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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SUISUN ALLIANCE,

Plaintiff and Appellant,

v.

SUISUN CITY et al.,

Defendants and Respondents;

WAL-MART STORES, INC.,

Real Party in Interest.

A125042

(Solano County
Super. Ct. No. FCS031099)

I. INTRODUCTION

Appellant Suisun Alliance, an association of landowners and residents of Suisun City and Solano County, has challenged Suisun City's approval of a development project, including a Wal-Mart Supercenter, near Travis Air Force Base. Appellant filed a petition for a writ of mandate and complaint for injunctive relief against Suisun City (City) for failure to comply with the State Aeronautics Act, Public Utilities Code section 21001 et seq. (SAA), and violation of the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA). The trial court denied the petition. We will affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Project

The proposed Walters Road West Project (the Project) consists of 227,019 square feet of retail development, including a Wal-Mart Supercenter, a restaurant or similar use, and a gas station with a convenience store and car wash. The Project site is a 20.8-acre

lot at the northwest quadrant of the intersection of State Route 12 and Walters Road in Suisun City, about 2.5 miles northwest of the nearest runway at Travis Air Force Base. The Project site is designated for General Commercial development by the City's 1992 General Plan and is zoned for General Commercial uses. The site is undeveloped and consists of grasslands and, depending on one's point of view, "an unnamed creek" (according to appellants), or "a drainage ditch" (according to respondents).

B. *Administrative History*

On September 24, 2007, the City released for public review a draft environmental impact report (DEIR) for the Project. Pursuant to CEQA, the nearly 1,600-page DEIR included an extensive analysis of the Project's potential environmental impacts. During the public comment period on the DEIR, the City received a number of comments, including from appellant, expressing concern about various environmental issues.

Pursuant to the SAA, the DEIR also analyzed the Project's consistency with the Travis Air Force Base Land Use Compatibility Plan (TALUCP), which established criteria for noise, public safety, and airspace protection in the vicinity of the airport, and determined that the Project would not exceed proscribed site-usage intensities.

The Solano County Airport Land Use Commission (ALUC) reviewed the Project application and the DEIR, and was originally scheduled to consider the Project's consistency with the TALUCP at a hearing on October 11, 2007. Prior to the hearing, ALUC staff prepared a report (the Original October 2007 Staff Report) that was circulated to the City and the public, recommending that the ALUC find the Project "substantially consistent" with the TALUCP under both the Survey of Similar Uses methodology and the ALUC staff's separate calculations under the Parking Ordinance methodology.

Just before the October 11, 2007, hearing, ALUC staff informed City staff that it was using new figures to determine the Project's consistency with the TALUCP and now recommended that the ALUC find the Project inconsistent with the TALUCP. ALUC staff provided the new figures in a supplemental sheet referred to as the Revised October 2007 Staff Report. Based on the new figures, ALUC staff determined that the Parking

Ordinance methodology was the appropriate methodology for determining the maximum density allowed under the TALUCP, and that, under both this methodology and the Survey of Similar Uses methodology, the Project was not consistent with the TALUCP. After receiving staff's report, the ALUC continued its hearing to November 8, 2007, to allow the applicant to respond.

Between October 11 and November 8, 2007, the City submitted additional data from its expert consultant, Michael Brandman Associates, to support its position that the Project would comply with the TALUCP using either the Survey of Similar Uses or the Parking Ordinance methodology. In response to the new data, ALUC staff prepared another report for the November 8 hearing, recommending that the ALUC find that the Project was consistent with the TALUCP.

At the hearing on November 8, 2007, the ALUC rejected the recommendation of its staff and found the Project was partially inconsistent with the provisions of the TALUCP, specifically, the TALUCP's safety criteria. In all other respects, i.e., noise and airspace protection, the ALUC found the Project consistent with the TALUCP.

City staff disagreed with the ALUC's determination and took steps under the SAA to draft proposed findings concluding that the Project was consistent with the public interest purposes stated in Public Utilities Code section 21670. The City Council considered these findings in overruling the ALUC's inconsistency determination. (Pub. Util. Code, § 21676.5, subd. (a).) Pursuant to SAA procedures, the City provided the ALUC and the State of California Department of Transportation, Division of Aeronautics (Division), copies of the proposed Resolution of decision and findings on November 21, 2007.

The ALUC responded in a letter dated December 13, 2007, asserting that the City's analysis was flawed, and reiterating its conclusion that the Project would pose a safety risk to the public because of its proximity to Travis. In a letter dated December 20, 2007, the Division also provided comments, which were limited to general support of the ALUC's inconsistency determination.

Under the SAA, the comments from the ALUC and the Division were advisory only; however, the City's consultant responded to the comments. (Pub. Util. Code, § 21676.5, subd. (a).) In addition, the City's draft Resolution of decision and findings was revised to state that the City had received, considered, and responded to the comments. The City Council adopted this revised Resolution when it voted unanimously to approve the Project and to overrule the ALUC.

On January 9, 2008, the City released the Final EIR (FEIR) for the Project, including comments and responses to all comments received on the DEIR during the comment period and revisions to the DEIR. The City also released an addendum to the FEIR to respond to comments the City received after it published the FEIR.

At the hearing on February 12, 2008, and after consideration of the FEIR, oral and written testimony and other information provided, the City Council voted unanimously to overrule the ALUC, certified the EIR, and approved the Project.

C. *Trial Court Proceedings*

On March 13, 2008, appellant filed its Petition for Writ of Mandate in the Solano County Superior Court. On January 21, 2009, following briefing by the parties and a November 3, 2008, hearing on the merits, the trial court issued its decision denying the petition and dismissing the action. The court ruled that: (1) substantial evidence supported the City's decision that the project was consistent with the TALUCP and the purposes of the SAA; (2) the City's review and decision regarding the off-site jet fuel pipeline did not violate CEQA; (3) the City's review and decision regarding the wetlands, water quality, and riparian habitat issues did not violate CEQA; and (4) the City's review and decision regarding urban decay did not violate CEQA.

Appellant filed a timely notice of appeal on April 10, 2009.

III. DISCUSSION

A. *State Aeronautics Act Claims*

Appellant contends the City's determination to overrule the ALUC's inconsistency finding and approve the Project was inconsistent with the intent of the SAA and the TALUCP's safety supporting criteria.

1. *Standard of Review*

Our review of the City's findings in support of its decision to overrule the ALUC is for substantial evidence. (*California Aviation Council v. City of Ceres* (1992) 9 Cal.App.4th 1384, 1393 (*California Aviation*)). Under this standard, we must "examine all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by substantial evidence. For this purpose, . . . substantial evidence has been defined in two ways: first as evidence of ponderable legal significance . . . reasonable in nature, credible, and of solid value; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335 (*Desmond*), internal quotations and citations omitted.) If the findings are supported by inferences that may fairly be drawn from the evidence, even though the evidence is also susceptible of opposing inferences, the reviewing court must not disturb the agency's decision. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I.*)); *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 674-675 (*San Franciscans*)).

We presume that the findings and actions of the administrative agency are supported by substantial evidence. (*Desmond, supra*, 21 Cal.App.4th at p. 335.) Appellant has the burden of demonstrating otherwise. (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.) Abuse of discretion is established only if the court finds that the findings are not supported by substantial evidence in light of the whole record. (*California Aviation, supra*, 9 Cal.App.4th at p. 1393.)

Moreover, in accordance with the substantial evidence standard of review, an appellant must set forth all the material evidence on point. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.) Where the appellant sets forth only the facts favorable to itself and ignores the evidence favorable to the respondent, the reviewing court may treat the appellant's argument as waived.

(*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1028.)

2. *SAA Principles and the Travis Air Force Base Land Use Compatibility Plan*

The SAA was enacted “to further and protect the public interest in aeronautics and aeronautical progress” by various means specified in the statute. (Pub. Util. Code, § 21002.)¹ The SAA defines aeronautics, in part, as “[t]he science and art of flight, including transportation by aircraft.” (§ 21011, subd. (a).)

Article 3.5 of Chapter 4 of the SAA provides for the establishment of airport land use commissions for the purpose of “ensuring the orderly expansion of airports” and adopting land use measures to protect public health, safety and welfare. (§ 21670, subd. (a)(2).)² The powers and duties of the commissions include: “(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses. [¶] (b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. [¶] (c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675. [¶] (d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.” (§ 21674.)

¹ All further unspecified statutory references in the SAA portion of this opinion (section III.A.) are to the Public Utilities Code.

² Section 21670, subdivision (a), provides: “The Legislature hereby finds and declares that: [¶] (1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems. [¶] (2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.”

Each local agency whose general plan includes areas covered by an airport land use commission plan must submit that plan and any proposed amendments to that plan to the commission. Each commission is required to determine whether a local agency's general plan is consistent or inconsistent with the commission's airport land use compatibility plan. (§ 21676, subs. (a), (b)) If a commission has not yet determined whether a local agency's general plan is consistent with the compatibility plan, the commission, in specified circumstances, must render a determination regarding whether individual proposed development projects are consistent with the compatibility plan. (§ 21676.5, subd. (a).)

Section 21674 provides that a commission's powers and duties "are subject to the limitations upon its jurisdiction set forth in Section 21676." Section 21676 provides, in turn, that a local agency may "overrule" a commission's determination of inconsistency by a two-thirds vote after a hearing if it makes specific findings that the proposed action is consistent with the statutory purposes stated in section 21670. (§§ 21676, 21676.5, subd. (a).)

