APPENDIX W

COURT OPINIONS:

***CITY OF SAN DIEGO ET AL. V. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY* (2015) 61 CAL.4TH 945 [CALIFORNIA SUPREME COURT];**

***CITY OF SAN DIEGO ET AL. V. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY* (2011) 201 CAL.APP.4TH 1134 [CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT]**

City of San Diego v. Board of Trustees of California State University

Supreme Court of California

August 3, 2015, Filed

S199557

Reporter
61 Cal. 4th 945 *; 352 P.3d 883 **; 190 Cal. Rptr. 3d 319 ***; 2015 Cal. LEXIS 5291 ****

CITY OF SAN DIEGO et al., Plaintiffs and Appellants, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Defendant and Respondent.

Subsequent History: Reported at San Diego v. Board of Trustees of the California State University, 2015 Cal. LEXIS 8385 (Cal., Aug. 3, 2015)

Prior History: [**1]** Superior Court of San Diego County, Nos. GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083768-CU-TT-CTL, 37-2007-00083773-CU-MC-CTL. Thomas P. Nugent, Judge. Court of Appeal, Fourth Appellate District, Division One, No. D057446.

City of San Diego v. Board of Trustees of California State University, 201 Cal. App. 4th 1134, 135 Cal. Rptr. 3d 495, 2011 Cal. App. LEXIS 1562 (Cal. App. 4th Dist., 2011)

Core Terms

mitigation, funds, appropriation, campus, budget, Resources, projects, off-site, impacts, agencies, dictum, environmental effect, public agency, feasible, effects, infeasible, off-campus, state agency, certifying, overriding consideration, mitigation measures, fair-share, earmarked, non-state, traffic, significant effect, enrollment, sources, costs, powers

Case Summary

Overview

HOLDINGS: [1]-The feasibility of mitigating a project's off-site environmental effects under Pub. Resources Code, §§ 21002.1, subd. (b), § 21004, 21060.5, 21081, did not depend on a legislative appropriation for the specific purpose of paying mitigation costs because an agency's duty to request funds under Pub. Resources Code, § 21106, simply meant that mitigation costs had to be included in the budget; [2]-Nothing in Ed. Code, §§ 66202.5, 67504, subd. (d)(1), conditioned campus expansion on obtaining appropriated funds; [3]-The Legislature did not deny an appropriation within the meaning of Gov. Code, § 13332.15, because requests for mitigation costs did not appear in the proposed state budget; [4]-A finding of infeasibility and a statement of overriding considerations in the environmental impact report, based on the absence of an earmarked appropriation, were erroneous and invalid.

Outcome
Decision affirmed.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN1[] **Standards of Review, Abuse of Discretion**

See Pub. Resources Code, § 21168.5.

Administrative Law > Judicial Review > Reviewability > Questions of Law

Business & Corporate

Compliance > ... > Environmental Law > Assessment & Information
Access > Environmental Impact Statements

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN2[] Reviewability, Questions of Law

A question of law is reviewed de novo. De novo review of legal questions is consistent with the principle that, in California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., cases, the court does not pass upon the correctness of the environmental conclusions in the environmental impact report (EIR), but only upon its sufficiency as an informative document. An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document, and an agency's use of an erroneous legal standard constitutes a failure to proceed in a manner required by law.

Business & Corporate
Compliance > ... > Environmental Law > Assessment & Information
Access > Environmental Impact Statements

HN3[] Environmental & Natural Resources, Environmental Impact Statements

The California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property but on the environment, as stated in Pub. Resources Code, § 21002.1, subd. (b), with "environment" defined for these purposes as the physical conditions which exist within the area which will be affected by a proposed project. Pub. Resources Code, § 21060.5. CEQA does permit a lead agency to determine that mitigation measures necessary to avoid a project's environmental effects are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. Pub. Resources Code, § 21081, subd. (a)(2). However, a lead agency may disclaim responsibility only when the other agency said to have responsibility has exclusive responsibility.

Governments > Courts > Judicial Precedent > Dicta

HN4[] Judicial Precedent, Dicta

Dictum is the statement of a principle not necessary to the decision.

Business & Corporate
Compliance > ... > Environmental Law > Assessment & Information
Access > Environmental Impact Statements

HN5[] Environmental & Natural Resources, Environmental Impact Statements

In mitigating the effects of its projects, a public agency has access to all of its discretionary powers and not just the power to spend appropriations. Pub. Resources Code, § 21004. Those discretionary powers include such actions as adopting changes to proposed projects, imposing conditions on their approval, adopting plans or ordinances to control a broad class of projects, and choosing alternative projects. Cal. Code Regs., tit. 14, § 15002, subd. (h). Moreover, some agencies enjoy some discretion over the use of appropriations and access to non-state funds.

Business & Corporate
Compliance > ... > Environmental Law > Assessment & Information
Access > Environmental Impact Statements

Governments > State & Territorial
Governments > Finance

HN6[] Environmental & Natural Resources, Environmental Impact Statements

The proposition that a state agency may pay mitigation costs only through an appropriation earmarked for that purpose is incorrect. Neither the California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., itself nor any decision suggests that mitigation costs for a project funded by the Legislature cannot appropriately be included in the project's budget and paid with the funds appropriated for the project. Indeed, such a procedure would appear to represent the most natural interpretation of CEQA.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy

Act > General Overview

Governments > State & Territorial
Governments > Finance

HN7[] Natural Resources & Public Lands, National Environmental Policy Act

See Pub. Resources Code, § 21106.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN8[] Environmental & Natural Resources, Environmental Impact Statements

No provision of the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., conditions the duty of a state agency to mitigate its projects' environmental effects on the Legislature's grant of an earmarked appropriation. Mitigation is the rule.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN9[] Environmental & Natural Resources, Environmental Impact Statements

See Pub. Resources Code, § 21002.1, subd. (b).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN10[] Environmental & Natural Resources, Environmental Impact Statements

The California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., requires not the Legislature but the responsible agency to determine whether and how a project's effects can feasibly be mitigated, as provided in Pub. Resources Code, § 21081, subd. (a)(1)-(3); to include mitigation costs in the budget pursuant to Pub. Resources Code, § 21106; and if mitigation is infeasible to decide whether the project should nevertheless proceed based on a statement of overriding considerations. § 21081, subd. (b).

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN11[] Natural Resources & Public Lands, National Environmental Policy Act

The Legislature intended the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

Governments > State & Territorial
Governments > Finance

HN12[] State & Territorial Governments, Finance

See Gov. Code, § 13332.15.

Governments > State & Territorial
Governments > Finance

HN13[] State & Territorial Governments, Finance

The plain meaning of Gov. Code, § 13332.15, would seem to require an official action of the Legislature acting as such, that is, as a body. Consistent with this understanding, courts have assumed the statutory requirement of formal action has been satisfied when the Legislature has deleted an appropriation proposed in a budget bill or when the Legislature has included in the Budget Act language barring a specific use of funds.

Education Law > School Funding > General Overview

HN14[] Education Law, School Funding

See Ed. Code, § 66202.5.

Education Law > School Funding > General

Overview

HN15[] Education Law, School Funding

Ed. Code, § 66202.5, does not say that only appropriated funds may be used for campus expansion. So construed, the statute would contradict Ed. Code, § 90064, which expressly permits the board of trustees to use, in addition to appropriated funds, any other funds provided by the board from any source to pay for capital projects.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN16[] Environmental & Natural Resources, Environmental Impact Statements

The California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN17[] Environmental & Natural Resources, Environmental Impact Statements

When made in accordance with the California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., an agency's decision that the specific benefits a project offers outweigh any environmental effects that cannot feasibly be mitigated, while subject to review for abuse of discretion under Pub. Resources Code, § 21168.5, lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned.

Headnotes/Syllabus

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The superior court denied petitions for a writ of mandate challenging a decision to certify an environmental impact report for a state university campus expansion project. (Superior Court of San Diego County, Nos. GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083768-CU-TT-CTL and 37-2007-00083773-CU-MC-CTL, Thomas P. Nugent, Judge.) The Court of Appeal, Fourth Dist., Div. One, No. D057446, reversed in part and directed the superior court to issue the requested writ of mandate.

The Supreme Court affirmed the decision of the Court of Appeal. The court held that the feasibility of mitigating the project's off-site environmental effects (Pub. Resources Code, §§ 21002.1, subd. (b), 21004, 21060.5, 21081) did not depend on a legislative appropriation for the specific purpose of paying mitigation costs because an agency's duty to request funds (Pub. Resources Code, § 21106) simply means that mitigation costs must be included in the budget. Campus expansion is not conditioned on obtaining appropriated funds (Ed. Code, §§ 66202.5, 67504, subd. (d)(1)). The Legislature did not deny an appropriation (Gov. Code, § 13332.15) because requests for mitigation costs did not appear in the proposed state budget. A finding of infeasibility and a statement of overriding considerations in the environmental impact report, based on the absence of an earmarked appropriation, were erroneous and invalid. (Opinion by Werdegar, J., expressing the unanimous opinion of the court.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1)[] (1)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Affected Area.

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) requires a public agency to mitigate or avoid its projects' significant effects not just **[*946]** on the agency's own property but

on the environment (Pub. Resources Code, § 21002.1, subd. (b)), with "environment" defined for these purposes as the physical conditions which exist within the area which will be affected by a proposed project (Pub. Resources Code, § 21060.5). CEQA does permit a lead agency to determine that mitigation measures necessary to avoid a project's environmental effects are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency (Pub. Resources Code, § 21081, subd. (a)(2)). However, a lead agency may disclaim responsibility only when the other agency said to have responsibility has exclusive responsibility.

CA(2)[] (2)

Courts § 45—Decisions and Orders—Doctrine of Stare Decisis—Obiter Dicta—What Constitutes.

Dictum is the statement of a principle not necessary to the decision.

CA(3)[] (3)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Discretionary Powers.

In mitigating the effects of its projects, a public agency has access to all of its discretionary powers and not just the power to spend appropriations (Pub. Resources Code, § 21004). Those discretionary powers include such actions as adopting changes to proposed projects, imposing conditions on their approval, adopting plans or ordinances to control a broad class of projects, and choosing alternative projects (Cal. Code Regs., tit. 14, § 15002, subd. (h)). Moreover, some agencies enjoy some discretion over the use of appropriations and access to nonstate funds.

CA(4)[] (4)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Funding.

The proposition that a state agency may pay mitigation costs only through an appropriation earmarked for that purpose is incorrect. Neither the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) itself nor any decision suggests that mitigation costs for a project funded by the Legislature cannot appropriately be included in the project's budget and paid with the funds appropriated for the project. Indeed, such a procedure would appear to represent the most natural interpretation of CEQA.

CA(5)[] (5)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Funding.

No provision of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) conditions the duty of a state agency to mitigate its projects' environmental effects on the Legislature's grant of an earmarked appropriation. Mitigation is the rule.

CA(6)[] (6)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Feasibility.

The California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) requires not the Legislature but the responsible agency to determine whether and how a project's effects can feasibly be mitigated (Pub. Resources Code, § 21081, subd. (a)(1)–(3)); to include mitigation costs in the budget (Pub. Resources Code, § 21106); and if mitigation is infeasible, to decide whether the project should nevertheless proceed based on a statement of overriding considerations (Pub. Resources Code, § 21081, subd. (b)).

CA(7)[] (7)

Pollution and Conservation Laws § 1.2—California Environmental Quality Act—Construction—Fullest Possible Protection.

The Legislature intended the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

CA(8)[] **(8)**

State of California § 12—Fiscal Matters—Appropriations—Denial—Official Action.

The plain meaning of *Gov. Code, § 13332.15*, would seem to require an official action of the Legislature acting as such, that is, as a body. Consistent with this understanding, courts have assumed the statutory requirement of formal action has been satisfied when the Legislature has deleted an appropriation proposed in a budget bill or when the Legislature has included in the Budget Act language barring a specific use of funds.

CA(9)[] **(9)**

Universities and Colleges § 3—Funds and Property—Campus Expansion.

Ed. Code, § 66202.5, does not say that only appropriated funds may be used for campus expansion. So construed, the statute would contradict *Ed. Code, § 90064*, which expressly permits the Board of Trustees of the California State University system to use, in addition to appropriated funds, any other funds provided by the board from any source to pay for capital projects.

CA(10)[] **(10)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Funding—Legislative Appropriation.

An assumption that the feasibility of mitigating a project's off-site environmental effects depended on a legislative appropriation for that specific purpose was erroneous. The erroneous assumption invalidated the California State University board's finding of infeasibility because the use of an erroneous legal standard constitutes a failure to proceed in a manner required by law (*Pub. Resources Code, § 21168.5*). The error also invalidated the board's statement of overriding considerations because the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*) does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. For these reasons, the Court of Appeal correctly directed the issuance of a writ of mandate ordering the board to vacate its decision certifying an environmental impact report.

[*Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2015) ch. 22, § 22.04*; *Cal. Forms of Pleading and Practice (2015) ch. 418, Pollution and Environmental Matters, § 418.35*; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 854.]

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Heather Wallace, Erika Frank and Robert Lapsley for The California Chamber of Commerce and The California Business Roundtable as Amici Curiae on behalf of Defendant and Respondent.

Judges: Opinion by Werdegar, J., expressing the unanimous view of the court.

Opinion by: Werdegar

Opinion

[*321] [**885] WERDEGAR, J.**—In this case we consider a challenge under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) to a decision by the Board of Trustees (Board) of the California State University (CSU) certifying an environmental impact report (EIR). The EIR concerns the Board's project to expand the campus of San Diego State University (SDSU) to accommodate more than 10,000 additional students over the next several years—part of a larger program to expand **[****3]** CSU's statewide enrollment capacity by 107,000. The SDSU project will contribute significantly to traffic congestion off campus in the City of San Diego. Although the Board has budgeted substantial state and "non-state" funds to expand its campuses ($ 9.9 billion), the Board has declined to use those funds, or any of CSU's financial resources, to reimburse other public agencies for its self-determined fair share of the statewide cost of mitigating its projects' off-campus environmental effects ($ 15 million). Instead, based on dictum in *City of Marina v. Board of Trustees of California State University (2006) 39 Cal.4th 341 [46 Cal. Rptr. 3d 355, 138 P.3d 692]* (*Marina*), [1] the Board has taken the position that CSU may not lawfully pay to mitigate the off-campus environmental effects of its projects unless the Legislature makes an appropriation for that specific purpose. Anticipating the Legislature might not make an earmarked appropriation for mitigation, given the resources already budgeted for campus expansion, the Board has found that mitigation is infeasible and certified the EIR for SDSU based on a statement of overriding considerations, that is, a determination the project offers benefits that outweigh its unmitigated effects. (See Pub. Resources Code, § 21081, subds. (a)(3) [mitigation infeasible], (b) [overriding benefits]; see also Cal. Code Regs., tit. 14, ***[*950]*** § 15000 et seq. (CEQA Guidelines); **[****4]** *id*., §§ 15091, subd. (a)(3) [findings], 15093 [statement of overriding considerations].)

We granted review to determine whether the Board's EIR complies with CEQA and to reexamine the dictum in *Marina, supra, 39 Cal.4th 341*. We conclude the dictum does not justify the Board's assumption that a state agency may contribute funds for off-site environmental mitigation only through earmarked appropriations, to the exclusion of other available sources of funding. The erroneous assumption invalidates both the Board's finding that mitigation is infeasible and its statement of overriding considerations. Accordingly, we will affirm the Court of Appeal's decision directing the Board to vacate its certification of the EIR.

I. Background

CSU is a public institution of higher education established by the Legislature in **[***322]** 1960 to offer undergraduate, graduate and professional instruction. (Ed. Code, § 66010.4, subd. (b).) Currently the largest four-year public university in the United States, CSU **[****5]** enrolls 447,000 students and employs 45,000 faculty and staff members on 23 campuses throughout the state. SDSU, one of CSU's campuses, enrolls over 33,000 students and employs 3,000 faculty and staff members on a 280-acre campus in the City of San Diego, eight miles from downtown.

Defendant Board is the governing body of CSU (Ed. Code, § 66600) and the lead agency responsible for preparing and certifying the EIR for SDSU's master plan. (See Pub. Resources Code, §§ 21067 [lead agency], **[**886]** 21100, subd. (a) [duties of lead agency]; see also Ed. Code, § 66606 [Board's powers]). Plaintiffs, who challenge the Board's decision to certify the EIR, are the City of San Diego (City); the San Diego Association of Governments (SANDAG), a regional agency with statutory responsibilities that include transportation and transit; and the Metropolitan Transit System (MTS), a public agency that serves San Diego and SDSU with light rail and buses.

In 2003, the Board directed CSU to take the steps necessary to accommodate a projected long-term increase in enrollment of 107,000 students statewide. To support higher enrollment with additional physical facilities, the Board approved a multiyear capital improvement program budgeting $ 5.9 billion in state funds and $ 4 billion **[****6]** in non-state (i.e., nonappropriated) funds. [2] As part of this program, the

[1] "[A] state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist." (***Marina, supra, 39 Cal.4th at p. 367***; see ***id., at p. 372*** (conc. opn. of Chin, J.) ["the discussion is dictum"].)

[2] CSU explains that non-state funds "are provided by mandatory fees, user charges, gifts, and bonds issued by the [Board] or auxiliary organizations. … Non-state funded projects include parking lots and structures, student housing, student unions, health centers, stadiums, food service

Board determined that SDSU should **[*951]** expand to enroll 10,000 more full-time equivalent students by the 2024–2025 academic year. The planned expansion will enlarge SDSU's actual enrollment of full- and part-time students by 11,385, raising total enrollment from 33,441 to 44,826, and also add 1,282 faculty and staff members.

In 2005, the Board prepared an EIR and campus master plan revision (the 2005 EIR) proposing to undertake several construction projects on the SDSU campus. The proposed projects included a housing development for faculty, staff, and graduate students, a research and instructional facility, the expansion of a student residence hall, a new student union building, and a hotel.

In the 2005 EIR, the Board found the proposed projects would contribute significantly to **[****7]** cumulative traffic congestion at several identified locations off campus. The Board declined, however, to contribute its share of the cost of improving the affected roadways and intersections to the other public agencies responsible for making the necessary improvements (the City and California's Department of Transportation (Caltrans)). Any contribution of funds for off-site mitigation, the Board asserted, would amount to a prohibited assessment of state property (cf. *Cal. Const., art. XIII, § 3, subd. (d)*) and an unlawful gift of public funds (cf. *id.*, *art. XVI, § 6*). Based on those assumptions, the Board concluded that SDSU was "not legally responsible for funding or constructing physical road improvements" and that the improvements were instead the responsibility of others. For the same reasons, the Board found that SDSU could not feasibly mitigate its project's traffic impacts and that those impacts would remain significant and unavoidable. Having found mitigation infeasible, the Board on September **[***323]** 21, 2005, certified the 2005 EIR as complete and in accordance with CEQA based on a statement of overriding considerations.

On October 20, 2005, the City challenged the Board's decision by filing a petition for writ of mandate in the **[****8]** San Diego County Superior Court. Among other things, the City challenged the Board's assumption that payments for off-site mitigation would represent unlawful assessments or gifts of public funds. At that time, the Board was taking the same position in another case challenging its refusal to mitigate the off-site environmental impacts of a project to expand CSU-Monterey Bay (CSUMB). In that other case, the Court of Appeal for the Sixth Appellate District had filed an opinion accepting the Board's position, we had granted review, and the case was pending in this court. (*City of Marina v. Board of Trustees of California State University*[*] (Cal.App.).) On July 31, 2006, we reversed the Sixth District's decision. In our opinion (*Marina, supra, 39 Cal.4th 341*), we rejected the **[*952]** Board's arguments against fair-share payments for mitigation and concluded the Board had abused its discretion in certifying the EIR for CSUMB.

In light of our decision in *Marina, supra, 39 Cal.4th 341*, **[**887]** the San Diego Superior Court in the case now before us issued a peremptory writ of mandate on September 1, 2006, directing the Board to vacate its decision certifying the 2005 EIR for SDSU. In its writ, the superior court stated **[****9]** that it "retain[ed] jurisdiction … until [the court] has determined that [the Board] has complied with CEQA and the views expressed by the California Supreme Court in … *Marina* … ."

On June 12, 2007, the Board circulated for public comment a new draft EIR and campus master plan revision for SDSU (2007 DEIR). That document, as subsequently revised, finalized and certified by the Board (the 2007 EIR or final 2007 EIR), is the subject of the instant proceeding.

In the 2007 DEIR, the Board proposed to undertake several large construction projects on 55 acres on and adjacent to the SDSU campus. The proposed projects include (1) Adobe Falls housing, a 348-unit, 33-acre development of townhouses, condominiums and recreational facilities for faculty and staff, to be funded by "an outside development interest"; (2) the Alvarado campus, several buildings totaling 612,000 square feet intended for academic, research and medical use, together with a 552,000-square-foot parking structure, to be funded by parking reserves and a future bond sale supported by parking fees; (3) the Alvarado Hotel, a 120-room, 60,000-square-foot hotel to be funded by "partnership arrangements"; (4) a campus conference **[****10]** center of 70,000 square feet to be

buildings, bookstores, and other facilities … ."

[*] Reporter's Note: Review granted on October 1, 2003, S117816. On July 31, 2006, the judgment of the Court of Appeal, Sixth District, was reversed and the cause was remanded to that court with directions to order the superior court to vacate its writ of mandate and to issue a new writ. For Supreme Court opinion, see 39 Cal.4th 341 [46 Cal. Rptr. 3d 355, 138 P.3d 692].

funded by donors; (5) five new student housing structures totaling 1.4 million square feet to accommodate 3,400 students, replacing two smaller structures, and a related 15,000-square-foot administrative building, to be funded by state revenue bonds; and (6) the renovation and expansion of the student union/Aztec center to include 70,000 square feet of new social and meeting space, recreational facilities, offices, and food and retail services, to be funded by student fees.

In the 2007 DEIR, the Board acknowledged the proposed project would contribute significantly to cumulative traffic congestion off campus in San Diego. The Board predicted the project, in the near term, would significantly impact six intersections, three street segments and one **[***324]** freeway ramp meter, and in the longer term (by 2030), nine more intersections, five more street segments, and four freeway mainline segments. For each affected location, the Board estimated the project's "fair-share contributions" to mitigate increased congestion; those contributions average 12 percent. The Board also **[*953]** identified the specific improvements that would mitigate most of the impacts to below a level **[****11]** of significance. The Board offered no assurance, however, that it would pay SDSU's fair share of the mitigation costs. Instead, the Board made the following statement, citing *Marina, supra, 39 Cal.4th 341*, as authority: "Fair-share mitigation is recommended that would reduce the identified impacts to a level below significant. However, the university's fair-share funding commitment is necessarily conditioned up[on] requesting and obtaining funds from the California Legislature. If the Legislature does not provide funding, or if funding is significantly delayed, all identified significant impacts would remain significant and unavoidable."

In public comments on the 2007 DEIR, the City objected that the Board had misinterpreted *Marina, supra, 39 Cal.4th 341*, and violated CEQA by failing to guarantee the proposed mitigation measures would be implemented. [3] A series of meetings followed in which representatives of the Board, the City and Caltrans discussed SDSU's duty to mitigate off-campus traffic impacts. When negotiations failed, the Board reiterated its position that any mitigation payment by SDSU would be conditioned on a future appropriation and stated it would request $ 6,437,000 from the Legislature for that purpose. In negotiations with Caltrans **[****12]** the Board agreed the project's "fair-share responsibility" for freeway impacts would be $ 890,000 in the near term and $ 9.25 million in the long term (by **[**888]** 2030). But the Board disclaimed any obligation to pay its share. The Board adhered to these positions in the final 2007 EIR, explaining them in the following series of statements setting out the Board's interpretation of *Marina*:

"Under the California Supreme Court's decision in *[Marina, supra], 39 Cal.4th 341*, CSU/SDSU is obligated to request funding from the state Legislature to pay its fair-share of the mitigation costs associated with the identified significant impacts. … Pursuant to that obligation, CSU will, following the normal state budget timelines and process, submit a budget request to the state Legislature and Governor that will include a mitigation dollar amount consistent with CSU's fair-share contribution towards implementation of the necessary roadway improvements within the jurisdiction of local agencies.

"The intent of the California Supreme Court's decision in [*Marina, supra, 39 Cal.4th 341*] is to ensure that significant impacts under CEQA are feasibly mitigated and that localities recover the cost of CSU's impacts. The underlying logic of that decision does not apply to **[****13]** other state agencies, such as **[*954]** [Caltrans], as these other state agencies are funded from the same source as CSU. Instead, CSU/SDSU will support Caltrans in its efforts to obtain the level of funding agreed to by the parties through the annual state budget process, **[***325]** and will look to the [City] and [SANDAG] to join in that support.

"However," the Board continued, "because CSU cannot guarantee that its request to the Governor and the Legislature for the necessary mitigation funding will be approved, or that any funding request submitted by Caltrans will be approved, or that the funding will be granted in the amount requested, or that the public agencies will fund the mitigation improvements that are within their responsibility and jurisdiction, the identified significant impacts are determined to be significant and unavoidable." For the same reasons, the Board found that "there are no feasible mitigation measures that would reduce the identified significant impacts to a level below significant. Therefore, these impacts must be

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[3] (See *Pub. Resources Code, § 21081.6, subd. (b)* ["A public agency shall **[****14]** provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures."]; see *CEQA Guidelines, § 15126.4, subd. (a)(2)* [to the same effect].)

considered unavoidably significant even after implementation of all feasible transportation/circulation and parking mitigation measures."

In August 2007, before certifying the 2007 EIR, the Chancellor of CSU submitted to the Department of Finance a "2008/09 Capital Outlay Budget Change Proposal" requesting the Legislature create a "systemwide fund for the mitigation of off-campus impacts related to growth and development on CSU campuses." Noting that six CSU campuses (Bakersfield, Fresno, Long Beach, Monterey Bay, San Diego and San Francisco) were currently revising their master plans, the chancellor requested a total of $ 15 million to mitigate off-campus environmental effects at all locations, including $ 10.5 million for SDSU. The Board's request did not appear in the Governor's proposed budget, the May revision or the 2008 Budget Act. The Board repeated the request in each of the next two years, apparently without any different result.

