertaking or a larger project, the agency may
19 prepare one environmental review for all projects or one for each project].)
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22 ***The Bicycle Plan Includes the Network Document.***

23 The Record shows that City documents described the Bicycle Plan as consisting of
24 both the Framework and Network documents, e.g.: Certificate of Exemption, January 11,
25 2005: “There are two major components to the San Francisco Plan [sic] Bicycle Plan update-
26 --the Policy Framework and the Network Improvement Document...” (1 AR 1-5A, 2, 3.)
27 Notice of Exemption, June 23, 2005: “There are two major components...the Policy
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1 Framework and the Network Improvement Document.” (1 AR 75.) Ordinance 109-05,
2 adopted June 7, 2005: “two components, the policy framework and the network
3 improvement program.” (1 AR 42.) (And see, e.g., 4 AR 568 (Network document); 5 AR
4 863 (Notification of Environmental Review); 15 AR 3426, 3439-40 (Framework document).
5

6 The City claimed that it originally “sought to include” the Network document in the
7 Bicycle Plan but later decided to seek approval of only the Framework document. The
8 Record shows that the City deliberately separated the two Bicycle Plan components to hasten
9 CEQA “clearance,” discussing its strategy at a meeting of the Board’s Land Use Committee
10 on May 17, 2004. (5 AR 942-46; 10 AR 2202.)

11 The Court finds unpersuasive the City’s attempts to change its own project
12 description to shrink the scope of the Bicycle Plan. The City’s Ordinance No. 109-05
13 contains the same inclusive description, and indicates that when the decisionmakers adopted
14 the Ordinance on June 7, 2005, they understood that the Bicycle Plan included both
15 documents. (1 AR 42.) Just two weeks later, the same Board, sitting as the San Francisco
16 County Transportation Authority, approved the Network document as its five-year plan for
17 funding and implementing the Bicycle Plan.
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19 The interrelation of the two documents is apparent. The Framework document sets
20 out “Actions” that are described in detail with named streets, charts and maps guiding their
21 implementation, while the Network document prioritizes them for funding and
22 implementation with engineering diagrams, overhead photographs, charts, and detailed
23 descriptions. City Ordinance 109-05 mandates their funding and implementation, and the
24 Board’s San Francisco County Transportation Authority Resolution commits to their funding
25 for at least five years. The same Board of Supervisors functions as both the legislative and
26 funding arm to achieve the common goals of the Bicycle Plan. That the City has begun to
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1 | implement parts of the Bicycle Plan described in both documents is further evidence that the
2 | actions described in the Bicycle Plan documents were reasonably foreseeable.

3 | The City encouraged the Court not to consider its actions in excepting the draft
4 | Network document and the subsequent actions taken by it in implementing numerous parts of
5 | Network document, characterized by the City as independent projects. However, the Court is
6 | not required to shut its eyes to the reality of the situation. "The requirements of CEQA
7 | cannot be avoided by piecemeal review which results from 'chopping a large project into
8 | many little ones -- each with a minimal potential impact on the environment -- which
9 | cumulatively may have disastrous consequences.'" *Lighthouse Field Beach Rescue v. City of*
10 | *Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208 (quoting *Bozung v. Local Agency Formation*
11 | *Com.* (1975) 13 Cal.3d 263, 283-284.) The City cannot implement this project piece by
12 | piece, claiming that the impact of each small project does not have a significant
13 | environmental effect. Such reasoning is akin to trying to avoid review of a timber harvest
14 | plan by removing trees one at a time, claiming each tree removal to be independent and
15 | exempt. At the end of the process the forest would be gone or the entire City streetscape
16 | reconfigured without environmental review ever having happened.