On June 13, 2002, the Solano County Board of Supervisors adopted the TALUCP and the Solano County Airport Land Use Compatibility Review Procedures (Review Procedures) pursuant to the recommendation of the ALUC. The 2002 TALUCP replaced the previous compatibility plan for the Travis environs which had been adopted in 1990.³

The TALUCP "sets forth land use compatibility policies applicable to future development in the vicinity of the base. The policies are designed to ensure that future land uses in the surrounding area will be compatible with the realistically foreseeable, ultimate potential aircraft activity at the base." (§§ 21675, subd. (a), 21670, subd. (a)-(b).) The TALUCP applies to "[a]ll lands on which the uses could be negatively affected

³ The Suisun City General Plan, which was adopted in 1992, incorporated the requirements of the 1990 land use plan for Travis into its land use policies. However, the General Plan does not reflect the 2002 changes to the TALUCP, and thus the proposed Project was submitted to the ALUC for review. (§§ 21675, subd. (a), 21676, subs. (a), (b).)

by noise or safety impacts associated with present or future aircraft operations on the main runway system of Travis Air Force Base,” and “[l]ands on which the uses could negatively affect the operation of aircraft at the base.” This “area of influence” of the TALUCP is divided into six geographic zones around the airport called “compatibility zones.” The Project is located in Compatibility Zone C, which encompasses locations exposed to potential noise at a certain level together with “additional areas occasionally affected by concentrated numbers of low-altitude . . . aircraft overflights,” and excluding “[d]eveloped residential areas within existing city limits.”⁴ Although the parties do not refer to the acreage or measurements of Compatibility Zone C, our colleagues in Division Five of this court observed that it “covers a very large land area within Solano County.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2008) 164 Cal.App.4th 1, 5.) The appellant in that case asserted without objection that “Compatibility Zone C ‘encompasses hundreds of thousands of acres of private property in a wide swath [of] more than 600 square miles extending more than 35 miles through Solano County.’ ” (*Ibid.*)

Noise, safety and airspace protection are the compatibility criteria applicable to the review of proposed land use actions in the vicinity of Travis.⁵ The compatibility of nonresidential development, such as the Project, is assessed primarily with respect to its usage intensity (the number of people per acre) and the noise-sensitivity of the use. The TALUCP’s density restrictions were developed “to minimize the risks to people and

⁴ The other compatibility zones surrounding Travis are: Zone A (runway primary surface and clear zone), which consists of current runways, a future runway, and immediately adjoining areas; Zone B1 (inner approach and departure zone), an area of substantial risk of a potential accident, within 7,500 feet of the end of the runways, and also subject to specific noise levels; Zone B2 (extended approach and departure zone), which encompasses approach and departure flight tracks not aligned with the runway, also a high risk area and subject to specific noise levels; and Zone D (other airport environs), which includes all other locations subject to federal airspace protections, and as to which the only compatibility factor is the height of structures.

⁵ The ALUC concurs with the City that the Project is consistent with noise and airspace compatibility criteria; the only area of dispute is safety.

property on the ground in the event of an off-airport aircraft accident or emergency landing.” “The principal means of reducing risks to people on the ground is to restrict land uses so as to limit the number of people who might gather in areas most susceptible to aircraft accidents.”

For Compatibility Zone C, the TALUCP limits the usage intensity of a nonresidential development to: (1) no more than 75 people per acre, averaged over the site, for indoor uses; (2) no more than 100 people per acre, averaged over the site, for outdoor uses; and (3) no more than 300 people per any single acre at one time. Guidance for determining the concentration of people for various land uses is found in Appendix C of the Review Procedures.

3. *Analysis*

Appellant contends the City’s decision to overrule the ALUC violated the SAA because the Project is inconsistent with the purposes of the SAA and the TALUCP’s population density restrictions. Appellant also contends the City violated the SAA’s procedural mandates.

a. *Consistency with the Purposes of the SAA*

Our starting point is the SAA, which, as we have stated, authorizes a local agency to overrule an airport land use commission’s inconsistency determination after a public hearing by a two-thirds vote of the agency’s governing body if it makes specific findings that the proposed project is consistent with the purposes of the airport land use commission statutes (Article 3.5 of the SAA) set forth in section 21670. (§§ 21670, subd. (a); 21676, 21676.5, subd. (a).) Broadly restated, the intent of Article 3.5 of the SAA is to minimize the risk to public health, safety, and welfare from exposure to excessive noise and safety hazards (i.e., aircraft accidents) and to ensure the orderly development and expansion of airports and surrounding areas. (§ 21670, subd. (a).)

In its Resolution of decision and findings, the City made findings that the Project was consistent with the purposes of section 21670. Focusing on the protection of public health, safety, and welfare, the City found that the Project would not pose any

unacceptable safety risk from aviation activities at Travis “because aircraft do not regularly, routinely, or directly over-fly the project site.”

The City’s aeronautics expert, R. Austin Wiswell,⁶ arrived at this conclusion after reviewing and analyzing the Project, the surrounding area, and the traffic patterns and accident history at Travis. He observed that, although the Project site is in the vicinity of Travis, the nearest runway is 2.5 miles away from the Project site. Wiswell also examined flight track diagrams in the TALUCP and aerial maps of the Project site and found that the Project site is not located under or near the main traffic patterns or the routine flight training tracks for Travis. He noted that only a single “ ‘sample radar flight track’ ” crosses over the Project site. The lack of air traffic over the project was also supported by the Travis Air Force Base June 2007 Environmental Assessment, prepared for a C-17 proposal pursuant to the National Environmental Policy Act. Based on this evidence, the City found that “the Project site is not heavily or regularly overflown by aircraft (particularly those making low altitude flights) associated with routine Travis . . . flight activity.”

The City also reviewed accident data from Travis, which showed that the likelihood of an aviation mishap is “extremely low.” In the 57 years from 1950 to 2007, there were only five aviation mishaps at Travis. Four of the five occurred between 1950 and 1963; the fifth occurred in 1987, more than 20 years before the City undertook its review of the Project. None of these incidents resulted in injury or death to persons on the ground. All occurred either within the grounds of Travis or within an area that would be within an “accident potential zone” (Compatibility Zones B1 and B2, not Zone C)

⁶ Wiswell has more than four decades of experience in the aviation industry, most recently as Chief of the California Department of Transportation, Division of Aeronautics (Division), from 1999 to 2005. His aviation safety roles have included reviewing development projects for determination of incompatibility with noise, safety, and airspace issues in proximity to airports. He also managed the development of the 2002 California Airport Land Use Compatibility Planning Handbook, which is published by the Division, and provides compatibility planning guidance to commissions, local agencies, and airport proprietors.

recommended by the Handbook. Based on the five mishaps in 57 years and annual operations figures, the probability of an aviation crash at or near Travis is 1.4 per 1 million flights.⁷ In addition, the military aircraft operations at Travis are “much less susceptible to mishaps because of engine failures—a fairly common cause of departure and arrival accidents—because the operations primarily involve multi-engine aircraft” From this evidence, the City found that Travis has had “an exemplary aviation safety record, particularly during the past 20 years, which suggests that the United States Air Force has very effective aviation safety measures in place to prevent mishaps.”

The City also addressed the concern voiced by several commissioners at the November 8, 2007, ALUC meeting, that the commercial uses associated with the Project would be exposed to an unacceptably high aviation safety risk due to the Project’s proximity to the nearest runway at Travis. Due to the size and power of the airplanes operating at Travis, the City found it was unlikely that a plane taking off from that runway would be hit by a gust of wind strong enough to cause it to veer off course toward the Project site and to potentially crash into the Wal-Mart Supercenter. Almost all flights depart away from the Project site and no such mishap has occurred in the past.

The City also cited statements from officials at Travis in support of its finding that the Project posed no unacceptable safety risk. The Public Affairs Chief, Captain Lindsay Logsdon, confirmed that Travis has no public safety concerns with respect to the proximity of a runway to the proposed Wal-Mart development. Base Commander Colonel Steven J. Arquette stated in a January 23, 2008, letter that he had no safety concerns regarding a Travis jet fuel pipeline located underground, north of and adjacent to the Project site. (See section III.B.(1), *post.*) Travis had thoroughly reviewed the draft and final EIR’s and would continue to work closely with the City and the developer to

⁷ For comparison purposes, the United States Department of Transportation Bureau of Transportation Statistics reports that the average crash rate for domestic air carriers was 2.72 accidents per 1 million flights in 2006, which is almost double the mishap rate for Travis.

ensure that the Project's construction activities and Wal-Mart's daily operations do not impede the continued safe operation of the pipeline.

Finally, the City also noted in the Resolution that commercial retail projects are a common type of land use near airports, and the TALUCP cited no evidence indicating that commercial retail uses were subject to any unique or unusual aviation safety risks from Travis.

The City relied on this evidence and analysis in finding that the Project would be consistent with the intent of the SAA to minimize the risk to public health, safety, and welfare in the event of an aircraft accident. According to the City, the ALUC's concerns about the potential for the Project to expose the public to unacceptably high aviation safety risks were based on "speculative and remote accident scenarios and not scientific evidence or observed accident history" at Travis. In addition, the City noted that the ALUC failed to consider Travis's safety record over the preceding five decades, which also was contrary to the ALUC's finding of unacceptably high aviation safety risks. The City concluded that the ALUC's determination that the Project was inconsistent with the TALUCP's safety criteria was erroneous.

In finding that the Project did not pose a risk to public health, safety, and welfare, the City also made findings regarding the Project site's location within TALUCP Compatibility Zone C. For example, the City stated, "the mere fact that the project site is within the LUCP compatibility Zone C does not correlate to a safety risk because, in reality, the LUCP compatibility zones bear little, if any, relation to actual 'on-the-ground' exposure risks for people and property." The City stated that many compatibility plans for military airports follow more closely the guidance for compatibility zones contained in the Handbook, and asserts that if the TALUCP's compatibility zones had been based on the Handbook guidelines, the Project site would not be located within Zone C. Appellant contends these findings are an improper attempt to avoid compliance with the TALUCP's Zone C restrictions on population density. Not true, responds the City: "Rather, the City merely determined that the Project, though located in Zone C, will be safe, because the particular location within Zone C does not correlate to an actual

increased safety risk.” Both points are well taken. The Project site plainly is located within TALUCP compatibility Zone C, and it is not within this court’s purview to address the propriety of that determination. The Zone C classification of the Project site, however, is not determinative of whether the Project poses a risk to public safety, an inquiry that is relevant to the Project’s consistency with the SAA purposes contained in section 21670.

Next, appellant contends that the City’s determination in this regard, that the Project is consistent with the SAA purposes, cannot stand because no substantial evidence supports the City’s findings that the Project is consistent with “ensur[ing] the orderly expansion” of airports, which includes a 20-year planning horizon.

