

1 DENNIS J. HERRERA
City Attorney
2 KATE HERRMANN STACY, State Bar #122313
AUDREY WILLIAMS PEARSON, State Bar #178414
3 MARLENA G. BYRNE, State Bar #212251
Deputy City Attorneys
4 1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
5 San Francisco, California 94102-5408
Telephone: (415) 554-4621
6 Facsimile: (415) 554-4757
E-Mail: audrey.pearson@sfgov.org

7
8 Attorneys for Respondents
CITY AND COUNTY OF SAN FRANCISCO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

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

14 Petitioners,

15 vs.

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

18 Respondents.

Case No. 505-509

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

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

Date Action Filed: July 28, 2005

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

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

AUG 21 2006

GORDON PARK-LI, CLERK

BY: _____
Deputy Clerk

TABLE OF CONTENTS

1

2 TABLE OF AUTHORITIES iii

3 INTRODUCTION 1

4 STATEMENT OF FACTS 2

5 ARGUMENT 10

6 I. THE ANALYSIS OF THE POLICY FRAMEWORK PROPERLY

7 DESCRIBED THE PROJECT AND PROPERLY FOUND THAT THE

8 PROJECT WOULD NOT HAVE A SIGNIFICANT IMPACT ON THE

9 ENVIRONMENT. 11

10 A. The City Properly Described the Project as the Approval of the Policy

11 Framework. 12

12 B. The City Has Properly Analyzed Individual Route Improvements. 16

13 C. The City Properly Determined that there Would Be No Environmental

14 Impacts from the Adoption of the Policy Framework. 17

15 1. Approval of the Policy Framework will not have any impacts

16 on the environment. 17

17 a. The goals and policies in the 2005 Policy Framework

18 are substantially the same as the goals and policies in

19 the 1997 Bicycle Plan. 18

20 b. The Policy Framework would not have indirect effects

21 on the environment. 19

22 c. CEQA Guidelines section 15304(h) exempts the

23 creation of bicycle lanes on existing rights-of-way. 20

24 D. Petitioners Have Not Met their Burden of Providing Substantial

25 Evidence of Significant Impacts of the Policy Framework. 21

26 II. THE RECOMMENDED ACTIONS IN THE POLICY FRAMEWORK ARE

27 NOT PREEMPTED BY THE VEHICLE CODE OR THE GOVERNMENT

28 CODE. 23

A. Sharrow Pavement Markings are Expressly Authorized by State Law. 23

B. Lane Sharing Between Bicycles and Motor Vehicles Is Not

Preempted. 24

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

Law. 27

D. The City has Authority to Eliminate Parking Spaces, Eliminate

Traffic Lanes, and Implement Bicycle Boulevards and Traffic

Calming Impediments. 28

E. The City May Establish "Contra Flow" Lanes. 29

F. Bike Boxes Are Allowed under the City's Power to Regulate Traffic. 30

1
2
3
4
5
6
7
8
9
10
11
12
13
14

16
17
18
19
20
21
22
23
24
25
26
27
28

G. The City May Adopt Alternative Methodologies to Analyzing Traffic Impacts.....30

III. THE CITY PROVIDED PROPER NOTICE OF THE ADOPTION OF THE BICYCLE PLAN POLICY FRAMEWORK.....31

CONCLUSION.....32

TABLE OF AUTHORITIES

State Cases

1

2 *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*

3 (2001) 91 Cal.App.4th 134413, 14

4 *Black Property Owners Association v. City of Berkeley*

5 (1994) 22 Cal.App.4th 97418

6 *Bozung v. Local Agency Formation Commission*

7 (1975) 13 Cal.3d 26315

8 *CalBeach Advocates v. City of Solana Beach*

9 (1992) 103 Cal.App.4th 52931

10 *Carsten v. City of Del Mar*

11 (1992) 8 Cal.App.4th 164228, 29

12 *Christward Ministry v. County of San Diego*

13 (1993) 12 Cal.App.4th 3112, 14

14 *Christward Ministry v. Superior Court*

15 (1986) 184 Cal.App.3d 18015

16 *Citizens Association for Sensible Development of Bishop Area v. County of Inyo*

