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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

FOR ACCOUNTABILITY IN
REDLANDS,

Plaintiff and Appellant,

v.

CITY OF REDLANDS,

Defendant and Respondent;

WALMART STORES, INC.,

Real Party in Interest and
Respondent.

E060756

(Super.Ct.No. CIVDS1300289)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez,
Judge. Affirmed.

Briggs Law Corporation, Cory J. Briggs, Mekaela M. Gladden, and Anthony N.
Kim for Plaintiff and Appellant.

Best Best & Krieger, Michelle Ouellette and Sara E. Owsowitz for Defendant and Respondent.

Sheppard, Mullin, Richter & Hampton, Arthur J. Friedman and Alexander L. Merritt for Real Party in Interest and Respondent.

I. INTRODUCTION

Plaintiff and appellant, For Accountability in Redlands (FAIR), is a “coalition whose members are concerned about transparency and accountability in decision-making by public officials in, about the accuracy of public information disseminated by, and about preserving the quality of life in and around the city limits of Respondent and Defendant City of Redlands [(the City)].” FAIR appeals the judgment denying its writ petition to set aside the City’s resolutions approving the Redlands Crossing Center Project (the project), a 275,500-square-foot shopping center to be anchored by a 215,000-square-foot Walmart store.¹

FAIR claims the City violated its general plan in approving the project, namely, several “key requirements” of Measure U, a 1997 initiative measure which added chapter “1A,” titled “Principles of Managed Development,” to the City’s general plan. The purpose and intent of Measure U “is to establish comprehensive and inviolable principles

¹ In another writ proceeding, Redlands Good Neighbor Coalition (RGNC), a non-profit organization, appeals from a separate judgment, entered by the trial court, denying RGNC’s writ petition to set aside the same project approvals FAIR challenges in this writ proceeding. (*Redlands Good Neighbor Coalition v. City of Redlands*, Riverside County Superior Court case No. CIVDS1211890, Court of Appeal, Fourth District, Division Two case No. E060138.) RGNC and FAIR are represented by the same counsel.

of managed development for the City of Redlands that will preserve, enhance and maintain the special quality of life valued by this community.” In related claims, FAIR argues insufficient evidence supports the City’s findings that the project is consistent with the requirements of Measure U.²

FAIR also claims the trial court abused its discretion in refusing to consider FAIR’s “extra-record” evidence, specifically, reports that were critical of the project and the City’s analysis of the project, but that were not part of the administrative record because they were never presented to the City. We conclude the trial court properly refused to consider FAIR’s extra-record evidence. As the court ruled, FAIR did not demonstrate it could not, with reasonable diligence, have presented its extra-record evidence to the City before the project was approved. (Code Civ. Proc., § 1094.5, subd. (e).) And contrary to FAIR’s argument, the City’s failure to comply with Government Code section 65009,³ by failing to include “exhaustion of remedies” warnings in each notice of public hearing for the project, did not excuse FAIR from timely presenting its extra-record evidence to the City. We also reject FAIR’s claims that the City violated Measure U in approving the project, and that insufficient evidence supports the City’s consistency findings. Accordingly, we affirm the judgment.

² FAIR raises no claims under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.)

³ All further statutory references are to the Government Code unless otherwise indicated.

II. BACKGROUND

A. *The Project*

The project is a proposal to develop a 275,500-square-foot regional retail shopping and commercial center, on approximately 32.97 acres at the southeast corner of Tennessee Street and San Bernardino Avenue, just east of Interstate 210. The project is to be anchored by a 215,000-square-foot Walmart store, open seven days a week. An additional 60,500 square feet of space would be used for other commercial purposes, including fast food restaurants. The project site was used as an orchard until 2002, but has since consisted of fallow agricultural land.

The City's general plan designates the project site as "commercial," allowing for a variety of uses, including shopping centers and business parks. The project site lies within the boundaries of the East Valley Corridor Specific Plan (the EVCSP), adopted by the City in 1989 "to refine General Plan policies" for the East Valley Corridor—a 4,000-acre planning area in the eastern portion of the San Bernardino Valley comprised mostly of vacant land, including the project site.

B. *The Project Approvals*

A draft environmental impact report (EIR) for the project was made available for public review and comment from November 21, 2011 to January 18, 2012. On March 16, 2012, the City released the final EIR which included the draft EIR, revisions to the draft EIR, and the City's responses to comments received on the draft EIR.

The planning commission considered the project during three public hearings on March 14, March 27, and April 24, 2012. At the April 24 hearing, the planning commission recommended that the city council certify the final EIR as complying with CEQA, and approve the socio-economic cost-benefit study, tentative parcel map (TPM 19060), and conditional use permit for the project.