On November 13 and 14, 2007, the Board conducted a public meeting to certify the 2007 EIR. Representatives of the City, SANDAG, MTS and Caltrans reiterated previously expressed concerns **[****15]** about the Board's approach to mitigation and its interpretation of *Marina, supra, 39 Cal.4th 341*. At the meeting's conclusion, the Board approved a resolution adopting the EIR's findings, certifying the EIR "as complete and in compliance with CEQA," and approving the campus master plan revision for SDSU.

The Board's resolution, in summary, finds the project will have significant impacts on traffic; that the impacts cannot feasibly be mitigated given the Board's interpretation of *Marina, supra, 39 Cal.4th 341*; and that the impacts are unavoidable but nevertheless acceptable because the project offers overriding benefits that justify proceeding despite the unmitigated effects. The Board's statement of overriding considerations includes a wide-ranging list of **[*955]** the anticipated benefits of campus expansion, which the Board summarizes as "satisfying statewide **[**889]** educational demand, improving educational opportunities for underrepresented populations, creating jobs, and fueling economic growth."

On December 14, 2007, plaintiffs City, SANDAG and MTS filed petitions for writ of mandate in the San Diego Superior Court challenging the Board's decision to certify the 2007 EIR. After consolidating the petitions, the court issued a statement of decision and **[****16]** judgment rejecting all of plaintiffs' claims, denying the petitions for writ of mandate, and discharging the 2006 peremptory writ.

Plaintiffs appealed the superior court's decision. The Court of Appeal reversed in part, affirmed in part, and directed the superior court to issue a writ of mandate ordering the Board to vacate its decision **[***326]** certifying the 2007 EIR. Among other things, the Court of Appeal held the Board had erred in relying on *Marina, supra, 39 Cal.4th 341*, to find off-site mitigation infeasible and, based on that finding, to conclude that overriding considerations justified proceeding with the master plan despite the unmitigated environmental effects. [4] We granted the Board's petition for review. [5]

II. Discussion

The main issue before us is a question of law: Does the dictum in *Marina, supra, 39 Cal.4th 341*, support the Board's assumption in the 2007 EIR that CSU may not contribute its fair share to mitigate the off-campus environmental effects of campus expansion unless the Legislature makes an appropriation for that specific purpose? The assumption critically underlies both the Board's finding that mitigation is infeasible and its statement of overriding considerations. We conclude the answer is no: The *Marina* dictum does not justify the assumption. The Board's other contentions also lack merit.
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[4] The Court of Appeal also held the Board (1) had not adequately investigated and addressed the project's impacts on public transit, (2) had found, without the support of substantial evidence, that the project would have no impact on transit, and (3) had improperly deferred mitigation of impacts due to vehicular traffic. We excluded these additional issues from review on our own motion. (See *Cal. Rules of Court, rule 8.516(a)(1)*.)

[5] The Board's interpretation of *Marina, supra, 39 Cal.4th 341*, potentially affects many other CEQA proceedings given CSU's plan to expand campuses **[****17]** across the state. We have granted and held a similar case involving a challenge to the Board's EIR for a project to expand CSU-East Bay. (*City of Hayward v. Trustees of California State University*, review granted Oct. 17, 2012, S203939.) Also, the Legislative Analyst's Office notes the Board has relied on its interpretation of *Marina* in two other instances to make fair-share payments for off-site mitigation contingent upon legislative funding. (Legis. Analyst's Off., Analysis of the 2008–2009 Budget Bill (Feb. 20, 2008) Education, p. E-173.)

A. *The standard of review.* ***[****18]***

CEQA sets out the applicable standard of review: ***HN1***[] "In any action or proceeding … to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Pub. Resources Code, § 21168.5*.)

The Board's finding that mitigation is not feasible without an earmarked appropriation depends for its validity on ***HN2***[] a "question of law—a type of question we review de novo." (*Marina, supra, 39 Cal.4th at p. 355*.) "De novo review of legal questions is … consistent with the principle that, in CEQA cases, '"[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an 'informative document.'"'" (*Id. at p. 356*, quoting *Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392 [253 Cal.Rptr. 426, 764 P.2d 278]*.) "An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document" **[**890]** (*Marina, at p. 356*), and "an **[***327]** agency's 'use of an erroneous legal standard constitutes a failure **[****19]** to proceed in a manner required by law …'" (*id. at p. 355*, quoting *No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 88 [118 Cal. Rptr. 34, 529 P.2d 66]*).

B. *The* Marina *decision.*

As noted, our decision in *Marina, supra, 39 Cal.4th 341*, addressed a challenge to the Board's EIR for an earlier campus expansion project. In that EIR, the Board had found that to expand CSUMB would significantly affect drainage, water supply, traffic, wastewater management and fire protection throughout Fort Ord, the former military base on which the campus was located, as well as vehicular traffic in the neighboring municipalities of Seaside and the City of Marina. (*Id. at pp. 349–350*.) Nevertheless, the Board refused to share the cost of mitigating these impacts with the public entities responsible for undertaking the necessary infrastructure improvements. Any payment for that purpose, the Board asserted in its EIR, would amount to an unlawful assessment of CSU or a gift of public funds. (*Id. at pp. 352–353*.) Based on these legal assumptions, the Board found that mitigation was infeasible and that overriding considerations justified certifying the EIR and approving the master plan despite the unmitigated effects. (*Id. at pp. 351–354*.)
[*957]

CA(1)[] **(1)** We concluded the Board had abused its discretion in certifying the EIR because the finding of infeasibility and statement of overriding considerations **[****20]** depended on erroneous legal assumptions. (*Marina, supra, 39 Cal.4th at pp. 368–369*.) Prominent among those assumptions was that the campus's geographical boundaries defined the extent of the Board's duty to mitigate. To the contrary, as we explained, ***HN3***[] "CEQA requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property but '*on the environment*' (*Pub. Resources Code, § 21002.1, subd. (b)*, italics added), with 'environment' defined for these purposes as 'the physical conditions which exist *within the area which will be affected by a proposed project*' (*id.*, *§ 21060.5*, italics added)." (*Marina, at p. 360*.)

The same erroneous assumption had also led the Board to find that off-site mitigation was the responsibility of other agencies. (*Marina, 39 Cal.4th at p. 366*.) CEQA does permit a lead agency to determine that mitigation measures necessary to avoid a project's environmental effects "are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency." (*Pub. Resources Code, § 21081, subd. (a)(2)*.) However, as we explained, the Board shared with other agencies the responsibility for mitigating CSUMB's effects on regional infrastructure, and a lead agency may disclaim responsibility "only when the other agency said to have responsibility **[****21]** has *exclusive* responsibility." (*Marina, at p. 366*, quoting *CEQA Guidelines, § 15091, subd. (c)* ["'[T]he finding in *subdivision (a)(2)* shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.'"].)

Having explained that the Board's duty to mitigate extended beyond the boundaries of the campus, we dismissed as "beside the point" the Board's argument that **[***328]** it "lack[ed] the power to construct infrastructure improvements away from campus on land [the Board did] not own and control … ." (*Marina, supra, 39 Cal.4th at p. 367*.) "Certainly," we acknowledged, "the [Board] may not enter the land of others to widen roads and lay sewer pipe; CEQA gives the [Board] no such power. (See *Pub. Resources Code, § 21004* ['[i]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only

those express or implied powers provided by law other than this division.'].) [But] CEQA does not," we continued, "limit a public agency's obligation to mitigate or avoid significant environmental **[**891]** effects to effects occurring on the agency's own property. (See Pub. Resources Code, §§ 21002.1, subd. (b), 21060.5.) CEQA also provides that '[a]ll state agencies … shall request in their budgets the funds necessary to protect the **[****22]** environment in relation to problems caused by their activities.' (*Id.*, § 21106.) Thus," we concluded, "if the [Board] cannot adequately mitigate or avoid CSUMB's off-campus environmental effects by performing **[*958]** acts on the campus, then to pay a third party … to perform the necessary acts off campus may well represent a feasible alternative." (*Marina, at p. 367*.)

C. *The* Marina *dictum.*

The discussion just quoted led to the dictum we granted review to reexamine. That dictum appears in the following paragraph, which imagines possible limitations of our holding that the Board shared with other agencies the responsibility to mitigate the off-site environmental effects of its project. The dictum on which the Board relies appears in the sentence set out below in italics: "To be clear, we do not hold that the duty of a public agency to mitigate or avoid significant environmental effects (Pub. Resources Code, § 21002.1, subd. (b)), combined with the duty to ask the Legislature for money to do so (*id.*, § 21106),[6] will always give a public agency that is undertaking a project with environmental effects shared responsibility for mitigation measures another agency must implement. Some mitigation measures cannot be purchased, such as permits that another agency **[****23]** has the sole discretion to grant or refuse. *Moreover, a state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist*. For the same reason, however, for the [Board] to disclaim responsibility for making such payments before [it has] complied with [its] statutory obligation to ask the Legislature for the necessary funds is premature, at the very least. The superior court found no evidence the [Board] had asked the Legislature for the funds. In [its] brief to this court, the [Board] acknowledge[s] [it] did not budget for payments [it] assumed would constitute invalid assessments … . That assumption, as we have explained, is invalid." (*Marina, supra, 39 Cal.4th at p. 367*, italics added.)

CA(2)[↑] **(2)** The italicized sentence embodied dictum rather than a principle necessary to our decision that the Board had erroneously disclaimed responsibility for mitigation. (See ***HN4***[↑] *Manufacturers Life Ins. Co. v. Superior Court (1995) 10 Cal.4th 257, 287 [41 Cal. Rptr. 2d 220, 895 P.2d 56]* **[***329]** ["'Dictum is the "statement of a principle **[****24]** not necessary to the decision."'"]; see also *Marina, supra, 39 Cal.4th at p. 372* (conc. opn. of Chin, J.) ["the discussion is dictum"].) Indeed, our opinion unmistakably identifies the sentence as dictum by describing the argument to which it responded as "premature, at the very least." (*Marina, at p. 367*.) We called the argument "*premature*" **[*959]** because the Board had not yet asked the Legislature for funding, and "premature, *at the very least*," to indicate the argument might lack merit even if properly presented.

1. *The* Marina *dictum does not justify the Board's position.*

In any event, the *Marina* dictum does not justify the Board's position that CSU may contribute funds for off-campus environmental mitigation only through an appropriation designated for that specific purpose, i.e., an earmarked appropriation. [7] Several reasons lead us to this conclusion:

[892]** ***CA(3)***[↑] **(3)** First, to read the *Marina* dictum as saying anything about earmarked appropriations is strained. No such argument was made by the Board or

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[6] "'All state agencies, boards, and commissions shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.' (Pub. Resources Code, § 21106.)" (***Marina, supra, 39 Cal.4th at p. 367, fn. 16***.)

[7] We are aware of no evidence that any other state agency interprets ***Marina, supra, 39 Cal.4th 341***, in the same way as the Board. Significantly, **[****29]** the Legislative Analyst's Office has noted that the University of California (UC) and the California Community Colleges (CCC) do not request earmarked appropriations for off-campus environmental mitigation. Instead, UC "directs funding from within its [own] budget (including nonstate funds) to compensate local agencies for off-campus infrastructure improvements," and CCC "views local college districts as responsible for negotiating with and funding fair-share payments to local governments." (Legis. Analyst's Off., Analysis of the 2008–2009 Budget Bill, *supra*, Education, p. E-175.) In the same document, the Legislative Analyst's Office also noted that, "the *Marina* decision … does not explicitly state that CSU is no longer responsible to mitigate off-campus impacts if the Legislature denies funding." (*Id.*, at p. E-173.)

addressed in the opinion. Neither does the *Marina* dictum offer useful guidance about a public agency's power to mitigate the environmental effects of its projects. The dictum's most important clause—"if the Legislature does not appropriate the **[****25]** money, the power does not exist" (*Marina, supra, 39 Cal.4th at p. 367*)—is simply an overstatement. ***HN5***[↑] In mitigating the effects of its projects, a public agency has access to all of its discretionary powers and not just the power to spend appropriations. (*Pub. Resources Code, § 21004*.) [8] Those discretionary powers include such actions as adopting changes to proposed projects, imposing conditions on their approval, adopting plans or ordinances to control a broad class of projects, and choosing alternative projects. (See *CEQA Guidelines, § 15002, subd. (h)*.) Moreover, some agencies such as CSU enjoy some discretion over the use of appropriations (see, e.g., *Ed. Code, §§ 89770*, *89771*, *89773*, *90083* [CSU may use part of general support appropriation for capital projects]) and access to non-state funds (see *ante*, at p. ___ & fn. 2). The Board, in its own words, "has never claimed that it lacks *all* discretion to prioritize the use of its non-state funds." **[*960]**

[*330]** ***CA(4)***[↑] **(4)** Second, ***HN6***[↑] the proposition that a state agency may pay mitigation costs only through an appropriation earmarked for that purpose is incorrect. Neither CEQA itself, *Marina, supra, 39 Cal.4th 341*, nor any other decision suggests that mitigation costs for a project funded by the Legislature cannot appropriately be included in the project's budget and paid with the funds appropriated for the **[****26]** project. Indeed, such a procedure would appear to represent the most natural interpretation of CEQA, which directs that ***HN7***[↑] "[a]ll state agencies … shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities." (*Pub. Resources Code, § 21106*; cf. *County of San Diego v. Grossmont-Cuyamaca Community College Dist. (2006) 141 Cal.App.4th 86, 101–105 [45 Cal. Rptr. 3d 674]* [district incorrectly found in EIR that funds appropriated for construction project could not feasibly be used to mitigate project's off-site traffic impacts].)

Furthermore, all but one of the new physical facilities proposed in the 2007 EIR are to be financed with nonappropriated funds. These facilities include the proposed Adobe Falls housing, the Alvarado campus, the Alvarado Hotel, the campus conference center and the student union expansion. (See *ante*, at p. 952.) The Board's power to participate in such projects logically embraces the power to ensure that mitigation costs attributable to those projects are included in the projects' budgets. (Cf. *Ed. Code, §§ 90064* [Board "may use for the payment of the costs of acquisition, construction or completion of any project any funds made available to the board by the State of California or any other funds provided by the board from any source"], *66606* [Board has "full power **[****27]** and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with" CSU].)

CA(5)[↑] **(5)** Third, ***HN8***[↑] no provision of CEQA conditions the duty of a state agency to mitigate its projects' environmental effects on the Legislature's grant of an earmarked appropriation. **[**893]** Mitigation is the rule: ***HN9***[↑] "Each public agency shall mitigate or avoid the significant effects on the environment **[***331]** of projects that it carries out or approves whenever it is feasible to do so." (*Pub. Resources Code, § 21002.1, subd. (b)*.) The Legislature has expressly subjected the Board's decisions concerning campus master plans to the requirements of CEQA (*Pub. Resources Code, § 21080.09, subd. (b)*), including the requirement of mitigation (*id.*, *§ 21002.1, subd. (b)*). When the Legislature has wanted to exempt the Board from those requirements, it has done so explicitly. (See *id.*, *§ 21080.9* [concerning adoption by CSU and other agencies of long-range land use plans subject to California Coastal Act of 1976 (*Pub. Resources Code, § 30000 et seq.*)].) No such exception can reasonably be inferred from the statute the *Marina* dictum purported to **[*961]** interpret (*Pub. Resources Code, § 21106*; see *Marina, 39 Cal.4th at p. 367*), which simply directs state agencies to include mitigation costs in their budgets.

Fourth and finally, the Board's interpretation of the *Marina* dictum **[****28]** is mistaken because it depends on a legally unsupportable distinction between environmental impacts occurring on the project site and those occurring off site. CEQA draws no such distinction for purposes of mitigation. Instead, CEQA defines the "environment" as "the physical conditions which exist

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[8] "In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division [(CEQA)]. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied **[****30]** constraints or limitations that may be provided by law." (*Pub. Resources Code, § 21004*.)

within the area which will be affected by a proposed project" (Pub. Resources Code, § 21060.5, italics added) and mandates that "[e]ach public agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries out or approves whenever it is feasible to do so" (id., § 21002.1, subd. (b), italics added). Indeed, this point represents one of *Marina*'s main holdings. (See *Marina, supra, 39 Cal.4th at pp. 359–360, 367*.) In the 2007 EIR, the Board commits to undertake a wide variety of mitigation measures on the SDSU campus (e.g., constructing noise barriers, preserving on-site native plant habitats, creating wetlands, and incorporating flow control measures to prevent erosion). If these on-site mitigation measures can be properly funded through the project budget without an earmarked appropriation, then so too can off-site mitigation measures.

2. *The Board's proposed rule entails unreasonable consequences.*

Unreasonable consequences would follow from the Board's proposed rule that fair-share payments for off-site mitigation may be funded only with an appropriation earmarked for that purpose, and that without such an appropriation mitigation is infeasible.

CA(6)[↑] **(6)** First, such a holding would logically apply to all state agencies, thus in effect forcing the Legislature to sit as a standing environmental review board to decide on a case-by-case basis whether state agencies' projects will proceed despite unmitigated off-site environmental effects. Yet CEQA has never been applied in this manner, and nothing in its language or history suggests it should be so applied. HN10[↑] CEQA requires not the Legislature but the responsible agency to determine whether and how a project's effects can feasibly be mitigated (Pub. Resources Code, § 21081, subd. (a)(1)–(3)), to include mitigation costs in the budget (*id.*, § 21106), and if mitigation is infeasible, to decide whether the project should nevertheless proceed based on a statement of overriding considerations (*id.*, § 21081, subd. (b)). The Board suggests we should treat CSU differently from other agencies in this **[****31]** respect because CSU has different missions and funding directives than other agencies. But the Board has identified no statute or regulation that modifies **[*962]** the requirements of CEQA for projects undertaken by CSU. Rather, the Legislature has declared that the whole of CEQA applies to the Board's decision to approve the long-range development plan for a campus. (*Pub. Resources Code, § 21080.09, subd. (b)*.)

Second, under the rule the Board proposes, if the Legislature did not make an earmarked appropriation for mitigating the off-site effects of a particular state project, but the responsible state agency nevertheless decided to proceed without mitigation, the cost of addressing that project's contribution to cumulative impacts on local infrastructure would fall upon local and regional governmental agencies. (Cf. *Marina, supra, 39 Cal.4th at pp. 349–350*.) Such a rule would impose a **[**894]** financial burden on local and regional agencies, which may not recover fees to mitigate the environmental impacts of state projects from other developers. This is because mitigation fees imposed on a project must be reasonably related and roughly proportional to that project's impacts. (See Gov. Code, § 66001, subds. (a)(3)–(4), (b) & (g) [the Mitigation Fee Act (Gov. Code, § 66010 et seq.)]; Dolan v. City of Tigard (1994) 512 U.S. 374, 391 [129 L. Ed. 2d 304, 114 S. Ct. 2309] [5th Amend. requires "'rough proportionality'"]; *Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 866–867 [50 Cal. Rptr. 2d 242, 911 P.2d 429]* [construing the Mitigation **[****32]** Fee Act in light of *Dolan*]; CEQA Guidelines, §§ 15041, subd. (a) [incorporating *Dolan* standard], 15126.4, subd. (a)(4)(B) [incorporating *Dolan* and *Ehrlich* standards].)

[*332]** Third, under the Board's proposed rule, off-site mitigation would likely be found infeasible for many, if not all, state projects that receive non-state funding, and more such projects would proceed without mitigation pursuant to statements of overriding considerations. Because a state agency's power to participate in such projects [9] logically entails the power to ensure that mitigation costs are included in the projects' budgets, state agencies cannot necessarily expect the Legislature to appropriate state funds to mitigate such projects' environmental effects. In any event, a decision by this court adopting the Board's proposed rule could not compel the Legislature to make any such appropriation. (See *Mandel v. Myers (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]* [separation of powers generally prohibits a court from directly ordering the Legislature to enact a specific appropriation].)

CA(7)[↑] **(7)** Taken together, the consequences of adopting **[****33]** the Board's proposed rule that off-site mitigation may be funded only through appropriations

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[9] Here, for example, the proposed Adobe Falls housing, Alvarado campus, Alvarado Hotel, and campus conference center. (See *ante*, at p. 953.)

for that specific purpose would substantially impair the fundamental statutory directive that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves **[*963]** whenever it is feasible to do so." (*Pub. Resources Code, § 21002.1, subd. (b)*.) To adopt the proposed rule would also represent a sharp, unwarranted departure from prior decisions recognizing ***HN11***[⬆] "the Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (*Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259 [104 Cal. Rptr. 761, 502 P.2d 1049]*; see *Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 112 [65 Cal. Rptr. 2d 580, 939 P.2d 1280]* [same]). We thus decline to adopt it.

3. *The Board's new arguments.*

In support of its finding that off-site mitigation may be funded only through an appropriation for that specific purpose, the Board offers three new arguments not presented below. None of these arguments has merit.

a. *Education Code section 67504.*

First, the Board argues the Legislature codified the Board's understanding of *Marina, supra, 39 Cal.4th 341*, in a 2009 amendment to *Education Code section 67504*. The new provision, which does not amend CEQA, was part of a comprehensive amendment to the Education Code intended to "refine higher education reporting **[****34]** requirements to provide for more effective, manageable, and transparent reporting by the higher education segments." (Stats. 2009, ch. 386, § 2 [uncodified provision].) The specific provision applicable to CSU refers to *Marina* only as the occasion for expressing "the intent of the Legislature that [CSU] take steps to reach agreements with local **[**895]** public agencies **[***333]** regarding the mitigation of off-campus impacts related to campus growth and development." (*Ed. Code, § 67504, subd. (d)(1)*.) The statute refers to the *Marina* decision, and not to its dictum or the Board's interpretation of that dictum, and indicates no limitation on the Board's duty to mitigate off-site impacts. Indeed, the statute requires CSU to "take steps to reach agreements with local public agencies regarding the mitigation of off-campus impacts related to campus growth and development" (*Ed. Code, § 67504, subd. (d)(1)*) and to report on "*payments made by the campus for the mitigation of off-campus impacts*" (*id., subd. (d)(2)*, italics added), thereby suggesting the Legislature assumed the Board would in fact make such payments. The statute's legislative history mentions *Marina* only in setting out the text of the proposed statutory language and contains nothing to suggest the Legislature **[****35]** intended to incorporate the Board's view of that case.

b. *Government Code section 13332.15.*

CA(8)[⬆] **(8)** Next, the Board contends the Legislature's failure to grant its request for an earmarked appropriation to mitigate off-site environmental effects has **[*964]** the effect of prohibiting CSU from spending any other public funds for that purpose, even funds generally appropriated for campus expansion. The Board relies on *Government Code section 13332.15*, which provides that ***HN12***[⬆] "[n]o appropriation may be combined or used in any manner … to achieve any purpose which has been denied by any formal action of the Legislature." Neither the judiciary nor the Legislature has defined "formal action" (*ibid.*) in this context. At a minimum, however, ***HN13***[⬆] the plain meaning of the statutory language would seem to require an official action of the Legislature acting *as such*, that is, as a body. [10]

Consistent with this understanding, courts have assumed the statutory requirement of formal action has been satisfied when the Legislature has deleted an appropriation proposed in a budget bill (e.g., *County of Sacramento v. Loeb (1984) 160 Cal. App. 3d 446, 459 [206 Cal. Rptr. 626]* [ultimately holding *Gov. Code, § 13332.15* did not apply retroactively]) or when the Legislature has included in the budget act language barring a specific use of funds (e.g., *Tirapelle v. Davis (1993) 20 Cal.App.4th 1317, 1324 [26 Cal. Rptr. 2d 666]* [Budget Act of 1991's direction that funding reductions be applied to employee compensation implicitly barred agencies from using funds allotted for other purposes to compensate employees]).

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[10] In ***Mandel v. Myers, supra, 29 Cal.3d 531, 545–546***, we declined to decide whether a legislative *committee's* deletion of a proposed appropriation from a budget bill amounted to "formal action" within the meaning of a provision (Stats. 1978, ch. 359, § 15, p. 1006 [1978–1979 Budget Act]) similar to, but predating, *Government Code section 13332.15* (added by Stats. 1983, ch. 323, § 44, pp. 965, 970). We did not reach the issue because we decided that language in the act barring the State Controller **[****36]** from paying a judgment against the Department of Health Services out of funds appropriated from that agency's operating expenses violated the separation of powers (*Cal. Const., art. III, § 3*) by impermissibly readjudicating the merits of a final judgment.

Here, in contrast, the Board has not shown the Legislature took any action, let alone a formal one acting as a body, on the Board's request during the 2008–2009 budget process to create a fund to mitigate the off-site environmental effects of campus expansion. The Legislature had no occasion to act on the request because, as noted, the Board's request did not appear in the Governor's proposed budget, the May revision or the 2008 Budget **[****37]** Act. The Board does not assert that its similar requests in each of the following two years produced any different result.

c. *Education Code section 66202.5*.

CA(9)[↑] **(9)** In its final new argument on this point, the Board contends the Legislature in *Education Code section 66202.5* has signaled its intent that CSU's "enrollment expansion," including off-campus environmental **[***334]** mitigation related to expansion, is to be funded only through "Budget Act appropriations." To the contrary, the cited statute as relevant here provides only **[*965]** that ***HN14***[↑] "[t]he State of California reaffirms its historic commitment to ensure adequate resources to support enrollment growth, within the systemwide academic and individual campus plans to accommodate eligible California freshmen applicants and eligible California Community College transfer students … ." (*Ibid.*) ***HN15***[↑] The statute does not say that only appropriated funds may be used for campus expansion. So construed, the statute would contradict *Education Code section 90064*, which expressly permits the Board to use, in addition to appropriated funds, "any other funds provided by the board from any **[**896]** source" to pay for capital projects. So construed, *section 66202.5* would also be very difficult to reconcile with the Board's decision to use nonappropriated funds for five of the six construction **[****38]** projects proposed in the 2007 EIR. (See *ante*, at p. 952.)