17 (1985) 172 Cal.App.3d 15116

18 *City of Carmel by the Sea v. Board of Supervisors*

19 (1986) 183 Cal.App.3d 22915

20 *City of Lafayette v. County of Contra Costa*

21 (1979) 91 Cal.App.3d 74928

22 *County of Inyo v. County of Los Angeles*

23 (1977) 71 Cal.App.3d 19914

24 *Davidson Homes v. City of San Jose*

25 (1997) 54 Cal.App.4th 10619, 21

26 *Del Mar Terrace Conservancy, Inc. v. City Council*

27 (1992) 10 Cal.App.4th 71216, 17

28 *Gabric v. City of Rancho Palos Verdes*

(1977) 73 Cal.App.3d 18318

Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District

(1992) 9 Cal.App.4th 46419, 20

Myers v. Board of Supervisors

(1976) 58 Cal.App.3d 41312, 18

1	<i>Pala Band of Mission Indians v. County of San Diego</i> (1998) 68 Cal.App.4th 556	14, 15, 16
2	<i>People v. Fong</i> (1993) 17 Cal.App.4th Supp.1	27
3	<i>Rio Vista Farm Bureau Center v. County of Solano</i> (1992) 5 Cal.App.4th 351	14, 16
4	<i>San Franciscans Upholding the Downtown Plan v. City and County of San Francisco</i> (2004) 102 Cal.App.4 th 656	22
5	<i>Selby Realty Company v. City of San Buenaventura</i> (1973) 10 Cal.3d 110	23
6	<i>Sierra Club v. West Side Irrigation District</i> (2005) 128 Cal.App.4th 690	12, 16
7	Federal Cases	
8	<i>Daly v. Volpe</i> (1975) 514 F.2d 1106.....	17
9	State Statutes & Codes	
10	California Government Code Section 40401(c)	29
11	California Government Code Section 65088.1	30
12	California Government Code Section 65089	30
13	California Government Code Section 65089.4	30
14	California Public Resources Code Section 21065	11
15	California Public Resources Code Section 21080(a)	11
16	California Public Resources Code Section 21080(b)	11
17	California Public Resources Code Section 21080(c)	12
18	California Public Resources Code Section 21080(d)	12

1	California Public Resources Code	
	Section 21082	30
2	California Public Resources Code	
3	Section 21083	20
4	California Public Resources Code	
5	Section 21084(a)	11
6	California Streets and Highways Code	
	Section 891.2	2
7	California Streets and Highways Code	
8	Section 891.4	2
9	California Vehicle Code	
10	Section 21	23
11	California Vehicle Code	
	Section 360	24
12	California Vehicle Code	
13	Section 530	24
14	California Vehicle Code	
	Section 21000(d).....	30
15	California Vehicle Code	
16	Section 21100(d).....	23
17	California Vehicle Code	
18	Section 21100(h).....	27
19	California Vehicle Code	
	Section 21101(c).....	28, 29
20	California Vehicle Code	
21	Section 21101.6	28
22	California Vehicle Code	
23	Section 21200	25, 26, 27
24	California Vehicle Code	
	Section 21200(a).....	24
25	California Vehicle Code	
26	Section 21202	24, 25, 26
27	California Vehicle Code	
28	Section 21202(a)(3)	24

1	California Vehicle Code Section 21207	28
2	California Vehicle Code Section 21208	27
3	California Vehicle Code Section 21400	23
4	California Vehicle Code Section 21401	23
5	California Vehicle Code Section 21654(a)	25
6	California Vehicle Code Section 21656	26
7	California Vehicle Code Section 21657	30
8	California Vehicle Code Section 21663	27
9	California Vehicle Code Section 21753	25
10	California Vehicle Code Section 21754	25, 26
11	California Vehicle Code Section 22350	26
12	California Vehicle Code Section 22352	26
13	California Vehicle Code Section 22358.5	26
14	California Vehicle Code Section 22400	26
15	California Vehicle Code Section 22503	29
16	California Vehicle Code Section 22507	29
17	California Vehicle Code Section 22508	29
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	California Vehicle Code Section 22517	25
2	California Vehicle Code Section 24654	25
3	San Francisco Statutes, Codes & Ordinances	
4	San Francisco Planning Code Section 306.3(b)(3)	31
5	San Francisco Planning Code Section 340(c)	31
6	Regulations	
7	The California Environment Quality Act, Title 14, Chapter 3, Code of Regulations Section 15061(a)	11
8	Section 15061(b)(3)	12, 17, 18
9	Section 15064(d)(3)	15, 19, 22
10	Section 15165.....	12
11	Section 15301(c)	10, 11, 20, 21
12	Section 15304(h).....	10, 11, 20, 21
13	Section 15358(a).....	18
14	Section 15378(a).....	12
15	Section 21000.....	7, 23
16	Treatises	
17	76 California Attorney General Opinions 214 (1993).....	27
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

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

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

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

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

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

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

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

11 The Court should deny the Petition.

12 STATEMENT OF FACTS

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

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

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

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

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

20 The 1997 Plan, together with three amendments, was updated and readopted in May 2001. (AR
21 8:1738.) These amendments added major projects recommended in the 1997 Plan that had been
22 completed or were currently being implemented, identified and added new potential bicycle facility
23 projects, and added several elements to the Plan as required by the Streets and Highways Code. (AR
24 8:1739-40. See also Exhibit A to RJN.)