On July 18, 2012, the city council held a public hearing to consider whether to certify the final EIR as complying with CEQA, and whether to approve or deny the project. Following several hours of public testimony and comments, the city council continued the project for further consideration. Meanwhile, city staff prepared written responses to questions and comments raised during the July 18 hearing.

At a further public hearing on October 16, 2012, the city council received additional public comments, then adopted resolution No. 7193 certifying the final EIR and adopting findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program pursuant to CEQA. The City also adopted resolution No. 7192, approving the socio-economic cost-benefit study for the project, resolution No. 7194, approving the conditional use permit, and resolution No. 7198, approving TPM 19060.

C. Briefing and Decision

In January 2013, FAIR filed a verified complaint for declaratory and injunctive relief, combined with a petition for a writ of mandate to set aside the project approvals on the ground the project was inconsistent with the City's general plan. FAIR alleged that,

in approving the project, the City violated provisions of Measure U and sections 66473.5 and 66474 of the Planning and Zoning Law. (§ 65000 et seq.)

Following briefing on the merits, and an October 4, 2013, hearing, the trial court issued a 53-page ruling denying FAIR's claims.⁴ On January 24, 2014, the court entered judgment in favor of respondents. FAIR timely appealed.

III. DISCUSSION/FAIR'S EXTRA-RECORD EVIDENCE

FAIR claims the court erroneously refused to consider "extra-record" evidence that FAIR submitted to the trial court in support of its Measure U claims, namely, several reports and studies that were critical of the project and the City's analysis of the project that were not presented to the City during the administrative proceedings for the project. We conclude the trial court properly refused to consider FAIR's extra-record evidence, and FAIR may not rely on that evidence now.

A. *Relevant Background*

In the trial court, FAIR submitted the declaration of Carol Buchanan, a resident of Redlands and a member of FAIR, who claimed she had "accumulated evidence discrediting the findings" in the City's socio-economic report for the project (the

⁴ The trial court granted the City and real party in interest and respondent, Walmart Stores, Inc.'s (Walmart) (collectively respondents), request that the court take judicial notice of two legislative enactments: (1) Measure U, the voter initiative amending the City's general plan, effective December 12, 1997, to, among other things, add chapter 1A.0, titled "Principles of Managed Development"; and (2) resolution No. 5580, adopted by the City on December 1, 1992, to implement Measure U by establishing procedural requirements for, among other things, the format that the socio-economic study and cost-benefit analysis should follow. (Evid. Code, § 452, subd. (b).)

Buchanan Declaration). Buchanan claimed she “did not submit this evidence to [the City] at the time of its October 16, 2012 City Council meeting because the public-hearing notice for the [p]roject did not indicate, at all, that October 16, 2012, would be [her] last opportunity to challenge the [p]roject on the ground that its socio-economic report (among other aspects of the approval) was insufficient, and [she] relied on that lack of indication to mean that [she] could present evidence in court to challenge the [p]roject if it was not denied by the City Council.”

Based on the defective notice of the October 16 hearing, Buchanan “understood” she would have another opportunity to challenge the socio-economic report and submit evidence “some time after” the October 16 hearing. As exhibits A through F to her declaration, Buchanan attached the exhibits she intended to submit to the City. The exhibits consist of reports or studies critical of the project and the City’s analysis, including the City’s socio-economic study and cost-benefit analysis, and the City’s analysis of the project’s impacts on traffic service levels.⁵

⁵ The exhibits to the Buchanan Declaration include: (1) a copy of Measure U (exh. A); (2) a report titled “Preliminary Report Retail Facility Planning and the City of Redlands: Questions Related to the Proposed Wal-Mart Center,” prepared by Regulatory Economics, Inc., and authored by Dr. Alan Schlottman, a professor of economics and director of research at the University of Nevada Las Vegas (exh. B); (3) a report titled “Economic Analysis of Redlands Crossing Retail Project,” prepared by Philip King, Ph.D., a professor of economics at San Francisco State University (exh. C); (4) a report titled “Wal-Mart’s Economic Footprint,” prepared by Hunter College Center for Community Planning & Development (exh. D); (5) a report titled “The Economic Impact of a Walmart Store in the Skyway Neighborhood of South Seattle,” prepared by Christopher S. Fowler Ph.D., a professor of geography at Pennsylvania State University (exh. E); and (6) a report reviewing the traffic and transportation aspects of the project, prepared by Smith Engineering & Management (exh. F).

Respondents filed evidentiary objections to the Buchanan Declaration on several grounds, including that the proffered reports were barred by the exhaustion of the administrative remedies doctrine. The trial court ruled FAIR was not required to exhaust its administrative remedies on its Measure U consistency claims, but also concluded FAIR was nonetheless barred from relying on its “extra-record” evidence—the reports attached to the Buchanan Declaration that were never presented to the City—in challenging the project approvals. As we explain, the trial court was correct.