Not conceding the point, the Board argues that "when the Legislature intends CSU to use non-state funding or a mixture of state and non-state sources to accomplish statutory objectives, the Legislature expressly states that intention." In support, the Board cites statutes encouraging the Board to seek additional sources of revenue to ensure equal athletic opportunities for male and female students (*Ed. Code, § 66016*), and to fund programs for disabled students (*id.*, *§ 67310, subd. (e)*). But nothing in those statutes purports to limit *Education Code section 90064*, which expressly authorizes the Board to use nonappropriated funds for capital projects.

CA(10)[↑] **(10)** In conclusion, we reject the Board's assumption that the feasibility of mitigating its project's off-site environmental effects depends on a legislative appropriation for that specific purpose. The erroneous assumption invalidates the Board's finding of infeasibility because the use of an erroneous legal standard constitutes a failure to proceed in a manner required by law. (See *Marina, supra, 39 Cal.4th at p. 355*; *Pub. Resources Code, § 21168.5*.) The error also invalidates the Board's statement of overriding considerations, because ***HN16***[↑] "CEQA does not authorize an agency to proceed with a project that will have **[****39]** significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible." (*Marina, at pp. 368–369*.) For these reasons, the Court of Appeal correctly directed the issuance of a writ of mandate ordering the Board to vacate its decision certifying the 2007 EIR.

D. *Further Proceedings.*

The Court of Appeal, after rejecting the Board's interpretation of *Marina, supra, 39 Cal.4th 341*, and ordering the Board to vacate its certification of the 2007 EIR, offered the following remarks as guidance for further proceedings: "The availability of potential sources of funding other than the Legislature for **[*966]** offsite mitigation measures should have been addressed in the DEIR and [Final EIR] and all of those potential sources should not be deemed 'infeasible' sources for CSU's 'fair-share' funding of offsite mitigation measures without a comprehensive discussion of those sources and compelling reasons showing those sources cannot, as a matter of law, be used to pay for mitigation of the significant offsite environmental effects of the Project."

In light of the Court of Appeal's remarks, the Board asks us **[****40]** to decide **[***335]** whether particular sources of funding may legally be used for off-site mitigation. No such question is properly before us. [11]

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[11] We reiterate, however, that the Board's power to undertake campus expansion projects, whether paid by state or non-state funds, logically embraces the power to ensure that mitigation costs attributable to those projects are included in the projects' budgets. We also observe that recently enacted *Education Code sections 89770*, *89771*, *89773* and *90083* (Stats. 2014, ch. 34, §§ 24–25), added by Senate Bill No. 860 (2013–2014 Reg. Sess.) expressly permit the Board to use up to 12 percent of CSU's annual general support appropriation to

This is because the Board, in the 2007 EIR, went no further in considering the feasibility of fair-share mitigation payments than to assume incorrectly, based on the dictum in *Marina, supra, 39 Cal.4th 341*, that such payments would require an appropriation for that specific purpose. Our decision rejecting the Board's interpretation of *Marina* will preclude the Board from once again finding mitigation infeasible on the same basis. Furthermore, a commitment by the Board to pay SDSU's fair share of off-site mitigation costs would **[**897]** not necessarily require any discussion of funding sources.

Arguing more broadly, the Board contends that "the notion of readily available 'alternative funding' is a fallacy" and that to reallocate funds for off-site mitigation could only result in the underfunding of CSU's core educational function. "The EIR approval process," the Board continues, "should not be used to compel CSU to demonstrate … that its budget has adequately balanced competing educational and environmental demands. There is simply no objective legal standard by which to adjudicate whether CSU's revenues would be better spent on more classrooms or more traffic lights." These arguments misconceive the Board's responsibilities under CEQA. As we explained in *Marina, supra, 39 Cal.4th 341*, "while education may be CSU's core function, to avoid or mitigate the environmental effects of its projects is also one of CSU's functions. This is the plain import of CEQA, in which the Legislature has commanded that '[e]*ach public agency* shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves **[****42]** whenever it is feasible to do so.'" (*Marina, at p. 360*.) **[*967]**

We expect the Board, in any new EIR, will proceed in accordance with CEQA's standards and procedures, including its provisions for public comment, and make all required findings in good faith and on the basis of substantial evidence. ***HN17***[↑] When made in accordance with CEQA, "an agency's decision that the specific benefits a project offers outweigh any environmental effects that cannot feasibly be mitigated, while subject to review for abuse of discretion (*Pub. Resources Code, § 21168.5*), lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned." (*Marina, supra, 39 Cal.4th at p. 368*.) However, "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (*id.*, *§ 21081, subd. (b)*), would tend to displace the fundamental obligation of ' **[***336]** [e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever **[****43]** it is feasible to do so' (*id.*, *§ 21002.1, subd. (b)*)." (*Marina, at pp. 368–369*.)

III. Conclusion

The judgment of the Court of Appeal is affirmed and remanded for further proceedings consistent with this opinion.

Cantil-Sakauye, C. J., Chin, J., Corrigan, J., Liu, J., Cuéllar, J., and Kruger, J., concurred.

End of Document

pay for capital expenditures **[****41]** and capital outlay projects, including campus expansion. (Cf. *Ed. Code, §§ 90061*, *90064* [Board's powers over construction projects]; *id.*, *§§ 89750*, *89753*, *89754* [Board's control over appropriations generally].)

City of San Diego v. Board of Trustees of California State University

Court of Appeal of California, Fourth Appellate District, Division One

December 13, 2011, Filed

D057446

Reporter
201 Cal. App. 4th 1134 *; 135 Cal. Rptr. 3d 495 **; 2011 Cal. App. LEXIS 1562 ***; 42 ELR 20359

CITY OF SAN DIEGO et al., Plaintiffs and Appellants, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Defendant and Respondent.

Notice: NOT CITABLE—SUPERSEDED BY GRANT OF REVIEW

Subsequent History: Time for Granting or Denying Review Extended *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 2217 (Cal., Mar. 15, 2012)*

Review granted, Depublished by *San Diego. City of v. Board of Trustees of the California State University, 140 Cal. Rptr. 3d 112, 274 P.3d 1110, 2012 Cal. LEXIS 3658 (Cal., 2012)*

Application granted by *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 4582 (Cal., May 2, 2012)*

Application granted by *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 6849 (Cal., July 6, 2012)*

Application granted by *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 7311 (Cal., July 11, 2012)*

Application granted by *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 9803 (Cal., Sept. 25, 2012)*

Application granted by *San Diego, City of v. Trustees of the California State University, 2012 Cal. LEXIS 10084 (Cal., Oct. 31, 2012)*

Application granted by *San Diego, County of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 12071 (Cal., Dec. 17, 2012)*

Application granted by *San Diego, City of v. Board of Trustees of the California State University, 2012 Cal. LEXIS 11846 (Cal., Dec. 19, 2012)*

Request denied by *City of San Diego v. Board of Trustees of the California State University, 2015 Cal. LEXIS 3690 (Cal., May 12, 2015)*

Request granted *San Diego v. Bd. of Trs. of the Cal. State Univ., 2015 Cal. LEXIS 6594 (Cal., May 15, 2015)*

Affirmed by, Remanded by, Superseded by *City of San Diego v. Board of Trustees of California State University, 61 Cal. 4th 945, 190 Cal. Rptr. 3d 319, 352 P.3d 883, 2015 Cal. LEXIS 5291 (2015)*

Prior History: [*1]** Appeal from a judgment of the Superior Court of San Diego County, Nos. GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083773-CU-MC-CTL & 37-2007-00083768-CU-TT-CTL, Thomas P. Nugent, Judge.

City of Marina v. Board of Trustees of California State University, 39 Cal. 4th 341, 46 Cal. Rptr. 3d 355, 138 P.3d 692, 2006 Cal. LEXIS 9286 (2006)

Disposition: Affirmed in part, reversed in part and remanded with directions.

Core Terms

mitigation, funding, trolley, offsite, mitigation measures, effects, transit, significant effect, public agency, agency's, impacts, environmental effect, transit system, trips, trial court, campus, traffic, calculated, feasible, significant environmental effect, commuter, fair-share, approving, comments, resident, Guidelines, documents, projects, station, infeasible

Case Summary

Procedural Posture

Plaintiffs, a city and others, appealed a judgment from the Superior Court of San Diego County (California), which denied their petitions for writs of mandate challenging defendant state university trustees' certification of a final environmental impact report (FEIR) and approval of a project.

Overview

Based in part on a finding that paying the city and others to mitigate significant off-site traffic impacts was infeasible, the FEIR contained a statement of overriding considerations. The court found invalid both the finding and the statement of overriding considerations because the duty to mitigate where feasible and enforceable under *Pub. Resources Code, §§ 21002*, *21002.1, subd. (b)*, *21060.5*, *21081, subd. (b)*, *§ 21081.6, subd. (b)*, did not require a specific appropriation pursuant to *Pub. Resources Code, § 21106*, and other sources of funding that could have been used to make discretionary payments as contemplated by *Pub. Resources Code, § 21004*, had not been adequately investigated. administrative remedies had been exhausted under former *Pub. Resources Code, § 21177, subd. (b)*, by sufficiently specific comments. The FEIR contained adequate analysis under *Pub. Resources Code, §§ 21060.5*, *21068*, *21080, subd. (d)*, *21082.2*, *21100*, *21151*, as to the calculation of traffic mitigation costs; however, it was inadequate with regard to deferred mitigation, investigation of potential impacts on public transit, and a finding of no significant effect on transit.

Outcome

The court reversed the trial court as to infeasibility, overriding considerations, exhaustion of administrative remedies, improper deferral, investigation of potential impacts on public transit, and no significant effect on transit. The court affirmed as to the calculation of traffic mitigation costs and remanded to the trial court with directions to issue a writ of mandate ordering that the FEIR, findings, and project approval be voided.

LexisNexis® Headnotes

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN1 **Natural Resources & Public Lands, National Environmental Policy Act**

See *Pub. Resources Code, § 21168.5*.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN2 **Natural Resources & Public Lands, National Environmental Policy Act**

An appellate court's review of the administrative record for legal error and substantial evidence in a California Environmental Quality act (CEQA), *Pub. Resources Code, § 21000 et seq.*, case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. The appellate court therefore resolves the substantive CEQA issues on which it granted review by independently determining whether the administrative record demonstrates any legal error by the public agency and whether it contains substantial evidence to support the public agency's factual determinations. The appellate court reviews de novo, or independently, the question whether the public agency committed any legal error under CEQA (i.e., did not proceed in a manner required by law). *Pub. Resources Code, § 21168.5*.

Administrative Law > Judicial Review > Standards of Review > Unlawful Procedures

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN3 **Standards of Review, Unlawful Procedures**

When a public agency does not comply with procedures required by law, its decision must be set aside as

presumptively prejudicial. Noncompliance by a public agency with the substantive requirements of the California Environmental Quality act (CEQA), *Pub. Resources Code, § 21000 et seq.*, or noncompliance with its information disclosure provisions that preclude relevant information from being presented to the public agency constitutes a prejudicial abuse of discretion within the meaning of *Pub. Resources Code, §§ 21168*, *21168.5*, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions. *Pub. Resources Code, § 21005, subd. (a)*. In other words, when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

Business & Corporate Compliance > ... > Environmental Law > Assessment & Information Access > Environmental Impact Statements

HN4 **Standards of Review, Substantial Evidence**

a reviewing court applies the substantial evidence standard of review to a public agency's conclusions, findings, and determinations, and to challenges to the scope of an analysis of a topic in an environmental impact report (EIR), the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions. Substantial evidence is defined in *Cal. Code Regs., tit. 14, § 15384, subd. (a)*, as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. The agency is the finder of fact, and the reviewing court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. However, argument, speculation, unsubstantiated opinion or narrative, and evidence which is clearly inaccurate or erroneous, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. *Pub. Resources Code, § 21082.2, subd. (c)*; *§ 15384*.

Business & Corporate Compliance > ... > Environmental Law > Assessment & Information Access > Environmental Impact Statements

HN5 **Environmental & Natural Resources, Environmental Impact Statements**

The California Environmental Quality act, *Pub. Resources Code, § 21000 et seq.*, generally requires preparation and certification of an environmental impact report (EIR) by a lead public agency on any proposed project that may have a significant effect on the environment. *Pub. Resources Code, §§ 21080, subd. (d)*, *21082.2, subd. (d)*, *21100, subd. (a)*, *21151*. The EIR must describe, in detail, all the significant effects on the environment of the project.

Business & Corporate Compliance > ... > Environmental Law > Assessment & Information Access > Environmental Impact Statements

HN6 **Environmental & Natural Resources, Environmental Impact Statements**

See *Cal. Code Regs., tit. 14, § 15064, subd. (d)*.

Business & Corporate Compliance > ... > Environmental Law > Assessment & Information Access > Environmental Impact Statements

HN7 **Environmental & Natural Resources, Environmental Impact Statements**

The California Environmental Quality act, *Pub. Resources Code, § 21000 et seq.*, compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. It permits government agencies to approve projects that have an environmentally deleterious effect, but also requires

them to justify those choices in light of specific social or economic conditions. Pub. Resources Code, § 21002.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN8[] Environmental & Natural Resources, Environmental Impact Statements

With narrow exceptions, the California Environmental Quality act, Pub. Resources Code, § 21000 et seq., requires an environmental impact report (EIR) whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. "Project" means, among other things, activities directly undertaken by any public agency or an activity undertaken by a person that is supported, in whole or in part, through contracts or other forms of assistance from one or more public agencies. an EIR is an informational document, and its purpose is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN9[] Environmental & Natural Resources, Environmental Impact Statements

Under the California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq., the public is notified that a draft environmental impact report (EIR) is being prepared, and the draft EIR is evaluated in light of comments received. The lead agency then prepares a final EIR incorporating comments on the EIR and the agency's responses to significant environmental points raised in the review process. The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment but also informed self-government.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN10[] Environmental & Natural Resources, Environmental Impact Statements

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an environmental impact report (EIR) that does not provide the decision-makers, and the public, with the information about the project that is required by the California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq. Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN11[] Environmental & Natural Resources, Environmental Impact Statements

Under the California Environmental Quality act, Pub. Resources Code, § 21000 et seq., a public agency is required to mitigate or avoid the significant environmental effects of a project that it carries out or approves if it is feasible to do so. Pub. Resources Code, § 21002.1, subd. (b). Measures to mitigate significant

environmental effects adopted by the agency must be fully enforceable. Pub. Resources Code, § 21081.6, subd. (b).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN12 **Environmental & Natural Resources, Environmental Impact Statements**

See Pub. Resources Code, § 21081.6, subd. (b).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN13 **Environmental & Natural Resources, Environmental Impact Statements**

an environmental impact report that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Governments > State & Territorial
Governments > Finance

HN14 **Environmental & Natural Resources, Environmental Impact Statements**

The California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq., requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property, but on the environment. Pub. Resources Code, § 21002.1, subd. (b). "Environment" is defined for these purposes as the physical conditions which exist within the area which will be affected by a proposed project. Pub. Resources Code, § 21060.5. Thus, if the agency cannot adequately mitigate or avoid environmental effects outside its property by performing acts on its property, then to pay a third party to perform the necessary acts off its property may well represent a feasible alternative. a payment made under these circumstances can properly be described neither as compulsory nor, for that reason, as an assessment. No rule precludes a public entity from sharing with another the cost of improvements benefiting both. Furthermore, while the agency may have another core function, to avoid or mitigate the environmental effects of its projects is also one of its functions. This is the plain import of CEQA, in which the Legislature has commanded that each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Governments > State & Territorial
Governments > Finance

HN15 **Environmental & Natural Resources, Environmental Impact Statements**

a payment by a public agency for mitigation of its project's environmental effects does not constitute an unlawful gift of public funds because those payments are used for the public purpose of discharging its duty as a public agency, under the express terms of the California Environmental Quality act, Pub. Resources Code, § 21000 et seq., to mitigate or avoid the significant effects on the environment whenever it is feasible to do so.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN16 **Environmental & Natural Resources, Environmental Impact Statements**

a project proponent may satisfy its duty to mitigate its own portion of a cumulative environmental impact by contributing to a regional mitigation fund. Courts have found fee-based mitigation programs for cumulative impacts, based on fair-share infrastructure contributions by individual projects, to constitute adequate mitigation

measures under the California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq. although a commitment to pay fair-share fees without any evidence the mitigation would actually occur would be inadequate, CEQA requires only a reasonable plan for mitigation and not a time-specific schedule for specific mitigation measures.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN17 **Environmental & Natural Resources, Environmental Impact Statements**

Under Pub. Resources Code, § 21081, subd. (a)(2), a public agency does not have to undertake identified mitigation measures if it finds those measures are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. However, the § 21081, subd. (a)(2), finding may be made by a lead agency only when the other agency said to have responsibility has exclusive responsibility. The finding in § 21081, subd. (a)(2), shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. Cal. Code Regs., tit. 14, § 15091, subd. (c).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN18 **Environmental & Natural Resources, Environmental Impact Statements**

The California Environmental Quality act, Pub. Resources Code, § 21000 et seq., does not limit a public agency's obligation to mitigate or avoid significant environmental effects to effects occurring on the agency's own property. Pub. Resources Code, §§ 21002.1, subd. (b), 21060.5.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview
Governments > State & Territorial
Governments > Finance

HN19 **Natural Resources & Public Lands, National Environmental Policy Act**

See Pub. Resources Code, § 21106.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Governments > State & Territorial
Governments > Finance

HN20 **Environmental & Natural Resources, Environmental Impact Statements**

The duty of a public agency to mitigate or avoid significant environmental effects pursuant to Pub. Resources Code, § 21002.1, subd. (b), combined with the duty to ask the Legislature for money to do so under Pub. Resources Code, § 21106, will not always give a public agency that is undertaking a project with environmental effects shared responsibility for mitigation measures another agency must implement. Some mitigation measures cannot be purchased, such as permits that another agency has the sole discretion to grant or refuse.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN21 **Environmental & Natural Resources, Environmental Impact Statements**

a statement of overriding considerations is required, and offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible. Pub. Resources Code, § 21081, subd. (b). Where an agency has abused its discretion in determining that certain effects cannot feasibly be mitigated, that its statement of overriding considerations is invalid necessarily follows. The California Environmental Quality act, Pub. Resources Code, § 21000 et seq.,

does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with *Pub. Resources Code, § 21081, subd. (b)*, would tend to displace the fundamental obligation of each public agency to mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so. *Pub. Resources Code, § 21002.1, subd. (b)*.

Governments > Courts > Judicial Precedent > Dicta

HN22 **Judicial Precedent, Dicta**

Only statements necessary to the decision are binding precedents. The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to supplementary or explanatory comments which might be included in an opinion. To determine the precedential value of a statement in an opinion, the language of that statement must be compared with the facts of the case and the issues raised. a decision is authority only for the point actually passed on by the court and directly involved in the case.

Governments > Courts > Judicial Precedent > Dicta

HN23 **Judicial Precedent, Dicta**

Courts of appeal generally consider California Supreme Court dicta to be persuasive.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Governments > State & Territorial
Governments > Finance

HN24 **Environmental & Natural Resources, Environmental Impact Statements**

The California Environmental Quality act (CEQA), *Pub. Resources Code, § 21000 et seq.*, expressly provides that a public agency may use its discretionary powers for the purpose of mitigating or avoiding a significant environmental effect of a project (except as otherwise provided by law). *Pub. Resources Code, § 21004*; *Cal. Code Regs., tit. 14, § 15040, subd. (c)*. Because the agency has a duty under CEQA to adopt feasible measures to mitigate or avoid the significant environmental effects of the project (whether those effects occur on-site or off-site), it would be illogical to interpret that duty to mitigate as requiring payment for off-site mitigation measures only if, and only to the extent, the agency obtains funding for that mitigation from one particular source (i.e., a specific appropriation by the Legislature for that mitigation) to the exclusion of other sources. Such an interpretation would, in effect, allow the agency to avoid its obligation to mitigate and would not further the Legislature's intent that CEQA be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN25 **Environmental & Natural Resources, Environmental Impact Statements**

See *Pub. Resources Code, § 21002*.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN26 **Environmental & Natural Resources, Environmental Impact Statements**

Unavoidable uncertainties affecting the funding and implementation of off-site mitigation measures do not make an agency's voluntary fair-share contributions toward mitigation of those off-site effects infeasible.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN27[] Reviewability, Exhaustion of Remedies

Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a California Environmental Quality act (CEQA), *Pub. Resources Code, § 21000 et seq.*, action. Only a proper party may petition for a writ of mandate to challenge the sufficiency of an environmental impact report (EIR) or the validity of an act or omission under CEQA. The petitioner is required to have objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination. Former *Pub. Resources Code, § 21177, subd. (b)*. The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative proceedings. Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation. Furthermore, a party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project.

Administrative Law > Judicial
Review > Reviewability > Exhaustion of Remedies

HN28[] Reviewability, Exhaustion of Remedies

The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. The decisionmaking body is entitled to learn the contentions of interested parties before litigation is instituted. To exhaust administrative remedies, more is required than generalized environmental comments at public hearings. The objection must be sufficiently specific to give the agency an opportunity to evaluate and respond to it. On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding.

Evidence > Judicial Notice > Adjudicative Facts > Public Records

Evidence > Judicial Notice > Adjudicative Facts > Verifiable Facts

HN29[] Adjudicative Facts, Public Records

See *Evid. Code, § 452*.

Evidence > Judicial Notice > General Overview

HN30[] Evidence, Judicial Notice

although a court may judicially notice a variety of matters, only relevant material may be noticed. Judicial notice, since it is a substitute for proof, is always confined to those matters which are relevant to the issue at hand.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Judicial Notice > General Overview

HN31[] Standards of Review, Abuse of Discretion

a trial court's decision whether to take judicial notice of documents is subject to review for abuse of discretion.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN32[] Environmental & Natural Resources, Environmental Impact Statements

The substantial evidence standard of review applies to an agency's methodology used for studying an environmental impact and the reliability or accuracy of the data on which the agency relied.

Business & Corporate
Compliance > ... > Environmental

Law > Assessment & Information
Access > Environmental Impact Statements

HN33[] Environmental & Natural Resources, Environmental Impact Statements

Feasible mitigation measures for significant environmental effects must be set forth in an environmental impact report (EIR) for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN34[] Environmental & Natural Resources, Environmental Impact Statements

See Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN35[] Environmental & Natural Resources, Environmental Impact Statements

a study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing the California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq. Reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and, consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN36[] Environmental & Natural Resources, Environmental Impact Statements

Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological or other report and then comply with any recommendations that may be made in the report. If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them. However, a lead agency's adoption of an environmental impact report's proposed mitigation measure for a significant environmental effect that merely states a generalized goal to mitigate a significant effect without committing to any specific criteria or standard of performance violates the California Environmental Quality act, Pub. Resources Code, § 21000 et seq., by improperly deferring the formulation and adoption of enforceable mitigation measures.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN37[] Environmental & Natural Resources, Environmental Impact Statements

an environmental impact report must include a detailed discussion of all significant effects on the environment of the proposed project. Pub. Resources Code, § 21100, subd. (b)(1).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN38[] Environmental & Natural Resources, Environmental Impact Statements

See *Pub. Resources Code, § 21068*.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN39 **Environmental & Natural Resources, Environmental Impact Statements**

See *Pub. Resources Code, § 21060.5*.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN40 **Environmental & Natural Resources, Environmental Impact Statements**

Under the California Environmental Quality act, *Pub. Resources Code, § 21000 et seq.*, the lead agency bears a burden to investigate potential environmental impacts. In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project. If an agency's investigation shows particular environmental effects of the project will not be potentially substantial, the environmental impact report (EIR) must contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the EIR. *Pub. Resources Code, § 21100, subd. (c)*. alternatively stated, the EIR must include a statement of the agency's reasons, albeit brief, for its conclusion that a particular environmental impact is not potentially substantial (i.e., significant).

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN41 **Environmental & Natural Resources, Environmental Impact Statements**

a mere conclusion of insignificance is not adequate to allow meaningful judicial review and constitutes a failure to proceed in the manner required by law. Even if an agency provides an adequate statement of reasons regarding its conclusion that a particular effect of a project will not be significant, that conclusion can be challenged as an abuse of discretion if not supported by substantial evidence in the administrative record.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN42 **Environmental & Natural Resources, Environmental Impact Statements**

If a lead agency does not conduct an adequate initial study regarding a particular environmental effect of a project, it cannot rely on an absence of evidence resulting from that inadequate study as proof there is substantial evidence showing that particular effect is not significant under the California Environmental Quality act, *Pub. Resources Code, § 21000 et seq.* Likewise, an agency cannot conclude a particular environmental effect is not significant based on a purported absence of precise methodology or quantification for determining the level of significance for that effect. an agency must use its best efforts to evaluate whether a particular impact is significant.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN43 **Environmental & Natural Resources, Environmental Impact Statements**

Under the California Environmental Quality act, *Pub. Resources Code, § 21000 et seq.*, the lead agency bears a burden to investigate potential environmental impacts. In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project.

Business & Corporate
Compliance > ... > Environmental

Law > Assessment & Information
Access > Environmental Impact Statements

HN44[] Environmental & Natural Resources, Environmental Impact Statements

See Cal. Code Regs., tit. 14, § 15144.

Business & Corporate
Compliance > ... > Environmental
Law > Assessment & Information
Access > Environmental Impact Statements

HN45[] Environmental & Natural Resources, Environmental Impact Statements

appendix G of the California Environmental Quality act (CEQA), Pub. Resources Code, § 21000 et seq., Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq., is only an illustrative checklist and does not set forth an exhaustive list of potentially significant environmental impacts under CEQA or standards of significance for those impacts. also, the lack of precise quantification or criteria for determining whether an environmental effect is significant under CEQA does not excuse a lead agency from using its best efforts to evaluate whether an effect is significant.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN46[] Standards of Review, Substantial Evidence

See Pub. Resources Code, § 21082.2, subd. (c).

