



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

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Herrera Files Brief in Defense of City's Bike Plan

City Attorney Argues that 'Implementation of a Plan that Demonstrably Protects Public Safety is a Wholly Worthy Policy Imperative'

SAN FRANCISCO (August 21, 2006)—City Attorney Dennis Herrera today filed the opposition brief in his office's legal defense of the policy framework for the San Francisco Bicycle Plan, which the Board of Supervisors adopted in June 2005 to make bicycling a safer, more integral part of daily life in San Francisco. Rebutting allegations by anti-bicycling activists that City policymakers didn't properly adopt the Policy Framework, Herrera's brief argues that San Francisco was correct in finding that the update would not negatively impact the environment, and that it was adequately reviewed in accordance with the requirements of the California Environmental Quality Act, or CEQA. The brief additionally argues that state law does not preempt the City from implementing the framework's recommended actions, and that the City's notice of adoption was entirely proper.

According to the brief filed in San Francisco Superior Court this afternoon, the City has had similar bicycle-friendly policies in place since at least 1997, when San Francisco adopted its first official Bicycle Plan. In addition, Herrera's brief argues, the state legislature has already determined that the creation of bicycle lanes usually does not have significant adverse impacts on the environment, and that CEQA guidelines specifically exempt the creation of bicycle lanes on existing rights-of-way from triggering environmental review.

"The fact is that bicyclists are already allowed the full use of roads in San Francisco, and the adoption of a plan that demonstrably protects public safety is a wholly worthy policy imperative," Herrera said. "In adopting the California Bicycle Transportation Act, the state legislature intended to establish a safe bicycle transportation system. And in enacting CEQA, legislators specifically exempted the creation of bike lanes on existing rights-of-way from triggering environmental review—and with good reason. Bicycles are an environmentally friendly form of transportation, and City policymakers are entitled to do what they can to make San Francisco a more bicycle-friendly city."

In June, then-Superior Court Judge James Warren issued a preliminary injunction blocking the City from implementing most recommendations in the Bicycle Plan until the Court ruled on the merits of the litigation. The injunction means that the City may not create new bike lanes; allow bikes inside of MUNI; or make any changes to traffic signals, signs, pavement markings, buildings or sidewalks to implement the plan. The injunction will remain in place until the court decides whether the plan has undergone adequate environmental review. A hearing on the merits in the case is scheduled for Wednesday, Sept. 13 at 9:30 a.m. before San Francisco Superior Court Judge Peter Busch, 400 McAllister Street, Department 301. The case is *Coalition for Adequate Review et al v. City and County of San Francisco et al*, San Francisco Superior Court Case No. 505-509, filed July 28, 2005.

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

15 Petitioners,

16 vs.

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

18 Respondents.

Case No. 505-509

**RESPONDENT CITY AND COUNTY
OF SAN FRANCISCO'S OPPOSITION
TO PETITION FOR WRIT OF
MANDATE**

Hearing Date: September 13, 2006
Hearing Judge: Hon. Peter Busch
Time: 9:30 a.m.
Place: Dept. 301

Date Action Filed: July 28, 2005

Attached Documents: City and County of
San Francisco's Request for Judicial Notice

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INTRODUCTION

In June 2005, the City and County of San Francisco ("the City") Board of Supervisors adopted an update to the 1997 San Francisco Bicycle Plan ("1997 Plan"). The 1997 Plan had one goal – to make San Francisco a more "bicycle-friendly" city. The June 2005 update to the 1997 Plan, called the "San Francisco Bicycle Plan: Policy Framework" ("Policy Framework"), also has one goal: making bicycling an integral part of daily life in San Francisco.

To accomplish this goal, the Policy Framework sets forth seven policies: 1) increase the safe use of bicycles in the City; 2) refine and expand existing official bicycle routes; 3) ensure plentiful bicycle parking; 4) adopt bicycle friendly practices and policies; 5) promote safe bicycling through education; 6) improve enforcement of bicycle related traffic laws; and 7) increase and prioritize funding for bicycling projects.

Petitioners Coalition for Adequate Review (CAR), Ninety-Nine Percent, and Rob Anderson (hereinafter "Petitioners"), do not share the City's goal of making San Francisco a more "bicycle-friendly" city. They do not want to "share [traffic] lanes with bicycles." (AR 7:1383 [comments of CAR].) They think it "irresponsible" for the City to encourage people to engage in an "inherently unsafe activity." (AR 7:1370 [comments of Rob Anderson].) They call bicycle riding a "lifestyle choice" that the City should not be "proselytiz[ing]" to children in schools. (*Id.*)

Quite inaccurately, Petitioners claim that the Policy Framework makes sweeping changes to City policy in order to accommodate "what will never be anything but a minor part of our transportation system." (*Id.*) However, the Policy Framework is anything but a sweeping change. The policies and recommendations in the Policy Framework are virtually identical to those in the 1997 Plan.

Petitioners make several claims to challenge the policy decision by the Board of Supervisors to make San Francisco a bicycle-friendly city. They claim that the City did not adequately review the 2005 update to the 1997 Plan under the California Environmental Quality Act, that the recommended actions in the Policy Framework are preempted by state law, and that the City did not provide proper notice of the adoption of the Policy Framework. Petitioners are wrong. The City correctly found that the Policy Framework will not have any impacts on the environment. The City is not preempted from

1 implementing any of recommended actions in the Policy Framework, and the City's notice of adoption
2 of the update was entirely proper.

3 Thus, Petitioners challenge to the update to the Bicycle Plan should be seen both for what it is
4 and for what it is not. It is not a genuine effort to raise concerns about environmental issues: bicycling is
5 the most environmentally friendly form of transportation apart from walking, and the state Legislature
6 has already determined that the creation of bicycle lanes will not have significant adverse impacts on the
7 environment. By this challenge, Petitioners do seek to continue to be able to drive their cars and park
8 them directly in front of their destinations. Petitioners cannot fathom why, despite their protests about
9 "aggressive bicyclists," increased traffic, and scarce parking, City decision-makers would still chose to
10 encourage bicycling, promote bicycle safety and make San Francisco a bicycle-friendly city.

11 The Court should deny the Petition.

12 **STATEMENT OF FACTS**

13 **Bicycle Plans Under California Streets and Highways Code Section 891.2.**

14 The San Francisco Department of Parking and Traffic's Bicycle Program is entirely grant-
15 funded. (AR 15:3451.) The Bicycle Program receives no money from the City's General Fund and,
16 thus, must rely on grants in order to implement bicycle projects. (*Id.*) One source of grant money is the
17 State of California's Bicycle Transportation Account, a state fund dedicated to providing money to cities
18 and counties for the construction of proposed bikeways and related facilities. (Cal. Sts. & High. Code
19 §§ 891.2; 891.4; AR 15:3454.) In order to qualify for funding from this account, each city or county
20 must have an approved bicycle plan. (*Id.*) The plan must be updated every five years and must contain
21 eleven articulated elements, including a description of existing and proposed bikeways. (*Id.*)

22 **The 1997 San Francisco Bicycle Plan.**

23 San Francisco first adopted a bicycle plan in March 1997 ("1997 Plan"). (AR 8:1729-30.) Even
24 prior to that, however, the Transportation Element of the San Francisco General Plan contained
25 numerous goals and policies related to facilitating safe and convenient use of bicycles, increasing
26 bicycle lanes on City streets and improving bicycle parking. (AR 8:1729.) The 1997 Plan – adopted by
27 resolution of the San Francisco Board of Supervisors ("Board") – had one goal: to "provide a
28

1 comprehensive guide for efforts that will make San Francisco a more 'bicycle-friendly' city." (1997 Plan
2 at ii.)¹ Within that overall goal, the 1997 Plan contained four objectives: 1) improve facilities for
3 bicycles; 2) improve bicycle safety; 3) promote bicycling in the City; and 4) increase funding for bicycle
4 projects. (*Id.*) The 1997 Plan outlined numerous issues and possible solutions to reach these goals and
5 objectives. For example, Chapter 3, as well as two appendices, included an extensive list of
6 recommended bicycle network route improvements. (*Id.* at 3-1 to 3-46; Appendices B and C.) Chapter
7 4 included recommendations for the phasing of the route improvements to the network based on funding
8 and the benefit to bicyclists in terms of safety or convenience (*id.* at 4-2), with design standards for
9 facility improvements outlined in Chapter 5. (*Id.* at 5-1.) Chapter 6 identified measures to calm traffic
10 in order to make bicycling safer and more convenient. (*Id.* at 6-1.) Chapter 7 gave an overview of
11 issues surrounding bicycle parking, including on- and off-street parking, and bicycle parking
12 requirements for newly constructed buildings. (*Id.* at 7-1 to 15.) Chapter 7 also reviewed and made
13 recommendations for improvements to transit and bridge access for bicycles. (*Id.* at 7-15 to 24.)
14 Chapter 8 contained an overview of and recommended changes to traffic laws and City policies that
15 affected bicycling. (*Id.* at 8-1.) It also recommended that City traffic engineers and planners receive
16 increased training on bicycle related issues (*id.* at 8-25) and that Planning amend its environmental
17 review guidelines to require consultants to address impacts to both automobiles and bicycles, conduct an
18 inventory of bicycle parking, and preclude adoption of traffic mitigation measures that would
19 compromise bicycle travel. (*Id.* at 8-13, 14.) Chapters 9 and 10 reviewed various issues surrounding
20 bicycle safety education, enforcement, and bicycle promotion programs. (*Id.* at 9-1 to 10-11.)