B. The City Failed to Comply with Section 65009

Exhaustion of administrative remedies is a jurisdictional prerequisite to a judicial action challenging a public agency’s planning decision. (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 993 [Fourth Dist., Div. Two].) But an agency may not rely on the exhaustion doctrine to preclude a judicial action challenging its planning decisions, unless the agency complies with the notice requirements of section 65009. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 740.) The statutory requirements of section 65009 “supersede the requirements of the common law doctrine of exhaustion of remedies.” (*Kings County Farm Bureau v. City of Hanford, supra*, at pp. 740-741.)

Section 65009 provides, in relevant part: “(b)(1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence

delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following: [¶] (A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence. [¶] (B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

“(b)(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include *in any public notice issued pursuant to this title* a notice substantially stating all of the following: ‘If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing.’” (Italics added.)

Based on the statute’s use of the phrase, “*in any public notice*” (italics added), respondents argue, as they did in the trial court, that section 65009 is satisfied “so long as the agency includes the requisite language in ‘any public notice,’” even if the agency fails to include the exhaustion language in other public notices on the same project. (§ 65009, subd. (b)(2).) Respondents claim section 65009 was satisfied here because the notice of the October 16, 2012, city council hearing on the project included the exhaustion language of section 65009. Respondents also point out that the *agendas* for the March 14, March 27, and April 24 planning commission hearings, and the agenda for the October 16, 2012, city council hearing, also included the exhaustion language of section 65009—even though the notices of the planning commission hearings and the July 18,

2012, city council hearing did not. In sum, respondents argue the City may invoke the exhaustion doctrine because the City complied with section 65009, and based on the exhaustion doctrine, FAIR was barred from presenting its “extra-record” *evidence* in the trial court.

We disagree with respondents’ interpretation of section 65009. As the trial court ruled, the City did not comply with section 65009 because the exhaustion language was not included in *each* notice of public hearing on the project. As a condition of invoking the exhaustion doctrine and precluding a party from raising *issues* in a judicial proceeding that were not raised in the administrative proceedings, section 65009 requires the exhaustion language of subdivision (b)(2) to be included “in *any* public notice issued pursuant to this title” (§ 65009, subd. (b)(1), italics added), and “any” public notice means *each* public notice of hearing on a project (see § 65094 [“As used in this title, ‘notice of a public hearing’ means *a* notice that includes the date, time, and place of a public hearing” (Italics added.)] And here, the exhaustion language was not included in several of the notices of public hearing on the project.

C. *FAIR’s Extra-record Evidence Was Nonetheless Properly Excluded*

FAIR claims that, because the City failed to comply with Government Code section 65009 and therefore cannot invoke the exhaustion doctrine against FAIR, the trial court erroneously refused to allow FAIR to rely on its extra-record evidence in challenging the project approvals in this writ proceeding. We disagree. Though the City failed to comply with Government Code section 65009, the trial court properly refused to

allow FAIR to rely on its extra-record evidence in challenging the project approvals. As the trial court concluded, FAIR did not make the proper foundational showing for augmenting the record under Code of Civil Procedure section 1094.5, subdivision (e).

As a general rule, a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency. (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.)

Augmentation of the record is permitted *only* within the strict limits set forth in Code of Civil Procedure section 1094.5, subdivision (e), which provides: “Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence” Absent a showing that one of these two exceptions applies, it is error for the trial court to permit the record to be augmented. (*Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.) The trial court has discretion to determine whether one of the exceptions applies, and its exercise of discretion will not be disturbed on appeal unless it is manifestly abused. (*Armondo v. Department of Motor Vehicles* (1993) 15 Cal.App.4th 1174, 1180.)

FAIR does not argue the City improperly excluded FAIR’s extra-record evidence. (Code Civ. Proc. § 1094.5, subd. (e).) Indeed, because the evidence was never presented to the City, the City did not improperly exclude it.

Instead, FAIR argues it was “tricked” or misled into not presenting its extra-record evidence at the October 16, 2012, hearing, because the notice of the city council hearing failed to include the exhaustion language of section 65009. FAIR argues that, based on the notice, it “never thought it was required to raise issues in the administrative proceeding to challenge the [p]roject in court. In essence, [the City] lulled [FAIR] . . . into thinking it did not have to exhaust remedies, effectively preventing [FAIR] from raising issues and introducing evidence into the administrative record that clearly demonstrate[d] [the City’s] decision to approve the [p]roject [was] not supported by substantial evidence.” FAIR argues the City should have notified the public that the October 16 hearing “was the public’s last chance to oppose the [p]roject and submit evidence in opposition to it.”

The trial court found FAIR’s argument “not reasonable” in light of the “strict standard[s]” of Code of Civil Procedure section 1094.5, subdivision (e). The court found FAIR “could not reasonably have believed that it would be entitled to present any evidence in court to challenge the approvals by way of a writ petition . . . without first demonstrating the requirements of [Code of Civil Procedure section] 1094.5[, subdivision] (e) [were] met.” We agree.