Section 21670 provides in part: “It is the purpose of this article to protect public health, safety, and welfare by *ensuring the orderly expansion of airports* and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.” (§ 21670, subd. (a)(2), emphasis added.) In addition, section 21675 provides in part: “Each commission shall formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission The commission’s airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan . . . that reflects the anticipated growth of the airport during *at least the next 20 years*.” (§ 21675, subd. (a), emphasis added.)⁸

The City made specific findings that the Project was consistent with each of the purposes of section 21670. With respect to its finding that “[t]he Project would protect the public health, safety, and welfare by ensuring the orderly expansion of airports,” the

⁸ Section 21675 is also applicable to military airports: “The commission shall include, within its airport land use compatibility plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any military airport for all of the purposes specified in subdivision (a). . . . This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.” (§ 21675, subd. (b).)

City explained that it “has, and will continue to, support any future development of Travis Air Force Base over the next 20 years. Chapter 18.42 of the City Zoning Code regulates airport flight obstruction areas and will continue to be applied to protect the approaches to the airport runways and the future development of [the base].” The City also found that “[t]he proposed project is consistent with the City Zoning Code and will not restrict the orderly development of Travis . . . or have any effect on its operational future.”

In its reply brief, appellant argues that these findings “fail to present any evidence explaining how approval of the Project will ensure expansion plans for Travis Air Force Base over the next 20 years.” Further, according to appellant, the City fails to identify which specific zoning codes it relies upon or “how such unidentified provisions might relate to the Project.”

The former contention reflects an overly narrow interpretation of the statutory scheme on the part of appellant as well as what may be inartful drafting on the part of the City. Clearly, “approval of the Project” cannot literally “ensure” any such expansion plans. The process for local agencies to overrule airport land use commission decisions applies not only to an individual development project, as here, but also to a general plan, an airport master plan, or other local actions such as zoning ordinances and building regulations. (See § 21676.) We imagine it would be easier to explain, for example, how approval of a local agency’s general plan would be consistent with “protect[ing] the public health, safety, and welfare by ensuring the orderly expansion” of the local airport than to explain how approval of a development project would meet that requirement.

In any event, although the City could have done more to support its finding, such as addressing any future development plans Travis may have adopted, we nonetheless conclude, bearing in mind our standard of review, that the City has adequately supported its finding that its action is *consistent with* the SAA purpose of protecting “the health, safety, and welfare of the public by ensuring the orderly expansion” of Travis. First, the City explained that Chapter 18.42 of the City Zoning Code regulates airport flight obstruction areas and will continue to be applied to protect the approaches to the airport

runways and the future development of Travis. Appellant's arguments to the contrary notwithstanding, we have no trouble discerning the relevance of the zoning code provisions, sections 18.42.010 through 18.42.160, referenced by the City in support of its finding.⁹

Second, in addressing the safety of people and property on the ground, the City pointed out that its General Plan applies the TALUCP's compatibility requirements to "virtually any construction projects east of Sunset Boulevard, including the Project site." The City's zoning code also limits the number of people and development "within any aircraft flight pattern." These local land use planning and zoning provisions also serve to protect runway approaches and the future development of Travis.

Appellant next contends that the City violated the SAA's review and comment procedures before overruling the ALUC's determination of inconsistency.

Section 21676.5, subdivision (a), requires that: "At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body."

Appellant acknowledges that, on November 21, 2007, the City provided to both the ALUC and the Division a copy of its proposed decision and findings and 45 days'

⁹ The first section of chapter 18.42 provides: "The purpose of the airport flight obstruction areas is to prevent the creation of flight obstruction and thereby protect the lives and property of users of airports and occupants of land in the vicinity of airports, and to prevent destruction or impairment of the utility of airports and the investment therein." The subsequent sections create the mechanism by which this purpose is effected.

notice in support of its proposal to overrule the ALUC. As allowed by the statute, within 30 days the ALUC and the Division provided comments on the proposed decision and findings, by letters dated December 13, 2007, and December 20, 2007, respectively. As required by the statute, the City included both letters as exhibits to the Resolution of decision and findings overruling the ALUC.

Appellant contends that the City's final Resolution of decision and findings, adopted on February 12, 2008, contained content that was not included in the proposed decision and findings that was provided to the ALUC and the Division for their review and comments. In particular, appellant cites the City's findings that the Project, although located in TALUCP compatibility Zone C, poses no risk to public safety, and the City's expanded discussion of its findings that the Project is consistent with the purposes of the SAA. The City does not dispute that the final Resolution of decision and findings contained this additional content.

However, nothing in section 21676.5, subdivision (a), which provides that such comments are *advisory*, prohibits the local agency governing body from revising or expanding its proposed findings to incorporate responses to the comments. The timing prescribed by the statute, that the local agency must provide a copy of the proposed decision and findings at least 45 days before the hearing, and that the commission and the division may submit comments within 30 days thereafter, creates a window of time of at least 15 days in advance of the hearing, presumably to allow the local agency to review and respond to the comments. The statute provides that the agency "shall include comments from the commission and the division in the final decision to overrule the commission." Accordingly, the City included its responses to comments in its final Resolution of decision and findings and attached the comments from the commission and the division as exhibits.

We also disagree with appellant's contention that, having substantially revised its proposed decision and findings, the City was required to comply anew with section 21676.5 by providing the revised document and another 45 days' notice to the ALUC and the Division. Appellant argues that the additional content constituted "wholesale

changes” to the proposed findings, that the City owed a mandatory procedural duty to provide a new notice and comment period, and that its failure to do so “fundamentally undermined the purpose of the statute,” which provides an “ ‘advisory’ ” role for the ALUC and the Division. Appellant relies on *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877 (*Environmental Defense*), in which the court invalidated a county’s so-called “ ‘streamlined zoning process’ ” because it did not provide sufficient notice to the public regarding the matters to be heard by the board of supervisors. A zoning ordinance required that the board give notice and hold hearings which would include discussion of the planning commission’s recommendation. The court held that, by giving notice of the board hearings before holding the planning commission hearings, the county was unable to adequately provide to the public “ ‘a general explanation of the matter to be considered.’ ” (*Environmental Defense, supra*, 158 Cal.App.4th at pp. 891, 893.) Here, the City’s proposed Resolution of decision and findings fulfilled its obligation to provide notice to the ALUC and the Division.

b. *Consistency with Provisions of the TALUCP*

As a separate and independent ground for overruling the ALUC, the City adopted findings and concluded that the Project was consistent with the TALUCP. Appellant assigns numerous errors to the City’s analysis and findings, which we shall address after we provide some additional information on compatibility planning under the TALUCP.

As described above, the TALUCP established land use compatibility zones for development in the vicinity of Travis. For purposes of safety, the compatibility of nonresidential development is assessed primarily in terms of usage intensity, the number of people per acre. Usage intensity is calculated for both the total site (the total number of people permitted on a project site at any time must not exceed the indicated usage intensity times the gross acreage of the site)¹⁰ and a single acre (a maximum number of

¹⁰ According to the TALUCP, the gross acreage of the site “includes the property at issue plus a share of adjacent roads and any adjacent, permanently dedicated, open lands.” Neither party includes, or even mentions, adjacent roads or open lands. The TALUCP also provides that “[u]sage intensity calculations shall include all people” who

people per any individual acre of a project site). For Zone C, the TALUCP sets the maximum site usage intensity as no more than an average of 75 persons per acre for indoor uses for the entire site and no more than an average of 300 persons per any individual acre on-site at any given time. If a proposed use exceeds the maximum intensity under either criterion, the use is considered inconsistent with the TALUCP. The TALUCP refers to an appendix in the Review Procedures, Appendix C, for methods for determining the concentration of people for various land uses.

Appendix C describes three methods for “estimating the number of people likely to use a particular facility:” (1) the Parking Ordinance method; (2) the Maximum Occupancy method; and (3) the Survey of Similar Uses method. The ALUC applied the Parking Ordinance method in concluding that the Project was inconsistent with the TALUCP. The City concluded that the Survey of Similar Uses was the more appropriate method to use, but concluded that under either the Parking Ordinance method or the Survey of Similar Uses method, the Project was consistent with the people-per-acre restrictions of Zone C, and thus consistent with the TALUCP.

i. *The Parking Ordinance Methodology*

The Parking Ordinance methodology is used to calculate the number of people in a given area “based upon the number of parking spaces provided. Some assumption regarding the number of people per vehicle needs to be developed to calculate the number of people on-site. The number of people per acre can then be calculated by dividing the number of people on-site by the size of the parcel in acres.” The Review Procedures states that “[t]his approach is appropriate where the use is expected to be dependent upon access by vehicles.”

In its Resolution of decision and findings, the City analyzed the consistency of the Project with the TALUCP using the Parking Ordinance methodology. The City first

may be on the property at any one time, including customers, employees, etc., whether indoors or outside.

calculated the maximum site usage intensity, using an average vehicle occupancy (AVO) of 1.5 persons per vehicle:

(1) the maximum number of people permitted on-site per acre is 75;

(2) the maximum number of people permitted on-site (75 persons per acre x 20.8 acres) is 1,560 persons;

(3) the total number of parking spaces on-site is 1,014;

(4) the total number of parking spaces after reduction for outdoor seasonal sales (1,014 – 40) is 974 spaces;

(5) the number of people on-site (974 spaces x 1.5 persons per vehicle) is 1,461 persons;

(6) the maximum usage intensity for the site (1,461 persons/20.8 acres) is 70.24 persons per acre.

According to the City's calculation, the Project would yield an average of 70.24 persons per acre, which is fewer than the 75 persons per acre maximum.

The City then calculated the maximum individual acre usage intensity for the Wal-Mart Supercenter building, again using an AVO of 1.5 persons per vehicle:

(1) The maximum number of people permitted per individual acre is 300;

(2) The total number of parking spaces assigned specifically to the Wal-Mart Supercenter is 921;

(3) The total number of parking spaces assigned to Wal-Mart after reduction for outdoor seasonal sales (921-40) is 881 spaces;

(4) The number of people in the store (881 spaces x 1.5 persons per vehicle) is 1,321 persons;

(5) The Wal-Mart Supercenter building area is approximately 4.6 acres;

(6) The maximum individual acre usage intensity (1,321 persons/4.6 acres) is 287.2 persons per acre.