21 The 1997 Plan, together with three amendments, was updated and readopted in May 2001. (AR
22 8:1738.) These amendments added major projects recommended in the 1997 Plan that had been
23 completed or were currently being implemented, identified and added new potential bicycle facility
24

25
26 ¹ The administrative record contains the resolution adopting the 1997 Bicycle Plan, but not
27 the Plan itself. The 1997 Plan is contained in the City's Request for Judicial Notice ("RJN") of
28 Board of Supervisor File No. 010726 (Exhibit A), and is cited herein as "1997 Plan [page number]."

1 projects, and added several elements to the Plan as required by the Streets and Highways Code. (AR
2 8:1739-40. See also Exhibit A to RJN.)

3 **The 2005 Update to the 1997 Bicycle Plan.**

4 In 2002, the City began to prepare an update to the 1997 Plan. (AR 15:3444.) At one time, the
5 Department of Parking and Traffic's ("the Department") Bicycle Program sought to include in the
6 updated plan a list of possible improvements for upgrading the routes on the existing bicycle network
7 which improvements had almost all been identified in the 1997 Plan but not yet implemented), along
8 with seven generalized goals and objectives, and recommended actions for achieving them. (AR
9 9:1856; 10:2147 ["instead of merely having a list of bicycle network improvements, it will contain
10 detailed ("grant ready") engineering analysis and evaluation of the top 20 bicycle network improvement
11 projects."].) In the end, however, the Department decided to focus solely on general policies related to
12 bicycles and determined not to seek approval of the list of route improvements (dubbed the "Network
13 Improvement Document" [hereinafter "NID"]). (AR 10:2215). This decision was made both to enable
14 the Department to move forward more quickly with a bicycle plan that would qualify for funding from
15 the state Bicycle Transportation Account and because ultimately, the design of the improvements to the
16 routes on the network could not be timely determined and remained uncertain. (AR 9:1977; 10:2274.)
17 Many of the route improvements needed significant outreach to the affected communities in which the
18 routes were located, more detailed engineering drawings, or identification of a preferred alternative.
19 (AR 9:1977.)

20 For example, the design and feasibility of improvements to the route on Second Street was still
21 highly speculative. The draft NID noted several impediments to an analysis or implementation of
22 improvements to the route on Second Street, including a note that "no determination" of a preferred
23 option for Second Street "has been made," that bike lanes on Second Street had already been
24 disapproved by the Parking and Traffic Commission in 1998, and that Second Street is the preferred
25 alignment for a new tunnel connecting Caltrain with the Transbay Terminal and thus could undergo
26 major construction in the near future. (AR 3:349, 457.) Likewise, the ultimate design and feasibility of
27 implementing improvements to Fifth Street was also quite speculative with numerous obstacles,
28

1 including a note that "no determination" of a preferred option had been made and that the City
2 disapproved a Fifth Street bicycle lane in 1998. (AR 3:462.) The NID contained two options for
3 improvements to 14th Street, and needed more outreach with local merchants. (AR 3:469.) For the 16th
4 and 17th Streets corridor, "the impact of travel lane reductions to traffic operations need[s] to be studied
5 further." (AR 3:474.) Indeed, there were several design options for 17th Street, including merely using a
6 shared lane arrow pavement marking ("sharrow"), which would not impact transit, traffic or parking.
7 (*Id.*) On Alemany Boulevard, "additional traffic analysis is required to determine feasibility . . ." (AR
8 3:488.) On Bayshore Boulevard, "additional analysis is required." (AR 3:493.) Improvements to the
9 Broadway Tunnel had four different design options. (AR 3:498-500.) Masonic Street from Fell Street
10 to Geary Street had three separate design options and "additional analysis is recommended." (AR 509-
11 17; 545-46.) Options for improvements to Cesar Chavez included both bicycle lanes on Cesar Chavez
12 or moving the route to a different street altogether, and "additional analysis" "needed to be conducted"
13 prior to implementing any improvements. (AR 3:502, 504.) Improvements to Polk Street were also
14 speculative: a contra-flow lane between Market and Grove Streets has been "suggested but not pursued
15 due to other priorities and lack of resources." (AR 3:558.) On Townsend Street, "[no] determination
16 [has been made] as to which option should be pursued." (AR 3:376.)²

17 Therefore, the Department set the draft NID aside for later consideration when designs for each
18 improvement would be further evolved and could be vetted in a public forum, a preferred option could
19 be identified, funding could be obtained, and each route improvement would be detailed enough for
20 environmental review and approval by the various decision makers. (AR 10:2226.) As a result, while
21 the 2005 Update included a goal of improving the bicycle network and noted priorities for route
22 improvements, it did not include any commitments or recommend specific options as to what those route
23 improvements might entail or when they might be implemented, if ever.

24 In addition to the general goal of improving the network, the Policy Framework included six
25 other goals and related policies: 1) increase safe bicycle use; 2) ensure plentiful bicycle parking; 3)

26 ² All of these routes, which coincide with the routes identified in Petitioners' brief at p.5-6,
27 were previously identified as route improvements in the 1997 Plan.

1 adopt bicycle friendly practices and policies; 4) promote safe bicycling; 5) increase enforcement of
2 bicycle related violations; and 6) prioritize and increase bicycle funding. (AR 15:3426.) To implement
3 each goal and objective, the Policy Framework recommended numerous "actions" to be undertaken by
4 various City agencies or officials.³

5 Although the Policy Framework was labeled an update to the goals and policies in the 1997 Plan,
6 in fact, the two documents differed little in substance. For example, the 1997 Plan notes that
7 implementation of bicycle lanes on certain streets may require the elimination of an existing traffic lane.
8 (Compare 1997 Plan 3-1, 3-7 ["in certain cases, travel lane removal may be the only way to safely
9 accommodate bicycle travel with a corridor"] to Policy Framework, AR 1:52 ["creating necessary and
10 appropriate facilities for . . . bicycles . . . often requires eliminating general traffic lanes"].) Both plans
11 seek the review of streets with excess traffic capacity for their ability to be striped with a bicycle lane.
12 (Compare 1997 Plan 8-12 ["all multi-lane streets that currently have excess capacity should be reviewed
13 for inclusion in the bicycle network such as the possibility of removing a travel lane to add bicycle
14 lanes" to Policy Framework, AR 15:3481 ["review multi-lane streets with excess capacity . . . for
15 possible lane removal to accommodate bicycle lanes . . . ".]) Both champion improved bicycle access on
16 transit (Compare 1997 Plan, 7-15 to 24 ["integration of bicycle and transit use . . . is essential in
17 maximizing the bicycle's transportation utility . . . "] to Policy Framework, AR 15:3518-19 ["expand
18 bicycle access to transit and bridges"].) Both recommend changes and improvements to numerous City
19 policies and traffic laws, including changes to laws regarding bicycling on sidewalks. (Compare 1997
20

21 ³ Petitioners repeatedly imply that "actions" in the Policy Framework are 'mandates' or
22 somehow automatically implemented merely by passage of the Policy Framework, and that this
23 differentiates the 2005 Plan from the 1997 Plan. But this is not true. As the Policy Framework
24 notes, the Actions are a list of *recommendations* if the City wants to "see a major increase in the
25 number of people that use bicycles." (AR 15:3425.) Each list in each chapter of the plan is
26 preceded by the phrase "*Recommended* [chapter topic] Actions," and that City staff "*should*"
27 prioritize the [following] actions." (See, e.g., AR 15:3459, 3500, 3518[emphasis added]) Even
28 Ordinance 109-05 leaves implementation of any particular part or recommendation in the Policy
Framework up to the discretion of City officials, and only "*urges*" them to implement the actions.
(AR 1:64, 65 [City officials should "take any actions *they may deem necessary or advisable* in order
to effectuate the purpose and intent of the Ordinance."][emphasis added].) Thus, the actions in the
Policy Framework are not mandates as Petitioners suggest. They are merely guides on how best to
implement the plan's goals and policies.

1 Plan at 8-3 to 4 ["there are areas where it is recommended that sidewalk bicycle riding be permitted"] to
2 Policy Framework, AR 15:3499 [sidewalk bikeways should be considered in certain locations].) Like
3 the 2005 Policy Framework, the 1997 Plan makes recommendations regarding bicycle parking including
4 recommendations for parking regulations in new buildings (compare 7-14 [summary of parking
5 recommendations] to Policy Framework, AR 15:3500-3501 [same]), education and enforcement
6 (compare 1997 Plan Chapter 9 ["education and enforcement"] to AR 15:3532-41[education] and 3542-
7 3559 [enforcement and safety]), traffic calming (1997 Plan Chapter 6 ["the objective of this chapter is to
8 identify prototype traffic calming measures to apply in San Francisco in order to make bicycling safer
9 and more convenient"] to AR 15:3482 [identify "bicycle arterial streets" and update traffic calming
10 guidelines]), and changes to Planning's environmental review guidelines for transportation (compare 8-
11 13 [Planning Guidelines should be amended to require bicycle traffic counts, bicycle parking counts, and
12 to preclude mitigation measures that would negatively impact bicycling] to AR 15:3571-72 [same]).⁴

13 **Environmental Review and Adoption of the 2005 Policy Framework.**

14 After deciding that the Department would not seek approval of a document with "grant-ready"
15 projects, the Department set aside the NID and submitted the Policy Framework to the San Francisco
16 Planning Department ("Planning") for review under the California Environmental Quality Act, Public
17 Resources Code section 21000 *et seq* ("CEQA") in May of 2004.⁵ (AR 5:855.) After analyzing the
18 update, Planning determined that it was exempt from further environmental review under CEQA
19 because there was no possibility that the adoption of the Policy Framework would have a significant
20 effect on the environment. (AR 1:1-6.) Specifically, the analysis noted that the Policy Framework was
21 not significantly different from the 1997 Bicycle Plan and did not specify any direct changes to any
22

23 ⁴ The 1997 Plan goes even farther than the recommendations in the Policy Framework, as
24 the 1997 Plan recommends and prioritizes certain bicycle route improvements. (Compare 1997
25 Plan Chapter 3 and Appendix B and C to AR 15:3459-74.)