“Public policy requires a litigant to produce all existing evidence on his behalf at the administrative hearing [citation].” (*Toyota of Visalia, Inc. v. New Motor Vehicle Bd.*, *supra*, 188 Cal.App.3d at p. 881.) Indeed, “[e]xtra-record evidence is admissible under [the reasonable diligence] exception [of Code of Civil Procedure section 1095.4,

subdivision (e)] only in those rare instances in which (1) the evidence in question existed *before* the agency made its decision [here, at the October 16, 2012, city council hearing], and (2) it was not possible in the exercise of reasonable diligence to present this evidence to the agency *before* the decision was made so that it could be considered and included in the administrative record.” (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.)

FAIR met neither of these requirements. As the trial court pointed out, FAIR was charged with understanding the strict requirements of Code of Civil Procedure section 1094.5, subdivision (e), and reasonably should have known it had to present any evidence it wanted to present to the City before the city council approved the project, or be barred from presenting that evidence in a judicial proceeding challenging the project approvals. Nothing in the notice of the October 16, 2012, hearing “tricked” or misled FAIR into believing it would be excused from timely presenting its evidence to the City.

IV. DISCUSSION/FAIR’S MEASURE U CLAIMS

FAIR claims the City violated several “key requirements” of section 1A. of the City’s general plan, or Measure U, in approving the project. In related arguments, FAIR claims insufficient evidence supports the city council’s findings that the project was consistent with applicable provisions of Measure U and the general plan. We conclude the City proceeded in the manner required by its general plan, and substantial evidence supports its consistency findings. (Code Civ. Proc., § 1094.5, subd. (b).)

A. *Applicable Law and Standard of Review*

“Every county and city must adopt a “comprehensive, long-term general plan for the physical development of the county or city” (Gov. Code, § 65300.) “The general plan has been aptly described as the ‘constitution for all future developments’ within the city or county. . . . ‘[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements’” [Citations.] “The consistency doctrine has been described as ‘the linchpin of California’s land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.’” [Citation.]” (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 636.)

In reviewing an agency’s consistency findings, our role is the same as the trial court’s; we independently review the agency’s actions and are not bound by the trial court’s conclusions. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 357.) The essential inquiry is whether the consistency findings are supported by substantial evidence in the record, or are “reasonable based on evidence in the record.” (*California Native Plant Society, supra*, 172 Cal.App.4th at p. 637.) Reasonable doubts must be resolved in favor of the agency’s findings and decision. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors, supra*, at p. 357.)

Additionally, our review of a city’s interpretation of its general plan provisions is highly deferential (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th

807, 816), and as long as the city’s interpretation is reasonable—that is, as long as the interpretation is compatible with the objectives and policies of the general plan—it must be upheld (*California Native Plant Society v. City of Rancho Cordova, supra*, 172 Cal.App.4th at pp. 637-638, 642).

B. The City Complied with the Requirements of Section 1A.10(b) of the General Plan and Substantial Evidence Supports the City’s Findings

FAIR claims the City and Walmart failed to comply with several requirements of section 1A.10(b) of the general plan, and insufficient evidence supports the findings the City made pursuant to section 1A.10(b). None of these claims have merit.

1. The Socio-economic Study Made the Required Cost-benefit Finding

Section 1A.10(b) requires the City to prepare a socio-economic study and cost-benefit analysis for any development project which, like the project here, exceeds “a cumulative total of 5,000 square feet.” Section 1A.10(b) provides that the City may not approve a project unless the socio-economic study finds, to the satisfaction of the city council, that the project: “1) will not create unmitigated physical blight within the City or overburden public services, including without limitation the sufficiency of police and fire protection and 2) the benefit of the development project to the City outweighs any direct cost to the City that may result.” We will refer to the latter finding as the study’s cost-benefit finding.

The City prepared a 36-page socio-economic study and cost-benefit analysis for the project (the Study). FAIR claims the Study failed to make the second finding

required by section 1A.10(b)—that the “benefits” of the project would outweigh its “direct costs” to the City. We disagree.

In a section titled “Cost Benefit Factors,” the Study states the project “is projected to result in annual ‘new net’ non-residential revenues of \$459,936 to the City upon operation, and annual ongoing costs of approximately \$178,080,” and this “equates to a revenue/cost ratio of a positive factor of 2.58.” The Study thus found that the net new revenue—or benefits—from the project would outweigh its direct costs by a factor of 2.58. This finding was sufficient to satisfy the cost-benefit finding required by section 1A.10(b).