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

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

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

17 For example, the design and feasibility of improvements to the route on Second Street was still
18 highly speculative. The draft NID noted several impediments to an analysis or implementation of
19 improvements to the route on Second Street, including a note that "no determination" of a preferred
20 option for Second Street "has been made," that bike lanes on Second Street had already been
21 disapproved by the Parking and Traffic Commission in 1998, and that Second Street is the preferred
22 alignment for a new tunnel connecting Caltrain with the Transbay Terminal and thus could undergo
23 major construction in the near future. (AR 3:349, 457.) Likewise, the ultimate design and feasibility of
24 implementing improvements to Fifth Street was also quite speculative with numerous obstacles,
25 including a note that "no determination" of a preferred option had been made and that the City
26 disapproved a Fifth Street bicycle lane in 1998. (AR 3:462.) The NID contained two options for
27 improvements to 14th Street, and needed more outreach with local merchants. (AR 3:469.) For the 16th
28 and 17th Streets corridor, "the impact of travel lane reductions to traffic operations need[s] to be studied

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

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

20 In addition to the general goal of improving the network, the Policy Framework included six
21 other goals and related policies: 1) increase safe bicycle use; 2) ensure plentiful bicycle parking; 3)
22 adopt bicycle friendly practices and policies; 4) promote safe bicycling; 5) increase enforcement of
23 bicycle related violations; and 6) prioritize and increase bicycle funding. (AR 15:3426.) To implement
24
25
26

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

1 each goal and objective, the Policy Framework recommended numerous "actions" to be undertaken by
2 various City agencies or officials.³

3 Although the Policy Framework was labeled an update to the goals and policies in the 1997 Plan,
4 in fact, the two documents differed little in substance. For example, the 1997 Plan notes that
5 implementation of bicycle lanes on certain streets may require the elimination of an existing traffic lane.
6 (Compare 1997 Plan 3-1, 3-7 ["in certain cases, travel lane removal may be the only way to safely
7 accommodate bicycle travel with a corridor"] to Policy Framework, AR 1:52 ["creating necessary and
8 appropriate facilities for . . . bicycles . . . often requires eliminating general traffic lanes"].) Both plans
9 seek the review of streets with excess traffic capacity for their ability to be striped with a bicycle lane.
10 (Compare 1997 Plan 8-12 ["all multi-lane streets that currently have excess capacity should be reviewed
11 for inclusion in the bicycle network such as the possibility of removing a travel lane to add bicycle
12 lanes" to Policy Framework, AR 15:3481 ["review multi-lane streets with excess capacity . . . for
13 possible lane removal to accommodate bicycle lanes . . . "].) Both champion improved bicycle access on
14 transit (Compare 1997 Plan, 7-15 to 24 ["integration of bicycle and transit use . . . is essential in
15 maximizing the bicycle's transportation utility . . . "] to Policy Framework, AR 15:3518-19 ["expand
16 bicycle access to transit and bridges"].) Both recommend changes and improvements to numerous City
17 policies and traffic laws, including changes to laws regarding bicycling on sidewalks. (Compare 1997
18 Plan at 8-3 to 4 ["there are areas where it is recommended that sidewalk bicycle riding be permitted"] to
19 Policy Framework, AR 15:3499 [sidewalk bikeways should be considered in certain locations].) Like
20 the 2005 Policy Framework, the 1997 Plan makes recommendations regarding bicycle parking including

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

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

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

11 After deciding that the Department would not seek approval of a document with "grant-ready"
12 projects, the Department set aside the NID and submitted the Policy Framework to the San Francisco
13 Planning Department ("Planning") for review under the California Environmental Quality Act, Public
14 Resources Code section 21000 *et seq* ("CEQA") in May of 2004.⁵ (AR 5:855.) After analyzing the
15 update, Planning determined that it was exempt from further environmental review under CEQA
16 because there was no possibility that the adoption of the Policy Framework would have a significant
17 effect on the environment. (AR 1:1-6.) Specifically, the analysis noted that the Policy Framework was
18 not significantly different from the 1997 Bicycle Plan and did not specify any direct changes to any
19 particular bicycle route or recommend any other changes to the environment. (AR 1:5.) The analysis
20 acknowledged that the improvements in the draft NID could change the physical environment and have
21 possible impacts, but any particular improvement in the draft NID was not reasonably foreseeable and
22 that indirect impacts from the improvements would be too speculative to evaluate. (*Id.*) Thus, Planning

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

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

1 concluded that, until and unless improvements were actually proposed, there was no possibility that
2 there would be significant environmental effects from just the adoption of the Policy Framework. (AR
3 1:5-6.)

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

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

23 **Subsequent Bicycle-Related Approvals**

24 After the Board adopted the Policy Framework, the San Francisco County Transportation
25 Authority ("TA") adopted the "Proposition K/5-Year Prioritization Programs for Pedestrian and Bicycle
26 Facility Maintenance Bicycle Circulation/Safety; and Tree Planting and Maintenance." (AR 14:3270.)
27 Petitioners did not comment at this hearing. (*Id.*) The TA, a non-City agency created under state law
28 (although governed by a Commission made up of the members of the City's Board of Supervisors), is

1 responsible for administering the ½ cent sales tax on all retail sales in San Francisco, a tax used to fund
2 transportation projects in San Francisco County. The voters of San Francisco adopted this sales tax in
3 November 2003 in Proposition K. (AR 15:2600.) The voters adopted an Expenditure Plan for the sales
4 tax, which identified numerous categories of projects or programs the TA would fund over the next 30
5 years, including earmarking \$255 million for bicycle and pedestrian improvements in San Francisco.
6 (AR 12:2754.) Prior to allocation of any of the sales tax money, the lead agency for each category of
7 programs contained within the Expenditure Plan, must prepare a "5-year prioritized program of projects"
8 ("Five-year plan"). (AR 4:567.) The Five-year plan for each program is intended to bring the lead
9 agency's focus on selecting projects within the program that can be delivered on-time, within budget,
10 and with the timely and competitive use of state and matching funds. (*Id.*)