26 ⁵ Six weeks prior to submitting an "environmental evaluation application," the Department
27 received a letter from the Environmental Review Officer that outlined the time commitment and
28 cost of environmental review *if* the plan received a negative declaration. The letter, however,
qualifies the estimate was a "best guess, based on partial knowledge of what may finally be
included" in a proposed plan. (AR 5:849.)

1 particular bicycle route or recommend any other changes to the environment. (AR 1:5.) The analysis
2 acknowledged that the improvements in the draft NID could change the physical environment and have
3 possible impacts, but any particular improvement in the draft NID was not reasonably foreseeable and
4 that indirect impacts from the improvements would be too speculative to evaluate. (*Id.*) Thus, Planning
5 concluded that, until and unless improvements were actually proposed, there was no possibility that
6 there would be significant environmental effects from just the adoption of the Policy Framework. (AR
7 1:5-6.)

8 On January 6, 2005, the Planning Commission adopted a resolution indicating its intent to
9 initiate amendments to the General Plan to incorporate the Policy Framework into the General Plan by
10 reference and to amend policies in the General Plan's Transportation Element and the Downtown Area
11 Plan related to bicycles. (AR 6:1015-16.) The Planning Commission noticed and held a public hearing
12 on a motion to adopt the amendments for January 27, 2005, but continued the hearing until February 3,
13 2005 in order to allow the public more time to prepare comments on the amendments. The Commission
14 adopted the General Plan amendments on February 3, recommended them to the Board for approval, and
15 found the Policy Framework in conformity with the General Plan. (AR 6:1246-48 [amendments]; 1275-
16 77 [conformity findings].);

17 Petitioners filed an appeal with the Board of Planning's determination that the Policy Framework
18 was exempt from further environmental review. Petitioners alleged vaguely that the Policy Framework
19 would have significant impacts due to the "radical changes" proposed by the Policy Framework and that
20 the Policy Framework and draft NID should be considered one project. (AR 7:1351.) Planning
21 responded to the allegations in the appeal, noting that the goals and policies were already contained in
22 the 1997 Plan, that the Policy Framework was a distinct and separate project from the development of
23 the draft NID, and that adoption of the improvements in the draft NID could take place independently of
24 the Policy Framework. (AR 7:1389-90.) On April 19, 2005, the Board unanimously upheld Planning's
25 determination that the Policy Framework would not have any impacts on the environment and, on June
26 7, 2005, adopted the General Plan amendments. (AR 7:1493; 1570.)

27 **Subsequent Bicycle-Related Approvals**

1 After the Board adopted the Policy Framework, the San Francisco County Transportation
2 Authority ("TA") adopted the "Proposition K/5-Year Prioritization Programs for Pedestrian and Bicycle
3 Facility Maintenance Bicycle Circulation/Safety; and Tree Planting and Maintenance." (AR 14:3270.)
4 Petitioners did not comment at this hearing. (*Id.*) The TA, a non-City agency created under state law
5 (although governed by a Commission made up of the members of the City's Board of Supervisors), is
6 responsible for administering the ½ cent sales tax on all retail sales in San Francisco, a tax used to fund
7 transportation projects in San Francisco County. The voters of San Francisco adopted this sales tax in
8 November 2003 in Proposition K. (AR 15:2600.) The voters adopted an Expenditure Plan for the sales
9 tax, which identified numerous categories of projects or programs the TA would fund over the next 30
10 years, including earmarking \$255 million for bicycle and pedestrian improvements in San Francisco.
11 (AR 12:2754.) Prior to allocation of any of the sales tax money, the lead agency for each category of
12 programs contained within the Expenditure Plan, must prepare a "5-year prioritized program of projects"
13 ("Five-year plan"). (AR 4:567.) The Five-year plan for each program is intended to bring the lead
14 agency's focus on selecting projects within the program that can be delivered on-time, within budget,
15 and with the timely and competitive use of state and matching funds. (*Id.*)

16 Petitioners attempt to portray this Five-year plan document approved by the TA as the
17 "approval" of the draft NID by the Board, but it was not. Although the two documents overlap, their
18 uses were quite different. The draft NID was originally designed to be a complete list of every bicycle
19 route in the City with various options for improving the routes, with details specific enough to allow for
20 approval of the route improvements by the Board, such that the Department could thereafter implement
21 the projects. (See AR 9:1856.) On the other hand, the Five-year plan contains only the projects for
22 which the Department may seek *funding* from the TA over the next five years. Funding requests for the
23 projects contained in the 5-year plan cover various stages of design, including just conceptual planning.
24 Actual implementation of projects that the TA would fund as a part of the Five-year plan will still
25 require more detailed design and approval by the Board. As a result, the adoption of the Five-year Plan
26 by the TA was not an "approval" of the draft NID, but merely the adoption of a fiscal program for the
27
28

1 TA to make informed decisions regarding requests for funding of bicycle and pedestrian improvements
2 in San Francisco pursuant to Proposition K.

3 Consistent with CEQA requirements, the Department has not sought simultaneous approval of
4 *all* the listed route improvements to the routes as identified in the draft NID. Instead, it has focused on
5 approval of improvements to individual routes or route portions, each of which has independent utility
6 for the safety and convenience of bicycle riders. The improvements have been to routes in
7 geographically diverse parts of the City, such as on Lake Street in the northwest part of San Francisco,
8 North Point between the Embarcadero and Van Ness Avenue in the northeast part of San Francisco, and
9 on Alemany Boulevard, in the southern part of San Francisco. Prior to adoption by the Board, each
10 route improvement received environmental review by the Department or by Planning, including analysis
11 of traffic impacts. (*See generally* Dec. of Audrey Pearson, filed May 23, 2006, exhibit C.) For each
12 one, the Department determined that it was exempt from further environmental review under 14
13 California Code of Regulations ("CEQA Guidelines") Section 15301(c), which exempts minor
14 alterations to existing streets, or CEQA Guidelines Section 15304(h), which exempts the creation of
15 bicycle lanes on existing rights of way.⁶ These determinations have not been appealed or challenged.
16 (See Pub.Res. Code § 21151 [requiring appeal to decisionmaking body].)

17 ARGUMENT

18 Petitioners challenge the adoption of the Policy Framework on three grounds. First, Petitioners
19 claim that the City did not properly analyze the Policy Framework under CEQA because 1) the CEQA
20 analysis only covered the Policy Framework and did not include an analysis of the route improvements
21 in the draft NID; and 2) because the analysis erroneously concluded that there would be no
22 environmental impacts from adoption of the policies. Second, Petitioners claim that several
23 recommended "actions" in the Policy Framework are preempted by provisions of the California Vehicle
24

25 ⁶ Contrary to Petitioners assertions, the City has never claimed that implementation of any
26 individual route improvement would be covered by the environmental review for the Policy
27 Framework. In fact, the City has always maintained that prior to implementation of individual route
28 improvements the City would be required to conduct additional environmental review. (AR 1:4.)

1 Code or Government Code. Third, Petitioners claim that the City did not give the public proper notice
2 of the adoption of the Policy Framework at the Planning Commission or at the Board of Supervisors.

3 None of Petitioners' claims have merit. Planning correctly described the "project" to be analyzed
4 under CEQA as the Policy Framework, not the Framework *and* the draft NID, and after detailed
5 analysis, Planning correctly determined that the Policy Framework would not have any environmental
6 impacts. Moreover, Petitioners have not met their burden of providing evidence that the adoption of the
7 Policy Framework could have environmental impacts. Petitioners provide vague and generalized
8 speculation of indirect impacts from projects to which the Policy Framework makes no commitment and
9 offers no recommendation. Second, the recommended actions in the Policy Framework are not
10 preempted by state law. The California Vehicle Code and Government Code give local jurisdictions
11 wide discretion in their ability to regulate the flow of bicycles, traffic and parking, and none of the
12 recommended actions conflict with express provisions of state law. Finally, the City properly noticed
13 the Planning Commission's and Board's actions adopting both the Policy Framework and the CEQA
14 analysis given to it. The Court should deny the Petition.

15 **I. THE ANALYSIS OF THE POLICY FRAMEWORK PROPERLY DESCRIBED THE**
16 **PROJECT AND PROPERLY FOUND THAT THE PROJECT WOULD NOT HAVE A**
SIGNIFICANT IMPACT ON THE ENVIRONMENT.

17 Petitioners claim that the City failed to comply with CEQA in its review of the Policy
18 Framework because the analysis should have included review of the draft NID and because the Policy
19 Framework will have environmental impacts. Petitioners are wrong. Petitioners' arguments improperly
20 assume that environmental review of a plan or policy necessarily must necessarily include review of
21 individual projects that will be guided by that plan or policy, but this is not what CEQA requires.
22 Further, Petitioners' arguments that there will be environmental impacts from the so-called "radical
23 changes" in the Policy Framework completely ignore 1997 Plan, the draft nature of the NID, and
24 CEQA's assumption that bicycle lanes do not have significant environmental impacts.