2. Substantial Evidence Supports the Study’s Cost-benefit Finding

In a related argument, FAIR claims insufficient evidence supports the cost-benefit finding, because the finding conflated the project’s “benefits” with its “revenues” and “[b]enefits’ and ‘revenues’ are obviously not the same thing in ordinary parlance, with [benefits] being much broader than and encompassing [revenues].” FAIR argues that, in light of the purpose of Measure U to “assure that future development within the City of Redlands occurs in a way that promotes the social and economic well-being of the entire community,” the cost-benefit finding cannot be based *solely* on a revenue/cost analysis, but must consider “all benefits” of the project, “in line with the dual purpose of Measure U to promote ‘the social *and* economic well-being of the entire community.’” (Italics added.)

Respondents counter that the Study properly chose to quantify the benefits of the project solely in terms of its revenues to the City, for purposes of determining whether the project's "benefits" outweighed its "direct costs." We agree. In completing the Study, the City reasonably interpreted Measure U as allowing the City to quantify the project's benefits solely in terms of its net new revenues to the City, in determining whether the project's "benefits" would outweigh its "direct costs."

3. The City Made a Proper "Overriding Benefit" Finding

As respondents point out, the final provision of section 1A.10(b) allows the city council to "approve a development project for which the socio-economic study fails to make the required findings or determinations if the City Council finds and determines upon a 4/5ths vote of its total authorized membership that the benefits to the City from the development project outweigh the negative socio-economic effects that may result." Respondents argue the City made this overriding benefit finding, even though the Study properly found, to the satisfaction of the city council, that the project's direct revenues (i.e., its financial benefits) would outweigh its direct costs. Again, we agree.

In adopting resolution No. 7192, the city council found by a four-to-one vote, with no members absent or abstaining, that the project site is a "keystone site" within the EVCSP due to its location on San Bernardino Avenue and adjacent to Interstate 210, and, "[a]s such, the [p]roject has the unique ability to create a highly accessible and visible development . . . [and] help develop an important gateway into the East Valley Corridor. Also, the [p]roject would provide a well designed commercial and retail center that will

attract major businesses to the area in order to provide a job base for the East Valley Corridor and strengthen the local economy, while ensuring a high-quality development through the [p]roject's approved plans and conditions of approval. . . ." By making this finding, the City implicitly found that the socio-economic benefits of the project outweighed its potential negative socio-economic effects, and made the overriding benefit finding allowed by section 1A.10(b).

FAIR argues the City failed to make the proper overriding benefit finding because the city council did not expressly find that the project's socio-economic benefits would outweigh its potential *negative socio-economic effects*. FAIR misreads the City's finding. The overriding benefit finding concludes the project would be beneficial to the City because it would create jobs, attract other businesses, strengthen the local economy, and be an important part of developing high-quality services and infrastructure in the East Valley Corridor. The City implicitly found that these *socio-economic* benefits would outweigh the project's potential negative socio-economic effects. There was no need to quantify or describe the project's potential negative socio-economic effects.

4. The City Was Not Required to Consider Indirect Costs of the Project

FAIR next claims insufficient evidence supports the City's overriding benefit finding in resolution No. 7192, because the Study's analysis, which underlies the City's findings, did not address the project's potential costs to the City in terms of lost sales and other tax revenues from other retailers, or job losses with such retailers, due to competition from the project's Walmart and other retail stores. Respondents counter that

section 1A.10(b) of the general plan did not require the City to analyze or quantify the project's potential costs in terms of lost revenues from or lost jobs with other retailers.

We agree.

In 1998, the City adopted resolution No. 5580, establishing procedures for processing the socio-economic analysis and cost-benefit studies required by Measure U. Resolution No. 5580 adopted a “model cost/benefit study” and “socio-economic evaluation checklist,” to be used by the City and developers to satisfy and implement Measure U's socio-economic study and cost-benefit requirements.

The model study is “intended to satisfy Measure U's requirement to ‘determine whether the benefit of the development project to the City outweighs any direct costs to the City that may result.’” The cost component of the model study tallies the project's recurring costs to the City for police and fire protection, public works, library services, general government administration, and administrative services. The model study also tallies the recurring revenues the project is expected to generate for the City for property taxes, sales and use taxes, property transfer taxes, permit fees, fines, and similar revenues. The model study offsets recurring revenues against recurring costs to arrive at the project's “recurring fiscal impact.”

As indicated, the Study found that the project's recurring fiscal impact would be to generate \$459,936 in new net revenues to the City, offset by \$178,080 in direct recurring costs, resulting in a positive “revenue/cost ratio” of 2.58. As respondents point out, the model study does not call for assessing a project's potential impacts on existing

businesses, whether in the form of lost sales taxes, jobs, or otherwise, though the model acknowledges this is one of its limitations.⁶ Instead, the model calls only for a calculation of a project’s direct, recurring revenues and direct, recurring costs, in calculating its fiscal impact to the City, as section 1A.10(b) of the general plan requires. A project’s potential impacts on existing businesses and jobs are not part of the direct, recurring cost-benefit calculation that section 1A.10(b) requires. Thus, FAIR’s claim that insufficient evidence supports the City’s cost-benefit finding is based on a misconception of the requirements of section 1A.10(b), and the model cost/benefit study, adopted by resolution No. 5580.