17 | The City cites to *Berkeley Keep Jets Over the Bay Committee v. Board of Port*
18 | *Commissioners* (2001) 91 Cal.App.4th 1344, 1358-59 as supporting the City's right to except
19 | the draft Network Document and subsequent piecemeal projects from the Bicycle Plan
20 | description. In that case, the lead agency prepared an EIR, and petitioners challenged the
21 | adequacy of the agency's project description. In *Berkeley Keep Jets*, the Court concluded
22 | that the construction of a new runway, new high speed taxiway, and the extension of a
23 | runway were not reasonably foreseeable consequences of airport expansion, and, thus, the
24 | project description in the EIR could exclude them and did not violate the prohibition against
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1 piecemeal descriptions; the taxiway and extension were deleted from the expansion early in
2 the planning process and essentially existed only as concepts in long-range plans that were
3 subject to constant revision. In this case, the detailed projects, in the form of the draft
4 Network document, were not only reasonably foreseeable, but that document was promptly
5 approved and various projects from the draft Network document have already been
6 implemented by the City. Unlike *Berkeley Keep Jets*, the City's actions show the City could
7 reasonably foresee the implementation of the various segments listed in the Framework and
8 Network documents of the Bicycle Plan.
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10 The City also relies on *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10
11 Cal.App.4th 712, for the proposition that when a subsequent activity is independent of, and
12 not a contemplated future part of the first activity, the two activities may be reviewed
13 separately, even though they may be similar in nature. In *Del Mar Terrace*, the City of San
14 Diego and Caltrans proposed the construction of one phase (a 1.8 mile segment) of State
15 Route 56, the construction of which consisted of five phases. The City and Caltrans
16 contemporaneously prepared four separate environmental documents for four of the five
17 phases. (*Id.* at 731.) The court held that the environmental review of a highway segment
18 need not include other phases of the highway even if the separate parts of the highway might
19 eventually be joined together. The court adopted a four-part test articulated by the federal
20 court in *Daly v. Volpe* (3d Cir. 1975) 514 F.2d 1106, in deciding whether roadway segments
21 were entitled to separate environmental review. The court found that separate environmental
22 review of a portion of a highway is appropriate when (a) the segment is of substantial length
23 and between logical terminal points; (b) the segment has independent utility; (c) the length of
24 the segment assures adequate opportunity for consideration of alternatives; and (d) if the
25 segment fulfills important state and local needs. The court found that the 1.8 mile segment
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1 met these criteria and upheld the review of just that segment. The Court noted that the
2 individual segments could be analyzed separately due to the uncertainty of whether and when
3 the electorate would approve development. (*Id.* at 731.)

4 This case is clearly distinguishable from *Del Mar Terrace*. *Del Mar Terrace* relied
5 on the uncertainty of the future segments of the highway segment projects, distinguishing
6 itself from *Laurel Heights Improvement Assn. v. Regents of University of California* (1988)
7 47 Cal.3d 376, where the Court required the inclusion of contemplated future activities that
8 were reasonably foreseeable. In *Laurel Heights*, the Court held that the fact that future action
9 had not yet been approved did *not* exempt it from environmental review. (*Id.* at 395.) Under
10 *Laurel Heights*, a future action need only be a reasonably foreseeable part of the original
11 project for environmental review of the whole project to be required by law. (*Id.* at 396.)
12 Similarly to *Laurel Heights*, and as discussed above, the City's implementation of segments
13 of the Bicycle Plan was not only reasonably foreseeable, but is already occurring.
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15 Further, these segments do not meet the test articulated in *Daly v. Volpe*. The
16 segmented bicycle lanes are not generally of "substantial length," nor do they connect
17 "logical terminal points." For example, at least some of the segments are as short as only
18 two blocks long and have no independent significance except as part of the greater plan.
19 (See two block segment from Arguello Boulevard to 3rd Avenue on Lake Street, Petitioner's
20 Request to Augment the Record, Ex A-2 (19 AR 4140).) As the City's implementation of the
21 segments of the Bicycle Plan were reasonably foreseeable, and do not meet the *Daly v. Volpe*
22 test, *Del Mar Terrace* does not apply. Consequently, the City erred in limiting the scope of
23 the Bicycle Plan.
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1 ***CEQA Review, as well as any CEQA Exemption, Must Apply to the Bicycle Plan as***
2 ***a Whole.***

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4 The City has implemented pieces of the Bicycle Plan described in both the
5 Framework and Network documents without CEQA review, street by street, claiming the
6 pieces are mini-projects, independent of the Bicycle Plan and covered by the GRE,
7 reasserting categorical exemptions under CEQA Guidelines § 15301 (“existing facilities”)
8 each time it builds another segment. The City’s position is that each time it implements a
9 small segment of the Bicycle Plan, if those affected wish to challenge it, they must file a new
10 petition in the Court.