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN47[] Standards of Review, Substantial Evidence

See Cal. Code Regs., tit. 14, § 15384, subd. (a).

Headnotes/Syllabus

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied petitions for writs of mandate filed by a city and others challenging state university trustees' certification of a final environmental impact report (FEIR) and approval of a project. Based in part on a finding that paying the city and others to mitigate significant offsite traffic impacts was infeasible, the FEIR contained a statement of overriding considerations. (Superior Court of San Diego County, Nos. GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083773-CU-MC-CTL and 37-2007-00083768-CU-TT-CTL, Thomas P. Nugent, Judge.)

The Court of Appeal reversed the trial court as to determinations regarding infeasibility, overriding considerations, exhaustion of administrative remedies, improper deferral, investigation of potential impacts on public transit, and no significant effect on transit. The court affirmed as to the calculation of traffic mitigation costs and remanded to the trial court with directions to issue a writ of mandate ordering that the FEIR, findings, and project approval be voided. The court found invalid both the finding of infeasibility and the statement of overriding considerations because the duty to mitigate where feasible and enforceable (Pub. Resources Code, §§ 21002, 21002.1, subd. (b), 21060.5, 21081, subd. (b), 21081.6, subd. (b)) does not require a specific appropriation (Pub. Resources Code, § 21106) and other sources of funding that could have been used to make discretionary payments (Pub. Resources Code, § 21004) had not been adequately investigated. Administrative remedies had been exhausted (Pub. Resources Code, former § 21177, subd. (b)) by sufficiently specific comments. The FEIR contained adequate analysis (Pub. Resources Code, §§ 21060.5, 21068, 21080, subd. (d), 21082.2, 21100, 21151) as to the calculation of traffic mitigation costs; however, it was inadequate with regard to deferred mitigation, investigation of potential impacts on public transit, and a

finding of no significant effect on transit. (Opinion by McDonald, J., with McConnell, P. J., and O'Rourke, J., concurring.) **[*1135]**

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1)[] **(1)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Significant Effect on Environment.

The California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) generally requires preparation and certification of an environmental impact report (EIR) by a lead public agency on any proposed project that may have a significant effect on the environment (Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151). The EIR must describe, in detail, all the significant effects on the environment of the project.

CA(2)[] **(2)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Requirement to Justify Choices.

The California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. It permits government agencies to approve projects that have an environmentally deleterious effect, but also requires them to justify those choices in light of specific social or economic conditions (Pub. Resources Code, § 21002).

CA(3)[] **(3)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Significant Effect on Environment.

With narrow exceptions, the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) requires an environmental impact report (EIR) whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. “Project” means, among other things, activities directly undertaken by any public agency or an activity undertaken by a person that is supported, in whole or in part, through contracts or other forms of assistance from one or more public agencies. An EIR is an informational document, and its purpose is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

CA(4)[] **(4)**

Pollution and Conservation Laws § 2.8—California Environmental Quality Act—Proceedings—Agency Findings and Project Approval—Mitigation Considerations.

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the public is **[*1136]** notified that a draft environmental impact report (EIR) is being prepared, and the draft EIR is evaluated in light of comments received. The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process. The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment but also informed self-government.

CA(5)[] **(5)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact

Reports—Contents and Sufficiency—Scope of Project.

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an environmental impact report (EIR) that does not provide the decision-makers, and the public, with the information about the project that is required by the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.

CA(6)[] **(6)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Enforceability.

Under the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*), a public agency is required to mitigate or avoid the significant environmental effects of a project that it carries out or approves if it is feasible to do so (*Pub. Resources Code, § 21002.1, subd. (b)*). Measures to mitigate significant environmental effects adopted by the agency must be fully enforceable (*Pub. Resources Code, § 21081.6, subd. (b)*).

CA(7)[] **(7)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Enforceability—Incorrect Conclusions.

An environmental impact report that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document.

CA(8)[] **(8)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Payment for Offsite Acts.

The California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property, but on the environment (*Pub. Resources Code, § 21002.1, subd. (b)*). “Environment” is defined for these purposes as the physical conditions which exist within the area which will be affected by a proposed project (*Pub. Resources Code, § 21060.5*). Thus, if the agency cannot adequately mitigate or avoid environmental effects outside its property by performing acts on its property, then to pay a third party to perform the necessary acts off its property may well represent a feasible alternative. A payment made under these circumstances can properly be described neither as compulsory nor, for that reason, as an assessment. No rule precludes a public entity from sharing with another the cost of improvements benefiting both. Furthermore, while the agency may have another core function, to avoid or mitigate the environmental effects of its projects is also one of its functions. This is the plain import of CEQA, in which the Legislature has commanded that each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

CA(9)[] **(9)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Payment for Offsite Acts.

A payment by a public agency for mitigation of its project's environmental effects does not constitute an unlawful gift of public funds because those payments are used for the public purpose of discharging its duty as a public agency, under the express terms of the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*) to mitigate or avoid the significant effects on the environment whenever it is feasible to do so.

CA(10)[] **(10)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Fee-based Mitigation Programs.

A project proponent may satisfy its duty to mitigate its own portion of a cumulative environmental impact by contributing to a regional mitigation fund. **[*1138]** Courts have found fee-based mitigation programs for cumulative impacts, based on fair-share infrastructure contributions by individual projects, to constitute adequate mitigation measures under the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*). Although a commitment to pay fair-share fees without any evidence the mitigation would actually occur would be inadequate, CEQA requires only a reasonable plan for mitigation and not a time-specific schedule for specific mitigation measures.

CA(11)[] **(11)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Responsibility of Other Agency.

Under *Pub. Resources Code, § 21081, subd. (a)(2)*, a public agency does not have to undertake identified mitigation measures if it finds those measures are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. However, the *§ 21081, subd. (a)(2)*, finding may be made by a lead agency only when the other agency said to have responsibility has exclusive responsibility. The finding in *§ 21081, subd. (a)(2)*, shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives (*Cal. Code Regs., tit. 14, § 15091, subd. (c)*).

CA(12)[] **(12)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Offsite Effects.

The California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*) does not limit a public agency's obligation to mitigate or avoid significant environmental effects to effects occurring on the agency's own property (*Pub. Resources Code, §§ 21002.1, subd. (b)*, *21060.5*).

CA(13)[] **(13)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Responsibility of Other Agency.

The duty of a public agency to mitigate or avoid significant environmental effects (*Pub. Resources Code, § 21002.1, subd. (b)*) combined with the duty to ask the Legislature for money to do so (*Pub. Resources Code, § 21106*) will not always give a public agency that is undertaking a project with environmental effects shared responsibility for mitigation measures another agency must implement. Some mitigation measures cannot be purchased, such as permits that another agency has the sole discretion to grant or refuse.

CA(14)[] **(14)**

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Statement of Overriding Considerations.

A statement of overriding considerations is required, and offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible (*Pub. Resources Code, § 21081, subd. (b)*). Where an agency has abused its discretion in determining that certain effects cannot feasibly be mitigated, that its statement of overriding considerations is invalid necessarily follows. The California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*) does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with *Pub. Resources Code, § 21081, subd. (b)*, would tend to displace the fundamental obligation of each public agency to mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so (*Pub. Resources Code, § 21002.1, subd. (b)*).

CA(15)[] (15)

Courts § 45—Decisions and Orders—Doctrine of Stare Decisis—Obiter Dicta—Supplementary or Explanatory Comments.

Only statements necessary to the decision are binding precedents. The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to supplementary or explanatory comments which might be included in an opinion. To determine the precedential value of a statement in an opinion, the language of that statement must be compared with the facts of the case and the issues raised. A decision is authority only for the point actually passed on by the court and directly involved in the case.

CA(16)[] (16)

Courts § 39.5—Decisions and Orders—Doctrine of Stare Decisis—Opinions of California Supreme Court—Dicta as Persuasive.

Courts of Appeal generally consider California Supreme Court dicta to be persuasive.

CA(17)[] (17)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Feasibility—Payment for Offsite Acts.

The California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) expressly provides that a public agency may use its discretionary powers for the purpose of mitigating or avoiding a significant environmental effect of a project, except as otherwise provided by **[*1140]** law (*Pub. Resources Code, § 21004*; *Cal. Code Regs., tit. 14, § 15040, subd. (c)*). Because the agency has a duty under CEQA to adopt feasible measures to mitigate or avoid the significant environmental effects of the project (whether those effects occur onsite or offsite), it would be illogical to interpret that duty to mitigate as requiring payment for offsite mitigation measures only if, and only to the extent, the agency obtains funding for that mitigation from one particular source (i.e., a specific appropriation by the Legislature for that mitigation) to the exclusion of other sources. Such an interpretation would, in effect, allow the agency to avoid its obligation to mitigate and would not further the Legislature's intent that CEQA be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

CA(18)[] (18)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Feasibility—Payment for Offsite Acts.

A public entity erred when, in preparing a draft environmental impact report, responses to comments, the final environmental impact report, and the findings, it concluded that its payment to a city and other public agencies of its fair share of the costs of offsite mitigation measures was infeasible. This erroneous legal assumption invalidated both its finding that measures to mitigate the offsite effects of the project were infeasible and its statement of overriding considerations, which can only be adopted when the measures necessary to mitigate those effects are truly infeasible.

[*Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2011) ch. 22, § 22.04*; *Cal. Forms of Pleading and Practice (2011) ch. 418, Pollution and Environmental Matters, § 418.35*; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 509.]

CA(19)[] (19)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Feasibility—Payment for Offsite Acts.

Unavoidable uncertainties affecting the funding and implementation of offsite mitigation measures do not make an agency's voluntary fair-share contributions toward mitigation of those offsite effects infeasible.

CA(20)[] (20)

Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Judicial Review—Exhaustion of Administrative Remedies.

Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a California Environmental Quality Act (CEQA) (*Pub. Resources*

Code, § 21000 et seq.) action. **[*1141]** Only a proper party may petition for a writ of mandate to challenge the sufficiency of an environmental impact report (EIR) or the validity of an act or omission under CEQA. The petitioner is required to have objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination (Pub. Resources Code, former § 21177, subd. (b)). The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative proceedings. Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation. Furthermore, a party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project.

CA(21)[] (21)

Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Judicial Review—Exhaustion of Administrative Remedies.

The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. The decisionmaking body is entitled to learn the contentions of interested parties before litigation is instituted. To exhaust administrative remedies, more is required than generalized environmental comments at public hearings. The objection must be sufficiently specific to give the agency an opportunity to evaluate and respond to it. On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding.

CA(22)[] (22)

Evidence § 3—Judicial Notice—Confined to Relevant Material.

Although a court may judicially notice a variety of matters, only relevant material may be noticed. Judicial notice, since it is a substitute for proof, is always confined to those matters which are relevant to the issue at hand.

CA(23)[] (23)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Improper Deferral.

Feasible mitigation measures for significant environmental effects must be set forth in an environmental impact report (EIR) for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project.

CA(24)[] (24)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Improper Deferral.

A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and, consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.

CA(25)[] (25)

Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Mitigation Measures—Improper Deferral.

Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. On the

other hand, an agency goes too far when it simply requires a project applicant to obtain a biological or other report and then comply with any recommendations that may be made in the report. If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them. However, a lead agency's adoption of an environmental impact report's proposed mitigation measure for a significant environmental effect that merely states a generalized goal to mitigate a significant effect without committing to any specific criteria or standard of performance violates the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*) by improperly deferring the formulation and adoption of enforceable mitigation measures.

CA(26)[] **(26)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Reasons for Finding Effects Insignificant.

Under the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*), the lead agency bears a burden to investigate potential environmental impacts. In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project. If an agency's investigation shows particular environmental effects of the project will not be potentially substantial, the environmental impact report (EIR) must contain a statement briefly **[*1143]** indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the EIR (*Pub. Resources Code, § 21100, subd. (c)*). Alternatively stated, the EIR must include a statement of the agency's reasons, albeit brief, for its conclusion that a particular environmental impact is not potentially substantial (i.e., significant).

CA(27)[] **(27)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Reasons for Finding Effects Insignificant.

If a lead agency does not conduct an adequate initial study regarding a particular environmental effect of a project, it cannot rely on an absence of evidence resulting from that inadequate study as proof there is substantial evidence showing that particular effect is not significant under the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*). Likewise, an agency cannot conclude a particular environmental effect is not significant based on a purported absence of precise methodology or quantification for determining the level of significance for that effect. An agency must use its best efforts to evaluate whether a particular impact is significant.

CA(28)[] **(28)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Duty of Lead agency to Evaluate Potential Impacts.

Under the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*), the lead agency bears a burden to investigate potential environmental impacts. In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project.

CA(29)[] **(29)**

Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Contents and Sufficiency—Duty of Lead agency to Evaluate Potential Impacts.

Appendix G of the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) Guidelines (*Cal. Code Regs., tit. 14, § 15000 et seq.*) is only an illustrative checklist and does not set forth an exhaustive list of potentially significant environmental impacts under CEQA or standards of significance for those impacts. Also, the lack of precise quantification or criteria for determining whether an environmental effect is significant under CEQA does not excuse a lead agency from using its best efforts to evaluate whether an effect is significant.

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Judges: Opinion by McDonald, J., with McConnell, P. J., and O'Rourke, J., concurring.

Opinion by: McDonald

Opinion

[502] McDONALD, J.**—In 2005, the Board of Trustees of the California State University (CSU) certified an environmental impact report (EIR) and approved a project for the expansion of San Diego State University (SDSU). The project included the construction of new buildings and an increase in SDSU's student enrollment from 25,000 full-time equivalent students (FTES) to 35,000 FTES by the 2024/2025 academic year. During the pendency of litigation challenging the 2005 EIR certification and project approval, the California Supreme Court issued its opinion in *City of Marina v. Board of Trustees of California State University (2006) 39 Cal.4th 341 [46 Cal. Rptr. 3d 355, 138 P.3d 692]* (*Marina*), which addressed certain issues involved in the 2005 SDSU EIR litigation. In response to *Marina*, the trial court in 2006 entered judgment against CSU and issued a writ of mandate directing it to set aside its certification of the 2005 EIR and approval of the SDSU expansion project. The court retained jurisdiction of the matter until it determined CSU had complied with the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*)[1] **[***3]** (CEQA) and the views expressed in *Marina*.
[*1145]

In 2007, CSU revised its master plan for expansion of SDSU (the Project) and released a draft EIR (DEIR) for the Project. After receiving comments from the general public and governmental agencies, CSU prepared a final EIR (FEIR), responding to those comments and revising the DEIR. In November 2007, CSU certified the FEIR and approved the Project, finding that because it might not obtain "fair-share" offsite mitigation funding from the Legislature and Governor, there are no feasible mitigation measures to reduce the **[**503]** Project's significant offsite traffic impacts to a less than significant level. Based in part on its finding that those significant offsite traffic impacts were unavoidable, CSU adopted a statement of overriding considerations, concluding the Project's benefits outweighed its unavoidable significant environmental effects, and then approved the Project.

The City of San Diego and the Redevelopment Agency of the City of San Diego (together City), San Diego Association of Governments (SANDAG), and San Diego Metropolitan Transit System (MTS) filed **[***4]** petitions for writs of mandate challenging CSU's certification of the FEIR and approval of the Project. After consolidating the cases and hearing arguments of counsel, the trial court denied the petitions and discharged the 2006 writ, finding CSU had complied with *Marina*. It then entered judgment for CSU.

On appeal, City, SANDAG, and MTS contend the trial court erred by (1) concluding CSU complied with CEQA and *Marina* by finding "fair-share" payments for mitigation of significant offsite environmental impacts were infeasible because it could not guarantee the Legislature and Governor would approve the funding, and that the FEIR was not required to address potential alternative means of paying CSU's "fair share" of those offsite mitigation costs; (2) concluding they could not raise those issues in the trial court because they did not raise them during the administrative proceedings (i.e., they failed to exhaust their administrative remedies); (3) denying their request for judicial notice of certain documents pertaining to the issue of whether CSU complied with CEQA and *Marina*; (4) concluding the FEIR did not err in calculating the increased vehicle traffic caused by the Project's **[***5]** increased student enrollment; (5) concluding CSU did not improperly defer adoption of mitigation measures to reduce vehicle traffic; and (6) concluding the FEIR adequately

[1] All statutory references are to the Public Resources Code unless otherwise specified.

addressed the Project's potential impacts on transit and that there is substantial evidence to support CSU's finding the Project will not cause any significant effect on public transit (e.g., trolley and bus facilities and service). For the reasons discussed below, we conclude the trial court erred in denying the petitions and the request for judicial notice and in discharging the 2006 writ.

[*1146]

FACTUAL AND PROCEDURAL BACKGROUND

The SDSU campus is located in the City of San Diego along the southern rim of Mission Valley. The campus consists of about 280 acres with the following general boundaries: Montezuma Road on the south, East Campus Drive on the east, 55th Street and Remington Road on the west, and Adobe Falls Road (north of Interstate 8) on the north. In 2005, CSU certified an EIR and approved a project for the expansion of SDSU. During the pendency of litigation challenging that 2005 EIR certification and project approval, the California Supreme Court issued its opinion in *Marina*. In response to *Marina*, in 2006 **[***6]** the trial court entered judgment against CSU, issued a writ of mandate directing it to set aside its certification of the 2005 EIR and approval of the project, and retained jurisdiction of the matter until it determined CSU had complied with CEQA and *Marina*.

In February 2007, toward its continuing goal of expanding SDSU's enrollment, CSU prepared a new notice of preparation and initial study (NOP) and circulated it for public comment. In June, after receiving public comments on the NOP, CSU prepared the DEIR. As described in the DEIR, the Project is CSU's master plan for expansion of SDSU through the **[**504]** 2024/2025 academic year by increasing student enrollment from 25,000 FTES to 35,000 FTES (equal to an actual increase of 11,385 students) and developing six components: (1) additional on-campus student housing (i.e., an additional 2,976 beds); (2) between 172 and 348 condominium and/or townhouse units on the 33-acre Adobe Falls site for SDSU faculty and staff housing; (3) a 120-room hotel on its Alvarado Road site; (4) 612,000 square feet of new building space on its Alvarado Road site for academic, research, and/or medical use and a 552,000-square-foot parking structure; (5) renovation **[***7]** and expansion of the student union building; and (6) a 70,000-square-foot campus conference center for meetings, conferences, office space, and food and retail services. The DEIR states the proposed increase in student enrollment will require the hiring of 691 additional faculty members and 591 additional staff members. The Project will result in a total of 12,667 additional students, faculty, and staff on the SDSU campus by the 2024/2025 academic year.[2] The DEIR discussed the Project's potential significant environmental impacts and mitigation measures and alternatives that would reduce or avoid those impacts.

CSU circulated the DEIR for public comment from June 12, 2007, through July 27, 2007. CSU held multiple community meetings to present the DEIR and the Project, and receive comments. CSU received about 87 comment letters on the DEIR from residents who live in neighborhoods that would be **[*1147]** affected by the Project; other members of the public; and federal, state, and local governmental agencies, including City and SANDAG. CSU then prepared the FEIR, which attached the comment letters, **[***8]** responded to them, and revised the DEIR.

On November 13 and 14, 2007, CSU held a public meeting on the FEIR. Representatives of City, SANDAG, MTS, California's Department of Transportation (Caltrans) and members of the public expressed concerns regarding the FEIR and the Project. CSU then adopted findings of fact (Findings) and the mitigation measures set forth in the mitigation monitoring and reporting program (MMRP). In the Findings, CSU found the FEIR identified potentially significant effects that could result from implementation of the Project, and inclusion of mitigation measures as part of approval of the Project would reduce most, but not all, of those effects to less than significant levels. However, as to those significant impacts that are unavoidable even after incorporating all feasible mitigation measures, CSU found the benefits of the Project outweighed those unavoidable significant impacts. CSU expressly found the Project would have "[n]o significant impacts on transit systems." CSU approved resolutions stating:

"7. A portion of the mitigation measures necessary to reduce traffic impacts to less than significant are the responsibility of and under the authority **[***9]** of the City … . The City and [CSU] have not come to agreement. [CSU] therefore cannot guarantee that certain mitigation measures that are the sole responsibility of the City will be timely implemented. [CSU] therefore finds that certain impacts upon traffic may remain significant and unavoidable if mitigation measures are not implemented, and adopts Findings of

[2] This total is the sum of 11,385 additional students, 691 additional faculty, and 591 additional staff.

Fact that include specific Overriding Considerations that outweigh **[**505]** the remaining potential unavoidable significant impacts with respect to traffic and transit that are not under the authority and responsibility of [CSU].

"8. … [CSU] hereby certifies the FEIR for the [Project] as complete and adequate in that the FEIR addresses all significant environmental impacts of the [Project] and fully complies with the requirements of CEQA and the CEQA Guidelines. …

"9. It is necessary, consistent with [*Marina*], for CSU to pursue mitigation funding from the [L]egislature to meet its CEQA fair-share mitigation obligations. The chancellor is therefore directed to request from the [G]overnor and the [L]egislature, through the annual state budget process, the future funds ($6,484,000) necessary to support costs as determined by [CSU] **[***10]** necessary to fulfill the mitigation requirements of CEQA.

"10. In the event the request for mitigation funds is approved in full, the chancellor is directed to proceed with implementation of the [master plan for **[*1148]** the Project]. Should the request for funds only be partially approved, the chancellor is directed to proceed with implementation of the [P]roject, funding identified mitigation measures to the extent of the available funds. In the event the request for funds is not approved, the chancellor is directed to proceed with implementation of the [P]roject consistent with resolution number 11 below.

"11. Because [CSU] cannot guarantee that the request to the [L]egislature for the necessary mitigation funding will be approved, or that the local agencies will fund the measures that are their responsibility, [CSU] finds that the impacts whose [*sic*] funding is uncertain remain significant and unavoidable, and that they are necessarily outweighed by the Statement of Overriding Considerations adopted by [CSU]." CSU certified the FEIR and approved the Project. It then issued a notice of determination regarding its findings and actions.

In December 2007, City, SANDAG and MTS filed separate petitions **[***11]** for writs of mandate challenging CSU's certification of the FEIR and approval of the Project. The trial court subsequently consolidated the cases. CSU filed a motion to discharge the 2006 writ. In February 2010, the trial court issued a statement of decision rejecting all of the claims asserted by City, SANDAG and MTS. In March 2010, the court entered judgment for CSU, denying the petitions for writs of mandate filed against it and discharging the 2006 writ. The court found CSU had met the requirements of CEQA and *Marina*. City, SANDAG and MTS timely filed notices of appeal challenging the judgment.[3]

DISCUSSION

I

Standard of Review

The abuse of discretion standard of review applies to our review of CSU's **[**506]** compliance with CEQA in the circumstances of this case. Section 21168.5 provides: ***HN1***[] "In any action or proceeding, other than an action or proceeding **[*1149]** under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." ***HN2***[] ?An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues on which we granted review by independently determining whether the **[***13]** administrative record demonstrates any legal error by the [public agency] and whether it contains substantial evidence to support the [public agency's] factual determinations." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 427 [53 Cal. Rptr. 3d 821, 150 P.3d 709]* (*Vineyard*).) We review de novo, or independently, the question whether CSU committed any legal error under CEQA (i.e., did not "proceed[] in a

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[3] We granted the requests to file, and have considered, amicus curiae briefs filed by Caltrans and by the League of California Cities and California State Association of Counties. We also have considered CSU's responses to those amicus curiae briefs. In support of CSU's response to Caltrans's amicus curiae brief, CSU filed a motion requesting that we take judicial notice of certain documents pertaining to Caltrans and its capital improvement program for transportation projects. Because Caltrans is not a party to this appeal and those documents are irrelevant and unnecessary to our disposition of this case, **[***12]** we exercise our discretion and deny CSU's request for judicial notice.

manner required by law") in preparing and certifying the FEIR and approving the Project. (§ 21168.5.) HN3[] When a public agency does not comply with procedures required by law, its decision must be set aside as presumptively prejudicial. (*Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1236 [32 Cal. Rptr. 2d 19, 876 P.2d 505]* (*Sierra Club*).) Noncompliance by a public agency with CEQA's substantive requirements or noncompliance with its information disclosure provisions that preclude relevant information from being presented to the public agency "constitute[s] a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (§ 21005, subd. (a); see *County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 946 [91 Cal. Rptr. 2d 66]*.) **[***14]** "In other words, when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation." (*County of Amador, at p. 946*.)

HN4[] We apply the substantial evidence standard of review to a public agency's "conclusions, findings, and determinations, and to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 898 [98 Cal. Rptr. 3d 137]*.) "Substantial evidence" is defined in the CEQA guidelines **[*1150]** as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384, subd. (a).)[4] "The agency **[**507]** is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve **[***15]** all conflicts in the evidence in favor of the agency's decision." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 117 [104 Cal. Rptr. 2d 326]*.) However, "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous … is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); see Guidelines, § 15384.)

II

CEQA Generally

HN5[] CA(1)[] **(1)** CEQA generally requires preparation and certification of an EIR by a lead public agency on any proposed project that may have a significant effect on the environment. (§§ 21080, subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151.) The EIR must describe, in detail, all the significant effects on the environment of the project. (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council (2010) 190 Cal.App.4th 1351, 1372 [119 Cal. Rptr. 3d 481]* (*Sunnyvale*).) HN6[] "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment **[***16]** which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (Guidelines, § 15064, subd. (d).) HN7[] CA(2)[] **(2)** "CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. It permits government agencies to approve projects that have an environmentally deleterious effect, but also requires them to justify those choices in light of specific social or economic conditions. (§ 21002.)" (*Sierra Club, supra, 7 Cal.4th at p. 1233*.)