5. Substantial Evidence Supports the Study’s “Trade Leakage” Finding

The Study also found the project “has the potential to capture a greater share of the retail leakage that is taking place within the City.” FAIR claims insufficient evidence supports this finding. Not so. First, the cost-benefit model indicated that the City was “experiencing trade area leakage,” meaning its residents were spending retail shopping dollars in areas outside the City, such as in San Bernardino. The model further states: “If

⁶ The model states: “Retail development cannot generate new business or create new buying power; it can only attract customers from existing business, fulfill an unmet need, or capture the increase in purchasing power that accrues with population growth. . . . Retail sales must come from the purchasing power of the existing population or from future populations or both. [¶] Consequently, prior to population growth, retail sales may be achieved by diverting existing purchasing power from existing merchants to other project [p]lan retailers. If this is the case, a portion of the sales taxes indicated in this model may not represent net increases in revenue, but rather the diversion of existing revenues. . . .” (Fn. omitted.)

leakage could be eliminated, additional retail space could be absorbed without affecting existing merchants and therefore existing sales taxes.”

The Study found the City was experiencing trade leakage of approximately \$907 annually, per capita, and the project’s trade area was approximately three to six miles, or a 15 to 20 minute drive from the project site. Total retail consumption within a five minute drive of the project site was around \$239 million; \$1.5 billion within a 10 minute drive; and \$2.96 billion within a 15 minute drive. The Study thus “anticipated” the project “*may realize* a high sales volume due to its proximity to a large consumer spending base, and higher inventory levels than a non-supercenter Walmart.” (Italics added.) The Study thus found the project had “*the potential*” to capture a greater share of the [City’s existing] retail leakage,” but the Study did not find the project would *necessarily* reduce trade leakage to other areas. (Italics added.)

In support of its claim that insufficient evidence supports the Study’s finding that the project *may* reduce the City’s existing level of trade leakage, FAIR points to the Urban Decay Study, attached as appendix J to the EIR, which states it is “reasonable to expect that residents will tend to make the vast majority of their retail purchases locally, provided that a competitive mix of retail stores reflective of consumer needs is available,” and this is “especially becoming the case in Redlands, given the amount of regional-serving retail space recently developed and planned for development in the City.” FAIR also points to table IV-7 of the EIR which concluded that 70 to 100 percent of the City’s

existing retail demand, depending on the specific type of goods sold, was not “leaking out” of the City but was being “captured” or satisfied by the City’s existing retailers.

Based on these findings, FAIR argues the project is ““unlikely to generate much in the way of additional retail sales from current residents in the City””

FAIR’s argument misses the point of the trade leakage finding. Even if, as FAIR argues, “the [p]roject ‘is unlikely to generate much in the way of additional retail sales from current residents in the City,’” this does not mean the project does not have the potential to reduce the City’s existing trade leakage problem. The proposed Walmart store and other new retail stores plainly have the potential to attract residents from the City and surrounding areas who previously shopped outside the City.

Additionally, the Urban Decay Study supports rather than undermines the Study’s finding that the project has the potential to reduce the City’s existing trade leakage problem. As the Urban Decay Study indicates, the Walmart supercenter and the project’s other retail stores will add to the City’s “competitive mix of retail stores,” and may therefore attract new customers from within the City and its surrounding areas.

6. Substantial Evidence Supports the Study’s \$178,080 Direct Cost Finding

Lastly, FAIR claims insufficient evidence supports the \$178,080 cost portion of the Study’s cost-benefit finding, because there is no basis for the Study’s conclusion that the City’s recurring costs for the project will be \$178,080. Again, we disagree. As the model cost/benefit study explains, “[t]he cost component of [a project’s] recurring fiscal impacts include the annual expenses related to the operations and maintenance of City

facilities and services,” and these expenses include a project’s costs for police and fire protection, public works, library services, general government administration, and administrative services.