25 **CEQA Overview**

26 To comply with CEQA, lead agencies must first determine whether an activity is a "project."
27 (Pub. Res. Code 21080(a).) The term "project" has two elements: it must have a direct, or reasonably
28

1 foreseeable indirect physical change on the environment; and it must be an activity undertaken by a
2 public agency or involve the issuance of a permit to a private party. (Pub. Res. Code § 21065.) If the
3 activity is determined to be a "project," the lead agency must then determine whether an exemption
4 applies. (CEQA Guidelines § 15061(a).) A project could be statutorily excluded from CEQA or could
5 fall into one or more of 33 classes of categorical exemptions. Categorical exemptions are types of
6 projects that the State Office of Planning and Research has determined do not have significant effects on
7 the environment. (Pub. Res. Code 21084(a).) These categorical exemptions include both "Class 4(h),"
8 which exempts the creation of bicycle lanes on existing rights-of way, and "Class 1(c)," which exempts
9 minor alterations to streets. (Pub. Res. Code § 21080(b); Guidelines §§ 15304(h), 15301(c).) If a
10 project is not exempt, the lead agency must then determine whether a project may have a significant
11 effect on the environment. If it can be seen with certainty that there will be no significant effect on the
12 environment, a general rule exclusion will apply. (Guidelines § 15061(b)(3) [the "general rule" is that
13 CEQA applies only to projects which have the potential for causing a significant effect on the
14 environment."].) The general rule exclusion ("GRE") (otherwise known as the "common sense
15 exception") was adopted to guard against the possibility that an obviously exempt project not found in
16 the list of 33 classes of categorical exemptions "might be required needlessly to comply with the
17 requirements of CEQA." (*Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 425.)

18 On the other hand, if substantial evidence in the record shows that the project might have a
19 significant effect on the environment, the lead agency must prepare an environmental impact report.
20 (Pub. Res. Code § 21080(d).) If the project will not have a significant impact on the environment, or
21 where the significant impact can be mitigated, the lead agency must prepare a negative declaration.
22 (Pub. Res. Code § 21080(c).)

23 **A. The City Properly Described the Project as the Approval of the Policy Framework.**

24 Petitioners claim that the City's environmental determination is flawed because the City
25 improperly described the project as just the adoption of the Policy Framework and the description did
26 not include the list of options for route improvements in the draft NID and, thus, improperly segmented
27 the project into two parts. However, the City properly described the project as just the Policy
28

1 Framework and properly left environmental review of the projects in the draft NID for when the design
2 of those projects are certain and their potential effects less speculative.

3 Under CEQA, a lead agency must review "the whole of an action." (CEQA Guidelines
4 § 15378(a).) Petitioners argue that the "whole of the action" includes both the Policy Framework and
5 the draft NID. Petitioners are wrong. Where a subsequent activity is independent of, and not a
6 contemplated future part of the first activity, the two activities may be reviewed separately, even though
7 they may be similar in nature. (*Christward Ministry v. County of San Diego* (1993) 12 Cal.App.4th 31;
8 *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690; CEQA Guidelines § 15165 [where one
9 project is one of several similar projects of a public agency, but is not deemed a part of a larger
10 undertaking or a larger project, the agency may prepare one environmental review for all projects or one
11 for each project].) Here, the draft NID is independent of the Policy Framework. Any of the bicycle
12 facility improvements contained in the draft NID could be implemented with or without the adoption of
13 the Policy Framework. At the same time, the Policy Framework has independent utility from the draft
14 NID as a means to qualify for funding from the state Bicycle Transportation Account and to guide City
15 decisionmakers on bicycle related issues.

16 CEQA does not require environmental review of development proposals in a planning study or
17 other documents that do not commit the agency to proceed. (*Berkeley Keep Jets Over the Bay*
18 *Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1358-59.) In *Berkeley Keep*
19 *Jets*, petitioners challenged the description of an airport expansion project that did not include other
20 anticipated developments at the airport. The petitioners claimed that without an analysis of these other
21 projects, the airport improperly segmented the expansion project. The court disagreed. Although the
22 airport had originally included these other projects in the project description for the airport expansion
23 environmental review, the airport ultimately dropped the projects because the projects were
24 controversial, presented political problems, and were not essential components of the expansion project.
25 (*Id.* at p. 1358.) The court upheld the description of the project as the airport expansion without the
26 curtailed developments. The court dismissed petitioners' evidence of early planning documents –
27 including early versions of the project description – that had included the other projects, stating:
28

1 [T]o conclude that these documents irreversibly committed the [airport] to a
2 particular course of action would be to ignore the fact that large public
3 transportation projects, such as the one involved here, are in the planning and
4 development stage over a long period of time and customarily undergo many
5 changes in design and scope before they are actually built. In reviewing the
6 [airport expansion]'s project definition, we are mindful that planning officials
7 need flexibility to allow for modifications without being found committed to
8 projects simply being contemplated in preliminary planning documents. In
9 essence, these [other] projects existed only as concepts in long-range plans
10 that were subject to constant revision. (*Id.* at 1360.)

11 Like in *Berkeley Keep Jets*, here the Department originally described the project as an update to
12 the 1997 Bicycle Plan with a list of "grant ready" improvements, i.e. both the Policy Document and the
13 NID. However, after noting that many of the projects in the NID were not ready for detailed design,
14 were controversial and would require extensive outreach, analysis or funding prior to the Department's
15 ability to settle on one design as the preferred option, the Department instead focused on the part of the
16 update that required immediate approval in order to qualify for state grant funding – the Policy
17 Framework. Like the court noted in *Berkeley Keep Jets*, such changes are in the nature of projects.
18 CEQA does not require that a project remain frozen in its description throughout the CEQA process or
19 any other implementing processes. "New and unforeseen insights may emerge during investigation
20 evoking revision of the original proposal." (*County of Inyo v. County of Los Angeles* (1977) 71
21 Cal.App.3d 185, 199.)

22 Indeed, even though the City had originally contemplated one environmental review, CEQA
23 does not *require* one environmental review of general policy documents (such as the Policy
24 Framework), together with projects potentially contemplated under the policies in the plan (such as the
25 improvements in the draft NID) if those projects are not currently proposed for adoption and not
26 reasonably foreseeable consequences of the adoption of the policy. (*Rio Vista Farm Bureau Center v.*
27 *County of Solano* (1992) 5 Cal.App.4th 351; *Pala Band of Mission Indians v. County of San Diego*
28 (1998) 68 Cal.App.4th 556; *Christward Ministry v. County of San Diego* (1993) 12 Cal.App.4th 31.)

In *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, the Court of
Appeal upheld the county's environmental review in conjunction with the adoption of a countywide
integrated waste management plan under the Integrated Waste Management Act of 1989 ("the Waste
Act"). The Waste Act mandates local preparation of a waste management plan, which summarizes a

1 county's waste management issues and provides specific steps the local agency will take to comply with
2 the Waste Act's purpose of "reduc[ing], recycl[ing] and reus[ing] solid waste." (*Id.* at 561.) The plan
3 must contain a siting element, which must provide a description of the geographic areas that can be used
4 for landfills. In *Pala Band of Mission Indians*, the county tentatively reserved ten sites as possible
5 landfill sites and anticipated developing a landfill on two of them, including one site that had already
6 received voter approval. (*Id.* at 560.) The county described the project as just the adoption of the plan,
7 and did not include in as part of the project an analysis of the impacts from implementation of any
8 particular landfill. The petitioner challenged the environmental review, claiming that the county
9 segmented the project and that the project description should have included both the plan and impacts
10 from development of the landfill sites. The county, on the other hand, argued that the plan was a
11 "comprehensive planning document" that "does not cause a specific new development project to be
12 undertaken," and, thus, "any environmental analysis of the sites would be speculative." (*Id.* at p. 576.)
13 The court agreed with the county, finding there was no guarantee that sites would be developed, and,
14 therefore, "in our view, preparation of an EIR [covering the plan *and* the impacts at the sites] at the
15 current planning state would be premature in that any analysis of potential environmental impacts would
16 be wholly speculative." (*Id.*)

17 Like the waste management plan in *Pala Band of Mission Indians*, the Policy Framework is a
18 comprehensive planning document that does not cause any new bicycle project to be undertaken. The
19 City correctly described the project as an analysis of the Policy Framework and did not need to include
20 as part of the project to be analyzed the draft list of network improvements. The route improvements in
21 the draft NID were not proposed for adoption and were not reasonably foreseeable consequences of, nor
22 dependent on, the adoption of the Policy Framework. Until specific measures are adopted and fully
23 fleshed out, their effects remained abstract and speculative and thus cannot be analyzed under CEQA,
24 and are not considered significant. (CEQA Guidelines § 15064(d)(3).) (See also *Rio Vista Farm*
25 *Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 372 [court upheld environmental review
26 of hazardous waste management plan incorporated into general plan against challenge that plan should
27
28

1 have analyzed hazardous waste facilities; court found plan did not propose or commit county to building
2 any particular waste facility.])

3 Cases cited by Petitioners are not to the contrary. In each case, the general plan amendments
4 approved was part of a larger project involving a specific rezoning *necessary* for a specific development
5 project. In *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, the court found that
6 the annexation of 677 acres of agricultural land was the first step in the property owners' specific
7 proposal to rezone the land from agricultural to residential, commercial, and recreational uses in order to
8 develop up to 3,700 new dwelling units. (*Id.* at 281.) In *Christward Ministry v. Superior Court* (1986)
9 184 Cal.App.3d 180, the court found that the general plan amendments were, in fact, part of a larger
10 project involving a proposed methane gas recovery plant. In *City of Carmel by the Sea v. Board of*
11 *Supervisors* (1986) 183 Cal.App.3d 229, the court found that a rezoning was the first step in allowing a
12 61-unit development near a wetland. (*Id.* at 224.) In *Citizens Assoc. for Sensible Development of*
13 *Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, the court found that a general plan
14 amendment was a necessary precursor to a proposed new shopping center.