11 The City’s position cannot be squared with CEQA, which mandates environmental
12 review of the *whole project*. (E.g., *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283 (CEQA
13 mandates that “environmental considerations do not become submerged by chopping a large
14 project into many little ones.”); *Association for a Cleaner Environment v. Yosemite*
15 *Community College District* (2004) 116 Cal.App.4th 629, 639; *Christward Ministry v.*
16 *Superior Court, supra*, 184 Cal.App.3d at 195-96.) CEQA Guidelines § 15003(h)
17 incorporates the Courts’ holdings: “The lead agency must consider the whole of an action,
18 not simply its constituent parts, when determining whether it will have a significant
19 environmental effect.” The City may not conceal environmental effects by focusing on
20 isolated parts of a project or overlooking the cumulative effects of the whole Bicycle Plan.
21 (*Bozung v. LAFCO, supra*, 13 Cal.3d at 279.)

22 Further, when the City asserts an exemption, that exemption must apply to the *whole*
23 Bicycle Plan. (*Association for a Cleaner Environment, supra*, 116 Cal.App.4th at 640.) As
24 previously discussed, the City failed to properly define the scope of the Bicycle Plan. This
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1 failure renders the City's Certificate of Exemption invalid, as its GRE determination failed to
2 address the full scope of the Bicycle Plan.

3 ***The City's Deferral of Review of Parts of the Bicycle Plan Violates CEQA.***

4 Promising that environmental review of parts of the Bicycle Plan will take place later
5 is unlawful and cannot excuse the City from complying with CEQA prior to adopting and
6 implementing the Bicycle Plan and amending its General Plan. (*Sundstrom v. County of*
7 *Mendocino* (1988) 202 Cal.App.3d 296, 307 (Deferring environmental assessment to a future
8 date runs "counter to that policy of CEQA which requires environmental review at the
9 earliest feasible stage in the planning process."); *Laurel Heights I, supra*, 47 Cal.3d at 394-
10 95); *No Oil, Inc. v. the City of Los Angeles, supra*, 13 Cal.3d at 79, Fn. 8 ("CEQA requires
11 that an agency determine whether a project may have a significant environmental impact, and
12 thus whether an EIR is required, *before* it approves that project.") (emphasis in original); the
13 *City of Redlands v. County of San Bernardino, supra*, 96 Cal.App.4th at 408; *Stanislaus*
14 *Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 154.)

15 Nor may the City lawfully evade CEQA by claiming that impacts are too
16 "speculative." (1 AR 5-A.) (*Laurel Heights I, supra*, 47 Cal.3d at 397); and *e.g., Stanislaus*
17 *Audubon, supra*, 33 Cal. App.4th at 158.) The City's claim that impacts were too speculative
18 to analyze is flatly contradicted by statements in both the Framework and Network
19 documents describing and listing the Bicycle Plan's potential significant impacts. (See pp. 8-
20 9, *supra*.) The claim is also belied by the ability of the City to analyze and adopt the
21 Network document as a funding plan.

22 The City's claim that impacts are unknown or unknowable is contrary to the law,
23 since the City must ascertain whether the Bicycle Plan may have a significant impact *before*
24 it asserts that the Bicycle Plan is exempt. (*Davidon Homes v. the City of San Jose* (1997) 54
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1 Cal.App.4th 106, 117.) The City cannot “hide behind its own failure to gather relevant
2 data.” (*City of Redlands, supra*, 96 Cal.App.4th at 408, quoting *Sundstrom v. County of*
3 *Mendocino, supra*, 202 Cal.App.3d at 307; *Bozung v. LAFCO, supra*, 13 Cal.3d at 282.)