FAIR points to no competent evidence that the City’s estimate that the project would cost the City \$178,080 in direct, recurring annual costs is inaccurate or unsupported by substantial evidence. Instead, FAIR relies on the “economic analysis” of the project attached to the Buchanan Declaration, which, for the reasons discussed, the trial court properly refused to consider. Nonetheless, FAIR’s argument is a curious one, because FAIR’s extra-record economic analysis estimates that the direct costs of the project were only \$50,000 to \$60,000, less than the City’s \$178,080 direct cost estimate. If FAIR is correct, then the project’s benefit/cost ratio is higher than 2.58, and the project is *more* beneficial to the City than the City estimated.⁷

⁷ FAIR’s extra-record economic analysis speculates that the project’s annual, direct costs to the City are “in the neighborhood of \$50,000 to \$60,000.” The analysis acknowledges, “[w]e do not have precise estimates of the cost of City services to the City of Redlands for the new project,” but observes that a Walmart supercenter in the City of Ukiah was recently estimated to cost *that city* \$29,338 in annual costs, including for administration, safety and public works. The analysis states that because (1) the project is “substantially larger” than the Ukiah project, (2) the project will result in the closure of an existing Walmart store in the City, and (3) the cost of living in Redlands is substantially higher than in Ukiah, “a reasonable first approximation” of the costs of the project is “in the neighborhood of \$50,000 to \$60,000.” This estimate is entirely speculative and in no way undermines the City’s \$178,080 direct cost estimate.

FAIR also improperly relies on the extra-record “preliminary report” prepared by Regulatory Economics, Inc., also attached to the Buchanan Declaration and never made part of the administrative record. That report observes that “[t]here appears to be increasing concern” that large Walmart stores generate unanticipated levels of policing costs, and discusses a Walmart supercenter in Port Richey, Florida that generated substantial property tax revenue but consumed “a large share” of that community’s police

[footnote continued on next page]

7. The Study Was Not Required to Be Completed Concurrently with Walmart's Initial Application or Be Included in the Draft EIR

FAIR next claims the City violated section 1A.10(b) by (1) not requiring Walmart to submit a preliminary or completed socio-economic study and cost-benefit analysis as part of its application for the project approvals, and (2) by not including the socio-economic study and cost-benefit analysis *in* the draft EIR. Neither of these claims have merit.

For projects requiring a socio-economic study and cost-benefit analysis, section 1A.10(b) provides that the study and analysis “*shall . . . be included in all environmental documents submitted to the extent permitted by law, identifying the source of funding for necessary public infrastructure and reflecting the effect of such development on the City, as part of the application process.*” The City Council shall publish notice of and hold at least one public hearing at which the public may appear and be heard to consider the socio-economic cost/benefit study. . . .” (Italics added.)

Contrary to FAIR’s claim, section 1A.10(b) does not require a project applicant to submit a socio-economic study and cost-benefit analysis along with its application for the project approvals. Indeed, resolution No. 5580, which established “procedures for the processing of socio-economic analyses and cost/benefit studies,” requires the project applicant to submit “a socio-economic evaluation checklist . . . and a cost-benefit study,”

[footnote continued from previous page]

resources. The report’s discussion of the Florida Walmart store’s policing costs is anecdotal, and in no way undermines the City’s \$178,080 direct cost estimate.

in forms attached to the resolution as exhibits A and B, “*as part of the development application process,*” not as part of the application itself. (Italics added.) And here, Walmart met this requirement. In 2008, shortly after it submitted its initial application for the project approvals, Walmart submitted to the City a report, titled “Socio-Economic/Cost Benefit Study Project Information,” which included information to be used by city staff in preparing the socio-economic analysis and cost-benefit study for the project.

Resolution No. 5580 also requires *the City*, not the project applicant, to “prepare” the socio-economic analysis and cost-benefit study; requires *City staff*, not the applicant, to “process completed socio-economic analysis and cost/benefit study applications” in accordance with the procedures set forth in the resolution; requires the analysis and study to be “*reviewed as a separate document . . . processed in conjunction with, and at the same time as, environmental review of the project under [CEQA]*”; and requires City staff, “acting as the Environmental Review Committee, [to] review all socio-economic analyses and cost/benefit studies and make its recommendation on the same to the Planning Commission and the City Council.”

These requirements were also met here. In March 2012, after the comment period on the draft EIR expired but before the planning commission recommended that the city council approve the project, city staff issued the socio-economic study and cost-benefit analysis for the project. The public had an opportunity to comment on the study and

analysis, as section 1A.10(b) required. The City was not required to include study and analysis in, or circulate them with, the draft EIR.

C. The City Complied with Section 1A.10(a) of the General Plan (Development Fees)

Section 1A.10(a) of the general plan, titled “Development Fee Policy,” provides: “In accord with the provisions of California Government Code Sections 66000 et seq., all development projects as defined therein shall be required to pay development fees to cover 100% of their pro rata share of the cost of any public infrastructure, facilities or services, including without limitation police and fire services, necessitated as a result of such development. The City Council shall set and determine development fees sufficient to cover 100% of the estimated cost of such public infrastructure, facilities and services based on appropriate cost-benefit analyses as required by the provisions of California law.” For purposes of the applicable Government Code provisions and section 1A.10(a) of the general plan, the project qualifies as a development project. (§ 66000, subd. (a) [defining development project].)