According to the City's calculation, the Project would yield an average of 287.2 persons per individual acre, which is fewer than the 300 persons per acre maximum.

Appellant contends that the City's use of a "midpoint" AVO of 1.5, rather than a higher maximum AVO, violated the requirement in the TALUCP that usage intensity calculations determine the maximum number of people the project is designed to accommodate. According to appellant, this arbitrary assumption rendered the City's evidence "irrelevant to the charge," and the City's "decision must be reversed for insufficient evidence."

To determine whether the City's assumption of an AVO of 1.5 was improper, we first reviewed both the TALUCP and the Review Procedures. Neither document contains a clearly applicable AVO or specific guidelines for calculating an AVO. The only references to vehicle occupancy are in Appendix C of the Review Procedures, which states: "Some assumption regarding the number of people per vehicle needs to be developed to calculate the number of people on-site." In the examples based on parking space requirements, it states: "Data from traffic studies or other sources can be used to estimate the average vehicle occupancy."

Turning next to the City's explanation for estimating an AVO of 1.5, we refer back to its Resolution of decision and findings, as well as documentation in the record. The City considered the recommendations of traffic consultants and the findings of traffic studies, which found a range of AVO rates for Solano County, the nine-county San Francisco Bay region, and the state. One consultant, Kimley-Horn and Associates, Inc., calculated an AVO of 1.7; the other, Omni-Means LTD, Engineers and Planners, suggested an AVO of between 1.2 and 1.4. In the Resolution of decision and findings, the City stated: "It was determined that the three most relevant average vehicle occupancy rates applicable to the proposed project were 1.303 (obtained from the United States Department of Transportation, Bureau of Transportation Statistics for home-to-shop trips for Solano County), 1.4 (obtained from Caltrans for 'all-trips' for the nine-county San Francisco Bay Area region) and 1.5 (obtained from Caltrans for 'all-trips' for the entire state), with the average vehicle occupancy rates for Solano County for trips related to shopping likely to be 1.2 to 1.3 persons per vehicle. . . . Based on these rates,

the City and the project applicant elected to use 1.5 persons per vehicle, as it was a more conservative rate.”

The City further explained that the uniform AVO estimate of 1.5 eliminated reliance on an assumption that distinguished between persons per vehicle for employees versus customers, taking into account “the potential scenarios in which employee and customer per vehicle rates would vary from 1.2 persons and 1.7 persons, respectively.”

The City added that it found this estimate to be a more reliable indicator of local behavior than a national average would be, since it was based on data collected in this region. The City also pointed out that the data, which was “collected in 1990, has been reconfirmed in a more recent Caltrans study: *2000-2001 California Statewide Household Travel Survey* (June 2002) and is consistent with the United States Department of Transportation, Bureau of Transportation Statistics’ vehicle occupancy rates applicable to the proposed project of 1.303.”

Finally, the City observed that other conservative assumptions factored into its Parking Ordinance methodology analysis, namely the assumption that 100 percent of the parking spaces would be full and the assumption that all the persons from all the vehicles in every spot in the parking lot would be inside the building; no one would be outside in the parking lot.

Appellant raises a number of arguments in connection with the City’s estimated AVO. First, appellant contends the problem with the City’s use of 1.5 is that it does not result in a calculation of maximum density, which would be based on the maximum AVO figure of 1.7 identified by the consultants. Second, appellant contends it was improper to offer a range of potential AVO figures from 1.2 to 1.7 and invite the City Council to choose one. Appellant further contends that the City fails to account for increased AVO that can be expected during peak periods, such as weekends and holidays. Moreover, the City’s data was for shopping trips of all types, including trips to a gas station or a hardware store, which would typically involve lower AVO’s than family shopping trips to discount superstores. To obtain empirical data regarding peak period maximum AVO, appellant commissioned a study by Marks Traffic Data to document AVO at regional

Wal-Mart Supercenters during a two-hour period in the afternoon of the last Saturday before Christmas. The combined AVO for the three sites was 1.8 which, when applied to the Project site, exceeds the TALUCP's maximum population densities for the site.

None of appellant's arguments has merit. The governing documents, the TALUCP and the Review Procedures, do not prescribe a particular methodology for calculating an AVO. Rather, the Review Procedures appendix expressly states that "some assumption" must be developed. There is no evidence that the City decided on an AVO of 1.5 by simply picking a number without analysis. There also is no evidence that the consultants and studies relied on by the City did not take into account peak periods in calculating their AVO figures. Finally, under the substantial evidence standard, the City was entitled to rely on its experts rather than appellant's. The City's selection of an AVO of 1.5 was based on documented statistics and analysis, and is supported by substantial evidence.

(ii) *The Survey of Similar Uses Methodology*

The City also used the Survey of Similar Uses methodology in concluding that the Project was consistent with the TALUCP. The Survey of Similar Uses methodology uses observed trip rates with respect to similar land uses to estimate the number of people on-site at peak periods of time. Appendix C of the Review Procedures states that this approach "is appropriate for uses which, because of the nature of the use, cannot be reasonably estimated based upon parking or square footage."

In its Resolution of decision and findings, the City analyzed the consistency of the Project with the TALUCP using the Survey of Similar Uses methodology. The City first calculated the maximum site usage intensity, using a trip generation figure provided by its traffic consultant of 877 trips during the weekday afternoon peak hour:

(1) the maximum number of people permitted on-site per acre for indoor uses is 75;

(2) the maximum number of people permitted on-site (20.8 acres x 75 persons per acre) is 1,560 persons;

(3) the 877 trips consisted of 442 vehicles entering the Project site and 435 exiting, for an average figure of 439 vehicles on-site at any given time;

(4) assuming an AVO of 2.0;

(5) the average number of people on-site (442 vehicles x 2.0 persons per vehicle) is 878. This number is less than the 1,560 persons permitted on-site at any one time.

The City then calculated the maximum individual acre usage intensity for the Wal-Mart Supercenter building, again using a trip generation count of 877 trips:

(1) The maximum number of people permitted per individual acre is 300;

(2) The Wal-Mart Supercenter building area is approximately 4.6 acres;

(3) The maximum allowable usage intensity (4.6 acres x 300 persons) is 1,360 persons;

(4) Approximately 150 employees would work during a typical shift, allowing for a maximum of 1,230 customers at any one time;

(1) Of the 1,014 parking spaces on-site, 921 are assigned to Wal-Mart and 93 are assigned to the restaurant and gas station;

(2) The average number of vehicles on-site is 439;

(3) Assume an AVO of 2.0;

(4) The total number of persons on-site (439 vehicles x 2.0 persons per vehicle) is 878 for the entire site, which is less than the 1,230 customer limit for the Supercenter only.

Appellant contends the City's use of a Survey of Similar Uses methodology is not authorized by the TALUCP. Appellant cites the Review Procedures' statement that the parking ordinance "approach is appropriate where the use is expected to be dependent upon access by vehicles," and the City's acknowledgement that most customers of Wal-Mart would be expected to drive to the store.

However, nothing in the TALUCP or the Review Procedures mandates the use of any particular methodology. Nor is the City's utilization of the Survey of Similar Uses methodology tantamount to "ignor[ing] the TALUP's procedural priorities," as appellant suggests. Contrary to appellant's assertion, the City set forth its rationale for choosing

not to rely on the Parking Ordinance methodology and instead concluding that the Survey of Similar Uses methodology was more accurate. The City's Survey of Similar Uses analysis was based on trip generation estimates from the traffic study prepared for the Project by the City's traffic consultant, Kimley-Horn and Associates, Inc., and dated August 2007. With respect to the Parking Ordinance methodology, the City pointed out the absence of any guidance on how to reasonably estimate vehicle occupancy. In addition, the method is based on the unrealistic assumptions that 100 percent of parking spaces will be full at all times and that every person parked on-site is inside a building, with no one transitioning into or out of the building.¹¹ The City also notes that Wal-Mart is a retail establishment, designed for people to move through the aisles efficiently and leave with their purchases, rather than a place where people sit and congregate. For these reasons, the City concluded that the Parking Ordinance methodology would not reasonably estimate the likely usage intensity for the Project and the Survey of Similar Uses methodology would be more accurate.

Next, appellant contends the City improperly used trip generation rates that do not account for peak shopping periods, such as weekends and holidays. Traffic engineer Daniel T. Smith pointed out a number of what he considered to be errors in the City's analysis, including the City's use of "the wrong number of project trips," a time of day that does not reflect true peak hours, and the City's failure to account for the December peak shopping season.

¹¹ The City also cited evidence provided by Marks Traffic Data, appellant's traffic consultant, to demonstrate that the Parking Ordinance method was unrealistic for the Project. The Marks Traffic Data traffic survey found that the entering/leaving ratio was approximately 1:1 during each 15-minute interval at two of the stores, indicating significant turnover of parking spaces during the two-hour period. The ratio indicates that people were constantly entering and leaving the store, undermining the assumptions in the parking ordinance methodology that 100 percent of the parking spaces would be full and that every person who parked in the lot is inside the store.

The City's traffic consultant, Kimley-Horn and Associates, Inc., prepared a traffic study for the Project, including calculating trip generation,¹² and explained its methodology in the study. The City's consultant responded to Smith's comments on the Kimley-Horn traffic study, including the rationale for the adjusted trip generation figures and new calculations showing that using the unadjusted trip generation totals would not alter the conclusions. Regarding the time of day for peak store usage, the afternoon peak hour trip generation rate used in the study was based on a rate of 5.06 trips per 1,000 square feet of store space. Trip Generation identifies a Saturday peak hour trip rate of 5.06 trips per 1,000 square feet for land use code 813, which is commonly used for Wal-Mart Supercenter projects. Thus, the study used a more conservative rate. Regarding store usage in December, the City's consultant stated that the counts by appellant's traffic consultant, Marks Traffic Data, provided evidence that the number of people on-site during a peak shopping period in December would actually be much lower than Smith estimated.