HN8[] CA(3)[] **(3)** "With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. [Citations.] 'Project' means, among other things, '[a]ctivities directly undertaken by any public agency' [or an activity undertaken by a person that is supported, in whole or in part, through **[*1151]** contracts or other forms of assistance from one or more public agencies]. [Citation.] … The Legislature has made clear that an EIR is 'an informational document' and **[***17]** that '[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.' " (*Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d*

[4] All regulatory citations are to title 14 of the California Code of Regulations (Guidelines).

376, 390–391 [253 Cal. Rptr. 426, 764 P.2d 278], fn. omitted (*Laurel Heights*).)

HN9[↑] *CA(4)*[↑] **(4)** "Under CEQA, the public is notified that a draft EIR is being prepared [citations], and the draft EIR is evaluated in light of comments received. [Citations.] The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process. [Citations.] The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. [Citation.] Before approving **[**508]** the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or **[***18]** that unmitigated effects are outweighed by the project's benefits." (*Laurel Heights, supra, 47 Cal.3d at p. 391*, fn. omitted.) "If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." (*Id. at p. 392*.)

HN10[↑] *CA(5)*[↑] **(5)** "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." (*Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, 829 [173 Cal. Rptr. 602]*.) In *City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438 [263 Cal. Rptr. 340]*, we stated that "only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh **[***19]** other alternatives … ." (*Id. at p. 1454*.) If a final EIR does not "adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project," informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law. (*City of Santee, at pp. 1454–1455*.)
[*1152]

HN11[↑] *CA(6)*[↑] **(6)** Under CEQA, a public agency is required to mitigate or avoid the significant environmental effects of a project that it carries out or approves if it is feasible to do so. (§ 21002.1, subd. (b); *Marina, supra, 39 Cal.4th at p. 359*.) Measures to mitigate significant environmental effects adopted by the agency must be fully enforceable. (§ 21081.6, subd. (b).) *HN12*[↑] "A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. …" (*Ibid*.)

III

Marina *and Mitigation of Significant Offsite Environmental Impacts*

City, SANDAG and MTS contend the trial court erred by concluding CSU complied with CEQA and *Marina* by finding "fair-share" payments by CSU for mitigation of the Project's significant offsite environmental impacts were infeasible **[***20]** because CSU could not guarantee the Legislature and Governor would approve mitigation funding and by concluding the FEIR was not required to address potential alternative means of paying CSU's "fair share" of offsite mitigation costs.

A

The DEIR identified and discussed the Project's potentially significant offsite traffic impacts to certain street intersections, street segments, freeway ramps, and freeway mainline segments. For each of those potentially significant traffic impacts, the DEIR recommended specific mitigation measures, which primarily consisted of contributions to City of CSU's fair share of costs of implementing those mitigation measures (e.g., improvements to City street intersections and segments). As to **[**509]** each of the 34 traffic mitigation measures, the DEIR calculated CSU's respective "fair-share" percentage (ranging from 1 percent to 39 percent) of the total cost of that mitigation measure. With implementation of the proposed mitigation measures, the DEIR concluded all of the specific traffic impacts would be reduced to a level below significant, except for four specific impacts that would remain significant and unavoidable. Regarding CSU's mitigation measures, the **[***21]** DEIR stated: "Fair-share mitigation is recommended that would reduce the identified impacts to a level below significant. However, [CSU's] fair-share funding commitment is necessarily conditioned [on] requesting and obtaining funds from the California Legislature. If the Legislature does not provide funding, or if funding is significantly delayed, all identified significant impacts would remain significant and

unavoidable."
[*1153]

In a letter dated July 27, 2007, City commented on the DEIR, restating many of the concerns it raised in its prior letter commenting on the NOP. City stated the DEIR's traffic impact analysis was "fatally flawed because it does not guarantee the implementation of the traffic mitigation measures it proposes." City disagreed with CSU's interpretation of *Marina* reflected in a quoted statement from the DEIR that CSU's "fair-share funding commitment is necessarily conditioned up[on] requesting and obtaining funds from the California Legislature. If the Legislature does not provide funding, or if funding is significantly delayed, all identified significant impacts would remain significant and unavoidable." (Underscoring added by City.) City quoted language from *Marina* **[***22]** on which CSU apparently relied and argued that language was "pure dictum."[5] City asserted the DEIR "fails because [CSU] disingenuously attempt[s] to dodge true responsibility [for mitigation of the Project's significant impacts] by relying on dicta in [*Marina*]."

In the FEIR, CSU responded to comments by City and others criticizing CSU's interpretation of *Marina* and its interpretation of its obligation under CEQA to discuss and propose measures to mitigate the Project's significant offsite traffic environmental impacts. The FEIR stated:

"The following are the requisite principles established by [*Marina*], relative to the [Project] and [FEIR]: [¶] … [¶]

"[CSU] is obligated to request funding from the Legislature for mitigation, including funds for its local agency fair-share mitigation costs. [Citation.]

"However, the power of [CSU] to mitigate the [P]roject's effects through **[***23]** voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist. [Citation.]

"Thus, if the Legislature does not fund [CSU's] fair share, [CSU] has the authority to adopt a statement of overriding considerations and proceed with the [P]roject. [Citation.]" Citing *Marina*, CSU's response further stated: "[T]he [FEIR] proposes a series of mitigation measures that requires [CSU], subject to funding by the state Legislature, to contribute its 'fair share' of the costs required to improve existing infrastructure, as needed. [Citation.] … Further, the [FEIR] determined that impacts related to traffic and circulation would be significant and unavoidable in light of the potential for the Legislature to deny **[**510]** CSU's or Caltrans'[s] funding requests, or to grant less funding than requested, or to delay receipt of the funds." CSU further stated:
[*1154]

"Consistent with [*Marina*], upon project approval by [CSU], the CSU Chancellor will request from the Governor and the state Legislature, through the annual State Budget process, the funds necessary to fulfill the mitigation requirements of CEQA, as determined by [CSU]. **[***24]** [¶] … [¶]

"If the Legislature approves the CSU funding request, or a portion of that request, it is anticipated the appropriated funds will be provided to [City] and the City of La Mesa in annual amounts corresponding to actual annual enrollment growth, provided that each entity identifies a fund or traffic impact fee program assuring that the funds will be expended solely in furtherance of the subject roadway improvements.

"Because CSU cannot guarantee that its request to the Governor and the Legislature for the necessary mitigation funding will be approved, or that Caltrans'[s] request for funding will be approved, or that funding will be granted in the amount requested, or that the public agencies will fund the mitigation improvements that are within their responsibility and jurisdiction, if the [P]roject is approved, CSU will find that the impacts whose [*sic*] funding is uncertain remain significant and unavoidable, and CSU will adopt a statement of overriding considerations pursuant to CEQA."

The FEIR made certain revisions to the DEIR, including a statement that its proposed traffic mitigation measures are consistent with *Marina*. As to many, if not most, of the specific traffic **[***25]** mitigation measures, the FEIR qualified CSU's obligation to contribute to City its fair share of mitigation costs by including the prefatory language "[s]ubject to funding by the state Legislature." The FEIR also listed its proposed fair-share percentage contribution, ranging from 1 percent to 39 percent, toward the cost of each of the 34 specific offsite traffic mitigation measures. Although the FEIR concluded the

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[5] As we discuss in more detail below, that language states: "[A] state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist." (***Marina, supra, 39 Cal.4th at p. 367***.)

Project "would result in significant impacts at various intersections, freeway interchanges and mainline segments" and recommended CSU pay "fair-share" mitigation to reduce those impacts below a level of significance, it concluded CSU's "fair-share funding commitment is necessarily conditioned upon requesting and obtaining funds from the California Legislature for those impacts within the jurisdiction of local agencies, and Caltrans obtaining funds from the Legislature for those impacts within its jurisdiction. If the Legislature does not provide funding, or if funding is significantly delayed, all identified significant impacts would remain significant and unavoidable." The FEIR then cited its response to comments on its interpretation of *Marina*.

CSU adopted the Findings **[***26]** and the mitigation measures set forth in the MMRP. In the Findings, CSU found the FEIR identified potentially significant effects that could result from implementation of the Project, but inclusion of mitigation measures as part of approval of the Project would reduce **[*1155]** most, but not all, of those effects to less than significant levels. However, the Findings stated: "*Because CSU's request to the Governor and the Legislature*, made pursuant to [*Marina*], *for the necessary mitigation funding may not be approved* in whole or in part, or because any funding request submitted by Caltrans may not be approved, and, because the local public agencies may not fund the mitigation improvements that are within their responsibility **[**511]** and jurisdiction, even if state funding is obtained, [CSU] finds *there are no feasible mitigation measures* that would reduce the identified significant impacts to a level below significant. Therefore, these impacts must be considered unavoidably significant even after implementation of all feasible transportation/circulation and parking mitigation measures." (Italics added.) Furthermore, as to those significant impacts that are unavoidable even after incorporating all feasible **[***27]** mitigation measures, CSU found the benefits of the Project outweighed those unavoidable impacts. CSU approved resolutions stating that:

"7. A portion of the mitigation measures necessary to reduce traffic impacts to less than significant are the responsibility of and under the authority of the City … . The City and [CSU] have not come to agreement. [CSU] therefore cannot guarantee that certain mitigation measures that are the sole responsibility of the City will be timely implemented. [CSU] therefore finds that certain impacts upon traffic may remain significant and unavoidable if mitigation measures are not implemented, and adopts Findings of Fact that include specific Overriding Considerations that outweigh the remaining, potential, unavoidable significant impacts with respect to traffic and transit that are not under the authority and responsibility of [CSU].

"8. … [CSU] hereby certifies the FEIR for the [Project] as complete and adequate in that the FEIR addresses all significant environmental impacts of the [Project] and fully complies with the requirements of CEQA and the CEQA Guidelines. …

"9. It is necessary, consistent with [*Marina*], for CSU to pursue mitigation funding **[***28]** from the [L]egislature to meet its CEQA fair-share mitigation obligations. The chancellor is therefore directed to request from the [G]overnor and the [L]egislature, through the annual state budget process, the future funds ($6,484,000) necessary to support costs as determined by [CSU] necessary to fulfill the mitigation requirements of CEQA.

"10. In **[*1156]** the event the request for mitigation funds is approved in full, the chancellor is directed to proceed with implementation of the [master plan for the Project]. Should the request for funds only be partially approved, the chancellor is directed to proceed with implementation of the [P]roject, funding identified mitigation measures to the extent of the available funds. In the event the request for funds is not approved, the chancellor is directed to proceed with implementation of the [P]roject consistent with resolution number 11 below.

"11. Because [CSU] cannot guarantee that the request to the [L]egislature for the necessary mitigation funding will be approved, or that the local agencies will fund the measures that are their responsibility, [CSU] finds that the impacts whose [*sic*] funding is uncertain remain significant and unavoidable, **[***29]** and that they are necessarily outweighed by the Statement of Overriding Considerations adopted by [CSU]." CSU certified the FEIR and approved the Project.

In denying City's subsequent petition for writ of mandate and discharging the 2006 writ, the trial court issued a statement of decision, stating in part:

?[*Marina*] did not rule out the possibility that a voluntary payment negotiated … for the purpose of mitigating specified environmental effects would not satisfy [CSU's] CEQA obligations as to **[**512]** such effects. In reliance on this opinion, CSU negotiated with the City and Caltrans to determine its fair share of the offsite improvements. CSU then requested the necessary funds from the Legislature and[,] in doing so, complied

with the mandate of [*Marina*]. [¶] … [¶]

"Petitioners suggest that CSU must discuss other methods to fund mitigation measures, such as non-state funded revenue bonds or reducing the scope of the [P]roject. [*Marina*] does not so hold. Further, such arguments were not raised in the underlying proceedings and cannot be raised now. … Here, Petitioners cited to several comment letters … . [H]owever, the alternative funding claims were not raised in these comment **[***30]** letters. [¶] … [¶]

"The Court finds that CSU has met the requirements of [*Marina*] and CEQA. The 2006 writ is discharged."

B

In *Marina*, the California Supreme Court addressed CSU's obligations under CEQA to discuss in an EIR measures to mitigate the significant offsite environmental impacts of a project involving the expansion of its Monterey Bay campus (CSUMB) on Fort Ord, a former United States Army base, to accommodate an increase in enrollment from 3,800 students to 25,000 students by 2030. (*Marina, supra, 39 Cal.4th at pp. 345–346, 348*.) The Fort Ord Reuse Authority (FORA) was created by the Legislature to manage the transition of the former Fort Ord base to civilian uses, including residential housing, business, light industry, research and development, recreation, and **[*1157]** education. (*Id. at p. 346*.) The Legislature gave FORA the power and duty to prepare the base's infrastructure for development for those civilian uses. (*Id. at p. 347*.) FORA's capital improvement plans included construction of infrastructure for transportation (e.g., roadways), water supply, and wastewater management. (*Ibid*.) The Legislature directed FORA to arrange its own financing for those infrastructure improvements, **[***31]** rather than through legislative appropriations. (*Ibid*.)

In its EIR for the expansion of CSUMB, CSU identified many significant environmental effects of the project and adopted specific mitigation measures that would mitigate most of those effects to a level of less than significant. (*Marina, supra, 39 Cal.4th at p. 349*.) However, because full mitigation of certain significant effects, including offsite traffic impacts, would require action by both CSU and FORA, the EIR did not provide for mitigation of those effects. (*Id. at pp. 349–351*.) Nevertheless, FORA's own planning documents included plans for infrastructure improvements that would fully mitigate the remaining effects of CSU's expansion of CSUMB. (*Id. at p. 351*.) In so doing, FORA assumed CSUMB would pay its share of the cost of the infrastructure improvements. (*Ibid*.) However, CSU refused to contribute any funds to FORA for road and fire protection improvements. (*Ibid*.) CSU certified the EIR and approved the project despite the remaining unmitigated effects, finding (as *Marina* paraphrases) that "(1) improvements to roads and fire protection are the responsibility of FORA rather than of [CSU]; (2) mitigation is infeasible because **[***32]** [CSU] may not legally contribute funds toward these improvements; and (3) the planned expansion of CSUMB offers overriding benefits that outweigh any remaining unmitigated **[**513]** effects on the environment." (*Ibid*., fn. omitted.)

FORA and the City of Marina filed separate petitions for writs of mandate challenging CSU's certification of the EIR, alleging that CSU "had (1) failed to identify and adopt existing, feasible measures to mitigate significant effects on the environment described in the EIR, (2) improperly certified the EIR and approved the [project] despite the availability of feasible mitigation measures, (3) improperly disclaimed responsibility for mitigating CSUMB's environmental effects, and (4) improperly relied on a statement of overriding considerations to justify certifying the EIR and approving the **[*1158]** [project].? (*Marina, supra, 39 Cal.4th at p. 354*.) The trial court granted the petitions and issued a writ of mandate directing CSU to vacate its actions and set aside the EIR's statement of overriding considerations. (*Id. at pp. 354–355*.) On appeal, the Court of Appeal reversed the judgment. (*Id. at p. 355*.) The California Supreme Court granted FORA's petition for review. (*Ibid*.)

CA(7)[↑] **(7)** In **[***33]** *Marina*, the court defined the question before it as "whether [CSU] ha[s] properly certified the EIR for CSUMB and, on that basis, approved the [project]." (*Marina, supra, 39 Cal.4th at p. 355*.) FORA contended CSU's certification of the EIR must be vacated because three of its underlying findings were based on the erroneous legal assumption that the California Constitution precluded it from contributing funds to FORA for mitigation of the project's environmental effects. (*39 Cal.4th at p. 355*.) The first two of CSU's findings were that (1) CSU cannot feasibly mitigate those significant effects, and (2) mitigation of those effects was not CSU's responsibility. (*Ibid*.) Those two findings required the third finding that overriding considerations outweighed the remaining unmitigated effects and justified certification of the EIR and approval of the project. (*Ibid*.) The Supreme Court in *Marina* agreed with FORA. (*Ibid*.) The court stated: *HN13*[↑] "[A]n EIR that incorrectly disclaims the power and duty

to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document." (*Id. at p. 356*.)

CA(8)[↑] **(8)** Regarding the first issue, *Marina* rejected CSU's claim that mitigation **[***34]** of significant offsite effects was infeasible. (*Marina, supra, 39 Cal.4th at pp. 356–366*.) The court held the California Constitution did *not* preclude *voluntary* mitigation payments by CSU because they do not constitute compulsory charges or assessments without legislative authority. (*39 Cal.4th at pp. 356–359*.) *Marina* stated: "CEQA requires [CSU] to avoid or mitigate, if feasible, the significant environmental effects of their project (… § 21002.1, subd. (b)) and … payments to FORA may represent a feasible form of mitigation. To illustrate the point, if campus expansion requires that roads or sewers be improved, [CSU] may do the work [itself] on campus, but [it has] no authority to build roads or sewers off campus on land that belongs to others. Yet [CSU is] not thereby excused from the duty to mitigate or avoid CSUMB's off-campus effects on traffic or wastewater management, because HN14[↑] CEQA requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property, but '*on the environment*' (… § 21002.1, subd. (b), italics added), with 'environment' defined for these purposes as 'the **[**514]** physical conditions which exist *within the area which* ***[***35]*** *will be affected by a proposed project*' (*id*., § 21060.5, italics added). Thus, if [CSU] cannot adequately mitigate or avoid CSUMB's off-campus environmental effects by performing acts on campus (as by reducing sufficiently the use of automobiles or the volume of sewage), then to pay a third party such as FORA to perform the necessary acts off campus may well represent a feasible alternative. A payment made under these circumstances can properly be described neither as compulsory nor, for that reason, as an assessment." (*Marina, supra, 39 Cal.4th at pp. 359–360*.) *Marina* held: "[N]o rule precludes a public entity from sharing with another the cost of improvements benefiting both. Furthermore, while education may be CSU's core function, to avoid or mitigate the environmental effects of its projects is also one of CSU's functions. This is the plain import of CEQA, in which the Legislature **[*1159]** has commanded that '[*e*]*ach public agency* shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.' " (*Marina, supra, 39 Cal.4th at pp. 360–361*.)

CA(9)[↑] **(9)** *Marina* also held that HN15[↑] a payment by CSU for mitigation of its project's environmental **[***36]** effects "would *not* constitute an unlawful gift of public funds" (*Marina, supra, 39 Cal.4th at p. 363*, italics added) because those payments would be used for "the public purpose of discharging [its] duty as a public agency, under the express terms of CEQA, to 'mitigate or avoid the significant effects on the environment … whenever it is feasible to do so' " (*id. at p. 372*).

CA(10)[↑] **(10)** *Marina* also rejected CSU's assertion that mitigation of its expansion of CSUMB was infeasible because it could not guarantee that FORA would actually implement the proposed infrastructure improvements. (*Marina, supra, 39 Cal.4th at p. 363*.) CSU found in its EIR that the offsite mitigation measures were not feasible because implementation of those measures was disputed and therefore mitigation of the effects to less than significant levels could not be assured. (*Ibid*.) *Marina* concluded: "The presently identified, unavoidable uncertainties affecting the funding and implementation of the infrastructure improvements FORA has proposed in its Reuse Plan do not render voluntary contributions to FORA by [CSU] infeasible as a method of mitigating CSUMB's effects. Both the CEQA Guidelines and judicial decisions recognize **[***37]** that HN16[↑] a project proponent may satisfy its duty to mitigate its own portion of a cumulative environmental impact by contributing to a regional mitigation fund. … [*C*]*ourts have found fee-based mitigation programs for cumulative impacts, based on fair-share infrastructure contributions by individual projects, to constitute adequate mitigation measures under CEQA*." (*Id. at p. 364*, italics added.) Although the court cautioned that a commitment to pay fair-share fees without any evidence the mitigation would actually occur would be inadequate, it concluded "[t]here is … no reason to doubt that FORA will meet its statutory obligation …" to construct the public capital facilities necessary for civilian development. (*Id. at p. 365*.) CEQA requires only a reasonable plan for mitigation and not a time-specific schedule for specific mitigation measures (e.g., specific road improvements). (*39 Cal.4th at p. 365*.)

[515]** CA(11)[↑] **(11)** Regarding the second issue, *Marina* rejected CSU's claim that mitigation was exclusively the responsibility of FORA. (*Marina, supra, 39 Cal.4th at pp. 366–367*.) HN17[↑] Under section 21081, subdivision (a)(2), a public agency does not have to undertake identified mitigation measures if it finds those measures **[***38]** "are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other **[*1160]** agency." In the circumstances of *Marina*,

although FORA has responsibility to implement its proposed infrastructure improvements, "the FORA Act contemplates that the costs of those improvements will be borne by those who benefit from them." (*Marina, at p. 366*.) However, *Marina* held the section 21081, subdivision (a)(2), finding may be made by a lead agency "only when the other agency said to have responsibility has *exclusive* responsibility." (*Marina, at p. 366*.) *Marina* stated: "As the CEQA Guidelines explain, '[t]he finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.' (*CEQA Guidelines, § 15091, subd. (c)*.) The Guidelines' logical interpretation of CEQA on this point 'avoids the problem of agencies deferring to each other, with the result that no agency deals with the problem. …'" (*Marina, supra, 39 Cal.4th at p. 366*.) *Marina* rejected CSU's argument that it had no responsibility to mitigate offsite environmental **[***39]** effects of its project because it lacked the power to construct offsite infrastructure improvements. (*Id. at pp. 366–367*.) *Marina* held: ***HN18***[] ***CA(12)***[] **(12)** "CEQA does not … limit a public agency's obligation to mitigate or avoid significant environmental effects to effects occurring on the agency's own property. (See … §§ 21002.1, subd. (b), 21060.5.) CEQA also provides that ***HN19***[] '[a]ll state agencies … shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.' (*Id*., § 21106.) Thus, as we have also explained, if [CSU] cannot adequately mitigate or avoid CSUMB's off-campus environmental effects by performing acts on the campus, then *to pay a third party* such as FORA *to perform the necessary acts off campus may well represent a feasible alternative*." (*39 Cal.4th at p. 367*, italics added.) *Marina* then stated: ***CA(13)***[] **(13)** ***HN20***[] "To be clear, we do not hold that the duty of a public agency to mitigate or avoid significant environmental effects (… § 21002.1, subd. (b)), combined with the duty to ask the Legislature for money to do so (*id*., § 21106), will always give a public agency that is undertaking a project with environmental effects shared **[***40]** responsibility for mitigation measures another agency must implement. Some mitigation measures cannot be purchased, such as permits that another agency has the sole discretion to grant or refuse. *Moreover, a state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist. For the same reason, however, for* [*CSU*] *to disclaim responsibility for making such payments before they have complied with their statutory obligation to ask the Legislature for the necessary funds is premature, at the* ***[**516]*** *very least. The superior court found no evidence* [*CSU*] *had asked the Legislature for the funds*. In [its] brief to this court, [CSU] acknowledge[s] [it] did not budget for payments [it] assumed would constitute invalid assessments … . That assumption, as we have explained, is invalid." (*Marina, supra, 39 Cal.4th at p. 367*, italics added, fn. omitted.)
[*1161]

CA(14)[] **(14)** Regarding the third issue (i.e., statement of overriding considerations), *Marina* stated: ***HN21***[] "A statement of overriding considerations is required, and offers a proper basis for approving a project despite **[***41]** the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have *properly* been found to be *infeasible*. (… § 21081, subd. (b).) Given our conclusion [CSU] [has] abused [its] discretion in determining that CSUMB's remaining effects cannot feasibly be mitigated, that [CSU's] statement of overriding circumstances is invalid necessarily follows. *CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible*. Such a rule, even were it not wholly inconsistent with the relevant statute (… § 21081, subd. (b)), would tend to displace the fundamental obligation of '[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so' (… § 21002.1, subd. (b))." (*Marina, supra, 39 Cal.4th at pp. 368–369*, italics added.)

Marina concluded CSU must be directed to vacate its certification of the EIR and approval **[***42]** of the project and set aside its statement of overriding considerations. (*Marina, supra, 39 Cal.4th at p. 369*.)

C

City, joined by SANDAG and MTS, contends the trial court erred in interpreting *Marina* to hold that CSU does not have to make "fair-share" payments for mitigation of the Project's significant offsite environmental impacts because CSU cannot guarantee the Legislature and Governor will approve the funding and therefore those

mitigation measures are "infeasible" under CEQA.[6] City asserts CSU and the trial court wrongly relied on dictum in *Marina* that would allow CSU to avoid its duty to mitigate under CEQA. City further argues the FEIR fails as an informational document because it did not discuss potential alternative means of paying CSU's "fair share" of offsite mitigation costs.

The language in *Marina* on which CSU and the trial court relied is contained in a paragraph *after* the court held mitigation was not the exclusive responsibility of FORA and CSU had an obligation under CEQA to mitigate or avoid the project's offsite environmental effects by paying **[***43]** a third party (e.g., FORA) to perform those acts if payments were feasible and on-campus actions could not adequately mitigate those effects. (*Marina, supra, 39 Cal.4th* ***[*1162]*** *at pp. 366–367*.) *Marina* then noted CSU had not made any request of the Legislature for offsite mitigation funding because CSU (erroneously) concluded it did not have any responsibility under CEQA to **[**517]** mitigate the offsite environmental effects of its project. (*39 Cal.4th at p. 367*.) The court stated: "[F]or [CSU] to disclaim responsibility for making such payments before [it has] complied with [its] statutory obligation to ask the Legislature for the necessary funds is premature, at the very least." (*Ibid*.) The court also stated: "[A] state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist." (*Ibid*.) It is that latter language (on which CSU and the trial court relied) that City asserts is dictum and does not provide persuasive reasoning to limit CSU's duty under CEQA to make "fair-share" mitigation payments for the Project's significant offsite effects **[***44]** to merely making a request for such funding from the Governor and the Legislature.