4 ***The Bicycle Plan in its Full Scope May Have a Potentially Significant Effect on the***
5 ***Environment.***

6
7 “[W]here there is any reasonable possibility that a project or activity may have a
8 significant effect on the environment, an exemption would be improper.” (*Save Our Carmel*
9 *River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, 689,
10 quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-06.) The Record shows that
11 the Bicycle Plan, considered as a whole, may have a potentially significant effect on the
12 environment. The City’s own documents show that it knew the Bicycle Plan would have
13 significant impacts. As just one example, the Framework document states that the Project
14 may have significant impacts, including “extensive parking loss, changes in land use,
15 immitigable impacts to transit operation, streetscape reconfiguration, etc.” (15 AR 3461.)
16
17 Given the extensive scope of the citywide Bicycle Plan and its potential effects to the
18 streetscape, parking, traffic, and public transit, the Bicycle Plan may have a significant effect
19 on the environment.

20
21 **PREEMPTION BY THE VEHICLE CODE AND PUBLIC NOTICE**

22 Petitioners forwarded additional arguments claiming that the recommended actions in
23 the Policy Framework are preempted by provisions of the California Vehicle Code or
24 Government Code, and that the City did not give the public proper notice of the adoption and
25 environmental review of the Policy Framework. Because the Court orders the City’s
26 legislation set aside due to noncompliance with CEQA, the Court does not consider the
27 preemption or notice issues in this decision.
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V. CONCLUSION

The Court finds that the City failed to comply with CEQA by defining the scope of the Bicycle Plan as selected portions of the Policy Framework, rather than the Policy Framework and Network document as it had originally done. By attempting to split these two components of the Bicycle Plan, and then doing a piecemeal implementation of the projects outlined and further planned in those two documents, the City bypassed a proper CEQA analysis of the Bicycle Plan in its entire scope. The Court further finds that as the City failed to evaluate the Bicycle Plan properly under CEQA, the subsequent piecemeal implementation of parts of the draft Network document also violated CEQA. However, the Court does not order that those individual projects be restored to their prior conditions at this time. By ordering the City to reevaluate the project in its proper scope, the City will necessarily reevaluate these piecemeal projects under CEQA as well. Of course, the Court makes no determination as to what level of review is required by CEQA, nor does the Court make any determination as to the ultimate outcome of the required review.

Since the Court finds that the City's "determination, finding, or decision" in its legislation adopting and implementing the Bicycle Plan did not comply with CEQA, the Court has the power to grant a mandate that the determination be voided by the public agency, and that the public agency take specific action to comply with CEQA by undertaking appropriate review. (Pub. Res. Code §21168.9(a).)

Further, the Court may continue in effect the existing injunction against project activities until such time as compliance with CEQA is fully achieved, to assure adequate consideration of alternatives and mitigation measures and protect the environment from adverse and possibly irreparable alteration prior to "full and accurate assessment and

1 disclosure of the scope and environmental impacts” of the Bicycle Plan. (*San Joaquin*
2 *Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App. at 741-42.)