All of the foregoing disagreements regarding whether the City's trip generation figure was improper are settled, however, by application of the substantial evidence rule. The City's findings are supported by inferences that may fairly be drawn from the evidence, even though the evidence may also be susceptible of opposing inferences. Accordingly, we will not disturb the City's decision. (*Laurel Heights I, supra*, 47 Cal.3d at p. 393; *San Franciscans, supra*, 102 Cal.App.4th at pp. 674-675.) Moreover, as we have already noted, in the situation of dueling experts, the City was entitled decide on

¹² According to the traffic study, "Trip generation for development projects is typically calculated based on rates contained in the Institute of Transportation Engineer's (ITE) publication, *Trip Generation* 7th Edition. *Trip Generation* is a standard reference used by jurisdictions throughout the country for the estimation of trip generation potential of proposed developments. [¶] A trip is defined in *Trip Generation* as a single or one-directional vehicle movement with either the origin or destination at the project site. In other words, a trip can be either 'to' or 'from' the site. In addition, a single customer visit to a site is counted as two trips (i.e., one to and one from the site). [¶] Trip generation calculations were prepared per ITE methodology based on gross floor area of the building."

which opinion to rely. (See, e.g., *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 863.)

Finally, appellant contends the City's assertion that the Project would not exceed the TALUCP's limit of 300 persons per any single acre is unreasonable. The problem with the City's calculation, according to appellant, is that it "unrealistically assumes that the store's occupants will be perfectly distributed throughout the building, rather than randomly clustered in areas of greater or lesser demand."

Once again, nothing in the TALUCP or the Review Procedures requires that the single acre maximum density calculation include a showing that the persons inside a store will remain perfectly distributed across the area. All of the methods for determining concentrations of people generate estimates and are based on various assumptions. The City's methodologies are reasonable, and the evidence and assumptions upon which the calculations are based are supported by substantial evidence. Nothing more is required.

B. *CEQA Claims*

1. *Standard of Review*

"In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the court's inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' (Pub. Resources Code, § 21168.5.)¹³ Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' (*Ibid.*; see *Western States Petroleum Assn. v. Superior Court* [(1995)] 9 Cal.4th [559], 568; *Laurel Heights I, supra*, 47 Cal.3d at pp. 392-393.) [¶] An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues on which we granted

¹³ All further unspecified statutory references in the CEQA portion of this opinion (section III.B.) are to the Public Resources Code.

review by independently determining whether the administrative record demonstrates any legal error by the County and whether it contains substantial evidence to support the County's factual determinations.” (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 (*Vineyard*), fns. omitted.)

2. CEQA Principles

“ ‘CEQA is a comprehensive scheme designed to provide long-term protection to the environment.’ (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) In general, ‘CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. It permits government agencies to approve projects that have an environmentally deleterious effect, but also requires them to justify those choices in light of specific social or economic conditions.’ (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233.)” (*Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, 311.)

Under CEQA, local agencies are required to “prepare . . . an environmental impact report [EIR] on any project that they intend to carry out or approve which may have a significant effect on the environment.” (§ 21151.) “ ‘ “Significant effect on the environment” means a substantial, or potentially substantial, adverse change in the environment.’ (§ 21068; see also [Cal. Code Regs., tit. 14,] § 15002, subd. (g) [(Guidelines).¹⁴]) The Legislature has made clear that an EIR is ‘an informational document’ and that ‘[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a

¹⁴ The CEQA Guidelines, codified at California Code of Regulations, title 14, section 15000 et seq., were developed by the Office of Planning and Research and adopted by the California Resources Agency. (§ 21083.) The Supreme Court has not yet decided whether the Guidelines constitute regulatory mandates, but has stated that “[a]t a minimum, however, courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 391, fn. 2.)

proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.’ (§ 21061; Guidelines, § 15003, subds. (b)-(e).)” (*Laurel Heights I, supra*, 47 Cal.3d at p. 391.)

“Under CEQA, the public is notified that a draft EIR is being prepared. (§§ 21092 and 21092.1.)” (*Laurel Heights I, supra*, 47 Cal.3d at p. 391.) Typically, the public has between 30 and 60 days to submit comments (Guidelines, § 15105, subd. (a)), and the draft EIR is evaluated in light of comments received (Guidelines, §§ 15087 and 15088). “The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency’s responses to significant environmental points raised in the review process. (Guidelines, §§ 15090 and 15132, subds. (b)-(d).) The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. (Guidelines, § 15090.) Before approving the project, the agency must also find either that the project’s significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project’s benefits. (§§ 21002, 21002.1, and 21081; Guidelines, §§ 15091-15093.)” (*Laurel Heights I, supra*, 47 Cal.3d at p. 391, fn. omitted.)

The EIR serves the purposes of alerting the public and public officials to environmental changes and assuring the public that the responsible agency has considered the environmental impact of its action. (*Laurel Heights I, supra*, 47 Cal.3d at p. 392.) “Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842; Guidelines, § 15003, subd. (e).) The EIR process protects not only the environment but also informed self-government.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 392.)

Negative feedback, whether from the public or from other public agencies, is to be considered to determine whether it requires alteration of the draft EIR. (§ 21091, subd. (d).) If the feedback is “new” and “significant,” the draft EIR may be modified, in which case the period of notice and comment begins again. (See § 21092.1; Guidelines § 15088, subd. (a); *Vineyard, supra*, 40 Cal.4th at p. 447; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124-1125 (*Laurel Heights II*).) This process of resubmission is commonly called recirculation.

3. Analysis

(a) *The Jet Fuel Pipeline Issue*

Appellant contends the City violated CEQA by failing to revise and recirculate the DEIR to include significant new information discovered during the public comment period concerning the presence of an underground jet fuel pipeline. Appellant argues that the City’s failure to revise and recirculate the DEIR to include disclosure and analysis of risks associated with the pipeline “violated CEQA’s mandatory information disclosure and informed decision-making procedures.”

Section 21092.1 provides that if “significant new information is added to an environmental impact report” after it has been submitted for public comment but before it has been certified, the EIR must be revised and recirculated for a new public review period. Recirculation is required where the new information is “significant.” (§ 21092.1; Guidelines, § 15088.5, subd. (a).)

“New information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect” (Guidelines, § 15088.5, subd. (a); *Vineyard, supra*, 40 Cal.4th at p. 447; *Laurel Heights II, supra*, 6 Cal.4th at p. 1129.) Circumstances involving significant new information and requiring recirculation include: “(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of

insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it. [¶] (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (Guidelines, § 15088.5, subd. (a).)

The findings adopted by the City Council include a finding that there is “no risk to the public from the Project due to the Travis Air Force Base Fuel Line.” Implicit in this finding and in the City Council’s certification of the FEIR is the determination that that there was no significant new information requiring recirculation. (See *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1134.) We review the City’s determination that new information is not significant and thus does not require recirculation under the substantial evidence standard. (*Vineyard*, *supra*, 40 Cal.4th at p. 447; *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135.)

Appellant contends that the DEIR is inadequate in that it did not disclose or analyze any potential environmental impacts due to the presence of the jet fuel pipeline. Appellant asserts that, even if the chances of coming into contact with a pipeline carrying explosive jet fuel are low, the consequences can be so severe to human life and property that the environmental impacts must be considered “significant.” Appellant cites a letter submitted by its counsel that described a 2005 incident in Walnut Creek involving “a construction impact to a fuel pipeline” that resulted in several deaths and serious injuries.

Issues concerning pipelines apparently were raised for the first time in comments received by the City after the DEIR was submitted for public review. Several comments voiced concerns about underground pipelines on the Project site including the potential for harm to the public if any pipelines were damaged as a result of the Project.

In the City’s response to written comments, included in the FEIR, it explained that the DEIR did not discuss jet fuel pipelines because there are no pipelines on the Project site. The Phase I Site Assessment evaluated all potential hazards on the site and identified no pipelines; the title search of the Project site found no pipeline easements.

The City identified a jet fuel pipeline located beneath a right-of-way adjacent to and north of the Project site (the Petersen Road right-of-way) that serves Travis Air Force Base. In its responses to written comments, the City stated that improvements to Petersen Road would not require relocation or any disturbance of the pipeline. In addition, the improved road would be designed to accommodate heavy trucks to provide sufficient protection to the pipeline. The City stated all construction activities near the pipeline would comply with all applicable regulations, including those pertaining to safety plans. The City also observed that utility and fuel pipelines are commonly located within roadway right-of-ways and that there are established procedures to identify and protect pipelines during construction.

In an addendum to the FEIR, the City responded to the January 29, 2008, letter from appellant's counsel that described a 2005 incident in Walnut Creek in which a "construction impact to a fuel pipeline" resulted in several deaths and serious injuries. Counsel's letter asserted that the EIR offered "no meaningful analysis of the proposed project's likely impacts to the jet fuel pipeline," relying instead on "bare and unsupported conclusions." The FEIR addendum summarized a January 23, 2009, letter from Colonel Steven J. Arquette, Commander of Travis Air Force Base, to the Pipeline Safety Trust. In the letter, Arquette stated that Travis regularly monitors and inspects the pipeline, and has a contingency plan in place in the event of pipeline malfunction. With respect to the Project, Arquette stated that Travis had thoroughly reviewed the draft and final EIR's "to ensure our continued ability to safely access, operate and maintain our pipeline." He observed that California law prohibits any person other than the pipeline operator from building a structure or improvement within a pipeline easement or adjacent to any pipeline easement that would obstruct access to the easement, and concluded that the Project "should not interfere with the safe operations of our pipeline." If the Project were approved, he stated that Travis, "as usual," would work with the City and the developer to review and comment on actual construction plans and to ensure that "construction activities and the daily operations of the [Wal-Mart] store do not impede the continued safe operation of the pipeline."

The pipeline issue was also discussed at two public hearings, one on January 29, 2008, before the planning commission, and one on February 12, 2008, at the conclusion of which the City Council adopted the resolution approving the Project. At the January hearing, the City's planning staff member indicated the pipeline's location on a map and summarized Col. Arquette's letter as stating, essentially, that the Project would not impact the pipeline and that the City and Travis would work closely with the builder on activities near the pipeline. At the February meeting, the City's senior planner also clarified the location of the pipeline vis-à-vis the Project, and stated that "[t]he Applicant's project does not propose any cuts for this area."

In light of the foregoing, we find the City's conclusion that the Project would have no significant impacts on the pipeline to be supported by substantial evidence.