15 The City's description of the overall Bicycle Plan update as having "two components" does not
16 mandate that the City review both components in one environmental document or alter the correctness
17 of the City's decision to analyze the improvements in the draft NID separately. Indeed, the plans in *Rio*
18 *Vista*, *Christward Ministry* and *Pala Band of Mission Indians* can all be described as having "two
19 components" – the generalized planning and policy component (such as the waste management plan in
20 *Pala*) and the actual project-level component (implementation of an actual landfill).

21 **B. The City Has Properly Analyzed Individual Route Improvements.**

22 Petitioners argue that the City continues to "segment" what is their definition of "the project" by
23 analyzing individual route improvements separately from other route improvements.⁷ Petitioners are
24

25 ⁷ The City objects to Petitioners' argument. Petitioners have not amended their first
26 amended Petition to include any actions after June 23, 2005, the date of the City's filing of the
27 Notice of Exemption, and the Petition does not allege a "pattern and practice." Thus, any actions by
28 the City after the June 23 Notice are irrelevant to this Petition. Nevertheless, in an abundance of
caution, the City addresses Petitioners' argument.

1 wrong. Individual improvements to the City's bicycle network can be looked at independently of one
2 another. When a subsequent activity is independent of, and not a contemplated future part of the first
3 activity, the two activities may be reviewed separately, even though they may be similar in nature. (*Del*
4 *Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 735; *Sierra Club v. West*
5 *Side Irrig. Dist.* (2005) 128 Cal.App.4th 690.)

6 *Del Mar Terrace* is controlling. In *Del Mar Terrace* the City of San Diego and Caltrans
7 proposed the construction of one phase (a 1.8 mile segment) of State Route 56, the construction of
8 which consisted of five total phases. The city and Caltrans contemporaneously prepared four separate
9 environmental documents for four of the five phases. (*Id.* at 731.) The petitioners argued that the
10 environmental review and approval of the 1.8 mile portion was improper segmentation of what should
11 have been one review of the whole state route. The court disagreed. The Court held that the
12 environmental review of a highway segment need not include other phases of the highway even if the
13 separate parts of the highway might eventually be joined together. The court adopted a four-part test
14 articulated by the federal court in *Daly v. Volpe* (1975) 514 F.2d 1106, in deciding whether roadway
15 segments were entitled to separate environmental review. The Court found that separate environmental
16 review of a portion of a highway is appropriate when (a) the segment is of substantial length and
17 between logical terminal points; (b) the segment has independent utility; (c) the length of the segment
18 assures adequate opportunity for consideration of alternatives; and (d) if the segment fulfills important
19 state and local needs. The Court further analyzed whether the approval of the highway segment
20 irretrievably committed the City and the State to completion of the other remaining segments. The court
21 found that the 1.8 mile segment met these criteria and upheld the review of just that segment.

22 The analysis in *Del Mar Terrace* is as fitting for bicycle routes as it is for highways. Each route
23 improvement in the draft NID can be analyzed independently when the segment meets the test set forth
24 in *Del Mar Terrace*. Thus, the City need not analyze each route improvement together with every other
25 route improvement prior to each improvement's adoption. Petitioners have not presented evidence or
26 even argument that the route improvements do not meet the test in *Del Mar Terrace*.

1 In sum, although the Department originally described the project as including both the Policy
2 Framework and the draft NID, the City did not improperly segment the two projects when Planning
3 analyzed only the Policy Framework. For the reasons noted above, the Department determined that the
4 potential route improvements in the draft NID were ultimately speculative future activities not
5 dependent on the adoption of the Policy Framework and likewise, the Policy Framework had the
6 independent utility as a means to qualify for grant funding from the state. In addition, the City was not
7 required to review all of the route improvements together as one project. Not only is the list of
8 improvements in the draft NID independent of the Policy Framework, but also each route improvement
9 is independent from every other route improvement.

10 **C. The City Properly Determined that there Would Be No Environmental Impacts**
11 **from the Adoption of the Policy Framework.**

12 **1. Approval of the Policy Framework will not have any impacts on the**
13 **environment.**

14 Documented in a 7-page memorandum, Planning determined that the adoption of the Bicycle
15 Plan would not have a significant effect on the environment and was therefore exempt from further
16 environmental review under CEQA Guidelines Section 15061(b)(3). As noted above, under Section
17 15061(b)(3), a project is exempt from further environmental review if it does not fit into one of the 33
18 classes of categorical exemptions and common sense dictates that there is no possibility that the project
19 will have a significant environmental impact. This "common sense exception" was adopted to guard
20 against the possibility that an obviously exempt project not found in the list of 33 classes of categorical
21 exemptions "might be required needlessly to comply with the requirements of CEQA." (*Myers v. Bd. of*
22 *Supervisors* (1976) 58 Cal.App.3d 413, 425.) The City correctly determined that the Policy Framework
23 fell into this category. CEQA, the CEQA Guidelines, and relevant CEQA case law support the City's
24 decision.

25 **a. The goals and policies in the 2005 Policy Framework are substantially**
26 **the same as the goals and policies in the 1997 Bicycle Plan.**

27 In examining the impacts from the Policy Framework, Planning noted that the existing setting
28 included the fact that the City already had a Bicycle Plan – the 1997 San Francisco Bicycle Plan. (AR
1:2.) As demonstrated in the Statement of Facts above, even a cursory examination of the old and new

plans reveals that they are substantially similar and that, in fact, the Department was not presenting "radical changes," as Petitioners suggested. (AR 7:1375 [comments of CAR].)

Petitioners wrongly ignore the 1997 Plan. In reviewing a general plan amendment, CEQA requires that the lead agency assess the environmental effects of only the *proposed changes* to the general plan on the existing environment, not the effects of the entire plan on the existing environment. (*Black Property Owners Assoc. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985.) This is because CEQA requires analysis of impacts *caused by* the project. (CEQA Guidelines § 15358(a) [direct and indirect effects are those "caused by" the project].) Thus, policies already adopted by the City and contained in the 1997 Bicycle Plan or contained in the various elements in the San Francisco General Plan, would not be the cause of impacts from adoption of the 2005 Policy Framework.

As a result, the *only* "new" recommendation in the Policy Framework for Planning to study for environmental review was that identified in Action 2.3 and Table 2-4. (AR 15:3472.) But this item of the Policy Framework merely *recommends* that certain streets within the City "*should be studied for potential* inclusion in the Bicycle Route Network." (*Id.* [emphasis added].) Such conjecture is not evidence of a significant impact. (*Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183.) The Policy Framework does not mandate study, contains no suggestion as to what these streets might look like after study, and does not commit the City from implementing any changes even if a study is done. Thus, because none of the "new" routes found in Table 2-4 included any particular plans or recommendations, there were no direct impacts that the City could study and any indirect impacts were speculative and could not be considered significant. (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 476 ["there is simply not enough specific information about the various courses of action available . . . to warrant review at this time."].) Remote speculation of an impact is not enough to prevent a lead agency from relying on the common sense exception to CEQA. (*Davidson Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 118.)⁸

⁸ Even Petitioners most feared "radical change" is not new to the General Plan. The recommended action to explore alternative methodologies for determining transportation performance beyond the traditional "level of service" has been a part of the Transportation Element of the San Francisco General Plan for many years. Objective 10 of the Transportation Element (continued on next page)

1 **b. The Policy Framework would not have indirect effects on the**
2 **environment.**

3 Although CEQA requires an analysis of the indirect effects of a project, for a project to have
4 indirect effects, the project must be a necessary or essential step in a chain of events that would
5 culminate in those indirect impacts. (*Kaufman & Broad, supra*, 9 Cal.App.4th at p. 473.) Indirect
6 impacts are not to be considered significant if they are speculative or unlikely to occur, or are not caused
7 by the project. (CEQA Guidelines § 15064(d)(3).) Although *Kaufman & Broad* involved whether an
8 activity is considered a "project," the reasoning is instructive because "projects" are defined as activities
9 that have a direct or indirect effect on the environment. There, a school district formed a community
10 facilities district (CFD) which allowed the school district to impose a special tax to be used to finance
11 the construction of schools. The school district determined that the formation of the CFD was exempt
12 from environmental review because it was not a "project" as defined in CEQA. Petitioners Kaufman &
13 Broad challenged this determination, arguing that the formation of the CFD could have an indirect effect
14 on the environment because by forming the CFD, the school district would likely construct new schools,
15 the construction of which could have environmental impacts. The Court of Appeal rejected this
16 argument and held that the CFD was not a project under CEQA.

17 The Court found that the formation of the CFD was not a necessary step in a chain of events that
18 would culminate in impacts on the environment from the construction of schools and, thus, had no
19 indirect effects. (*Id.* at 473.) This was because any impacts from the construction of the schools were
20 not "*caused by*" the formation of the CFD. The Court noted that the CFD would not create a need for
21 new schools, nor was the construction of new schools dependent upon the formation of the CFD – the
22 school district could construct new schools using some other method to finance them.

23
24 (footnote continued from previous page)
25 concerns Transportation Performance Measures, and the preamble states that "[traditional Levels of
26 Service measures] . . . are not well suited for measuring the performance of alternative modes of
27 transportation to the automobile, such as transit, walking or bicycling." (City's RJN, Exh. B).
28 Objective 10 is to "develop and employ methods of measuring the performance of the City's
transportation system that respond to its multi-modal nature." (*Id.*)

1 Likewise, here, the Policy Framework is not an essential step in a chain of events leading to
2 environmental impacts from bicycle facilities. Any impacts from implementation of a bicycle facility
3 would not be caused by the adoption of the Policy Framework. Bicycle facilities could be implemented
4 without the adoption of the Policy Framework with funding from sources other than the state. In
5 addition, the bicycle facilities could be implemented without any of the amendments to the General
6 Plan. Just as the CFD did not create the need for schools, the Policy Framework does not create the
7 need for bicycle facilities. Bicyclists are already allowed to use every street in San Francisco. The
8 Policy Framework, among other goals, merely seeks to guide City departments in implementing
9 priorities for creating a safer environment for bicyclists and reducing the dependence on the car.