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

24 Consistent with CEQA requirements, the Department has not sought simultaneous approval of
25 *all* the listed route improvements to the routes as identified in the draft NID. Instead, it has focused on
26 approval of improvements to individual routes or route portions, each of which has independent utility
27 for the safety and convenience of bicycle riders. The improvements have been to routes in
28 geographically diverse parts of the City, such as on Lake Street in the northwest part of San Francisco,

1 North Point between the Embarcadero and Van Ness Avenue in the northeast part of San Francisco, and
2 on Alemany Boulevard, in the southern part of San Francisco. Prior to adoption by the Board, each
3 route improvement received environmental review by the Department or by Planning, including analysis
4 of traffic impacts. (See generally Dec. of Audrey Pearson, filed May 23, 2006, exhibit C.) For each
5 one, the Department determined that it was exempt from further environmental review under 14
6 California Code of Regulations ("CEQA Guidelines") Section 15301(c), which exempts minor
7 alterations to existing streets, or CEQA Guidelines Section 15304(h), which exempts the creation of
8 bicycle lanes on existing rights of way.⁶ These determinations have not been appealed or challenged.
9 (See Pub.Res. Code § 21151 [requiring appeal to decisionmaking body].)

10 ARGUMENT

11 Petitioners challenge the adoption of the Policy Framework on three grounds. First, Petitioners
12 claim that the City did not properly analyze the Policy Framework under CEQA because 1) the CEQA
13 analysis only covered the Policy Framework and did not include an analysis of the route improvements
14 in the draft NID; and 2) because the analysis erroneously concluded that there would be no
15 environmental impacts from adoption of the policies. Second, Petitioners claim that several
16 recommended "actions" in the Policy Framework are preempted by provisions of the California Vehicle
17 Code or Government Code. Third, Petitioners claim that the City did not give the public proper notice
18 of the adoption of the Policy Framework at the Planning Commission or at the Board of Supervisors.

19 None of Petitioners' claims have merit. Planning correctly described the "project" to be analyzed
20 under CEQA as the Policy Framework, not the Framework *and* the draft NID, and after detailed
21 analysis, Planning correctly determined that the Policy Framework would not have any environmental
22 impacts. Moreover, Petitioners have not met their burden of providing evidence that the adoption of the
23 Policy Framework could have environmental impacts. Petitioners provide vague and generalized
24 speculation of indirect impacts from projects to which the Policy Framework makes no commitment and
25

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

1 offers no recommendation. Second, the recommended actions in the Policy Framework are not
2 preempted by state law. The California Vehicle Code and Government Code give local jurisdictions
3 wide discretion in their ability to regulate the flow of bicycles, traffic and parking, and none of the
4 recommended actions conflict with express provisions of state law. Finally, the City properly noticed
5 the Planning Commission's and Board's actions adopting both the Policy Framework and the CEQA
6 analysis given to it. The Court should deny the Petition.

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

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

18 **CEQA Overview**

19 To comply with CEQA, lead agencies must first determine whether an activity is a "project."
20 (Pub. Res. Code 21080(a).) The term "project" has two elements: it must have a direct, or reasonably
21 foreseeable indirect physical change on the environment; and it must be an activity undertaken by a
22 public agency or involve the issuance of a permit to a private party. (Pub. Res. Code § 21065.) If the
23 activity is determined to be a "project," the lead agency must then determine whether an exemption
24 applies. (CEQA Guidelines § 15061(a).) A project could be statutorily excluded from CEQA or could
25 fall into one or more of 33 classes of categorical exemptions. Categorical exemptions are types of
26 projects that the State Office of Planning and Research has determined do not have significant effects on
27 the environment. (Pub. Res. Code 21084(a).) These categorical exemptions include both "Class 4(h),"
28 which exempts the creation of bicycle lanes on existing rights-of way, and "Class 1(c)," which exempts
minor alterations to streets. (Pub. Res. Code § 21080(b); Guidelines §§ 15304(h), 15301(c).) If a

1 project is not exempt, the lead agency must then determine whether a project may have a significant
2 effect on the environment. If it can be seen with certainty that there will be no significant effect on the
3 environment, a general rule exclusion will apply. (Guidelines § 15061(b)(3) [the "general rule" is that
4 CEQA applies only to projects which have the potential for causing a significant effect on the
5 environment."].) The general rule exclusion ("GRE") (otherwise known as the "common sense
6 exception") was adopted to guard against the possibility that an obviously exempt project not found in
7 the list of 33 classes of categorical exemptions "might be required needlessly to comply with the
8 requirements of CEQA." (*Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 425.)