CA(15)[↑] **(15)** The language in *Marina* at issue is dictum because it was not necessary for the holding or disposition. ***HN22***[↑] "Only statements necessary to the decision are binding precedents … ." (*Western Landscape Construction v. Bank of America (1997) 58 Cal.App.4th 57, 61 [67 Cal. Rptr. 2d 868]*.) "The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to supplementary or explanatory comments which might be included in an opinion. To determine the precedential value of a statement in an opinion, the language of that statement must be compared with the facts of the case and the issues raised." (*Ibid*.)[7] "A decision is authority only for the point actually passed on by the court and directly involved in the case." (*Gomes v. County of Mendocino (1995) 37 Cal.App.4th 977, 985 [44 Cal. Rptr. 2d 93]*.)

The ratio decidendi of *Marina* is defined by those issues directly raised by the parties and addressed by the California Supreme Court that were necessary to its decision. In *Marina*, the court defined the question before it as "whether [CSU] ha[s] properly certified the EIR for CSUMB and, on that basis, approved the [project]." (*Marina, supra, 39 Cal.4th at p. 355*.) FORA contended CSU's EIR certification must be vacated because three of CSU's underlying findings were based on the erroneous legal assumption that the California Constitution precluded it from contributing funds to FORA for mitigation of the project's environmental effects. (*39 Cal.4th at p. 355*.) The California Supreme Court agreed with FORA that CSU erred in making the **[*1163]** first two findings, i.e., that (1) CSU cannot feasibly mitigate those significant effects and (2) mitigation of those effects was not CSU's responsibility. (*Ibid*.) The court then agreed CSU erred in making its third finding (i.e., **[***46]** its statement of overriding considerations) because it was based on erroneous assumptions that it could not feasibly mitigate the significant offsite effects of its project and mitigation was not its responsibility. (*Ibid*.) *Marina* concluded: "An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative **[**518]** document." (*Id. at p. 356*.)

The language in *Marina* on which CSU relies in the instant appeal was set forth in *Marina*'s discussion of whether mitigation of offsite effects was exclusively the responsibility of FORA. (*Marina, supra, 39 Cal.4th at pp. 366–367*.) The court concluded CSU had a responsibility under CEQA to mitigate the significant offsite effects of its project even though it had no legal power to actually construct the offsite improvements.

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[6] CSU argued below that offsite mitigation was "infeasible" because it could not guarantee funding from the Legislature.

[7] "The *ratio decidendi* is the principle or rule that constitutes the ground of the decision, and it is this principle or rule that has the effect of a precedent. It is therefore necessary to read the language of an opinion in the light of its facts and the issues raised, to determine (a) which statements of law were necessary to **[***45]** the decision, and therefore binding precedents, and (b) which were arguments and general observations, unnecessary to the decision, i.e., dicta, with no force as precedents." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 509, pp. 572–573.)

(*Marina, at pp. 366–367*.) *Marina* suggested that if CSU could not adequately mitigate significant offsite effects by performing on-campus acts, it could feasibly mitigate those offsite effects by paying a third party (e.g., FORA) to perform offsite mitigation (e.g., construct infrastructure improvements). (*Id. at p. 367*.) For purposes of stare **[***47]** decisis, that discussion constituted the court's reasoning necessary to its decision. Contrary to CSU's assertion, *Marina*'s additional statements—that CSU had not requested funding from the Legislature for that offsite mitigation and that if the Legislature did not provide such funding, had it been requested, CSU would not have the power to mitigate those offsite effects—were supplementary or explanatory comments to its ratio decidendi and were dicta. (*Western Landscape Construction v. Bank of America, supra, 58 Cal.App.4th at p. 61*; *Gogri v. Jack in the Box Inc. (2008) 166 Cal.App.4th 255, 272 [82 Cal. Rptr. 3d 629]*.) We conclude *Marina*'s statement that "if the Legislature does not appropriate the money [for voluntary payments for offsite mitigation], the power does not exist" (*Marina, at p. 367*) was unnecessary to its disposition of the appeal and is dictum we are not required to follow. (*Western Landscape, at p. 61*; *Gogri, at p. 272*.)

CA(16)[↑] **(16)** CSU argues that, even though that statement in *Marina* may be dictum, we nevertheless should follow it. However, although ***HN23***[↑] we generally consider California Supreme Court dicta to be persuasive (*Hubbard v. Superior Court (1997) 66 Cal.App.4th 1163, 1169 [78 Cal. Rptr. 2d 819]*), the court's statement **[***48]** in question did not involve extensive analysis. We agree with the reasoning of *Marina*'s preliminary statements that CSU has an obligation under CEQA to mitigate or avoid the significant environmental effects of its projects (whether those effects are on-campus or offsite) and, toward fulfilling that obligation, it has a duty to ask the Legislature for funding to do so. (*Marina, supra, 39 Cal.4th at p. 367*.) However, the statement in *Marina* that: "[A] state agency's power to mitigate its project's **[*1164]** effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist" (*ibid*.) is not supported by any statute, regulation, case, or other authority. Rather, *Marina* merely proceeds from its conclusory statement to note that because CSU had not even requested such appropriation from the Legislature, CSU could not argue it had no obligation under CEQA to make voluntary mitigation payments to a third party for offsite mitigation. (*Marina, at p. 367*.)

We believe that had the parties in *Marina* specifically addressed the issue and had the California Supreme Court extensively addressed or analyzed the issue, *Marina* **[***49]** would have modified or qualified its dictum. As City asserts, neither CEQA nor any provision of the Education Code or other statute precludes CSU (or any other state agency) from using nonlegislatively appropriated funding for making **[**519]** voluntary payments to third parties for mitigation of the offsite significant environmental effects of its projects. For example, we presume a campus of CSU (e.g., SDSU) may receive revenues or other funds from a myriad of sources (e.g., tuition, student fees, revenue bonds, parking fees, and private donations). Furthermore, in the context of the instant case, SDSU presumably will receive additional revenues from Project-related sources (e.g., rent from Adobe Falls faculty and student housing, revenue from guests of the Alvarado hotel, fees charged to residents of the Project's new dormitories and/or other student housing, revenue from the new campus conference center, and revenue from the expanded and renovated student union). The availability of potential sources of funding other than the Legislature for offsite mitigation measures should have been addressed in the DEIR and FEIR and all of those potential sources should not be deemed "infeasible" sources **[***50]** for CSU's "fair-share" funding of offsite mitigation measures without a comprehensive discussion of those sources and compelling reasons showing those sources cannot, as a matter of law, be used to pay for mitigation of the significant offsite environmental effects of the Project.

CA(17)[↑] **(17)** CSU did not cite in the DEIR or FEIR, or in its trial or appellate briefs, any statute, regulation, or other provision that bars it from using some or all of those revenue or other funding sources to help pay its "fair share" of the costs to mitigate the significant offsite environmental effects of the Project. ***HN24***[↑] CEQA expressly provides that a public agency may use its discretionary powers for the purpose of mitigating or avoiding a significant environmental effect of a project (except as otherwise provided by law). (§ 21004; Guidelines, *§ 15040, subd. (c)*; see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist. (2006) 141 Cal.App.4th 86, 103–104 [45 Cal. Rptr. 3d 674]*.) Under CEQA, a public agency (e.g., CSU) is required to mitigate or avoid the significant environmental effects of a project that it carries out or approves if it is feasible to do so. (§ 21002.1, subd. (b); ***[*1165]*** *Marina, supra, 39 Cal.4th at p. 359*.) *Marina* **[***51]** stated: "CEQA requires [CSU] to avoid or mitigate, if feasible, the significant environmental effects

of their project (? § 21002.1, subd. (b)) and … payments to FORA may represent a feasible form of mitigation." (*Marina, at p. 359*.) The court stated: "*CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible*. Such a rule, even were it not wholly inconsistent with the relevant statute (… § 21081, subd. (b)), would tend to displace the fundamental obligation of ?[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so' (… § 21002.1, subd. (b))." (*Id. at pp. 368–369*, italics added.) Because of CSU's duty under CEQA to adopt *feasible* measures to mitigate or avoid the significant environmental effects of the Project (whether those effects occur on campus or offsite), it would be *illogical* to interpret that duty to mitigate as requiring payment **[***52]** for offsite mitigation measures only if, and only to the extent, CSU obtains funding for that mitigation from one particular source of its myriad of revenue or other funding sources (i.e., a specific appropriation by the Legislature for that mitigation) to the exclusion of the many other funding **[**520]** sources CSU could use to help pay its "fair share" of the costs to mitigate the offsite effects of the Project. Were we to accept CSU's interpretation of *Marina*, it would, in effect, allow CSU to avoid its obligation under CEQA to take feasible measures to mitigate or avoid the significant offsite environmental effects of the Project and thereby obtain the benefits of the Project while leaving City and other public agencies with the entire burden of paying for mitigation of the offsite environmental effects of the Project (or causing neighboring residents and commuters to suffer the unmitigated adverse impacts of the Project). Also, to so limit CSU's duty to mitigate under CEQA would not further the Legislature's intent that CEQA "be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259 [104 Cal. Rptr. 761, 502 P.2d 1049]*, **[***53]** disapproved on another ground in *Kowis v. Howard (1992) 3 Cal.4th 888, 896–897 [12 Cal. Rptr. 2d 728, 838 P.2d 250]*.)

D

CA(18)[↑] **(18)** Because CSU erred in relying on the above dictum from *Marina* in preparing the DEIR, responses to comments, the FEIR, and the Findings, and concluding its payment to City and other public agencies of its "fair share" of the costs of offsite mitigation measures was "not feasible" (i.e., infeasible), we, like the court in *Marina*, conclude CSU's *erroneous legal assumption* invalidates both its finding that measures to mitigate the offsite effects of the **[*1166]** Project were infeasible and its statement of overriding considerations that can only be adopted when "*the measures necessary to mitigate those effects are truly infeasible*."[8] (*Marina, supra, 39 Cal.4th at pp. 368–369*, italics added.) *HN25*[↑] "[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects … ." (§ 21002.) Furthermore, an agency can adopt a statement of overriding considerations only after it has first properly found that mitigation measures are truly infeasible. (*Marina, at pp. 368–369*.) *Marina* **[***54]** stated: "A statement of overriding considerations is required, and offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have *properly* been found to be *infeasible*. (… § 21081, subd. (b).) Given our conclusion [CSU] [has] abused [its] discretion in determining that CSUMB's remaining effects cannot feasibly be mitigated, **[**521]** that [CSU's] statement of overriding circumstances is invalid necessarily follows." (*Marina, at p. 368*, italics added.) The court explained: "*CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the*

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[8] The Findings stated that: "*Because CSU's request to the Governor and the Legislature*, made pursuant to [*Marina*], *for the necessary mitigation funding may not be approved* in whole or in part, or because any funding request submitted by Caltrans may not be approved, and, because the local public agencies may not fund the mitigation improvements that are within their responsibility and jurisdiction, even if state funding is obtained, [CSU] finds *there are no feasible mitigation measures* that would reduce the identified significant impacts to a level below significant. Therefore, these impacts must be considered unavoidably significant even after implementation of all feasible transportation/circulation and parking mitigation measures." (Italics added.) CSU represents on appeal that the Legislature has not granted its request for such funding. Given the difficult choices the Legislature and Governor faced in making widespread funding cuts in California's most recent budget, a pragmatist could reasonably predict that it is unlikely the Legislature will provide funding for offsite mitigation of the Project in the foreseeable **[***56]** future.

measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (? § 21081, subd. (b)), would tend to displace the fundamental obligation of '[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so' **[***55]** (… § 21002.1, subd. (b))." (*Id. at pp. 368–369*, italics added.)

Because the DEIR, the FEIR, and the Findings were based on the erroneous legal assumption that CSU could pay its "fair share" of offsite mitigation costs *only if* the Legislature specifically appropriated such funding, CSU improperly found those mitigation measures were infeasible and improperly adopted a statement of overriding considerations for those "unavoidable" effects of the Project (i.e., effects for which mitigation was wrongly **[*1167]** deemed infeasible). Alternatively stated, CSU did not proceed in a manner required by law and thereby abused its discretion by certifying the FEIR and approving the Project. (§ 21168.5; *Vineyard, supra, 40 Cal.4th at p. 427*.) When a public agency does not comply with procedures required by law, its decision must be set aside as presumptively prejudicial. (*Sierra Club, supra, 7 Cal.4th at p. 1236*.)

CA(19)[↑] **(19)** To the extent CSU continues to assert, as it did in its Findings and resolutions, that mitigation of the significant offsite effects of the Project is infeasible because CSU cannot guarantee City or other public agencies (e.g., Caltrans) will fund and implement measures to mitigate those significant effects, *Marina* noted *HN26*[↑] "unavoidable uncertainties affecting **[***57]** the funding and implementation of" offsite mitigation measures do *not* make CSU's voluntary "fair-share? contributions toward mitigation of those offsite effects "infeasible." (*Marina, supra, 39 Cal.4th at p. 364*.) Furthermore, the DEIR, the FEIR, and the Findings do not contain any detailed discussion showing City or other public agencies will not take measures to fund and implement mitigation measures within their respective jurisdictions and control. Our review of the record shows CSU has identified specific mitigation measures for each significant offsite environmental effect of the Project (e.g., street intersections and segments and freeway on-ramps and segments) and CSU has not shown the public agencies with jurisdiction over those mitigation measures had rejected those mitigation measures assuming CSU pays its "fair share" of those mitigation costs.[9]

[522]** City also asserts the DEIR and FEIR did not discuss alternatives to the Project's on-campus components or other on-campus acts that could mitigate the significant offsite environmental effects of the Project and thereby reduce or eliminate CSU's obligation to pay its ?fair share" for offsite mitigation. *Marina* implicitly recognized that CEQA requires CSU to consider on-campus acts that can mitigate offsite effects, stating: "[I]f [CSU] cannot adequately mitigate or avoid [a project's] off-campus environmental effects by performing acts on the campus [(e.g., by sufficiently reducing the use of vehicles)], then to pay a third party [(e.g., City or Caltrans)] to perform the necessary acts off campus may well represent a feasible alternative." (*Marina, supra, 39 Cal.4th at p. 367*; see also Guidelines, *§ 15126.4*; *Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th* ***[*1168]*** *1252, 1261, fn. 4 [100 Cal. Rptr. 2d 301]*.) **[***59]** Based on our review of the DEIR and FEIR, we do not believe those documents adequately addressed the possibility of reducing or avoiding the need for certain offsite mitigation measures (and CSU's "fair-share" funding thereof) by taking feasible measures to alter certain on-campus components of the Project or taking other acts on SDSU's campus. Although the DEIR and FEIR extensively discussed specific alternatives to the Project, they did not expressly discuss possible *feasible* modifications to the Project or other *on-campus acts* that could reduce or eliminate the need for CSU's "fair-share" funding of offsite mitigation costs. (Cf. *Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal.App.4th 866, 882–883 [111 Cal. Rptr. 3d 374]*; *Save Round Valley Alliance v. County of Inyo (2007) 157 Cal.App.4th 1437, 1457 [70 Cal. Rptr. 3d 59]* ["If an alternative is identified as at least potentially feasible, an in-depth discussion is required."]; *Association of Irritated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1400 [133 Cal. Rptr. 2d 718]* ["An EIR must 'describe a range of

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[9] Although Caltrans is not a direct party to this appeal, it has filed an amicus curiae brief in which it argues that CSU wrongly interprets *Marina* as holding CSU need not make "fair-share" payments to another state agency (e.g., Caltrans) for offsite mitigation of the Project's environmental effects (e.g., freeway on-ramps and segments) **[***58]** because they both depend on the Legislature for their funding. We do not decide this issue because it is not directly before us in this appeal. Nevertheless, we express our doubt that CSU's apparent strained interpretation of *Marina* (as reflected in the DEIR and FEIR) is consistent with either *Marina* or CEQA.

reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but **[***60]** would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.' "].) Because the DEIR and FEIR did not contain an adequate discussion of the possible feasible *on-campus* measures that could reduce or avoid the need for *offsite* mitigation, they were inadequate informational documents under CEQA. Accordingly, CSU did not proceed in a manner required by law and thereby abused its discretion by certifying the FEIR and approving the Project. (§ 21168.5; *Vineyard, supra, 40 Cal.4th at p. 427*; *Sierra Club, supra, 7 Cal.4th at p. 1236*.)

Because of the above deficiencies, the DEIR and FEIR are inadequate informational documents under CEQA. (*Laurel Heights, supra, 47 Cal.3d at p. 392*; *City of Santee v. County of San Diego, supra, 214 Cal.App.3d at pp. 1454–1455*.) CSU's decision makers and the public did not have proper and adequate information regarding the Project and feasible sources for "fair-share" funding of significant offsite mitigation measures and feasible on-campus acts that could reduce or eliminate the need for offsite mitigation and funding. CSU abused its discretion by certifying the FEIR and approving **[***61]** the Project.[10] The trial court erred in concluding otherwise.

[*1169]

[523]** IV

Exhaustion of Administrative Remedies

CSU asserts, as it did in the trial court, that City, SANDAG, and MTS are barred by the doctrine of exhaustion of administrative remedies from raising the contentions that CSU erred in interpreting *Marina* and improperly found offsite mitigation was infeasible because CSU could not guarantee the Legislature would appropriate funding for mitigation of the Project's significant offsite effects.

A

HN27[↑] *CA(20)*[↑] **(20)** ?Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action. Only a proper party may petition for a writ of mandate to challenge the sufficiency of an EIR or the validity of an act or omission under CEQA. The petitioner is required to have 'objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance **[***62]** of the notice of determination.' ([Former] § 21177, subd. (b).) The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative proceedings. [Citation.] Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation." (*Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1199 [22 Cal. Rptr. 3d 203]* (*Bakersfield*).) Furthermore, "a party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project." (*Federation of Hillside & Canyon Associations v. City of Los Angeles, supra, 83 Cal.App.4th at p. 1263*.)

HN28[↑] *CA(21)*[↑] **(21)** "The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. [Citation.] The decisionmaking body ' "is entitled to learn the contentions of interested parties before litigation is instituted." ' " (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 384 [110 Cal. Rptr. 2d 579]*.) **[***63]** To exhaust administrative remedies, "[m]ore is obviously required" than "generalized environmental comments at public hearings." (*Coalition for Student Action v. City of Fullerton (1984) 153 Cal.App.3d 1194, 1197 [200 Cal. Rptr. 855]*.) The objection must be sufficiently specific to give the agency an opportunity to evaluate and respond to it. (*Porterville Citizens for **[*1170]** Responsible Hillside Development v. City of Porterville (2007) 157 Cal.App.4th 885, 909 [69 Cal. Rptr. 3d 105]*; cf. *Resource Defense Fund v. Local Agency Formation Com. (1987) 191 Cal.App.3d 886, 894 [236 Cal. Rptr. 794]* [requiring the exact issue to have been raised], disapproved on another ground in *Voices of the Wetlands v. State Water Resources Control Bd. (2011) 52 Cal.4th 499, 529 [128 Cal. Rptr. 3d 658, 257 P.3d 81]*.) "On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding." (*Citizens*

[10] In so holding, we do not address City's additional assertion that CSU's position constitutes improper deferral of mitigation by, in effect, shifting responsibility for mitigation from CSU to the Governor and the Legislature.

Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, 163 [217 Cal. Rptr. 893].) Application of the exhaustion doctrine is a **[**524]** question of law we determine de novo. (*Sierra Club v. City of Orange (2008) 163 Cal.App.4th 523, 536 [78 Cal. Rptr. 3d 1]*; *Planning & Conservation League v. Castaic Lake Water Agency (2009) 180 Cal.App.4th 210, 251 [103 Cal. Rptr. 3d 124]*.)

B

We conclude the **[***64]** doctrine of exhaustion of administrative remedies does not bar City, SANDAG, and MTS from raising the contentions that CSU wrongly interpreted *Marina* and improperly found "fair-share" payments for offsite mitigation of significant effects were infeasible because CSU could not guarantee the Legislature would appropriate funding for that offsite mitigation. Based on our independent review of the administrative record, there are at least three documents or comments that show those issues were raised in a sufficiently specific manner to allow CSU an opportunity to evaluate and address them. First, in a letter to CSU from City's attorney dated July 27, 2007, City restated its concerns that it raised in its February 21 letter responding to the NOP. Furthermore, City asserted the DEIR was "fatally flawed because it does not guarantee the implementation of the traffic mitigation measures it proposes." Quoting language from the DEIR stating that CSU's ?fair-share" funding commitment is necessarily conditioned on requesting and obtaining funds from the Legislature, City asserted: "This approach relies on a faulty interpretation of [*Marina*]." City extensively discussed *Marina* and asserted that **[***65]** it included "pure dictum" in stating CSU did not have the power to mitigate if the Legislature does not appropriate funding for mitigation. City argued: "The [DEIR] improperly relies on this dictum to build towards an untenable either-or-finding, that either they will—or they will not—mitigate significant traffic impacts." City concluded: "The [DEIR] fails because [CSU] disingenuously attempt[s] to dodge true responsibility by relying on dicta in the same California Supreme Court case [(i.e., *Marina*)] that caused the collapse of the first [DEIR] on the [Project]." We conclude City's letter was sufficiently specific to apprise CSU of the contentions that City asserted in objecting to the DEIR (i.e., that CSU wrongly interpreted *Marina* and improperly relied on *Marina*'s dictum to **[*1171]** conclude that "fair-share" payments for offsite mitigation of the Project's significant effects were infeasible because CSU could not guarantee the Legislature would appropriate funding for that offsite mitigation).

Second, on February 21, 2007 (after the NOP was issued), CSU held a scoping meeting at which it heard comments from the public. At that meeting, Anne Brunkow, president of the Del Cerro Action Council, **[***66]** made the following oral comments (transcribed by a reporter and included in the administrative record): "I want to remind [CSU] that [*Marina*] indicated that public agencies have a requirement to either avoid or mitigate the significant impacts of their projects. So while it is comforting to know that [CSU] is going to request funding for the mitigation requirement, I want to remind [CSU] that *not only do you need to request that funding from the* [*L*]*egislature, but you simply need to mitigate. So assuming that the* [*L*]*egislature denies your request for funding, that does not eliminate your responsibility to mitigate* the [P]roject['s] [significant environmental effects]." (Italics added.) Brunkow's comment clearly presented her position that under CEQA and *Marina* CSU had a duty to mitigate the significant environmental effects of the Project *even if* the Legislature denied CSU's request for **[**525]** mitigation funding. City, SANDAG and MTS can rely on Brunkow's comment to refute CSU's claim that they did not exhaust their administrative remedies. As plaintiffs challenging CSU's certification of the FEIR and approval of the Project, they may raise in court "as a ground of noncompliance any objection **[***67]** that was presented by any person or entity during the administrative proceedings." (*Bakersfield, supra, 124 Cal.App.4th at p. 1199*.)

Third, the administrative record shows that even *CSU's own staff* was aware of and considered *Marina* and other options for funding mitigation of the Project's effects. The written agenda for a January 16, 2007, meeting of CSU's campus planning staff and its CEQA traffic consultants included a section describing the topics of prior discussion, including: "**2. Other less technical issues of mitigation concern**[:] [¶] a. *Sources of funding* (lack thereof); *Legislature, local agencies, CSU capital funds (G.O*. [general obligation] *bonds)* … ." (Italics added.) The agenda then listed topics for discussion at that meeting, including: "**8**. Are there *other avenues*, particularly with the state Legislature[,] that should be explored as a way of addressing [*Marina*] implementation?" (Italics added.) Based on that agenda, it is clear CSU staff had discussed at a past meeting *alternative sources of funding* CSU's mitigation obligation, including CSU's capital funds or general obligation bonds. It can also be reasonably inferred from the agenda that CSU staff discussed "other **[***68]** avenues" (i.e., alternative sources) for funding the implementation of its mitigation

obligation under *Marina* and CEQA. Because CSU is charged with the actions and knowledge of its staff in preparing the DEIR, particularly when that information is contained in the administrative record it is considering, we conclude City, SANDAG and MTS may rely on **[*1172]** the above agenda of CSU's staff to show they exhausted their administrative remedies and CSU had an opportunity to consider and address the issue whether there were alternative sources for funding its obligation under CEQA to pay its "fair share" of offsite mitigation measures. (*Bakersfield, supra, 124 Cal.App.4th at p. 1199* [petitioner may raise ?any objection that was presented by any person or entity during the administrative proceedings"].)

We conclude City, SANDAG and MTS are not barred by the doctrine of exhaustion of administrative remedies from raising the issues that CSU wrongly interpreted *Marina* and improperly found "fair-share" payments for offsite mitigation of significant effects were infeasible because CSU could not guarantee the Legislature would appropriate funding for that offsite mitigation. Those issues were adequately **[***69]** raised during the administrative proceedings by sufficiently specific comments to give CSU an opportunity to evaluate and respond to them. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville, supra, 157 Cal.App.4th at p. 909*.) Furthermore, the specific issue of alternative (i.e., nonlegislative) sources of funding for offsite mitigation was raised at least implicitly, if not expressly, in the portions of the administrative record discussed above. *City of Walnut Creek v. County of Contra Costa (1980) 101 Cal.App.3d 1012 [162 Cal. Rptr. 224]*, cited by CSU and relied on by the trial court, is inapposite and does not persuade us to reach a contrary conclusion. Therefore, the trial court erred by concluding City, SANDAG and MTS were barred by the doctrine of exhaustion of administrative remedies from raising the contentions regarding funding for offsite **[**526]** mitigation measures.[11]

[11] In its statement of decision, the trial court stated: "Petitioners suggest that CSU must discuss other methods to fund mitigation measures, such as non-state funded revenue bonds or reducing the scope of the [P]roject. … [S]uch arguments were not raised in the underlying [administrative] proceedings **[***70]** and cannot be raised now. A project opponent cannot make a skeletal showing during the administrative process and then obtain a hearing on expanded issues in the reviewing court. [Citation.] Here, Petitioners cited to several comment letters … . [H]owever, the alternative funding claims were not raised in these comment letters." Based on our reasoning above, we conclude the trial court erred in concluding City, SANDAG and MTS were barred from raising the contention that CSU was required to consider other, nonlegislative sources for payment of its "fair share" of offsite mitigation measures.