10 **c. CEQA Guidelines section 15304(h) exempts the creation of bicycle**
11 **lanes on existing rights-of-way.**

12 Bolstering Planning's determination that the Bicycle Plan would not have any significant effects
13 is CEQA itself. CEQA requires the State Office of Planning and Research to prepare and develop
14 proposed guidelines for implementing CEQA, including preparation of "a list of classes of projects
15 which [sic] have been determined not to have a significant effect on the environment." (Pub. Res. Code
16 §§ 21083; 21084(a).) One of the classes for which this determination has been made is for the "creation
17 of bicycle lanes on existing rights-of-way." (CEQA Guidelines § 15304(h).) Another such class is for
18 projects involving "minor alterations to existing streets." (CEQA Guidelines § 15301(c).) Thus, CEQA
19 assumes that the creation of most bicycle route improvements – either a bicycle lane or a minor
20 alteration to the street – will not have a significant impact on the environment.⁹

23 ⁹ Petitioners claim that the City can never rely on an exemption under Sections 15301(c) or
24 15304(h) to create a bicycle lane on a City street unless there already is an existing bicycle lane in
25 that street because the "existing facility" in Section 15301(c) and the "existing right of way" in
26 section 15304(h) must mean an existing bicycle lane. (Petitioners' brief at p. 17 n 8.) This
27 argument makes no sense. If a street already contained a bicycle lane there would be no need to
28 *create* a bicycle lane and no need for CEQA to exempt the creation under Section 15304(h).
Likewise, if alteration of "existing facility" did not allow a change to the streetscape, there would no
need for CEQA to exempt "minor alteration[s] of an existing street" in section 15301(c).

1 **D. Petitioners Have Not Met their Burden of Providing Substantial Evidence of**
2 **Significant Impacts of the Policy Framework.**

3 Contrary to Petitioners' claims, the City expressly considered whether the Policy Framework
4 would have environmental impacts, documenting its findings with substantial evidence in the record.
5 (AR 7:1393-98 [GRE]; 1387-91 [response to appeal].) The burden thereafter shifted to Petitioners to
6 provide substantial evidence that the adoption of the Policy Framework could in fact have a significant
7 impact on the environment. (*Davidson Homes v. City of San Jose* (1997) 54 Cal App 4th 106.) Instead,
8 Petitioners merely made generalized claims that the adoption of the Bicycle Plan would have impacts
9 due to the "radical changes." (AR 7:1375.) But, as noted above, the Policy Framework contained no
10 "radical changes" – the 2005 policies are virtually the same as the policies in the 1997 Plan. In any
11 event, the impacts to which Petitioners allude are speculative at best because the Policy Framework does
12 not commit the City to making any changes to the physical environment. Remote speculation is not
13 enough to prevent a lead agency from relying on the common sense exception to CEQA. (*Davidson*
14 *Homes v. City of San Jose*, supra, 54 Cal App 4th at p. 118.) To so hold "would render the common
15 sense exemption meaningless." (*Id.*) Only if the argument that a project will have a significant
16 environmental impact is reasonable, must the lead agency refute the claim to a certainty. (*Id.*) Here,
17 Petitioners not only failed to meet their burden of showing a reasonable possibility that the adoption of
18 the Bicycle Plan would result in significant environmental effects, the City responded to their concerns
19 and refuted their claims to a certainty. (AR 7:1387-91.)

20 In fact, Petitioners point to no recommended action in the 2005 Policy Framework not in the
21 1997 Bicycle Plan that could have any possibility of a significant effect. Indeed, Petitioners are mostly
22 offended by recommendations in the Policy Framework that have no bearing on physical changes to the
23 environment at all. For example, Petitioners object to spending City money on the promotion of
24 bicycling, funding additional staffing at Planning for enforcement of bicycle parking violations, having
25 transportation reports identify the number of bicycle parking spaces near a proposed new project, or
26 putting bicycle racks on buses. (AR 7:1375-76 [comments of CAR].)

27 At most, Petitioners point to indirect physical changes, but an "indirect physical change is to be
28 considered only if that change is a reasonably foreseeable impact which may be *caused* by the project.

1 A change which is speculative or unlikely to occur is not reasonably foreseeable." (Guidelines
2 § 15064(d)(3) [emphasis added].) All of Petitioners' "evidence" of changes which even remotely
3 implicate environmental issues were identified in the 1997 Plan and would not be caused by the Policy
4 Framework. For example, the idea that the implementation of a bicycle lane may require the elimination
5 of a traffic lane or the prohibition of parking is in the 1997 Plan in Chapter 3. (1997 Plan at 3-1, 7 ["In
6 certain cases travel lane removal may be the only way to safely accommodate bicycle travel within a
7 corridor."]; 3-14 [suggesting parking prohibitions on Masonic, Fell and Oak Streets].) The 1997 Plan
8 promotes bicycles and buses sharing transit-only lanes. (1997 Plan at 3-11 ["Sharing the bus lane . . .
9 should be legitimized by the City."].) Bicycling on sidewalks is not new either. (1997 Plan at 8-3, 4
10 [recommending sidewalk bicycle riding].)

11 Petitioners' vaguely allege impacts to traffic, parking and pedestrian safety, but point to no
12 particular street, no particular intersection, no particular parking loss significant enough to cause
13 secondary effects,¹⁰ and no particular area in which pedestrians would be unsafe from implementation of
14 a bicycle facility. Petitioners "evidence" of indirect impacts is thus mere speculation.

15 In sum, Planning correctly found that the adoption of the Policy Framework would not result in
16 any new significant impacts on the environment. The policies were virtually identical to the policies
17 contained in the 1997 Plan, the Policy Framework did not commit the City to any particular course of
18 action related to any particular route improvement, and CEQA itself already assumes that the creation of
19 bicycle lanes on existing rights of way does not have a significant impact on the environment. Thus,
20 Planning correctly issued a "common sense" general rule exclusion.

21 **II. THE RECOMMENDED ACTIONS IN THE POLICY FRAMEWORK ARE NOT**
22 **PREEMPTED BY THE VEHICLE CODE OR THE GOVERNMENT CODE.**

23 Petitioners also challenge the adoption of the 2005 Policy Framework by claiming that either the
24 California Vehicle Code or the Government Code preempts several of the recommended "actions" in the
25 Policy Framework. This claim has no merit. Petitioners completely ignore that the "actions" in the

26 ¹⁰ Of course, lack of parking, in and of itself, is not an environmental effect. (*San*
27 *Franciscans Upholding the Downtown Plan v. CCSF* (2004) 102 Cal.App.4th 656, 697.)

1 Policy Framework are *recommendations* on how to best implement the goals and policies. (See e.g. AR
2 15:3500 [City staff should prioritize the following actions to implement the recommendations . . .])
3 Approval of the Policy Framework did not automatically implement any of these recommendations. As
4 such, Petitioners claim that the Vehicle Code or Government Code preempts the recommendations is not
5 ripe for review. (*Selby Realty Company v. City of San Buenaventura* (1973) 10 Cal.3d 110 [courts will
6 not be drawn into disputes over General Plan policies which depend on speculative future events].)

7 In any event, even if Petitioners claims were ripe for review, California Vehicle Code § 21
8 preempts local regulation only to the extent that it conflicts with Vehicle Code provisions, and only if a
9 regulation is not "expressly authorized" by the Code (Cal. Veh. Code § 21 ["no local authority shall
10 enact or enforce any ordinance on the matters covered by this code unless expressly authorized
11 herein."].)

12 Here, however, the Code expressly authorizes municipalities to regulate traffic patterns, regulate
13 parking and create bicycle lanes, and none of Petitioners preemption arguments are valid.

14 **A. Sharrow Pavement Markings are Expressly Authorized by State Law.**

15 State law provides express authority to local jurisdictions to use "sharrow" pavement markings to
16 regulate traffic. Section 21000(d) of the California Vehicle Code permits local authorities to regulate
17 traffic "by means of official traffic control devices meeting the requirements of Section 21400." (Cal.
18 Veh. Code. § 21100(d).) Vehicle Code § 21400, in turn, sets forth the procedures by which the
19 Department of Transportation (Caltrans) will create uniform standards for "official traffic control
20 devices," and Vehicle Code § 21401 requires that only "official traffic control devices" adopted by
21 Caltrans be used upon a street or highway.

22 Sharrows, or "Shared Roadway Bicycle Markings" were adopted on September 12, 2005, as part
23 of the State of California's April 3, 2006, California Manual on Uniform Traffic Control Devices
24 (MUTCD), Section 9C.103. (*See* State of California Department of Transportation, Traffic Operations
25 Policy Directive Number 5-10, Issued Sept. 12, 2005, Exh. D to RJN [hereinafter "Policy Directive."].)
26 The reasons for using a sharrow pavement marking is to "[r]educe the chance of bicyclists impacting
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1 open doors of parked vehicles on a shared roadway with on-street parallel parking," and to "[a]lert road
2 users within a narrow traveled way of the lateral location where bicyclists ride." (Policy Directive at 2.)

3 Having been approved for use by Caltrans and included in the MUTCD, sharrows are an "official
4 traffic control device" expressly approved by the State for use by local authorities to regulate traffic.