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

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

15 Petitioners claim that the City's environmental determination is flawed because the City
16 improperly described the project as just the adoption of the Policy Framework and the description did
17 not include the list of options for route improvements in the draft NID and, thus, improperly segmented
18 the project into two parts. However, the City properly described the project as just the Policy
19 Framework and properly left environmental review of the projects in the draft NID for when the design
20 of those projects are certain and their potential effects less speculative.

21 Under CEQA, a lead agency must review "the whole of an action." (CEQA Guidelines
22 § 15378(a).) Petitioners argue that the "whole of the action" includes both the Policy Framework and
23 the draft NID. Petitioners are wrong. Where a subsequent activity is independent of, and not a
24 contemplated future part of the first activity, the two activities may be reviewed separately, even though
25 they may be similar in nature. (*Christward Ministry v. County of San Diego* (1993) 12 Cal.App.4th 31;
26 *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690; CEQA Guidelines § 15165 [where one
27 project is one of several similar projects of a public agency, but is not deemed a part of a larger
28 undertaking or a larger project, the agency may prepare one environmental review for all projects or one

1 for each project].) Here, the draft NID is independent of the Policy Framework. Any of the bicycle
2 facility improvements contained in the draft NID could be implemented with or without the adoption of
3 the Policy Framework. At the same time, the Policy Framework has independent utility from the draft
4 NID as a means to qualify for funding from the state Bicycle Transportation Account and to guide City
5 decisionmakers on bicycle related issues.

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

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

28 Like in *Berkeley Keep Jets*, here the Department originally described the project as an update to
the 1997 Bicycle Plan with a list of "grant ready" improvements, i.e. both the Policy Document and the
NID. However, after noting that many of the projects in the NID were not ready for detailed design,
were controversial and would require extensive outreach, analysis or funding prior to the Department's
ability to settle on one design as the preferred option, the Department instead focused on the part of the

1 update that required immediate approval in order to qualify for state grant funding – the Policy
2 Framework. Like the court noted in *Berkeley Keep Jets*, such changes are in the nature of projects.
3 CEQA does not require that a project remain frozen in its description throughout the CEQA process or
4 any other implementing processes. "New and unforeseen insights may emerge during investigation
5 evoking revision of the original proposal." (*County of Inyo v. County of Los Angeles* (1977) 71
6 Cal.App.3d 185, 199.)

7 Indeed, even though the City had originally contemplated one environmental review, CEQA
8 does not *require* one environmental review of general policy documents (such as the Policy
9 Framework), together with projects potentially contemplated under the policies in the plan (such as the
10 improvements in the draft NID) if those projects are not currently proposed for adoption and not
11 reasonably foreseeable consequences of the adoption of the policy. (*Rio Vista Farm Bureau Center v.*
12 *County of Solano* (1992) 5 Cal.App.4th 351; *Pala Band of Mission Indians v. County of San Diego*
13 (1998) 68 Cal.App.4th 556; *Christward Ministry v. County of San Diego* (1993) 12 Cal.App.4th 31.)

14 In *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, the Court of
15 Appeal upheld the county's environmental review in conjunction with the adoption of a countywide
16 integrated waste management plan under the Integrated Waste Management Act of 1989 ("the Waste
17 Act"). The Waste Act mandates local preparation of a waste management plan, which summarizes a
18 county's waste management issues and provides specific steps the local agency will take to comply with
19 the Waste Act's purpose of "reduc[ing], recycl[ing] and reus[ing] solid waste." (*Id.* at 561.) The plan
20 must contain a siting element, which must provide a description of the geographic areas that can be used
21 for landfills. In *Pala Band of Mission Indians*, the county tentatively reserved ten sites as possible
22 landfill sites and anticipated developing a landfill on two of them, including one site that had already
23 received voter approval. (*Id.* at 560.) The county described the project as just the adoption of the plan,
24 and did not include in as part of the project an analysis of the impacts from implementation of any
25 particular landfill. The petitioner challenged the environmental review, claiming that the county
26 segmented the project and that the project description should have included both the plan and impacts
27 from development of the landfill sites. The county, on the other hand, argued that the plan was a
28 "comprehensive planning document" that "does not cause a specific new development project to be

1 undertaken,” and, thus, “any environmental analysis of the sites would be speculative.” (*Id.* at p. 576.)
2 The court agreed with the county, finding there was no guarantee that sites would be developed, and,
3 therefore, “in our view, preparation of an EIR [covering the plan *and* the impacts at the sites] at the
4 current planning state would be premature in that any analysis of potential environmental impacts would
5 be wholly speculative.” (*Id.*)

6 Like the waste management plan in *Pala Band of Mission Indians*, the Policy Framework is a
7 comprehensive planning document that does not cause any new bicycle project to be undertaken. The
8 City correctly described the project as an analysis of the Policy Framework and did not need to include
9 as part of the project to be analyzed the draft list of network improvements. The route improvements in
10 the draft NID were not proposed for adoption and were not reasonably foreseeable consequences of, nor
11 dependent on, the adoption of the Policy Framework. Until specific measures are adopted and fully
12 fleshed out, their effects remained abstract and speculative and thus cannot be analyzed under CEQA,
13 and are not considered significant. (CEQA Guidelines § 15064(d)(3).) (See also *Rio Vista Farm*
14 *Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 372 [court upheld environmental review
15 of hazardous waste management plan incorporated into general plan against challenge that plan should
16 have analyzed hazardous waste facilities; court found plan did not propose or commit county to building
17 any particular waste facility.].)