3 THE COURT HEREBY ORDERS:

- 4 1) A Peremptory Writ of Mandate is directed to Respondent, the City and County
5 of San Francisco, and all its agents, officers, employees, and representatives
6 ordering the Respondent to set aside the June 7, 2006 Board of Supervisors
7 adoption of the Bicycle Plan’s Framework document by Ordinance No. 109-05
8 and any other legislation or acts adopting the Bicycle Plan or any component of
9 it.
10
- 11 2) For purposes of this Order, the Court determines that the Bicycle Plan consists
12 of the San Francisco Bicycle Plan, its “Framework document” adopted on June
13 7, 2005, its “Network Improvement Document,” their entire contents including
14 maps, charts, tables, and illustrations, and all legislative acts by the City to
15 implement any action named, illustrated or described in them since June 7,
16 2005.
17
- 18 3) A Peremptory Writ of Mandate is directed to Respondent, the City and County
19 of San Francisco, and all its agents, officers, employees, and representatives
20 ordering the Respondent to reevaluate the Bicycle Plan as defined above, and
21 any subsequent actions implementing any part of it, under CEQA.
22
- 23 4) The City is enjoined on the same terms as specified in the preliminary injunction
24 issued on June 16, 2006 (a copy of which is attached as Exhibit A), and this
25 injunction will remain in effect until the Respondent has complied with CEQA.
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- 1 5) The Court declines to pre-judge all the potential programs the City asks
2 permission to continue during the pendency of this injunction, but the exceptions
3 contained in paragraph B of the preliminary injunction remain in effect.
4 6) The Petitioners' Motion to Augment the Record of August 17, 2006, is granted.
5 7) Petitioners shall be awarded costs of suit. The Court reserves jurisdiction to
6 determine entitlement to attorney fees and amount of fees pursuant to any
7 properly and timely filed motion by Petitioners.
8

9
10 IT IS SO ORDERED.

11
12 Dated: November 3, 2006

13 By: Peter J. Busch
14 Peter J. Busch
15 Judge of the Superior Court
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FILED
San Francisco County Superior Court

JUN 20 2006

GORDON PARK-LI, Clerk
BY: [Signature] Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

COALITION FOR ADEQUATE
REVIEW; NINETY-NINE PERCENT;
and ROB ANDERSON,

Petitioners,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; and DOES 1 through 10,
inclusive,

Respondents.

Case No. 505-509

PRELIMINARY INJUNCTION

Hearing Date: June 13, 2006
Hearing Judge: Hon. James L Warren
Time: 9:30 a.m.
Place: 301

Date Action Filed: July 28, 2005

The motion of Petitioners Coalition for Adequate Review; Ninety-nine percent and Rob Anderson for a preliminary injunction was heard before the Honorable James L. Warren, Judge of the San Francisco Superior Court, on June 6, 2006, pursuant to an order to show cause issued on May 11, 2006. Appearing for Petitioners was Mary Miles. Appearing for Respondent City and County of San Francisco was Audrey Williams Pearson, Deputy City Attorney. The matter having been argued, and evidence and papers of both parties considered, THE COURT HEREBY ORDERS:

The Court finds that the Petitioners have shown a substantial likelihood of prevailing, and have demonstrated that the balance of hardship tips in their favor if provisional restraint does not

///

EXHIBIT "A"

1 preserve the status quo until judgment on the merits. Therefore, the Court grants the Petitioners'
2 request for a preliminary injunction.

3 At the hearing on June 6, 2006, the Court ordered the parties to either submit a stipulated
4 preliminary injunction order for the Court's approval, or to submit individual orders for a
5 preliminary injunction by 2:00 p.m. on Monday July 12, 2006. The Court, having received no
6 stipulated order, orders the following.

7
8 **ORDER**

9 Satisfactory proof having been made, and good cause appearing, IT IS ORDERED that,

10 A. Respondent, City and County of San Francisco, and all its agents, officers, employees,
11 and representatives are hereby enjoined, pending the trial of this matter, from:

- 12 1. Eliminating traffic lanes and/or parking on any street named or described in any part of the
13 Bicycle Plan (consisting, for the purposes of this injunction, of the "Framework Document" and
14 "Network Improvement Document"), installing any signs, pavement markings, or making any
15 other change to any street, traffic signal, building, sidewalk, or other land use or physical feature
16 in San Francisco to implement the Plan or any part of it, including its maps;
- 17 2. Eliminating and/or restricting or limiting parking by changing signs, meters and pavement from
18 public unmetered to metered parking, loading, or from public parking (uncolored) pavement, to
19 red, yellow, blue, green, white, or to any other curb colors limiting times allowed for parking, or
20 any other restrictions on parking made to implement the Plan or any part of it;
- 21 3. Installing bicycle lanes on any street in San Francisco named or described in any part of the Plan
22 and its maps;
- 23 4. Undertaking any other changes to any street in San Francisco or its hardscape, or to traffic
24 signals, signs, pavement markings, buildings, sidewalks, or to land use in San Francisco to
25 implement the Plan or any part of it; and
- 26 5. Allowing bicycles inside Muni buses and other public transit under control of the City where
27 they were not allowed before June 7, 2005.