5 **B. Lane Sharing Between Bicycles and Motor Vehicles Is Not Preempted.**

6 Petitioners claim that the Vehicle Code preempts any lane sharing between bicycles and motor
7 vehicles. However, the requirement that motor vehicles share lanes with bicycles is well-supported
8 under state law. Vehicle Code section 21200(a) demonstrates the Legislature's intent that bicycles share
9 the road with motor vehicle traffic by setting forth rules applicable to "[e]very person riding a bicycle
10 upon a *highway*" (emphasis added), while "highway" is defined as "a way or place . . . publicly
11 maintained and open to the use of the public for purposes of vehicular travel." (Vehicle Code § 360.)
12 Vehicle Code section 21202 adds that if a bicycle operated in a "roadway" (defined in Vehicle Code §
13 530 as "that portion of a highway improved, designed or ordinarily used for vehicular travel,") is moving
14 at less than the speed of traffic it must ride as close "as practicable" to the right hand curb. Vehicle
15 Code section 21202 expressly also authorizes bicycles to use the left turn lanes used by motor vehicles.

16 Vehicle Code section 21202 also expressly authorizes bicycles to "share the road" and move
17 away from the extreme right side of the roadway when it is not practicable to stay there, such as when
18 there are parked cars that present a hazard from opening doors. For example, Section 21202 allows
19 bikes to move out of the right-hand position in order to pass slower vehicles in the road, to pass right-
20 turning vehicles on the left, and to leave the right side of the road to avoid conditions, including fixed or
21 moving objects, vehicles, or substandard width lanes (defined as lanes that are 'too narrow for a bicycle
22 and a vehicle to travel safely side by side within the lane') that make it unsafe to continue along the
23 right-hand curb or edge. (Cal.Veh. Code § 21202(a)(3).)

24 There is no way to read Vehicle Code §§ 21200 and 21202 to support the conclusion that the
25 Legislature intended to prohibit bicycles from sharing the road with motor vehicles. And, when required
26 for safety reasons, section 21202 makes it clear that state law expressly permits a bicycle to occupy the
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1 full width of a traffic lane when parked cars create a safety hazard on the right side of the road or when
2 the lane is too narrow for a bicycle and a motor vehicle to travel side by side. (*Id.*)

3 None of the many statutes that Petitioners cite as authority for preemption of sharrows or signs
4 that allow bicycles full use of a traffic lane change this conclusion. First, Petitioners argue that the use
5 of sharrows, which encourage bicycle riders to avoid injury from suddenly opening car doors by riding
6 outside of the "door zone", is preempted by Vehicle Code § 22517 ("No person shall open the door of a
7 vehicle on the side available to moving traffic unless it is reasonably safe to do so"). Petitioners'
8 argument assumes that the Legislature's intent in passing this statute was not to regulate the conduct of
9 motor vehicle drivers, but was to occupy the field to prevent any regulation of any activity that could
10 occur within the "door zone" of parked vehicles. This argument stretches preemption analysis beyond
11 recognition.

12 Petitioners claim that requiring motor vehicles to share lanes with bicycles is preempted by
13 Vehicle Code section 21654(a), which requires vehicles traveling at less than the speed of traffic to drive
14 in the right hand lane or "as close as practicable" to the right hand curb. Nothing in Section 21654(a)
15 changes the express rules of the road for bicycles set out in Vehicle Code section 21202, which similarly
16 requires bicycles to ride as close "as practicable" to the right hand curb. The sudden opening of parked
17 car doors was the largest cause of bicycle related collisions between 1998 and 2003. (*See* AR 15:3555.)
18 The reason that the State adopted the sharrow pavement marking as an official traffic control device was
19 to "reduce the chance of bicyclists impacting open doors of parked vehicles on a shared roadway with
20 on-street parallel parking." (*See* Policy Directive at 2.) Therefore, common sense requires reading
21 Vehicle Code sections 21202 and 24654 to allow bicycles to move out of the extreme right hand
22 position when it is not "practicable" to stay there, and allowing bicycles to place themselves in a lane in
23 a manner that avoids the common hazard of car doors that might open into their path of travel.

24 Nor do Vehicle Code sections 21753 and 21754 support Petitioners' preemption argument.
25 Those sections allow a faster moving vehicle to pass another vehicle on the right under specified
26 conditions and restate the general duty of a slower moving vehicle to stay to the right. Nothing in those
27 sections eliminates the rights of a bicycle under Vehicle Code section 21202 to share a narrow lane of
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1 traffic with other vehicles and, when required, to move out of the way of potential safety hazards. In
2 fact, section 21754 expressly protects the ability of a slower vehicle being passed to keep its place in the
3 lane when required for safety reasons: "This section does not require the driver of an overtaken vehicle
4 to drive on the shoulder of the highway in order to allow the overtaking vehicle to pass."

5 Similarly, Petitioners' citation to Vehicle Code section 21656 is equally irrelevant. The fact that
6 a slow moving vehicle is required to pull over when there are five or more vehicles behind it does not
7 change the express authorization of section 21202 for bicycles to place themselves safely within a lane
8 that they must share with motor vehicles.

9 Petitioners claim that speed limit laws preempt the operation of bicycles in traffic lanes, citing
10 Vehicle Code sections 22352 (setting 15mph and 25mph prima facie speed limits in certain settings) and
11 22400 ("No person shall *drive* upon a highway at such a slow speed as to impede or block the normal
12 and reasonable movement of traffic unless the slow speed is necessary for safe operation"
13 [emphasis added.]) Petitioners state that since Vehicle Code section 22358.5 prohibits downward
14 adjustment of speed limits set by state law, the use of a bicycle on any street where it cannot maintain a
15 minimum speed equal to the speed limit is prohibited. The argument is nonsensical.

16 First, Vehicle Code section 22358.5 does not prohibit the downward adjustment of speed limits
17 as Petitioners state in their brief. Rather, the section merely states that it is not necessary to officially
18 change speed limits in an area where road conditions would tend to slow traffic, because the basic speed
19 law of Vehicle Code section 22350 is considered sufficient. (Cal. Veh. Code § 22350 ["No person shall
20 drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for . . .
21 the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the
22 safety of persons or property."].)

23 Second, sharrows do not in themselves have any effect on regulating the legal speed limits on
24 roads where they are used. To the extent that Petitioners are attempting to argue that sharrows have the
25 practical effect of reducing the speed of traffic, the argument still fails to demonstrate preemption. The
26 speed limit laws cited by Petitioners regulate the maximum speed, not the minimum speed of traffic. To
27 follow Petitioners' argument to its logical conclusion would require outlawing all bicycles from all
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1 roadways, since by their very nature bicycles cannot maintain the same speeds as motor vehicles, nor
2 would it be safe for them to do so.

3 Finally, Petitioners argue that Vehicle Code section 21208, which regulates permitted
4 movements in and out of established bicycle lanes, preempts the use of sharrows. But sharrows, by
5 definition, are used only where no bicycle lane has been established. Therefore, Petitioners' citation of
6 Vehicle Code section 21208 is irrelevant.

7 **C. Local Regulation of Bicycles on Sidewalks is Not Preempted by State Law.**

8 Petitioners contend that the City may not regulate the riding of bicycles on sidewalks despite the
9 clear language in Vehicle Code section 21100(h), which states that "[l]ocal authorities may adopt rules
10 and regulations . . . regarding . . . [o]peration of bicycles . . . on the public sidewalks." (Cal. Veh. Code
11 § 21100(h).) The meaning of section 21100(h) is not ambiguous.

12 Petitioners, however, argue that this language gives local jurisdictions only the authority to
13 *restrict* the use of bicycles on sidewalks. Petitioners cite Vehicle Code section 21663, which prohibits
14 motor vehicles from operating on sidewalks, and selectively quote *People v. Fong* (1993) 17 Cal.App.4th
15 Supp.1, in support for a convoluted argument that bicycles are "motor vehicles." But neither authority
16 stands for the proposition that Vehicle Code section 21100(h) does not mean what it says. Bicycles are
17 not "motor vehicles," and *People v. Fong* (1993) 17 Cal.App.4th Supp.1, is not to the contrary. In
18 *People v. Fong*, the Court held that a bicyclist on a roadway must obey the speed limit, just as a motor
19 vehicle must, based on Vehicle Code section 21200, which makes bicycles "subject to all the provisions
20 [of Division 11 of the Vehicle Code] applicable to the driver of a vehicle."

21 Petitioners also cite an Attorney General Opinion to argue that a local ordinance relating to the
22 use of bicycles on sidewalks may only restrict such use. However, in reality, the opinion reveals an
23 understanding and acceptance by the Legislature that the use of bicycles may be locally permitted on
24 sidewalks. The opinion concludes that the Vehicle Code demonstrates the legislative intent that the
25 bicycles may operate on sidewalks, subject to the rules of the road. (76 Ops. Ca. Atty. Gen. 214 (1993).)

1 **D. The City has Authority to Eliminate Parking Spaces, Eliminate Traffic Lanes, and**
2 **Implement Bicycle Boulevards and Traffic Calming Impediments.**

3 Petitioners argue that the Vehicle Code preempts the ability of the City to eliminate traffic lanes
4 or parking spaces to establish bicycle lanes, and preempts the ability of a City to create "bicycle
5 boulevards" or implement traffic claming measures. Petitioners support this conclusion by arguing 1)
6 that a bicycle lane, bicycle boulevard or traffic calming measure is a prohibited "selective device" that
7 blocks public access to the street, and 2) that bicycle lanes cannot be *in* traffic lanes because they are
8 required to be "separated" from lanes used by other vehicles in the street. Neither argument is supported
9 by any of the authorities to which Petitioners cite.