18 Cases cited by Petitioners are not to the contrary. In each case, the general plan amendments
19 approved was part of a larger project involving a specific rezoning *necessary* for a specific development
20 project. In *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, the court found that
21 the annexation of 677 acres of agricultural land was the first step in the property owners’ specific
22 proposal to rezone the land from agricultural to residential, commercial, and recreational uses in order to
23 develop up to 3,700 new dwelling units. (*Id.* at 281.) In *Christward Ministry v. Superior Court* (1986)
24 184 Cal.App.3d 180, the court found that the general plan amendments were, in fact, part of a larger
25 project involving a proposed methane gas recovery plant. In *City of Carmel by the Sea v. Board of*
26 *Supervisors* (1986) 183 Cal.App.3d 229, the court found that a rezoning was the first step in allowing a
27 61-unit development near a wetland. (*Id.* at 224.) In *Citizens Assoc. for Sensible Development of*
28

1 *Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, the court found that a general plan
2 amendment was a necessary precursor to a proposed new shopping center.

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

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

10 Petitioners argue that the City continues to "segment" what is their definition of "the project" by
11 analyzing individual route improvements separately from other route improvements.⁷ Petitioners are
12 wrong. Individual improvements to the City's bicycle network can be looked at independently of one
13 another. When a subsequent activity is independent of, and not a contemplated future part of the first
14 activity, the two activities may be reviewed separately, even though they may be similar in nature. (*Del*
15 *Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 735; *Sierra Club v. West*
16 *Side Irrig. Dist.* (2005) 128 Cal.App.4th 690.)

17 *Del Mar Terrace* is controlling. In *Del Mar Terrace* the City of San Diego and Caltrans
18 proposed the construction of one phase (a 1.8 mile segment) of State Route 56, the construction of
19 which consisted of five total phases. The city and Caltrans contemporaneously prepared four separate
20 environmental documents for four of the five phases. (*Id.* at 731.) The petitioners argued that the
21 environmental review and approval of the 1.8 mile portion was improper segmentation of what should
22 have been one review of the whole state route. The court disagreed. The Court held that the
23 environmental review of a highway segment need not include other phases of the highway even if the
24 separate parts of the highway might eventually be joined together. The court adopted a four-part test

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

1 articulated by the federal court in *Daly v. Volpe* (1975) 514 F.2d 1106, in deciding whether roadway
2 segments were entitled to separate environmental review. The Court found that separate environmental
3 review of a portion of a highway is appropriate when (a) the segment is of substantial length and
4 between logical terminal points; (b) the segment has independent utility; (c) the length of the segment
5 assures adequate opportunity for consideration of alternatives; and (d) if the segment fulfills important
6 state and local needs. The Court further analyzed whether the approval of the highway segment
7 irretrievably committed the City and the State to completion of the other remaining segments. The court
8 found that the 1.8 mile segment met these criteria and upheld the review of just that segment.

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

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

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

25 **1. Approval of the Policy Framework will not have any impacts on the**
26 **environment.**

27 Documented in a 7-page memorandum, Planning determined that the adoption of the Bicycle
28 Plan would not have a significant effect on the environment and was therefore exempt from further
environmental review under CEQA Guidelines Section 15061(b)(3). As noted above, under Section

1 15061(b)(3), a project is exempt from further environmental review if it does not fit into one of the 33
2 classes of categorical exemptions and common sense dictates that there is no possibility that the project
3 will have a significant environmental impact. This "common sense exception" was adopted to guard
4 against the possibility that an obviously exempt project not found in the list of 33 classes of categorical
5 exemptions "might be required needlessly to comply with the requirements of CEQA." (*Myers v. Bd. of*
6 *Supervisors* (1976) 58 Cal.App.3d 413, 425.) The City correctly determined that the Policy Framework
7 fell into this category. CEQA, the CEQA Guidelines, and relevant CEQA case law support the City's
8 decision.

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

11 In examining the impacts from the Policy Framework, Planning noted that the existing setting
12 included the fact that the City already had a Bicycle Plan – the 1997 San Francisco Bicycle Plan. (AR
13 1:2.) As demonstrated in the Statement of Facts above, even a cursory examination of the old and new
14 plans reveals that they are substantially similar and that, in fact, the Department was not presenting
15 "radical changes," as Petitioners suggested. (AR 7:1375 [comments of CAR].)

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

24 As a result, the *only* "new" recommendation in the Policy Framework for Planning to study for
25 environmental review was that identified in Action 2.3 and Table 2-4. (AR 15:3472.) But this item of
26 the Policy Framework merely *recommends* that certain streets within the City "*should be studied* for
27 *potential inclusion in the Bicycle Route Network.*" (*Id.* [emphasis added].) Such conjecture is not
28 evidence of a significant impact. (*Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183.)