Appellant's contention that the City violated CEQA's informed public participation mandates fares no better. "Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).) This court has previously explained, '[a] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)" (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391 (*Irrigated Residents*)). The comments submitted during the public review and comment period, Col. Arquette's letter, and the discussion, albeit brief, at the public hearings enabled the City to make an informed decision and an informed public to participate in the process.

(b) *Riparian Habitat Issue*

Next, appellant contends the City violated CEQA's public participation and informed decision-making mandates by changing its position with respect to riparian habitat on the Project site. After stating in the DEIR that impacts to riparian habitat would be mitigated, the City then stated in the FEIR that no riparian habitat was present on the Project site and deleted from the EIR the proposed mitigation. Appellant argues

that the City thereby denied the public its procedural right to comment and present evidence that riparian habitat does exist on the site and that the loss of such habitat is a significant environmental impact that must be mitigated. Because the DEIR that was publicly circulated precluded meaningful comment and review on this issue, the City was required to revise the DEIR and recirculate it. (Guidelines, § 15088.5, subd. (a)(4).)

The DEIR that was publicly circulated states that the Project site contains a 1,025 foot-long drainage ditch that meets the criteria for “waters of the U.S.” and “waters of the state.” The ditch runs north to south across the Project site, conveying runoff from the residential neighborhood on the north side of Petersen Road south via a culvert under State Route 12 that ultimately empties into Hill Slough south of the Project site. “The drainage ditch has been colonized by disturbance tolerant forbs and emergent vegetation. Wetland vegetation dominates the bed of the ditch. The banks of the ditch are vegetated with disturbance-tolerant, non-native forbs and grasses” “The drainage ditch provides dense vegetative cover for wildlife within the drainage, but not along the top of the bank. Waterfowl, including mallard . . . and American coot . . . could be expected to forage in the channel and nest in the dense, in-channel vegetation. Waders such as the great blue heron . . . , great egret . . . , and snowy egret . . . could be expected to forage within the channel.”

The DEIR’s impact analysis states: “The project site contains riparian habitat associated with the 1,025-foot drainage ditch considered Waters of the U.S. and Waters of the State by federal and state resource agencies. Development of the proposed project would result in filling the entire ditch. This would be a significant impact on riparian habitat.” To mitigate the loss of riparian habitat, the DEIR proposes the purchase of off-site riparian credits at a mitigation bank in the region at a 1:1 ratio.

After the City released the DEIR, Wal-Mart’s biological consultants, who had been working on obtaining permits from regulatory agencies, submitted a biological assessment that characterized the drainage ditch as a wetland habitat: “A vegetated drainage ditch and twelve seasonal wetlands were identified across the Property. All thirteen features meet the Corps criteria for wetlands. These features were observed to be

dominated by hydrophytic vegetation, had primary and secondary hydrology indicators and contained hydric soils. The hydrology feeding these wetlands originates mostly from intercepted rainfall, except in the case of the vegetated drainage ditch, which receives urban runoff from the neighboring developments. Wetlands 1 through Wetland 11 and Wetland 13 are seasonal adjacent wetlands containing a mix of native and non-native wetland plant species. Wetland 12 is a constructed drainage ditch, containing a defined bed and bank, sign of scouring, drift lines and flowing water at the time of the survey. The ditch is also identified on the USGS quadrangle map as a dashed blue line feature which is tributary to Hill Slough Creek to the south. Hill Slough enters the northern portion of Suisun Slough and the delta. However, wetland vegetation was also observed to dominate the channel bottom. Due to the presence of wetland vegetation, hydric soils and the presence of primary indicators of hydrology, the constructed ditch is classified as a perennial wetland.”

In the meantime, the San Francisco Bay Regional Water Quality Control Board (RWQCB) submitted comments on the DEIR. The RWQCB objected to the mitigation proposal to purchase credits “at an agency approved mitigation bank to compensate for the loss of riparian habitat,” explaining that “it is our understanding that these [two specified mitigation] banks cannot accommodate a mitigation habitat demand for riparian credits.”

In its response in the FEIR, the City stated that it would not need riparian credits because the project would not impact any riparian habitat. The City explained that the DEIR erroneously characterized the ditch as containing riparian habitat, but biological evaluations revealed that its vegetation is of low quality and it does not meet the criteria for riparian habitat. The mitigation measure for riparian habitat was unnecessary because there was no riparian habitat on the property. Instead, the loss of the drainage ditch would be fully mitigated by the mitigation measure for wetlands.

In a subsequent letter dated February 11, 2008, the RWQCB reiterated its position that the ditch (referred to in the letter as an “unnamed creek”) provides riparian habitat. At the February 12, 2008, hearing before the City Council, the city’s counsel brought the

RWQCB's letter to the Council's attention, but stated that the City's biologists had reviewed the correspondence and had not changed their opinion.

The City Council adopted the resolution decision and findings certifying the EIR. The City's findings in support of its determination provided: "Initially, in the Draft EIR, the potential impacts to riparian habitat under Impact BIO-3 were addressed by Mitigation Measure BIO-3 [¶] This mitigation measure was designed to mitigate for impacts to an approximately 1,025 [foot-] long drainage ditch that is a water of the United States and a water of the state, which was noted in the Draft EIR as a riparian habitat. However, biological evaluations of the ditch performed after the release and circulation of the Draft EIR indicate that the ditch's vegetation is of low quality and does not meet criteria for 'riparian habitat.' Therefore, it has been determined that the Draft EIR erroneously characterized the ditch as containing 'riparian habitat' in Impact BIO-3. Accordingly, the text of Impact BIO-3 has been corrected to eliminate references to impacts to riparian habitat and Mitigation Measure BIO-3 has been eliminated because there is no habitat on the project site that meets the definition of 'riparian habitat.' Instead the loss of the drainage ditch would be fully mitigated by Mitigation Measure BIO-4, which sets forth offsite mitigation for wetlands. This change is noted in the Errata and does not change the residual significance of any conclusions presented in the Draft EIR."

Appellant contends the City's "bait-and-switch in eliminating the DEIR's determination that riparian habitat does exist on the site (and, therefore, the need for mitigation to address the loss of such resources) in its FEIR, constitutes the addition of 'significant new information' requiring the circulation of a revised Draft EIR." The DEIR that was circulated, appellant argues, induced the public and the RWQCB to believe that the City was aware that riparian habitat existed on the site and would require avoidance or mitigation. By deleting all reference to riparian habitat and the corresponding mitigation measure in the FEIR, without establishing a new period for review and comment, the City effectively denied the public and the RWQCB their procedural right to consider and respond to such significant new information.

As in the preceding section, appellant conflates two distinct arguments: (1) that the City violated the information disclosure provisions of CEQA, i.e., a failure to proceed in the manner required by law; and (2) that no substantial evidence supports the City's determination that recirculation of a revised DEIR was not required.

“An adequate EIR must be ‘prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.’ (Guidelines, § 15151.) It ‘must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’ ([*Laurel Heights I*], *supra*, 47 Cal.3d at p. 405.) [¶] CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. (Guidelines, §15151.) Although disagreement among experts does not render an EIR inadequate, the report should summarize the main points of disagreement. (*Ibid.*) The absence of information in an EIR, or the failure to reflect disagreement among the experts, does not per se constitute a prejudicial abuse of discretion. ([§ 21005].) A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. ([*Laurel Heights I*], *supra*, 47 Cal.3d at pp. 403-405.)” (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 712.)

The question presented is whether the City's failure to include information on the wetlands/riparian habitat issue precluded informed decision making and informed public participation. We conclude it did not. The DEIR “rang the environmental alarm bell loud and clear,” alerting the City and the public to the prospective loss of the drainage ditch. (*Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1038.) Filling the ditch was assessed as a significant environmental impact and mitigation measures were identified. The public had notice of the expected loss of the drainage ditch, including the opportunity to urge the City to preserve it.

The DEIR contained a detailed description of the physical conditions of the drainage ditch, and there is no dispute about the adequacy of that description in the DEIR. (Guidelines, § 15125 [“An EIR must include a description of the physical environmental conditions in the vicinity of the project”].) Rather, the dispute is over the City’s subsequent finding that the ditch was a wetlands area rather than riparian habitat, a finding with which the RWQCB disagreed. Notwithstanding this disagreement among experts as to the appropriate characterization of the ditch, the loss of the ditch was still identified as a significant environmental impact in the FEIR, an impact to be mitigated. (Guidelines, §§ 15126.2 [consideration and discussion of significant environmental impacts], 15126.4 [consideration and discussion of mitigation measures proposed to minimize significant effects].) The DEIR fulfilled its statutory purposes here: the City had ample information upon which to make its decision, and the public was not precluded from informed participation.

We turn now to appellant’s contention that the City was required to recirculate a revised DEIR. The relevant finding by the City is that the ditch is a wetland area, not riparian habitat. By changing the finding in the DEIR without recirculating it, the City impliedly determined that this did not constitute “significant new information” requiring recirculation. (See *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1134.) We review the City’s determination that new information is not significant and thus does not require recirculation under the substantial evidence standard. (*Vineyard*, *supra*, 40 Cal.4th at p. 447; *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135.) That standard is satisfied here.

As we explained above, “[n]ew information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect” (Guidelines, § 15088.5, subd. (a); *Vineyard*, *supra*, 40 Cal.4th at p. 447; *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1129.) Here, the “new information” was the City’s determination that the physical conditions of the ditch were more accurately characterized as wetlands than riparian habitat and, thus, the loss of the ditch was a less severe impact than previously thought. This did not

constitute a “new significant environmental impact” resulting from the Project or a “substantial increase in the severity of an environmental impact;” nor did it render the DEIR “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (See Guidelines, § 15088.5, subd. (a).)