10 First, Petitioners argue that the City may not create bicycle lanes in the roadway, or bicycle
11 boulevards or traffic calming devices because installing these features would be tantamount to installing
12 "gates or other selective devices" prohibited by the Vehicle Code where they would "deny or restrict
13 access of certain members of the public to the street while permitting others unrestricted access to the
14 street." (Cal. Veh. Code § 21101.6 [codifying *City of Lafayette v. County of Contra Costa* (1979) 91
15 Cal.App.3d 749].) However, neither *City of Lafayette* nor Vehicle Code section 21101.6 is applicable to
16 the creation of bicycle lanes, bicycle boulevards, or implementation of traffic calming. The selective
17 device at issue in the *City of Lafayette* case was a gate that would close a public road to all but certain
18 selected *people* – residents of a particular area. The features to which Petitioners object do not block the
19 use of the street by any particular person. A bicycle lane does not block the use of a street by the public
20 or prevent the use of the roadway for travel. A bicycle lane merely defines the lanes in the roadway on
21 which different types of vehicles may travel. This is expressly authorized by Vehicle Code section
22 21207, which allows local authorities to "establish[] . . . bicycle lanes separated from any vehicular lanes
23 upon highways . . ." and section 21101(c) which allows local authorities to prohibit the use of particular
24 highways by certain vehicles.

25 Likewise, neither bicycle boulevards nor traffic calming devices are prohibited by section
26 21101.6. Even with these features, all members of the public are allowed use of the street. In fact, the
27 court in *Carsten v. City of Del Mar* (1992) 8 Cal.App.4th 1642 specifically upheld the use of traffic
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1 islands and curbs to reduce traffic speeds in a residential neighborhood – the goal of traffic calming. (*Id.*
2 at 1646.)

3 Petitioners argues that even if there is express authority to establish a bicycle lane, the City
4 cannot create a bicycle lane without separating it from other traffic lanes. Inherent in Petitioners
5 argument is the belief that once a traffic lane or parking space is established in a roadway, it may not be
6 eliminated. But this is not true either. The City has express authority to regulate traffic and parking,
7 including the authority to eliminate traffic lanes or parking. California Government Code section
8 40401(c) gives city governments the discretion to "[e]stablish, lay out, alter, keep open, improve, and
9 repair streets, sidewalks, alleys, tunnels, and other public highways . . ." (Govt. Code § 40401(c).) The
10 ability to "establish, lay out, alter, keep open, improve and repair streets" allows local agencies to alter
11 patterns of traffic. "Relatively permanent, physical changes in the width or alignment of roadways that
12 are effected by islands, strips, shoulders, and curbs clearly are within the construction and maintenance
13 power [of a local government] though of course they may alter patterns of traffic." (*Carsten v. City of*
14 *Del Mar*, supra, 8 Cal.App.4th at 1653 [citations omitted].) In addition, local agencies are also allowed
15 to regulate parking. (See e.g. Cal. Veh. Code § 22507 [authorizing local parking restrictions]; Cal. Veh.
16 Code § 22508 [authorizing parking meter zones]; Cal.Veh. Code § 22503 [authorizing angle parking].)

17 Thus, Petitioners have not cited any authority to support their argument that the creation of a
18 bicycle lane by removing a lane of traffic or parking is preempted by the Vehicle Code.

19 **E. The City May Establish "Contra Flow" Lanes.**

20 Petitioners next argue that "contra-flow" lanes are preempted because they "[allow] bicyclists to
21 travel in the wrong direction on city streets." (Petitioners' brief at p.26.) Contrary to Petitioners claims,
22 contra-flow lanes do not allow bikes to travel in the opposite direction of traffic. They change one-way
23 streets to two-way street, with one direction exclusively reserved for bicycle traffic. (See AR 15:3588
24 [noting bicycle traffic separated by a double yellow line like an opposite flowing lane on any other two-
25 way street].) The City may prohibit the use of particular streets by certain vehicles (Cal. Veh. Code
26 § 21101(c).) A contra flow lane does not create an exception to the rules of the road; rather it changes
27 the traffic configuration and changes which rules of the road apply. (See AR 15:3588 [noting that a
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1 standard two-way warning sign may be appropriate].) Thus, contra-flow lanes are expressly authorized
2 under the City's power to regulate traffic and the City's power to control the direction of traffic. (See
3 Cal. Veh. Code § 21000(d) [localities may regulate traffic using official traffic control devices]; Cal.
4 Veh. Code § 21657 [allowing authorities in charge of any highway to designate traffic direction].)

5 **F. Bike Boxes Are Allowed under the City's Power to Regulate Traffic.**

6 Petitioners' final preemption argument challenges the potential use of bicycle streaming lanes
7 and bike boxes (collectively "bike boxes"). These devices do not allow bicyclists to disobey traffic laws
8 relating to "limit lines" – the line at which a vehicle must stop prior to entering an intersection. These
9 devices create different limit lines for different lanes – one limit line for a general traffic lane, and a
10 separate limit line for a bicycle lane. The Petitioners cite various irrelevant provisions of the Vehicle
11 Code that generally require bicyclist to comply with the rules of the road. However, these provisions are
12 not in conflict with bike boxes. Bike boxes do not allowed bicyclists to "[disobey] traffic signals for
13 vehicles... [pass] vehicles stopped for pedestrians at intersection[s]... [or fail to] stop at limit line," as
14 the plaintiff implies. (Petitioner's brief at p. 26 [citations omitted].) Because bike boxes are not in
15 conflict with the Vehicle Code and are expressly authorized under the City's power to regulate traffic as
16 long as they comply with the MUTCD, they are valid components of the City's Policy Framework.

17 **G. The City May Adopt Alternative Methodologies to Analyzing Traffic Impacts.**

18 Petitioners claim that the City is preempted from studying alternative methods for analyzing
19 impacts to traffic. Currently, the City measures impacts to traffic using the "levels of service" (LOS)
20 method, which identifies how long a car must wait to pass through an intersection. The LOS is
21 measured as A through F, LOS A signifying free flowing traffic conditions, LOS F signifying very
22 heavy congestion. Contrary to Petitioners claims, the use of LOS is not mandated by CEQA, and CEQA
23 does not mandate that traffic impacts be measured by reference to LOS of automobiles. CEQA Section
24 20182 and CEQA Guidelines 15064.7 allow public agencies to adopt objectives, criteria and procedures
25 for the evaluations of projects. (Pub. Res. Code § 21082 [each public agency is encouraged to develop
26 and publish thresholds of significance – an identifiable performance level of a particular environmental
27 impact].) Government Code sections 65088.1, 65089 and 65089.4 govern the use of LOS in Congestion
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1 Management Plans. Although these plans may require the standard use of LOS to measure congestion
2 in Congestion Management Plans, CEQA does not. Thus, policies in the 2005 Policy Framework urging
3 further study of alternative methods of measuring transportation impacts do not violate CEQA.

4 **III. THE CITY PROVIDED PROPER NOTICE OF THE ADOPTION OF THE BICYCLE**
5 **PLAN POLICY FRAMEWORK**

6 Petitioners finally claim that the City did not provide adequate notice of "its deliberations on the
7 Project's environmental impacts." (Petitioners' brief at p. 28). It is unclear what "notice of
8 deliberations" Petitioners claim should have been provided, as Petitioners cite to no statute or other law
9 requiring notice of deliberations. In fact, an agency is not required to provide any notice to the public or
10 to other agencies that it is considering whether a project is exempt. The agency need not provide an
11 opportunity to review or comment on the exemption, and it need not hold a hearing on its exemption
12 determination. (*CalBeach Advocates v. Solana Beach* (1992) 103 Cal.App.4th 529.)

13 Petitioners also claim that the City failed to provide notice when it placed the intent to initiate the
14 general plan amendments on the Planning Commission's January 6, 2005 agenda. But the agenda
15 contains this item. (City's RJN at Exh. C.) Petitioners attempt to imply that notice in the newspaper was
16 required, but it was not. (See S.F. Planning Code § 340(c) [no newspaper notice requirement for
17 resolution of intent to initiate General Plan amendments].) Newspaper notice is required only for the
18 actual hearing prior to adoption of a General Plan amendment. (S.F. Planning Code § 306.3(b)(3) ["In
19 the case of amending the General Plan, notice shall be given by an advertisement at least once in a
20 newspaper of general circulation in the City . . ."].) Tellingly, Petitioners make no claim that the actual
21 hearing at which the Planning Commission adopted the General Plan amendments – on February 3, 2005
22 – was not properly noticed, because they cannot make that claim.

23 Petitioners also claim that the Board's hearing on the appeal of the exemption under the general
24 rule exclusion was not properly noticed, because the subject line of a letter to the appellant scheduling
25 the date for the appeal hearing stated that the appeal was the appeal of a "categorical exemption." (See
26 Petitioners' Brief at p.30, citing AR 7:1360.) But this letter was not an official notice for the general
27 public, but merely a letter to the appellant herself scheduling a hearing date for an appeal she had filed.
28 The Board's published agenda for the April 19, 2005 hearing – the official "notice" of the appeal –

1 properly indicates that the appeal is of the "certificate of determination of exemption/exclusion from
2 environmental review for San Francisco Bicycle Plan: Policy Framework." (AR 7:1473.)

3 In sum, the City properly noticed each and every public hearing on the road to approval of the
4 Policy Framework and the appeal of the general rule exclusion, and Petitioners assertions to the contrary
5 are without merit.

6 **CONCLUSION**

7 The Court should deny the Petition.

8 Dated: August 21, 2006

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