V

Request for Judicial Notice

City contends the trial court erred by denying its request for judicial notice of certain documents pertaining to the issue of whether CSU complied with CEQA and *Marina*. **[*1173]**

A

CSU moved to discharge the 2006 writ, arguing it had complied with *Marina*. In opposition to CSU's motion to discharge, City filed a request for judicial notice (RJN) of 22 exhibits (exhibits A through W), consisting of about 1,418 pages. City argued the trial court should take judicial notice of (1) documents contained in certain exhibits (exhibits A through L) pursuant to *Evidence Code section 452, subdivision (c)*, **[***71]** because they represented official acts of the executive and legislative offices of the State of California and were not reasonably subject to dispute and (2) documents contained in certain exhibits (exhibits M through W) pursuant to *Evidence Code section 452, subdivision (h)*, because they are writings of CSU's executive offices, evidence of official acts taken by CSU, and not reasonably subject to dispute. CSU then filed a motion to strike the documents for which City's RJN sought judicial notice. CSU argued those documents were irrelevant to the issue of whether it had complied with CEQA and had not been considered by CSU when it certified the FEIR and approved the Project. City argued the RJN documents should be judicially noticed to show CSU had not complied with *Marina* (and CEQA) by simply requesting mitigation funding from the Governor and the Legislature. The trial court granted CSU's motion to strike the RJN documents, stating: "The court does not concur with … City's interpretation of [*Marina*] … . These documents were not part of the administrative record and were never considered by CSU when certifying the [FEIR] and approving the 2007 Project."

On October 7, 2010, City **[***72]** filed a motion to augment the record on appeal with the documents lodged with its RJN (i.e., exhibits A through W). On October 27, we issued an order granting City's motion to augment the record on appeal.

B

Evidence Code section 452 provides:

HN29[↑] "Judicial notice may be taken of the following matters to the extent that they are not embraced within [*Evidence Code] Section 451*: [¶] … [¶]

"(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States. [¶] … [¶]

"(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination **[**527]** by resort to sources of reasonably indisputable accuracy."
[*1174]

HN30[↑] ***CA(22)***[↑] **(22)** "Although a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed. 'But judicial notice, since it is a substitute for proof [citation], is always confined to those matters which are relevant to the issue at hand.' " (*Mangini v. R. J. Reynolds Tobacco Co. (1994) 7 Cal.4th 1057, 1063 [31 Cal. Rptr. 2d 358, 875 P.2d 73]*, overruled on another ground in *In re Tobacco Cases II (2007) 41 Cal.4th 1257, 1276 [63 Cal. Rptr. 3d 418, 163 P.3d 106]*.) ***HN31***[↑] A trial court's decision whether to take judicial notice of documents is **[***73]** subject to review for abuse of discretion. (*In re Social Services Payment Cases (2008) 166 Cal.App.4th 1249, 1271 [83 Cal. Rptr. 3d 434]*; *Salazar v. Upland Police Dept. (2004) 116 Cal.App.4th 934, 946 [11 Cal. Rptr. 3d 22]*.)

C

Because we reverse the judgment on other grounds, we do not address the merits of City's contention that the trial court erred by granting CSU's motion to strike City's RJN documents and thereby implicitly denying the RJN. Nevertheless, to provide the parties and the trial court with guidance in future proceedings in this matter, we briefly comment on the trial court's rationale for not taking judicial notice of, and striking, the RJN documents. The court's primary reason for striking the RJN documents was that, given its rejection of City's interpretation of *Marina*, those documents were irrelevant to its determination that CSU had complied with *Marina* by requesting offsite mitigation funding from the Legislature. However, as we concluded above, a mere request by CSU that the Legislature appropriate funding for offsite mitigation of the Project's significant effects does not comply with CEQA (and, at a minimum, an extensive discussion considering other possible feasible sources for funding offsite mitigation **[***74]** is required). CEQA and *Marina* require that CSU adopt feasible measures to mitigate the significant offsite environmental effects of the Project. CSU must consider and adopt feasible sources of offsite mitigation funding in addition to requesting funding from the Governor and the Legislature. Therefore, to the extent the RJN documents are relevant to CSU's obligation to take feasible measures to mitigate the significant effects of the Project, including considering possible feasible sources for offsite mitigation funding, CSU should consider those documents and the trial court in any future proceeding may, in the reasonable exercise of its discretion, grant any future request to take judicial notice of documents relevant to the question of whether CSU has proceeded in a manner required by law.[12]
[*1175]

VI

Increased Vehicle Traffic Calculations

SANDAG and MTS contend the trial court erred by concluding CSU did not improperly calculate the increased vehicle traffic that will be caused by the Project's increased student enrollment. They assert CSU erred in calculating the average daily vehicle trip (ADT) rates for both the Project's anticipated new resident students and new nonresident (or commuter) students.[13]

[528]** A

Resident Student ADT Rate. For purposes of analyzing the impact of the Project on traffic, the DEIR considered a new student to be a "resident" if that student either lived on the SDSU campus or within one-half mile of the campus. The DEIR assumed the Project would result in enrollment of an additional 11,385 students by the

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[12] Although we have not reviewed the RJN documents in question, City represents that those documents are CSU and state budget and finance documents appropriate for judicial notice because they relate to the question of whether CSU properly interpreted *Marina* and complied with its CEQA obligation to adopt and implement feasible measures to mitigate the significant offsite environmental effects **[***75]** of the Project.

[13] For purposes of linguistic convenience, we generally will refer to nonresident students as "commuter" students.

2024/2025 academic year and that 35 percent of those new students (3,984) would be resident students and the remaining 65 percent of new students (7,401) would be commuter students.

In estimating the ADT rate for the 3,984 new resident students, the DEIR relied on prior ADT rate calculations for resident students made by City and the **[***76]** University of California, San Diego (UCSD). In a "College Community Redevelopment Project EIR" drafted by City in 1993 (Redevelopment EIR), City calculated the ADT rate for a resident SDSU student would range from 0.12 to 0.64. In a separate EIR, UCSD calculated the ADT rate for a resident UCSD student to be 0.41. For purposes of analyzing the impact of the Project on traffic, the DEIR assumed the higher 0.64 ADT rate from the Redevelopment EIR would apply to the Project's new resident students.

SANDAG and MTS argue the DEIR erred by using the Redevelopment EIR's ADT rate for resident SDSU students because, in so doing, it treated the Project's new resident students as existing commuter students who relocated to campus housing. They argue the analysis used in the Redevelopment EIR is inapposite because that EIR considered the effect of constructing new student housing near the SDSU campus and the reduction in traffic as the result of the relocation of existing commuter students to housing near the campus and did not consider any increase in SDSU enrollment. However, we are not persuaded by that argument because the relevant issue is whether SANDAG and MTS have shown the Redevelopment EIR's **[***77]** penultimate ADT calculation for resident students is not supported by substantial evidence and **[*1176]** cannot reasonably be relied on by CSU in calculating the ADT rate for the Project's new resident students. We conclude they have not carried their burden on appeal to make that showing.

SANDAG and MTS extensively discuss the Redevelopment EIR's methodology in calculating the ADT rate for existing commuter students who relocate to housing near the SDSU campus. However, we need only briefly set forth that methodology and its calculations. Table 5-14 of the Redevelopment EIR (specifically cited in the DEIR) began with a vehicle ADT rate for commuters of between 3.1 and 4.4 per dwelling unit, depending on the type of housing.[14] The 4.4 ADT rate was then reduced by 2.8 ADT's per dwelling unit to reflect the fact that SDSU commuter students who relocated to the new redevelopment housing near SDSU would no longer need to commute to SDSU by vehicle. The Redevelopment EIR concluded the relocated, and then resident, SDSU students (and faculty and staff) would have an ADT rate of 1.6 per dwelling unit. Dividing the **[**529]** Redevelopment EIR's 1.6 ADT resident rate by the number of students (2.5) per dwelling **[***78]** unit, the DEIR calculated an ADT rate of 0.64 per new resident student should apply in analyzing the traffic impacts of the Project. That 0.64 ADT rate per student was then multiplied by the number of the Project's new resident students (3,984), for a total increase of 2,550 ADT's, or daily vehicle trips, by the new resident students.

We conclude CSU's methodology in relying on the Redevelopment EIR's ADT calculations for resident students was reasonable. Furthermore, the Redevelopment EIR provided substantial evidence to support the DEIR's 0.64 ADT rate for new resident students. SANDAG and MTS do not carry their burden on appeal to show otherwise. We are not persuaded by their assertion that CSU improperly considered the Project's new resident students to be relocated commuter students by taking a "relocation deduction." CSU did *not* consider the Project's new resident students to be **[***79]** relocated commuter students, but rather relied on, and adopted, the Redevelopment EIR's ADT calculation for relocated, and then resident, students. It was the end result of the ADT rate calculated for a resident student that the DEIR adopted from the Redevelopment EIR and *not* the Redevelopment EIR's assumption that existing commuters would relocate to housing on or near SDSU's campus.[15] Finally, because the DEIR assumed

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[14] City's engineer for the Redevelopment EIR assumed that for medium-density housing there were 6.0 daily trips per dwelling, of which about 4.4 trips were by vehicle and the remaining 1.6 daily trips were by walking or bicycle (1.24 trips) or by carpool, vanpool, or transit (bus or trolley) (0.37 trips).

[15] We likewise are not persuaded by SANDAG and MTS's argument that CSU improperly took a "double" deduction for transit use by new resident students. As noted above, in relying on the Redevelopment EIR's end result for the ADT rate for resident students, CSU did *not* include in that ADT rate a 0.37 ADT deduction for transit use. Rather, that deduction was part of the Redevelopment EIR's methodology **[***80]** of beginning with a 6.0 total trip rate per dwelling unit for medium density housing and then deducting 0.37 trips for transit use and 1.24 trips for walking and bicycling. It was the penultimate 0.64 ADT rate for resident students that was adopted in the DEIR and relevant in analyzing the Project's traffic impacts. The Redevelopment EIR's transit deduction of 0.37 trips for

the higher 0.64 ADT rate for new resident **[*1177]** students applied to the Project (based on the Redevelopment EIR's calculations), we need not address SANDAG and MTS's additional assertion that there was no substantial evidence to support CSU's reliance on UCSD's 0.41 ADT rate for its resident students. CSU did not rely on that lower ADT rate in analyzing the traffic impacts of the Project.

B

Commuter Student ADT Rate. SANDAG and MTS assert CSU improperly calculated the increase in ADT's caused by the Project's new commuter students because it assumed new (and existing) commuter students would increasingly use transit (i.e., trolley and buses) rather than individual vehicles for their trips. They argue CSU wrongly assumed that increased transit use would result in a 47 percent "shift-to-trolley" **[***81]** reduction in vehicle trips by the 2024/2025 academic year.

Based on an actual vehicle count conducted during a five-day period in November 2006 at SDSU's parking lots, CSU determined SDSU's total ADT's were 66,807 and, when divided by the then current number of commuter students (27,047), obtained an ADT rate of 2.47 per commuter student. Multiplying that 2.47 ADT rate **[**530]** by the number of *new commuter* students (7,401) to be added by the Project, a total of 18,280 new vehicle trips per day would be expected for new commuter students. When that total of 18,280 ADT's for new commuter students was added to the 2,550 ADT's for new resident students (as discussed above), the 1,376 ADT's for Adobe Falls housing residents, and the 1,200 ADT's for Alvarado hotel guests, a total of 23,406 ADT's would be added by the Project by 2024/2025 based on 2006 figures. However, because the 2.47 ADT rate for commuter students was based on 2006 vehicle and trolley usage, it did not reflect any anticipated future increase in the rate of trolley usage and resultant decrease in the rate of vehicle usage.[16] Based on SANDAG and MTS's projections that daily boardings at the SDSU trolley station would increase from **[***82]** 5,982 to 14,714 by 2024/2025, CSU calculated there would be an increase of 8,732 passengers boarding at the SDSU station over the current number of boardings. **[*1178]** After adjusting for non-SDSU-related boardings (e.g., transfers), carpools, and use of other forms of transit (e.g., bus), CSU determined 5,460 of the 8,732 increase in daily boardings at the SDSU station would be SDSU-related trolley boardings. Because daily boardings represent only outbound trips, CSU multiplied 5,460 by two to obtain the increased number (10,920) of SDSU-related trolley trips (both inbound and outbound) by 2024/2025 based on SANDAG and MTS's projections. Because CSU assumed that projected increased trolley usage reflected a shift from vehicle usage to trolley usage, CSU subtracted that increased trolley usage (10,920) from the gross total increased number of ADT's resulting from the Project based on 2006/2007 figures (23,406) and obtained a net increase of 12,486 ADT's resulting from the Project. Therefore, CSU reduced the initial calculation for the gross increase (23,406) in the Project's ADT's, or average daily vehicle trips, based on its assumption that SDSU students, faculty and staff would increasingly **[***83]** use the trolley by 2024/2025 instead of vehicles, resulting in a net increase in ADT's caused by the Project of only 12,486 by 2024/2025.[17]

SANDAG and MTS argue CSU improperly reduced the gross increase in ADT's by 47 percent to reflect the projected increased usage of the trolley by 2024/2025.[18] They argue that 47 percent "shift-to-trolley" reduction was improper because it reduced an already reduced ADT rate based on trolley use. However, as CSU notes, its gross 2.47 ADT commuter rate was based on the then existing rate of trolley usage and did not account for future increases in the rate of trolley usage. Accordingly, CSU reduced the Project's total increase in ADT's caused by new commuter students, new resident students, Adobe Falls housing residents, and Alvarado hotel guests, by 47 percent to reflect the projected increase in the rate of trolley usage and resultant decrease in the rate **[***84]** of vehicle usage. In so doing, we cannot conclude that CSU acted

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commuting students who relocate to housing on or near SDSU's campus was irrelevant to *transit use by resident students*, which was not involved in the Redevelopment EIR's ADT calculation for resident students. Therefore, there was no double deduction when, as discussed below, the DEIR reduced the ADT's for both resident and commuter students based on projections that students would increasingly use transit in the future.

[16] Likewise, the 0.64 ADT rate for new resident students also did not reflect any anticipated future increase in trolley usage.

[17] The DEIR incorrectly stated the net increase in ADT's was 12,484, rather than the correct figure of 12,486. For purposes of this opinion, we will use the correct number.

[18] Based on our calculations, the actual "shift-to-trolley" percentage reduction (10,920 trolley trips divided by 23,406 ADT's) is approximately 46.65 percent, which is rounded up to 47 percent.

unreasonably or without substantial evidence for using that methodology. (*City of Long Beach v. Los Angeles Unified School Dist., supra, 176 Cal.App.4th at p. 898* HN32[] **[**531]** [substantial evidence standard of review applies to agency's methodology used for studying an impact and the reliability or accuracy of data on which agency relied].)

Furthermore, we reject SANDAG and MTS's assertion that CSU "essentially [assumed] all new non-residents, faculty, staff and visitors would be vehicle drivers who were somehow magically persuaded to switch to trolley transportation." Rather, CSU initially calculated the gross increase in ADT's resulting from the Project's new students (commuters and residents), faculty, **[*1179]** staff, and guests, based on 2006/2007 rates of trolley usage and then reduced that number to reflect a 47 percent "shift-to-trolley" use by 2024/2025. We conclude there is substantial evidence to support CSU's methodology and calculations in **[***85]** finding the Project's net increase in ADT's will be 12,486. To the extent SANDAG and MTS argue CSU should have used a different methodology, they do not show there is insufficient evidence to support the methodology CSU used in calculating the Project's traffic impact in increasing ADT's. Accordingly, SANDAG and MTS have not carried their burden on appeal to show CSU improperly calculated the increase in ADT's by the Project's new commuter students based on CSU's assumption that new (and existing) commuter students (as well as resident students, Adobe Falls housing residents, and Alvarado hotel guests) would increasingly use the trolley rather than vehicles.

C

Based on the above arguments challenging CSU's methodology and calculations regarding the increased number of ADT's caused by the Project, SANDAG and MTS assert CSU's calculation of its "fair share" of costs to mitigate the Project's traffic impacts (i.e., $6,484,000) is not supported by substantial evidence. However, because we rejected those methodology and calculation arguments above, we conclude SANDAG and MTS have not carried their burden on appeal to show there is insufficient evidence to support CSU's calculation of its "fair **[***86]** share" of traffic mitigation costs.

VII

Deferral of Mitigation of Traffic Impacts

SANDAG and MTS contend the trial court erred by concluding CSU properly deferred adoption of mitigation measures to reduce vehicle traffic. They assert CSU's adoption of mitigation measure "TCP-27," requiring CSU to consult with them in developing a transportation demand management (TDM) program with the goal of reducing vehicle trips to SDSU's campus in favor of alternate modes of travel, constitutes improper deferral of measures to mitigate the Project's traffic impacts.

A

HN33[] CA(23)[] **(23)** Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred **[*1180]** until after certification of the EIR and approval of a project. Guidelines, section 15126.4, subdivision (a)(1)(B) states: HN34[] "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified **[***87]** way."

HN35[] CA(24)[] **(24)** "A study conducted after approval of a project will inevitably have a diminished **[**532]** influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 307 [248 Cal. Rptr. 352]*.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 92 [108 Cal. Rptr. 3d 478]* (*Communities*).)

HN36[] CA(25)[] **(25)** "Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological [or other] report and then comply with any recommendations that **[***88]** may be made in the report." (*Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1275 [15 Cal. Rptr. 3d 176]*.) "If

mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them." (*Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793 [32 Cal. Rptr. 3d 177]*.)

However, a lead agency's adoption of an EIR's proposed mitigation measure for a significant environmental effect that merely states a "generalized goal" to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable mitigation measures. (*San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670 [57 Cal. Rptr. 3d 663]*; *Communities, supra, 184 Cal.App.4th at p. 93* ["EIR merely proposes a generalized goal of no net increase in greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the [project's significant environmental effects.]"]; cf. *Sacramento Old City Assn. v. City* ***[*1181]*** *Council (1991) 229 Cal.App.3d 1011, 1028–1029 [280 Cal. Rptr. 478]* **[***89]** [upheld EIR that set forth a range of mitigation measures to offset significant traffic impacts where performance criteria would have to be met, even though further study was needed and EIR did not specify which measures had to be adopted by city].)

B

The DEIR concluded the Project would cause significant traffic impacts. In response to comments from SANDAG and others that CSU should take a more balanced approach to mobility and provide mitigation measures supporting alternative modes of travel, CSU revised the DEIR to include mitigation measure TCP-27 in the FEIR. TCP-27 stated: "SDSU shall develop a campus Transportation Demand Management ('TDM') program to be implemented not later than the commencement of the 2012/2013 academic year. *The TDM program shall be developed* in consultation with [SANDAG] and [MTS] and shall facilitate a balanced approach to mobility, *with the ultimate goal of reducing vehicle trips* to campus in favor of alternate modes of travel." (Italics added.) **[**533]** In the Findings, CSU adopted TCP-27, along with other traffic mitigation measures. CSU also adopted the mitigation measures set forth in the MMRP, which included TCP-27. CSU then certified the FEIR and approved the **[***90]** Project.

C

SANDAG and MTS assert the traffic mitigation measure set forth in TCP-27 constitutes improper deferral of mitigation by CSU in violation of CEQA. They argue TCP-27 did not identify any specific future mitigation actions or set any specific goals or performance standards. They argue TCP-27 merely stated a generalized goal and did not commit CSU to take any actual or specific mitigation actions, thereby constituting improper deferral of mitigation of the Project's significant traffic effects.

We agree with SANDAG and MTS's assertion that CSU's adoption of TCP-27 constitutes improper deferral of mitigation of the Project's significant traffic effects. TCP-27 commits CSU only to consult with SANDAG and MTS and then develop a TDM to be implemented by 2012/2013. The TDM ?shall facilitate a balanced approach to mobility, with the ultimate goal of reducing vehicle trips to campus in favor of alternate modes of travel," but there are no specific mitigation measures to be considered or any specific criteria or performance standards set forth in the TDM. TCP-27 sets only a "generalized goal" of reducing vehicle trips by, presumably, encouraging alternate modes of travel. "This is inadequate. **[***91]** No criteria or alternatives to be considered are set out. Rather, the mitigation measure does no more than **[*1182]** require a report be prepared and followed, or allow approval by [CSU] without setting any standards." (*Endangered Habitats League, Inc. v. County of Orange, supra, 131 Cal.App.4th at p. 794*.) Therefore, the TDM required to be developed by TCP-27 appears to be, at best, an amorphous measure that does not commit CSU to take any specific mitigation measures to reduce vehicle trips and does not provide for any objective performance standards by which the success of CSU's mitigation actions can be measured. Accordingly, as in another case, "[t]he only criteria for 'success' of the ultimate mitigation plan adopted is the subjective judgment of [CSU], which presumably will make its decision outside of any public process … after the Project has been approved." (*Communities, supra, 184 Cal.App.4th at p. 93*.) Furthermore, because TCP-27 and the TDM are lacking in specifics, neither CSU's decision makers nor the public had an opportunity to consider possible specific, concrete mitigation measures to reduce vehicle trips to SDSU. Because CSU only adopted TCP-27 in response to comments **[***92]** to the DEIR and thereby apparently deferred studying actual measures that could be taken to reduce vehicle trips, "[t]he solution was not to defer the specification and adoption of mitigation measures until … after Project approval, but, rather, to defer approval of the Project until proposed mitigation

measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment." (*Id. at p. 95*.) *Sacramento Old City Assn. v. City Council, supra, 229 Cal.App.3d 1011*, cited by CSU, is inapposite and does not persuade us to reach a contrary conclusion.[19] The trial court erred by concluding **[**534]** CSU did not improperly defer adoption of mitigation measures to reduce vehicle traffic by adopting TCP-27.

VIII

The Project's Effect on Transit

SANDAG and MTS contend the trial court erred by concluding the FEIR adequately addressed the Project's potential impacts **[***93]** on transit and there is substantial evidence to support CSU's finding that the Project will not cause any significant effect on public transit (e.g., trolley and bus facilities and service).

A

An EIR must describe, in detail, all the significant effects on the environment of the project. (*Sunnyvale, supra, 190 Cal.App.4th at p. 1372*.) **HN37**[↑] An EIR **[*1183]** must include a detailed discussion of "[a]ll significant effects on the environment of the proposed project." (§ 21100, subd. (b)(1).) Section 21068 states: **HN38**[↑] " 'Significant effect on the environment' means a *substantial, or potentially substantial, adverse change* in the environment." (Italics added.) Section 21060.5 states: **HN39**[↑] " 'Environment' means the *physical conditions* which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (Italics added.) "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." **[***94]** (Guidelines, § 15064, subd. (d).)

HN40[↑] **CA(26)**[↑] **(26)** "[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts." (*County Sanitation Dist. No. 2 v. County of Kern (2005) 127 Cal.App.4th 1544, 1597 [27 Cal. Rptr. 3d 28]*.) In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs. (2001) 91 Cal.App.4th 1344, 1370 [111 Cal. Rptr. 2d 598]* (*Berkeley*).) If an agency's investigation shows particular environmental effects of the project will not be potentially substantial, the EIR must "contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the [EIR]." (§ 21100, subd. (c); see also Guidelines, § 15064, subd. (b).) Alternatively stated, the EIR must include a statement of the agency's reasons, albeit brief, for its conclusion that a particular environmental impact is not potentially substantial (i.e., significant). (*Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1111 [11 Cal. Rptr. 3d 104]* (*Amador*).) **HN41**[↑] A mere conclusion **[***95]** of insignificance is not adequate to allow meaningful judicial review and constitutes a failure to proceed in the manner required by law. (*Id. at pp. 1111–1112*.)

CA(27)[↑] **(27)** Even if an agency provides an adequate statement of reasons regarding its conclusion that a particular effect of a project will not be significant, that conclusion can be challenged as an abuse of discretion if not supported by substantial evidence in the administrative record. (*Amador, supra, 116 Cal.App.4th at p. 1113*.) **HN42**[↑] If a lead agency does not conduct an adequate initial **[**535]** study regarding a particular environmental effect of a project, it cannot rely on an absence of evidence resulting from that inadequate study as proof there is substantial evidence showing that particular effect is not significant under CEQA. (*Sundstrom v. County of Mendocino, supra, 202 Cal.App.3d at p. 311*.) Likewise, an agency cannot conclude a particular environmental effect is not significant based on a purported absence of **[*1184]** precise methodology or quantification for determining the level of significance for that effect. (*Berkeley, supra, 91 Cal.App.4th at p. 1370*.) An agency must use its best efforts to evaluate whether a particular impact is significant. **[***96]** (*Id. at pp. 1370–1371*.)

"The Legislature has made clear that an EIR is 'an informational document' and that '[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is

[19] Furthermore, to the extent CSU argues SANDAG and MTS failed to exhaust their administrative remedies on this issue, CSU does not make any substantive argument on the facts or law showing they are barred from raising this issue on appeal. We conclude CSU has waived that conclusory argument.

likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.' " (*Laurel Heights, supra, 47 Cal.3d at p. 391*.) "Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits." (*Ibid*.) Under CEQA, a public agency is required to mitigate or avoid the significant environmental effects of a project that it carries out or approves if it is feasible to do so. (§ 21002.1, subd. (b); *Marina, supra, 39 Cal.4th at p. 359*.)

B

The DEIR circulated by CSU discussed the potentially significant impacts of the Project on the environment. Although the DEIR's traffic analysis included a substantial reduction of the Project's impact on traffic **[***97]** as a result of the projected "shift-to-trolley" use as discussed above, the DEIR did *not* substantively address whether that increased rate of trolley use, together with the additional trolley trips taken by the new 11,385 students to be added by the Project, would cause a significant effect, whether direct or indirect, on the environment. Appendix N (Traffic Technical Report) to the DEIR relied on SANDAG's forecast that boardings at the SDSU trolley station would increase from 5,982 daily boardings in 2007 to 17,450 daily boardings in 2030 to conclude, through interpolation, that there would be 14,714 daily boardings in the 2024/2025 academic year. Appendix H1 reflected that interpolation of SANDAG's forecasted increase in boardings at the SDSU station.