We also reject appellant’s contention that the City’s changed characterization of the ditch habitat “has rendered the EIR’s analysis of the project fundamentally unstable,” and, further, “has rendered the EIR’s analysis fundamentally inaccurate and unstable in violation of CEQA’s most basic procedural requirements.” Appellant’s reliance on *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 (*County of Inyo*) is unavailing. *County of Inyo* involved a writ of mandate issued in 1973 directing the City of Los Angeles and its Department of Water and Power to prepare an EIR for a project involving increased pumping for export via two aqueducts. The project description in the EIR was much narrower: “The final EIR represents an ex parte attempt to narrow the city’s CEQA obligation—and the scope of this lawsuit—down to the relatively small flow of underground water destined for in-valley use.” (*Id.* at p. 195.) The project description throughout the EIR varied, leading the court to conclude that “[t]he incessant shifts among different project descriptions do vitiate the city’s EIR process as a vehicle for intelligent public participation.” (*Id.* at p. 197.) This situation contrasts sharply with the project description in the instant case.

(c) *Urban Decay Issue*

Finally, appellant contends the City’s conclusion that the Project will have no economic impacts that may result in urban decay is not supported and violated CEQA’s public participation and informed decision-making mandates.

“An EIR is to disclose and analyze the direct and the reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (Guidelines, §§ 15126.2, 15064, subd. (d)(3).) Economic and social impacts of proposed projects, therefore, are outside CEQA’s purview. When there is evidence, however, that economic and social effects caused by a project, such as a shopping center, could result in a

reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the CEQA lead agency is obligated to assess this indirect environmental impact. [Citations.] An impact ‘which is speculative or unlikely to occur is not reasonably foreseeable.’ (Guidelines, § 15064, subd. (d)(3).)” (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1182 (*Anderson First*)).

When the economic or social effects of a project cause a physical change, “the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project.” (Guidelines, § 15064, subd. (e).) In addition, “[a]n EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.” (Guidelines, § 15131, subd. (a).)

In the DEIR for the Project, the City analyzed the Project’s potential for both direct and cumulative urban decay impacts. The analysis was based on the Final Retail Market Impact Analysis prepared by Bay Area Economics (BAE, the BAE report) and attached as Exhibit K to the DEIR. The BAE report defined the trade area (the geographic region that encompasses most of a retail outlet’s customers), analyzed population, household, and labor market trends, and included analysis of the trade area. BAE also performed a retail sales analysis, examining retail trends in Suisun City, nearby cities, and Solano County as a whole. BAE considered general merchandise stores, food stores, restaurant sales, and other retail categories. In particular, BAE noted that “Suisun City’s weakness as a retail destination is extremely pronounced in general merchandise sales,” the only store being the Rite-Aid in the Sunset Center. BAE also analyzed market “leakage” (consumers traveling outside the area to shop) and demand for new retail space in the trade area. Next, the BAE report analyzed the impact of the Project on sales of existing retailers in the trade area and outside of the trade area, as well as cumulative impacts.

The City's urban decay analysis took a two-step approach: it first analyzed the Project's likely economic effect, including the prospect that the Project would compete with existing retailers in the market area, and then assessed whether the likely economic effects would translate, through a chain of causation, into reasonably foreseeable adverse environmental effects in the form of physical urban decay.

The DEIR analyzed the Project's potential impacts on existing retail centers in the City, including Heritage Park Shopping Center, anchored by a Raley's grocery store, and the Sunset Center, containing a Rite-Aid store. The DEIR identified the Raley's and the Rite-Aid as the two businesses most likely to be impacted by the Project. The DEIR also analyzed the Project's potential regional impacts, including stores in Fairfield. In the DEIR, the City made findings that the Project (1) "would not significantly change the dynamic of the local retail market and, therefore, would not result in store closures and long-term vacancies;" (2) "would not result in the closure of competing businesses, causing the physical deterioration of properties or structures they once occupied;" and (3) in conjunction with other planned commercial retail projects, would not result in significant regional urban decay impacts. The City concluded that the level of each impact was less than significant and that no mitigation was necessary.

In the FEIR, the City responded to written comments on the DEIR's urban decay analysis. The City summarized its analysis and addressed the expected impact to Rite-Aid and Raley's. The City pointed out that, although the initial impact of the Project on these businesses could be diverted sales as high as 16 percent the first year, this amount would decrease over time and would still allow a sustainable level of business. Even if either business were forced to close, the City concluded it was unlikely that the closure would lead to urban decay because both businesses were in well-maintained shopping centers with high tenancy rates and property management with a track record of maintaining their properties. The City also responded to specific concerns in the FEIR as well as in the addendum to the FEIR. Finally, in approving the Project, the City found, "based on the Final EIR and the whole record, that the Project will result in less than significant impacts to urban decay related to store closures and long-term vacancies,

physical deterioration of property or structures, regional impacts, and cumulative impacts.”

(i) *The Rite Aid Drug Store*

Appellant contends that the City’s analysis of the potential economic impacts of the Project on the Rite Aid store in the Sunset Center is unsubstantiated and that the City violated CEQA by failing to correct and recirculate a revised DEIR.

Appellant retained economics professor Dr. Philip G. King to review the DEIR and its underlying economic analysis, the BAE report. In his report, Dr. King quoted a statement from the BAE report: “ ‘Estimated taxable sales for general merchandise stores (effectively the only store is the Rite-Aid in the Sunset Center) are \$1.2 million (BAE report, p. 15).’ ” Dr. King used this figure to calculate the taxable (non-drug/non-food) sales per square foot for the store (\$67); compared this to the national average sales per square foot for taxable sales at similar stores (\$170); and concluded that, despite the EIR’s conclusion that the Rite-Aid was performing at the national average, in fact the Rite-Aid was “doing very poorly.” Dr. King then explained that, assuming the EIR’s estimate that Rite-Aid will lose 16 percent of its general merchandise sales to the Project, the Rite-Aid “will almost certainly close” as a result of the Project. This would leave both of the major retail spaces vacant at Sunset Center,¹⁵ and thus, according to appellant, presents a threat of urban decay that should have been, but was not, addressed in the City’s DEIR.

In the addendum to the FEIR, the City responded to Dr. King’s report. Regarding Rite-Aide’s taxable sales, the City stated that “[t]he \$1.2 million figure cited in the Retail Market Impact Analysis is an error. The correct figure is \$2.7 million.” The City then revised Dr. King’s calculation using the corrected figure, which yielded \$150 per square foot, a number much closer to the national average of \$170. The City further noted that a 16 percent reduction in sales would not be as substantial as Dr. King contended and

¹⁵ An Albertson’s grocery store was the other anchor tenant at Sunset Center. The Albertson’s store closed in 2006.

“render[ed] moot his subsequent projection of store closure.” The City also indicated that Albertson’s has a long-term lease and is still paying rent on its space despite having vacated the premises. The City concluded that “urban decay at Sunset Center is not a foreseeable consequence of the proposed project.”

The record provides no further explanation of the purported error in the BAE report. Real party characterizes it as a “typographical error,” one which is assertedly “apparent” upon comparing the text of the BAE report with the table of data referenced in the text. The text reads: “Suisun City’s weakness as a retail destination is extremely pronounced in general merchandise sales, as shown above in Table 6. Estimated taxable sales for general merchandise stores (effectively the only store is the Rite-Aid in the Sunset Center) are \$1.2 million, with annual per capita taxable sales of only \$43.” Table 6, which displays comparative total taxable retail sales for 2004-2005, shows sales at general merchandise stores in Suisun City to be \$2,696,000, and sales per capita at general merchandise stores in Suisun City to be \$95. The \$2,696,000 figure is also referenced in Appendix D-2 to the BAE report.

We hardly find this to be an “obvious typographical error,” as urged by real party, since the annual per capita taxable sales figure in the text also differs from that stated in Table 6 and Appendix D-2. Nor do we agree with appellant that the City failed to provide “any factual basis” for “this last-minute, *substantial* upward revision.” Rather, as we just stated, the \$2,696,000 figure appears in both the total taxable retail sales table above the text in the body of the report and in Appendix D-2 of the report. The appendix explains the calculation of the taxable sales figure for Rite-Aid and states the sources of information used in making the calculations.

We review appellant’s claim that the City’s analysis of potential economic impacts of the Project on the Rite-Aid store is inadequate for substantial evidence.

The City’s finding that the development of the Project would not force the Rite-Aid to close is based on several factors, including the store’s location about 1.7 miles from the Project on the west side of the City, making it the most convenient general merchandise store for many residents, as well as customer loyalty to what had been the

only general merchandise store in Suisun City. The City expects that Rite-Aid would at first lose about 16 percent of its sales to the Project, but that this percentage would likely still allow a sustainable level of business and would decrease over time. New customers drawn to the City by the Project and anticipated population growth in the market area would result in higher sales. In addition, the Sunset Center is well-managed and well-maintained, and there are no signs of physical deterioration. At the time the consultant visited the site, all retail spaces were occupied, although Albertson's had just announced that it would be closing.

Appellant counters the evidence cited by the City with its own evidence that Wal-Mart Supercenters cause urban decay, i.e., Dr. King's report. However, "we do not review the record . . . to determine whether it demonstrates a possibility of environmental impact; we review it in the light most favorable to [the City's] conclusion to determine whether substantial evidence supports the conclusion that the impact of urban decay is less than significant. [Citations.] In the CEQA context, substantial evidence 'means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' " (*Anderson First, supra*, 130 Cal.App.4th at p. 1183.)

The City found no evidence that the Project's economic impact would likely result in an environmental impact of urban decay on the Rite-Aid store. Contrary to appellant's contentions, the DEIR addressed this issue and supported its conclusion. The DEIR assessed the potential for the Project to cause store closures and long-term vacancies in existing retail space in the trade area. The DEIR also analyzed whether development of the Project would result in the closure of competing businesses, causing the physical deterioration of properties or structures they once occupied, and concluded that it would not.

The City also obtained input from the Suisun City Redevelopment Agency (Agency), which indicated "that it does not expect the development of the proposed project to result in physical deterioration of existing retail centers or the downtown area. The Agency believes that property management for Heritage Park and Sunset Center,

respectively, will maintain their properties to ensure that no physical deterioration occurs. The Agency indicated that it does not have any existing or planned redevelopment activities for either retail center because it does not consider them to be underutilized or blighted. The Agency is currently engaged in redevelopment activities in the downtown area, but it believes that downtown businesses would not directly compete with the proposed project and, therefore, would not be susceptible to closure. In addition, the Agency notes that Suisun City is under-retailed and that there is substantial leakage of retail dollars to retailers located outside of the City. The Agency believes that the development of the proposed Wal-Mart Supercenter would attract consumers from outside of the City who would also patronize other local businesses such as restaurants. Overall, the Agency believes that the proposed project would serve a substantial, unmet retail demand in the City and would not cause store closures and subsequent physical deterioration in the City.” The City’s conclusion that impacts would be less than significant is supported by substantial evidence.