28 ///

1 B. Notwithstanding but subject to the foregoing provision of Section A, Respondents City
2 and County of San Francisco, and all its agents, officers, employees and representatives are not
3 enjoined from the following activities:

- 4 1. Installing bicycle-related signage with bicycle route guidance, warning or regulatory messages,
5 including standard signs in the Manual on Uniform Traffic Control Devices ("MUTCD") or the
6 MUTCD California Supplement, except to the extent prohibited pursuant to Section A above;
- 7 2. Adopting any ordinance or resolution amending the San Francisco Planning Code or any other
8 San Francisco Code regarding any requirement for the provision of spaces for bicycle parking,
9 provided that the adoption of such ordinance or resolution complies fully with all applicable
10 laws, including environmental statutes;
- 11 3. Approving any ordinance, resolution, motion, variance or condition of approval on any permit
12 for any project in which bicycle parking or a bicycle lane is required by Code provision or either
13 as mitigation of a significant environmental impact or as an improvement measure for an
14 environmental impact that is found less-than-significant as those terms are defined in CEQA.
15 However, the physical implementation of any bicycle lane or route improvement identified or
16 approved as part of such project, mitigation measure or improvement measure is enjoined
17 pursuant to the provisions of Section A, above;
- 18 4. Approving, funding or continuing with any studies, engineering, planning or other
19 administrative work on any item in the 2005 San Francisco Bike Plan or any proposed
20 improvement to any bicycle route, including work up to and including adoption or any motion
21 or resolution or ordinance by the appropriate public agency body;
- 22 5. Approving, implementing or continuing with any on-going maintenance activities of any
23 existing bicycle facility, including repainting faded pavement markings or replacing broken or
24 missing bicycle route signage; and
- 25 6. Implementing any educational or training program, enforcement activities or promotional
26 activities as outlined in Chapters 5, 6 and 7 of the 2005 San Francisco Bicycle Plan as adopted
27 by the Board of Supervisors on June 7, 2005.


28 ///

1 No bond will be required. This Preliminary Injunction shall remain in effect until the Court
2 rules on the merits of the case.

3 The hearing date is set for September 13, 2006, at 9:30 a.m., or as soon thereafter as the
4 matter may be heard, with briefing as follows: Petitioners' Brief: July 21, 2006; Respondent's
5 Brief: August 21, 2006; Petitioners' Reply Brief: September 8, 2006.

6
7 IT IS SO ORDERED.

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9 Date: 6/16/06



Hon. James L. Warren
Judge of the Superior Court
LSW

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California Superior Court
County of San Francisco
Law & Motion Department • Room 301

COALITION FOR ADEQUATE REVIEW;
NINETY-NINE PERCENT; AND ROB
ANDERSON,

PETITIONERS,

V.

CITY AND COUNTY OF SAN
FRANCISCO; AND DOES 1 THROUGH
10, INCLUSIVE,
RESPONDENTS.

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**Certificate of Service by Mail
(CCP § 1013a(4))**

I, Gordon Park-Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

1) I am not a party to the within action;

2) On NOV - 7 2006, I served the attached:

ORDER GRANTING PETITION FOR PEREMPTORY WRIT OF MANDATE

by placing a copy thereof in a sealed envelope, addressed to the following:

Mary Miles
364 Page Street, No 36
San Francisco, California 94102

Marlena Byrne
Deputy City Attorney
1 Dr. Carlton B. Goodlet Place
City Hall Room 234
San Francisco, California 94102

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: NOV - 7 2006

GORDON PARK-LI, Clerk
By: *Donna Lok*
deputy DONNA LOK