1 The Policy Framework does not mandate study, contains no suggestion as to what these streets might
2 look like after study, and does not commit the City from implementing any changes even if a study is
3 done. Thus, because none of the "new" routes found in Table 2-4 included any particular plans or
4 recommendations, there were no direct impacts that the City could study and any indirect impacts were
5 speculative and could not be considered significant. (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill*
6 *Unified School Dist.* (1992) 9 Cal.App.4th 464, 476 ["there is simply not enough specific information
7 about the various courses of action available . . . to warrant review at this time."].) Remote speculation
8 of an impact is not enough to prevent a lead agency from relying on the common sense exception to
9 CEQA. (*Davidson Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 118.)⁸

10 **b. The Policy Framework would not have indirect effects on the**
11 **environment.**

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

23 ⁸ Even Petitioners most feared "radical change" is not new to the General Plan. The
24 recommended action to explore alternative methodologies for determining transportation
25 performance beyond the traditional "level of service" has been a part of the Transportation Element
26 of the San Francisco General Plan for many years. Objective 10 of the Transportation Element
27 concerns Transportation Performance Measures, and the preamble states that "[traditional Levels of
28 Service measures] . . . are not well suited for measuring the performance of alternative modes of
transportation to the automobile, such as transit, walking or bicycling." (City's RJN, Exh. B).
Objective 10 is to "develop and employ methods of measuring the performance of the City's
transportation system that respond to its multi-modal nature." (*Id.*)

1 on the environment because by forming the CFD, the school district would likely construct new schools,
2 the construction of which could have environmental impacts. The Court of Appeal rejected this
3 argument and held that the CFD was not a project under CEQA.

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

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

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

21 Bolstering Planning's determination that the Bicycle Plan would not have any significant effects
22 is CEQA itself. CEQA requires the State Office of Planning and Research to prepare and develop
23 proposed guidelines for implementing CEQA, including preparation of "a list of classes of projects
24 which [sic] have been determined not to have a significant effect on the environment." (Pub. Res. Code
25 §§ 21083; 21084(a).) One of the classes for which this determination has been made is for the "creation
26 of bicycle lanes on existing rights-of-way." (CEQA Guidelines § 15304(h).) Another such class is for
27 projects involving "minor alterations to existing streets." (CEQA Guidelines § 15301(c).) Thus, CEQA
28

1 assumes that the creation of most bicycle route improvements – either a bicycle lane or a minor
2 alteration to the street – will not have a significant impact on the environment.⁹

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

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

22 In fact, Petitioners point to no recommended action in the 2005 Policy Framework not in the
23 1997 Bicycle Plan that could have any possibility of a significant effect. Indeed, Petitioners are mostly

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

1 offended by recommendations in the Policy Framework that have no bearing on physical changes to the
2 environment at all. For example, Petitioners object to spending City money on the promotion of
3 bicycling, funding additional staffing at Planning for enforcement of bicycle parking violations, having
4 transportation reports identify the number of bicycle parking spaces near a proposed new project, or
5 putting bicycle racks on buses. (AR 7:1375-76 [comments of CAR].)

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

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

22 In sum, Planning correctly found that the adoption of the Policy Framework would not result in
23 any new significant impacts on the environment. The policies were virtually identical to the policies
24 contained in the 1997 Plan, the Policy Framework did not commit the City to any particular course of
25 action related to any particular route improvement, and CEQA itself already assumes that the creation of
26

27 ¹⁰ Of course, lack of parking, in and of itself, is not an environmental effect. (*San Franciscans Upholding the Downtown Plan v. CCSF* (2004) 102 Cal.App.4th 656, 697.)
28

1 bicycle lanes on existing rights of way does not have a significant impact on the environment. Thus,
2 Planning correctly issued a "common sense" general rule exclusion.

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

5 Petitioners also challenge the adoption of the 2005 Policy Framework by claiming that either the
6 California Vehicle Code or the Government Code preempts several of the recommended "actions" in the
7 Policy Framework. This claim has no merit. Petitioners completely ignore that the "actions" in the
8 Policy Framework are *recommendations* on how to best implement the goals and policies. (See e.g. AR
9 15:3500 [City staff should prioritize the following actions to implement the recommendations . . .])
10 Approval of the Policy Framework did not automatically implement any of these recommendations. As
11 such, Petitioners claim that the Vehicle Code or Government Code preempts the recommendations is not
12 ripe for review. (*Selby Realty Company v. City of San Buenaventura* (1973) 10 Cal.3d 110 [courts will
13 not be drawn into disputes over General Plan policies which depend on speculative future events].)