Appellant also contends that the City’s erroneous urban decay analysis (the \$1.2 million sales figure) violated CEQA’s public participation and informed decision-making mandates, and that the City’s correction of the error triggered a mandatory duty to revise the DEIR and recirculate it. Real party contends appellant is barred from raising this argument because it failed to exhaust its administrative remedies and waived the claim by failing to assert it during the trial court proceedings.

Despite appellant’s strenuous contention that “this issue was fully briefed and argued at trial,” and “[t]here is no question this issue was fully briefed by all sides at trial,” we find the claim was waived by appellant’s failure to assert it in the court below. Appellant’s citations to the Clerk’s Transcript and the Reporter’s Transcript contain no such briefing or argument, and we decline the invitation to exercise our discretion to decide the issue.¹⁶

¹⁶ This tendency of appellant’s counsel to overreach is also apparent in its argument that the City’s failure to circulate an accurate DEIR was a prejudicial abuse of discretion: “Appellants and their economic expert, Dr. Phil King, rightly assumed that

(ii) *The Food Maxx Grocery Store*

Appellant contends that the City's urban decay analysis did not disclose or analyze adverse impacts to retail centers in the nearby City of Fairfield, in particular the Food Maxx grocery store on West Texas Street. Food Maxx is likely to go out of business, according to appellant, because of the adverse impact of an already existing Wal-Mart Supercenter in Fairfield combined with the expected adverse impact of the proposed Wal-Mart Supercenter in Suisun City, i.e., the Project. Appellant also argues that the City's failure to assess these cumulative effects violated CEQA's procedural requirements.

“A fundamental purpose of CEQA is to ensure that governmental agencies regulate their activities “so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” [Citations.] The heart of CEQA is the EIR. [Citation.] Its purposes are manifold, but chief among them is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment. [Citations.] [¶] Part of this vital informational function is performed by a cumulative impact analysis.’ ([*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984)] 151 Cal.App.3d [61,] 72-73.) ‘The term “‘[c]umulative impacts' refer[s] to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.’ ” ([*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994)] 27 Cal.App.4th [713,] 739.) ‘[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR

the statements in the DEIR were accurate and based their substantive Draft EIR comments on the text presented in the DEIR,” drawing a clear distinction between that document and the BAE report, which counsel describes as “a report buried in one of the DEIR’s appendices.” We feel constrained to mention that Dr. King’s report states that he was asked to review both the EIR and “the accompanying economic analysis prepared by Bay Area Economics (Appendix K),” and that in quoting the erroneous \$1.2 million figure, he cited not the “text presented in the DEIR” but the supposedly “buried” BAE report, and to the precise page number of that “buried” report.

together with other projects causing related impacts.’ (Guidelines, § 15130, subd. (a)(1).) ‘ “The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines, § 15355, subd. (b).) “Cumulative impact analysis ‘assesses cumulative damage as a whole greater than the sum of its parts.’ ”’ (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1403.)” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.)

Appellant contends the City’s analysis of the impacts of the two Supercenters on the Food Maxx store is inadequate because it fails to actually evaluate the cumulative impact of the two Wal-Mart stores operating in the region. As evidence of this shortcoming, appellant refers us to a portion of the City’s response to comments on the DEIR in which the City essentially states that since the Fairfield Supercenter EIR did not find any urban decay impacts to the Food Maxx, and since the Food Maxx is closer to the Fairfield Supercenter than to the Project, the Project is even less likely to cause the Food Maxx to close or suffer some other type of significant impact. We agree with appellant that this comparative analysis is irrelevant to whether the two Supercenters, both exerting competitive pressure on the Food Maxx, would result in combined economic impacts that could cause significant environmental impacts.

Appellant also cites a January 23, 2008, letter from Steve Gaines, a Save Mart executive, to appellant’s economic expert, Dr. King, assessing the impacts of the Fairfield Supercenter on the West Texas Food Maxx store (and another Food Maxx store located elsewhere in Fairfield) and further assessing the anticipated impact of the Project on the two Food Maxx stores. According to Gaines, although both Food Maxx stores had been able to absorb the loss in sales occasioned by the Fairfield Supercenter, that loss in sales, when combined with the loss anticipated to result from the Project, will reduce the West Texas Food Maxx’s sales below the store’s ability to remain profitable and the store will close.

We look to the record to determine whether substantial evidence supports the City's finding that the cumulative impact of the Fairfield Supercenter and the Project would have no significant urban decay impact on the Food Maxx.

The cumulative impact discussion in the BAE report states that its analysis is based on the assumptions (1) that the Fairfield Supercenter will open prior to the Project; and (2) the Fairfield Wal-Mart store on Chadbourne Road will close when the Fairfield Supercenter opens, in accordance with Wal-Mart's stated intention. The BAE report considered the cumulative impacts of planned retail projects within the trade area (i.e., Suisun City) and on areas outside of the trade area, principally Fairfield. The report estimated the impact to retail sales at existing outlets in Fairfield, the "capture," at \$270 million, a loss of 11 percent in 2009 (which was projected to be the first year the Project would be operational). By 2015, even with both Supercenters operating, BAE estimated Fairfield sales will have completely recovered and will be 2 percent above the baseline level due to population growth. The BAE report concludes: "Outside the Trade Area any economic impacts will be spread among the large base of retailers in Fairfield and the region beyond, with minimal impacts on any particular stores or centers; urban decay beyond the Trade Area also is not expected as a result of the Proposed Project."

The DEIR adopts the analysis from the BAE report. With respect to the "Fairfield-Suisun area," the DEIR finds that "while there may be short-term impacts that could lead to closures of existing stores as they faced competition from all of these projects, long-term projected population growth in Suisun City and Fairfield should, within a few years, increase retail demand leading to the absorption of these vacancies. For these reasons, the proposed project would not have a significant regional impact. Impacts would be less than significant."

The FEIR's Responses to Written Comments on the Draft EIR responded to two comment letters that raised issues regarding economic impacts on retailers outside of the trade area. The FEIR stated that "the urban decay [analysis] examined impacts on Fairfield retailers from the diversion of sales to the proposed project. Therefore, the urban decay analysis meets the requirements of CEQA by considering these impacts,

even though they are outside the defined Trade Area.” With respect to comments regarding the Food Maxx store, the FEIR stated (unhelpfully, as we observed earlier): “The Food Maxx store on West Texas Street is closer to the approved Fairfield Wal-Mart Supercenter than the proposed store in Suisun City. If the Fairfield Wal-Mart Supercenter closer to the Food Maxx is unlikely to cause closure of that store or urban decay impacts, as concluded in the Fairfield Wal-Mart EIR, a more distant Wal-Mart Supercenter in Suisun City is even more unlikely to cause such a closure or any type of significant cumulative impact.”

Finally, the City issued an Addendum to the FEIR to respond to comments received after publication of the FEIR on January 9, 2008. Among the comments pertaining to urban decay were assertions that the EIR “failed to account for the cumulative impact of both the proposed project and the Fairfield Wal-Mart Supercenter,” and that it failed to address or mitigate impacts on the Food Maxx store in Fairfield. The Addendum points out that the Fairfield Supercenter EIR found only one significant urban decay impact, related to the space Wal-Mart would be vacating (Chadbourne Road) when it opened its Supercenter in Fairfield. Regarding cumulative impact on Fairfield retailers, the Addendum repeats the City’s conclusion that “because of population growth, overall retail demand in Suisun City and Fairfield will grow such that losses in sales at existing outlets will be short term, with overall market demand making any store closures short-term.”

Regarding urban decay impacts on Food Maxx specifically and the letter from Steve Gaines, the City reiterated the Fairfield Supercenter EIR finding of only one urban decay impact in Fairfield, issues related to the re-use of the Chadbourne Road Wal-Mart site, which would be mitigated to less-than-significant levels. No other urban decay impacts were found, either from the Fairfield Supercenter alone or cumulatively. The City declined to accord any weight to the Gaines letter on grounds that the data it provided could not be independently verified and the data was assertedly inconsistent

with data Save Mart¹⁷ provided during the EIR process on a project in Tracy. Noting that Save Mart is a potential competitor for the Project, the Addendum concludes that the data Gaines provided “cannot be deemed reliable.” Finally, the Addendum states that the Gaines letter failed to take into account future population growth in Fairfield and Suisun City, and the result that “overall retail sales at existing outlets in Fairfield would be above current levels within a few years of the two Wal-Mart Supercenters opening.”

In view of the whole record, it appears that the City did in fact consider the cumulative impacts of the Fairfield Supercenter and the Project on Fairfield retailers and the Food Maxx in particular. The City concluded that, although Fairfield retailers, including the Food Maxx, could be expected to lose sales and some might go out of business, both sales and the population in Fairfield would increase, erasing the sales deficit by 2015. In addition, any business closures would be short term only and thus unlikely to lead to urban decay or physical deterioration. In sum, the evidence of economic effects caused by the Project would not result in a reasonably foreseeable impact of urban decay on the Food Maxx. (*Anderson First, supra*, 130 Cal.App.4th at p. 1186.) Although the City’s analysis is not perfect and appellant makes a good argument that the combined effect of the Supercenters could force the Food Maxx out of business, the City has presented substantial evidence that the Project will not cause urban decay.

We also conclude that the City did not violate CEQA’s procedural mandates. The EIR sufficiently disclosed and analyzed the direct and the reasonably foreseeable indirect environmental impacts of the Project. The City considered whether economic and social effects caused by the Project could result in urban decay or deterioration, and concluded they would not. (*Anderson First, supra*, 130 Cal.App.4th at p. 1182.) No more is required.

¹⁷ We are informed in the Addendum that Save Mart Supermarkets owns Food Maxx and is a privately-held corporation.

IV. DISPOSITION

The judgment is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Richman, J.