In response to the DEIR, SANDAG sent a letter, dated August 8, 2007, to SDSU stating that "the traffic study assumes a high level of transit mode share while failing to address capacity limitations of the [transit] system to absorb the projected transit trips. Consequently, the traffic study understates traffic impacts and does not adequately mitigate for those impacts in the short or long term." It further stated: "Project-specific **[***98]** impacts should be mitigated **[*1185]** with specific transit, highway, and roadway improvements that are implemented by [CSU]. Long-term impacts should be mitigated through a combination of project-specific improvements and by participating in the construction and/or funding of regional transportation facilities and services at a fair-share level." SANDAG expressed the specific concern that the DEIR's traffic analysis "assume[d] **[**536]** a high proportion of trips accommodated by transit without addressing the needed capital and operating support necessary to attain that mode split." SANDAG stated:

"The analysis includes an unsupported assumption that one-half of the growth in vehicular trips generated by the campus growth will be handled by transit. This assumption is based on the SANDAG model's estimate of future boarding growth at the SDSU trolley station. The SANDAG model projects demand for transit travel unconstrained by the limitations of the system's capacity. *We are skeptical that the projected 10,000 additional transit trips can be absorbed by the system without infrastructure and operational improvements to the trolley and bus system*. While we support any effort to meet [SDSU's] future travel **[***99]** needs with transit, *the DEIR must address the impacts of the demand growth on transit and assess SDSU's responsibility to provide improvements to mitigate those impacts*.

"… The Master Plan and EIR should identify mode split targets for 2030 and intermediate years, and include specific measures geared toward achieving those targets. *The DEIR should include a plan for capital and operating improvements that mitigate for additional demand and any negative impacts to current transit operations as a result of SDSU's plans*. For example, *the capacity of the trolley infrastructure and services should be evaluated, and mitigation measures should be proposed, such as improvements to track, rolling stock, and station infrastructure, or additional service to address capacity issues*. These measures should be identified in consultation with [MTS]." (Italics added.)

The FEIR included CSU's responses to various comments by other agencies and the public to the DEIR, including a specific response to SANDAG's comments. The FEIR stated:

"Between March 2007 and august 2007, representatives of SDSU and SANDAG met on numerous occasions to discuss the [Project]. *Because the* [*DEIR*] *did not find that the* [*Project*] **[***100]** *would result in significant impacts to transit (i.e., trolley or bus systems), it is SDSU/CSU's position that no mitigation is required*.

"*SANDAG, however, contends that SDSU is responsible for transportation improvements, including primarily improvements to transit* … . According to **[*1186]** SANDAG, this per capita cost figure [$19,300] could be used as an initial basis for determining SDSU's fair share contribution toward the regional impacts resulting from the [P]roject. [Citation.]

"*SANDAG has provided no evidence that the* [*Project*] *would result in significant impacts to transit within the meaning of CEQA*, nor has it provided SDSU with a sufficient nexus study relative to the [Project's] impacts and the $19,000/student mitigation payment it proposes. …" (Italics added.) In regard to SANDAG's specific concern that the DEIR assumed a high level of transit use but did not address the capacity limitations of the transit system to absorb those increased transit trips, CSU responded:

"*The premise of the comment is incorrect*. *CEQA does not require that the traffic impacts analysis address whether the transit system has capacity limitations or is able to absorb the projected transit trips*. (See, **[***101]** e.g., CEQA Guidelines Appendix G, Subparagraph XV, Transportation/Traffic … .) …

[537]** "Additionally, *CEQA does not define increased transit ridership as an 'impact,' nor does it provide applicable thresholds of significance to determine when such increased ridership would be 'significant' within the meaning of CEQA*, thereby requiring mitigation. Absent identification of a significant impact within the meaning of CEQA, no mitigation is required.

"*In addition to the absence of significance criteria in Appendix G of the CEQA Guidelines, neither SANDAG nor the City of San Diego has developed criteria that may be utilized to assess whether the* [*Project*] *would significantly impact transit services*. ?

?Moreover, *to require a project proponent to 'mitigate? increased transit ridership by paying for capital improvements to the transit system, as the comment letter requests, would be directly contrary to statewide land use and planning principles, which uniformly encourage the increased use of transit to reduce traffic impacts and related air quality impacts*. … [T]he comments ask SDSU to take steps to further increase transit ridership, while at the same time contending that such increased **[***102]** ridership is an 'impact' requiring mitigation. The inherent disincentive in this approach is counter to the fundamental principles of CEQA to reduce, not increase, environmental impacts.

"*In sum, any transit 'impacts' that may result from the* [*Project*] *relating to increased transit ridership are not subject to CEQA analysis as they are not environmental impacts recognized under CEQA*. Accordingly, if a transit impact analysis were to be undertaken, as the comment letter suggests, it would necessarily be conducted under a non-CEQA regime.

"The comment implies that the focus of any such analysis would be on whether the [Project] contributes to transit ridership rates in such a manner **[*1187]** that implementation of the [Project] would result in over-capacity. Accordingly, any analysis to be undertaken would entail assessing the transit service's ability to accommodate the additional riders. [¶] … [¶]

"Notably, at no time during the traffic consultant's discussions with SANDAG was any concern expressed regarding future capacity associated with the Green Line. Furthermore, *at present time, there is no evidence that the Green Line is operating at or near capacity due to SDSU ridership*. SANDAG's **[***103]** comment letter provided no data or other documentation that the Green Line is operating over capacity, thereby resulting in physical deficiencies in the system. …

"… [T]he projections of future ridership utilized in the EIR are based on SANDAG's own generated estimates. Therefore, *it is reasonable to expect that* because the source of the numbers is SANDAG, *SANDAG is planning for the increased ridership* [and] this increased ridership has already been factored [into] SANDAG's long-range plans for the system. Finally, *there is no evidence that SANDAG will not be able to secure funding for any necessary transportation infrastructure programs through traditional funding sources* at the local, state, and federal levels … ." (Italics added.)

Based on CSU's responses to SANDAG's comments, the FEIR revised the DEIR's transportation analysis section to include the following statement: "**With respect to transit, neither SANDAG nor the City of San Diego has established criteria that could be [**538] utilized to assess the project's impact on transit service. Additionally, the Congestion Management Program (?CMP') provides no methodology to analyze potential impacts to transit and there is no criteria [***104] to determine whether an increase in transit ridership would be a significant impact within the meaning of CEQA.**" The FEIR also included revisions to its appendix N (Traffic Technical Report), adding the following statements: "The [P]roject will result in an increase in ridership on both local bus service and the San Diego Trolley. The SANDAG forecasted increase in trolley ridership is discussed in Section 8.1.4 of this report. Neither SANDAG nor the City of San Diego has criteria that could be utilized to assess the [P]roject's impact on transit service. In addition, the Congestion Management Program (CMP) provides no methodology to analyze potential impacts to transit and there is no criteria to

determine whether the increase in ridership would be significant. [¶] The San Diego Trolley line was recently extended to [SDSU] in 2005 and was constructed to accommodate large ridership amounts."

On November 13, 2007 (after the period for public comment on the DEIR had ended), MTS sent a letter to CSU, expressing some of the same concerns SANDAG had expressed. MTS stated:
[*1188]

"The [DEIR] for the [Project] recognizes the importance of transit and indicates that a large part of the anticipated **[***105]** growth in the campus population will rely on transit to gain access to campus facilities. Unfortunately, *the existing trolley and bus services cannot possibly meet this demand*. Based on preliminary review, *transit would need to provide an additional $27 million investment in capital and an additional $1 million per year to operate the service*. The current state of funding for transit makes this investment impossible. Among other factors contributing to this lack of funding is the State of California's diversion of $17 million from MTS in this fiscal year and the promise to continue this diversion next year.

"Currently, MTS's trolley and buses make over 10,000 trips per day to and from SDSU, which represents over 20 percent of the student population. Based on the EIR, the number of transit trips serving SDSU is expected to increase by 64 percent. Not only is this substantial increase a reflection of the growth in student population, it also assumes an increase in transit's share of trips to the university. *To achieve this increase and adequately serve the demand, transit operations need to be expanded*. …" (Italics added.)

On November 13 and 14, 2007, CSU held a public meeting on the **[***106]** FEIR. Representatives of SANDAG and MTS, among others, expressed their concerns regarding the FEIR and the Project. CSU then adopted the Findings and the MMRP. In the Findings, CSU generally found the FEIR identified potentially significant effects that could result from implementation of the Project, but inclusion of mitigation measures as part of approval of the Project would reduce most, but not all, of those effects to less than significant levels. CSU expressly found the Project would have "[*n*]*o significant impacts on transit systems*." (Italics added.) CSU then certified the FEIR and approved the Project.

C

We first address SANDAG and MTS's assertion that CSU did not adequately investigate or address the Project's potential impacts on transit. Based on our independent review of the administrative record, we conclude CSU did not **[**539]** adequately investigate and address the Project's significant (i.e., substantial or potentially substantial) adverse impacts on the San Diego public transit system (i.e., trolley and bus systems).[20] Although CSU calculated (per SANDAG projections) that the number of daily boardings at the SDSU trolley station would increase from 5,982 boardings in 2006/2007 **[***107]** to 14,714 boardings in the 2024/2025 academic year (apparently due primarily **[*1189]** to the Project's additional 11,385 students and shift from vehicle to trolley usage as discussed above), CSU did *not* conduct any *substantive* investigation or other study of the potential environmental impacts of that increased trolley usage and whether those impacts were significant environmental effects under CEQA. SANDAG and MTS's comments expressed their concerns that the increased trolley trips resulting from the Project could not be absorbed by the trolley system without infrastructure and operational improvements. They expressed their belief that CSU should study the capacity limitations of the trolley system and propose mitigation measures to reduce the Project's significant effects on the trolley system. However, rather than accepting their suggestions, CSU rejected them. In its responses to SANDAG's comments and in the FEIR, CSU took the position that it had no duty under CEQA to investigate the potential effects of the Project on the transit system because (1) any impact of the Project on the transit system is not an "environmental" effect under CEQA; (2) SANDAG and other agencies did not, and the **[***108]** Guidelines do not, provide CSU with any criteria for determining the capacity of the SDSU trolley station or whether the increased trolley usage is a "significant" environmental effect under CEQA; and (3) public policy favors increased transit use so impacts on the trolley system should not be considered significant environmental impacts subject to mitigation obligations under CEQA.

CA(28)[↑] **(28)** On appeal, CSU appears to rely only on the second ground to justify its failure to investigate and address the potential significant effects of the Project on the trolley system.[21] CSU argues, in **[**540]**

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[20] Section 21068 defines a " '[s]ignificant effect on the environment' " as "a substantial, or potentially substantial, adverse change in the environment."

[21] Although CSU does not substantively address or rely on the other two grounds on appeal, we believe CSU wisely chose to

conclusory fashion, that because SANDAG and other agencies (e.g., City and MTS) did not provide it with either the exact capacity limitations of the SDSU trolley station or **[*1190]** specific criteria for determining whether the Project's effects on the trolley system would be "significant" effects, there was no evidence in the administrative record that would allow it to investigate and determine whether the Project's increased trolley usage would exceed the SDSU trolley **[***109]** station's capacity. CSU further argues that absent specific criteria for determining whether the Project's effects on the trolley system would be "significant," it had no duty to investigate those effects and determine, on its own, whether those effects would be "significant" under CEQA. However, in so arguing, CSU improperly attempts to avoid, or at least unduly minimize, its duties as a lead agency under CEQA to investigate and address a project's potentially significant environmental effects in an EIR and to discuss and adopt feasible mitigation measures to avoid or reduce those effects. (See generally §§ 21002, 21080, subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151; *Sunnyvale, supra, 190 Cal.App.4th at p. 1372*; *Sierra Club, supra, 7 Cal.4th at p. 1233*; *Laurel Heights, supra, 47 Cal.3d at p. 391* [lead agency must prepare an EIR which "is 'an informational document' and … '[t]he purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives **[***110]** to such a project.' "].) ***HN43*** "[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.? (*County Sanitation Dist. No. 2 v. County of Kern, supra, 127 Cal.App.4th at p. 1597*.) In so doing, the lead agency must consult with any public agency that has jurisdiction over natural resources or other potential environmental impacts of a project. (*Berkeley, supra, 91 Cal.App.4th at p. 1370*.)

CSU has a duty to investigate potential environmental impacts of the Project, including whether the Project's impacts on the transit system may be significant **[***112]** environmental effects. Although the record supports a finding that CSU consulted with SANDAG and other public agencies on certain matters, CSU does not cite, and we are not aware of, any document in the administrative record showing CSU expressly requested data or other specific information regarding the capacity limitations of the SDSU trolley station or trolley line or system generally. CSU cannot fulfill its duties as a lead agency under CEQA by acknowledging the Project will cause a substantial increase in trolley ridership and then not proactively investigate whether that increase will exceed the trolley system's capacity or otherwise cause potentially substantial adverse changes to the trolley system's infrastructure and operations. (Guidelines, § 15144 ***HN44*** ["[A]n agency must use its best efforts to find out and disclose all that it reasonably can."]; *Berkeley, supra, 91 Cal.App.4th at p. 1370* [no evidence lead agency made "reasonably conscientious effort" to collect data or make further inquiries of other agencies].) Alternatively stated, CSU cannot both conclude the Project will cause substantially increased **[*1191]** trolley ridership (i.e., an additional 6,898 SDSU-related riders) and **[***113]** then passively wait for other agencies to provide it with data or other information that would allow **[**541]** it to determine whether that effect is a significant environmental effect under CEQA.[22]

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abandon them. We are unaware of any statute, regulation, or case that provides or holds a project's effects on a transit system cannot be considered to be "environmental" effects under CEQA. On the contrary, section 21060.5 defines "environment" under CEQA to be the ?physical conditions which exist within the area which will be affected by a proposed project." Like a project's effects on streets and highways, a project's effects on a transit system logically should be considered "environmental" effects under CEQA because those effects ordinarily will impact, both directly and indirectly, the physical conditions in the area of a project. Likewise, although **[***111]** we presume there is a public policy generally favoring increased use of public transit, that policy does not necessarily preclude, much less outweigh, the public policy underlying CEQA regarding the consideration of, and elimination or reduction of, a project's potentially significant environmental effects before that project is approved. Because the latter public policy expressed in CEQA is the more specific one, we believe the public policy favoring public transit usage should not exempt a lead agency (e.g., CSU) from CEQA's requirements that it investigate a project's potentially significant environmental impacts on a public transit system and adopt feasible mitigation measures to avoid or reduce those effects. As the California Supreme Court has stated, "[t]he foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Laurel Heights, supra, 47 Cal.3d at p. 390*.)

[22] CSU implicitly concedes that SANDAG and MTS are *not* "responsible **[***114]** agencies" under CEQA required to provide CSU "with specific detail about the scope and content of the environmental information related to [that] agency's area of statutory responsibility that must be included in the draft EIR." (Guidelines, § 15082, subd. (b).) Accordingly, neither SANDAG nor MTS had an affirmative duty under CEQA to

Therefore, although we presume SANDAG and MTS did not provide CSU with specific data regarding the capacity limitations of the SDSU trolley station or the trolley line or system generally, their failure to provide CSU with that data or information did not excuse CSU from carrying out its duty, on its own, to investigate and discuss in the DEIR and FEIR the Project's potentially substantial adverse effects on the transit system, including whether the capacity of the trolley station and system may be exceeded and thereby cause rider congestion at the station, denigration of trolley service, infrastructure, and rolling stock, and additional infrastructure and operating costs.[23] (Cf. *Woodward Park Homeowners Assn., Inc. v. City of Fresno (2007) 150 Cal.App.4th 683, 728–729 [58 Cal. Rptr. 3d 102]* ["There is no foundation for the idea that [a lead agency] can refuse to require mitigation of an impact solely because another agency did not provide information."].)

CA(29)[↑] **(29)** Furthermore, although appendix G of the Guidelines does not specifically list transit as an environmental factor under CEQA or set forth criteria **[***115]** for determining when transit impacts are significant, those omissions do not support CSU's assertion that it need not address the Project's effects on the trolley system. ***HN45***[↑] That appendix is only an illustrative checklist and does not set forth an exhaustive list of potentially significant environmental impacts under CEQA or standards of significance for those impacts. (See, e.g., *Amador, supra, 116 Cal.App.4th at pp. 1108–1111*.) Also, the lack of precise quantification or criteria for determining whether an environmental effect is "significant" under CEQA does not excuse a lead agency from using its best efforts to evaluate whether an effect is significant. (*Berkeley, supra, 91 Cal.App.4th at p. 1370*.)
[*1192]

By not substantively investigating and addressing the Project's impacts on the transit system and whether those impacts may be significant environmental impacts under CEQA, CSU did not proceed in a manner required by law and therefore abused its discretion under CEQA. (§ 21168.5.) Because CSU did not comply with procedures required by law, its decision must be set aside as presumptively prejudicial. (*Sierra Club, supra, 7 Cal.4th at p. 1236*.) CSU's noncompliance with CEQA's substantive **[***116]** requirements and its information disclosure provisions precluded relevant information from being presented to CSU and the general public and "constitute[d] a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, **[**542]** regardless of whether a different outcome would have resulted if [CSU] had complied with those provisions." (§ 21005, subd. (a); see *County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 946*.) "In other words, when [CSU] fail[ed] to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation." (*County of Amador, at p. 946*.) The trial court erred by concluding CSU adequately investigated and addressed the Project's potential impacts on public transit.[24]

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SANDAG and MTS also assert there is insufficient evidence to support CSU's finding that the Project will not cause any significant effect on public transit (e.g., trolley facilities and service). SANDAG and MTS also argue CSU's finding that the Project will have no significant effect on the transit system is legally deficient. After CSU did not substantively address in the DEIR whether the Project's increased trolley use would cause a significant effect, whether direct or indirect, on the trolley system or other physical conditions within the area (§§ 21060.5, 21100, subd. (b)(1)), SANDAG commented on the DEIR and raised that issue. In response, CSU made a conclusory, and unsupported, statement in the FEIR that "any transit 'impacts' that

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provide CSU with specific data regarding the trolley station's capacity or specific criteria for determining whether the Project would have a significant effect on the transit system.

[23] Likewise, CSU did not investigate and discuss in the DEIR and FEIR the other potentially substantial adverse effects of the Project on the transit system, such as high usage at *peak* times that exceeds the capacity or causes congestion of the trolley system or SDSU trolley station (rather than simply considering *average daily* capacity limitations), and whether the Project's effects, when considered cumulatively with other planned developments or other factors affecting the transit system, will have a significant effect on the transit system.

[24] For the same reasons discussed above, CSU, as SANDAG and MTS assert, also failed to adequately respond to SANDAG's comments to the DEIR as CEQA requires. (Guidelines, *§ 15088*.) CSU was required to make a good faith, reasoned analysis in response to SANDAG's comments. (*Berkeley, supra, 91 Cal.App.4th at p. 1367*.) As in *Berkeley*, **[***117]** CSU's responses to SANDAG's comments were conclusory and evasive and did not reflect a meaningful attempt to determine whether the Project's effects on the transit system would be significant. (*Id. at p. 1371*.)

may result from the [Project] relating to increased transit ridership are not subject to CEQA analysis as they are not environmental impacts recognized under CEQA." In the Findings, CSU then made the conclusory **[*1193]** finding that the Project would **[***118]** have "[*n*]*o significant impacts on transit systems*." (Italics added.) In so finding, CSU did not support its finding of no significant effect on the transit system with a brief statement of its reasons for that finding. If an agency's investigation shows particular environmental effects of the project will not be potentially significant, the EIR must "contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the [EIR]." (§ 21100, subd. (c); see also Guidelines, *§ 15064, subd. (b)*.) Furthermore, the EIR must include a statement of the agency's reasons, albeit brief, for its conclusion that a particular environmental impact is not potentially significant. (*Amador, supra, 116 Cal.App.4th at p. 1111*.) A mere conclusion of insignificance is not adequate to allow meaningful judicial review and constitutes a failure to proceed in the manner required by law. (*Id. at pp. 1111–1112*.) Accordingly, CSU's conclusory finding that the Project will not **[*1194]** have a significant effect on the transit system is legally deficient under CEQA.

More importantly, there is insufficient evidence **[***119]** in the administrative record to support CSU's finding the Project will not have a significant effect on the transit system. On appeal, CSU does not cite or rely on any substantial evidence showing **[**543]** the projected increase in trolley usage resulting from the Project's additional enrollment will not cause a "potentially substantial, adverse change" in or to the transit system. (§ 21068 [" 'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment."].) CSU calculated, based on SANDAG's projections, that there will be an increase from 5,982 daily boardings to 14,714 daily boardings at the SDSU station by the 2024/2025 academic year. Of those 14,714 daily boardings, CSU calculated that 11,624 will be SDSU-related boardings, an increase of 6,898 boardings over the 4,726 SDSU-related boardings in 2006/2007. Therefore, there will be an increase of almost 150 percent in the number of SDSU-related riders from 2006/2007 to 2024/2025. However, CSU did not conduct any substantive investigation or analysis regarding whether that substantial increase in SDSU-related trolley usage may affect the trolley system. Furthermore, CSU does not **[***120]** cite, and we are not aware of, any evidence in the administrative record showing the Project's increased trolley usage will not have a significant effect on the transit system.

Although CSU argues an SDSU economic benefit analysis contained in the administrative record provides support for its finding that the Project will not have a significant effect on the transit system, we conclude that analysis does not constitute substantial evidence in support of CSU's finding. CSU cites appendix Q to the FEIR, titled "SDSU Economic Impact Report." That report, dated July 19, 2007, was prepared by ICF International for SDSU and describes the report as "Measuring the Economic Impact on the Region." By the nature of the issues it addresses, the economic benefit report does not directly investigate or address whether the Project's increased trolley usage will have a significant environmental effect on the transit system. Nevertheless, in summarizing the Project's impacts on transportation, the report stated: "An estimated 12,000 students, faculty and staff can be accommodated by the SDSU trolley station." The report stated: "The trolley can accommodate 12,000 students, faculty and staff." That **[***121]** statement is supported by a citation to footnote 21, which is a reference to the Web site "*http://www.scup.org/about/Awards/2006/San_Diego_State.html*." (As of Dec. 13, 2011.) None of the parties discuss, much less provide us with information regarding, that supporting Web site. Furthermore, the Web site's information is not contained in the administrative record. Without further information regarding the supporting citation, we conclude the evidence is insufficient to support the economic benefit report's statement that the SDSU trolley station can accommodate 12,000 students, faculty and staff. Accordingly, that unsubstantiated conclusory statement in the economic benefit report cannot provide substantial evidence for a finding that SDSU's trolley station capacity is 12,000 or that the Project will not have a significant effect on the transit system.[25] ***HN46***[

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[25] Even had the administrative record included the information **[***122]** set forth on that Web site, we would nevertheless reach the same conclusion. That Web site reflects a 2006 architectural award or citation given to SDSU by the Society for College and University Planning. In describing the award for the SDSU transit station, the Web site states: "The trolley has allowed the University to expand without adding parking for the next 20–25 years. They plan to add 12,000 students without new parking and now have surplus parking." (See <*http://www.scup.org/about/Awards/2006/San_Diego_State.html*> [as of Dec. 13, 2011].) Contrary to the economic benefit report's statement, the Web site does *not* state that the SDSU trolley station can accommodate 12,000 students, faculty and

[↑] "[U]nsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous … is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); see Guidelines, § 15384.)

In arguing there is substantial **[***123]** evidence to support its finding, CSU primarily argues SANDAG and MTS failed to provide it with data or other **[*1195]** information that would allow it to determine whether the Project would have a significant effect on the transit system. CSU apparently argues that because those agencies did not provide it with evidence of the capacity limitations of the SDSU station or otherwise show the Project would have a significant effect on the transit system, there is substantial evidence to support its finding that the Project will not have a significant effect on the transit system. In so arguing, CSU either misconstrues and/or misapplies the substantial evidence standard of review under CEQA. ***HN47***[↑] "Substantial evidence" under CEQA is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) Although we make all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra, 87 Cal.App.4th at p. 117*), **[***124]** "[a]rgument, speculation, unsubstantiated **[**544]** opinion or narrative, evidence which is clearly inaccurate or erroneous … is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); see Guidelines, § 15384.) SANDAG and MTS correctly assert there is *no* evidence in the administrative record to support CSU's finding that the Project's increased trolley usage will not cause a potentially substantial adverse change to the transit system. (§ 21068.) CSU's finding that the Project will have no significant effect on the transit system is based on speculation, unsubstantiated opinion and narrative or evidence that is clearly inaccurate or erroneous, which does not provide substantial evidence. (§ 21082.2, subd. (c); Guidelines, § 15384.) Accordingly, the trial court erred by concluding there is substantial evidence to support CSU's finding that the Project will not have a significant effect on the transit system.

DISPOSITION

The judgment is reversed in part and affirmed in part, and the matter is remanded to the trial court with directions to enter a new judgment granting in part **[***125]** and denying in part the petitions for writs of mandate consistent with this opinion. The court shall issue a writ of mandate ordering CSU to void its certification of the FEIR and adoption of the Findings and to void its approval of the Project based on noncompliance with CEQA as set forth in this opinion. The trial court shall also issue an order that the Project may be **[*1196]** considered for reapproval by CSU if a new, legally adequate EIR is prepared, circulated for public comment, and certified in compliance with CEQA consistent **[**545]** with the views expressed in this opinion. Appellants are awarded costs on appeal.

McConnell, P. J., and O'Rourke, J., concurred.

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staff. Because the report's citation to the Web site provides *no support* for its statement, the report's unsupported statement that the SDSU trolley station can accommodate 12,000 students, faculty and staff, in turn, provides no support for CSU's assertion that the SDSU trolley station can accommodate 12,000 SDSU-related users and therefore the Project's additional trolley users will not exceed the SDSU station's capacity or otherwise cause a significant effect on the transit system.