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

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

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

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

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

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

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

11 Petitioners claim that the Vehicle Code preempts any lane sharing between bicycles and motor
12 vehicles. However, the requirement that motor vehicles share lanes with bicycles is well-supported
13 under state law. Vehicle Code section 21200(a) demonstrates the Legislature's intent that bicycles share
14 the road with motor vehicle traffic by setting forth rules applicable to "[e]very person riding a bicycle
15 upon a *highway* . . ." (emphasis added), while "highway" is defined as "a way or place . . . publicly
16 maintained and open to the use of the public for purposes of vehicular travel." (Vehicle Code § 360.)
17 Vehicle Code section 21202 adds that if a bicycle operated in a "roadway" (defined in Vehicle Code §
18 530 as "that portion of a highway improved, designed or ordinarily used for vehicular travel,") is moving
19 at less than the speed of traffic it must ride as close "as practicable" to the right hand curb. Vehicle
20 Code section 21202 expressly also authorizes bicycles to use the left turn lanes used by motor vehicles.

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

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

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

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

27 Nor do Vehicle Code sections 21753 and 21754 support Petitioners' preemption argument.
28 Those sections allow a faster moving vehicle to pass another vehicle on the right under specified

1 conditions and restate the general duty of a slower moving vehicle to stay to the right. Nothing in those
2 sections eliminates the rights of a bicycle under Vehicle Code section 21202 to share a narrow lane of
3 traffic with other vehicles and, when required, to move out of the way of potential safety hazards. In
4 fact, section 21754 expressly protects the ability of a slower vehicle being passed to keep its place in the
5 lane when required for safety reasons: "This section does not require the driver of an overtaken vehicle
6 to drive on the shoulder of the highway in order to allow the overtaking vehicle to pass."

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

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

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

25 Second, sharrows do not in themselves have any effect on regulating the legal speed limits on
26 roads where they are used. To the extent that Petitioners are attempting to argue that sharrows have the
27 practical effect of reducing the speed of traffic, the argument still fails to demonstrate preemption. The
28 speed limit laws cited by Petitioners regulate the maximum speed, not the minimum speed of traffic. To

1 follow Petitioners' argument to its logical conclusion would require outlawing all bicycles from all
2 roadways, since by their very nature bicycles cannot maintain the same speeds as motor vehicles, nor
3 would it be safe for them to do so.

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

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

9 Petitioners contend that the City may not regulate the riding of bicycles on sidewalks despite the
10 clear language in Vehicle Code section 21100(h), which states that "[l]ocal authorities may adopt rules
11 and regulations . . . regarding . . . [o]peration of bicycles . . . on the public sidewalks." (Cal. Veh. Code
12 § 21100(h).) The meaning of section 21100(h) is not ambiguous.

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

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

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

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

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

25 Likewise, neither bicycle boulevards nor traffic calming devices are prohibited by section
26 21101.6. Even with these features, all members of the public are allowed use of the street. In fact, the
27 court in *Carsten v. City of Del Mar* (1992) 8 Cal.App.4th 1642 specifically upheld the use of traffic
28

1 islands and curbs to reduce traffic speeds in a residential neighborhood – the goal of traffic calming. (*Id.*
2 at 1646.)

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

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

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

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

1 under the City's power to regulate traffic and the City's power to control the direction of traffic. (See
2 Cal. Veh. Code § 21000(d) [localities may regulate traffic using official traffic control devices]; Cal.
3 Veh. Code § 21657 [allowing authorities in charge of any highway to designate traffic direction].)

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

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

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

17 Petitioners claim that the City is preempted from studying alternative methods for analyzing
18 impacts to traffic. Currently, the City measures impacts to traffic using the "levels of service" (LOS)
19 method, which identifies how long a car must wait to pass through an intersection. The LOS is
20 measured as A through F, LOS A signifying free flowing traffic conditions, LOS F signifying very
21 heavy congestion. Contrary to Petitioners claims, the use of LOS is not mandated by CEQA, and CEQA
22 does not mandate that traffic impacts be measured by reference to LOS of automobiles. CEQA Section
23 20182 and CEQA Guidelines 15064.7 allow public agencies to adopt objectives, criteria and procedures
24 for the evaluations of projects. (Pub. Res. Code § 21082 [each public agency is encouraged to develop
25 and publish thresholds of significance – an identifiable performance level of a particular environmental
26 impact].) Government Code sections 65088.1, 65089 and 65089.4 govern the use of LOS in Congestion
27 Management Plans. Although these plans may require the standard use of LOS to measure congestion
28

1 in Congestion Management Plans, CEQA does not. Thus, policies in the 2005 Policy Framework urging
2 further study of alternative methods of measuring transportation impacts do not violate CEQA.

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

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

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

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

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

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

6 **CONCLUSION**

7 The Court should deny the Petition.

8 Dated: August 21, 2006

9 DENNIS J. HERRERA
City Attorney
10 KATE HERRMANN STACY
AUDREY WILLIAMS PEARSON
11 MARLENA G. BYRNE
Deputy City Attorneys

12 By: 
13 AUDREY WILLIAMS PEARSON

14 Attorneys for Respondents

15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Monica Trejo, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, 1 Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102.

On August 21, 2006, I served the following document(s):

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

on the following persons at the locations specified:

Mary Miles
364 Page St., No. 36
San Francisco, CA 94102

in the manner indicated below:

- BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery is attached or will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed August 21, 2006, at San Francisco, California.



Monica Trejo