FAIR claims the City violated section 1A.10(a) of the general plan because “the Study and its cost/benefit analysis did not serve as the foundational document allowing for the city council to set and determine development fees to cover the costs of the [p]roject.” Instead, FAIR argues, the cost-benefit analysis indicates that the public infrastructure costs of the project will be paid through development impact fees, but rather than listing the public infrastructure costs of the project, the Study states the project “will also pay the City’s Development Impact Fees (DIF) that have been

estimated to be approximately \$5,613,082; or will get appropriate credit for the installation of public infrastructure within a DIF program.” Thus, FAIR argues, the Study simply “decree[d] the amount [of development fees] to be paid by fiat,” without basing the development impact fees on the public infrastructure costs of the project.

FAIR’s argument focuses on selected portions of the Study while disregarding its content as a whole, and misconstrues the requirements of section 1A.10. Under the heading, “Public Infrastructure and Effect on the City of Redlands,” the Study explains: “The project is projected to construct an extensive network of public infrastructure located along the project site’s four frontages and within the vicinity of the project site which is estimated at approximately \$4,856,191. The project will *also pay* the City’s Development Impact Fees (DIF) that have been estimated to be approximately \$5,613,082; *or* will get appropriate credit for the installation of public infrastructure within a DIF program.” (Italics added.) Thus, the Study confirmed that the development impact fees for the project would cover 100 percent of the public infrastructure costs of the project, as section 1A.10(a) of the general plan required.

Contrary to FAIR’s argument, section 1A.10(a) did not require the City to base the project’s development impact fees *on* its public infrastructure costs; instead, it only required the City to “set and determine development fees sufficient to cover 100% of the estimated cost of [the] public infrastructure” for the project. As indicated, this requirement was met. Additionally, exhibit B to the Study includes an item-by-item breakdown of the project’s estimated \$4,856,191 public infrastructure costs, or costs of

“off-site improvements.” The \$4,856,191 sum includes the costs of new traffic signals, street lights, utilities, fire hydrants, and improving the roadways along the project’s four street frontages, Tennessee Street, San Bernardino Avenue, New York Avenue/Karon Street, and Pennsylvania Avenue.

D. *The City Complied with Section 1A.40 of the General Plan (Agricultural Uses)*

Section 1A.40 of the general plan states: “Agricultural uses of land are important to the culture, economy and stability of the City of Redlands and *shall be preserved to the greatest extent possible* consistent with the will of the people as expressed in Proposition R and Measure N, and consistent with the policies of the State of California set forth in Government Code Section 51220.” (Italics added.)

FAIR argues the City violated section 1A.40 of the general plan by approving the project because the project will be built on fallow agricultural land and will, as the EIR found, “incrementally increase pressure on surrounding agricultural land to convert to non-agricultural use.” Thus, FAIR argues the project will not “preserve” agricultural land uses “to the greatest extent possible” as section 1A.40 requires.

Respondents argue that section 1A.40 does not apply to the project site, but only applies to land in *current* agricultural use. We agree. As indicated, section 1A.40 requires the preservation of agricultural “uses” of land. And because the project site consists of fallow agricultural land, which has not been in “agricultural use” since 2002, section 1A.40 does not apply to the project site.

Nor does Proposition R, the City’s “growth control zoning ordinance,” which was amended by Measure N, apply to the project site. These general plan provisions limit the number of residential units that may be developed in the City, but do not limit commercial development projects, like the Redlands Crossing Center project. The state policies set forth in section 51220 are also concerned with preserving *existing* agricultural land uses, and in any event do not require the project site to be preserved for agricultural uses.⁸

As respondents point out, the general plan includes other provisions intended to preserve *existing* agricultural land uses, to the extent feasible, but none of these provisions require the City to preserve the project site for agricultural use, or return it to agricultural use, for any period. Section 7.41 of the general plan calls for the City to “[r]etain the maximum *feasible* amount of agricultural open space”⁹ (Italics added.)

⁸ Section 51220, which is part of the Williamson Act (§ 51200 et seq.), sets forth the Legislature’s findings: “(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources [¶] (b) That the agricultural work force is vital to sustaining agricultural productivity [¶] (c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest . . . [and] [¶] (d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space”

⁹ To this end, section 7.41 of the general plan provides that in an effort to maintain and preserve the agricultural industry in the Redlands area, the “agricultural preserve” concept was developed, which provides the City and property owners two means of preserving existing agricultural land uses: (1) designating lands as “agricultural preserve” pursuant to an agreement between the City and property owner, so the City may “provide[] agricultural protection” through zoning regulations, and (2) placing lands under Williamson Act contracts. Here, however, the project site is not a designated “agricultural preserve,” and is not subject to any Williamson Act contracts.

But section 7.41 does not require *fallow* agricultural land, such as the project site, to be preserved for or converted back to agricultural use.

The project site lies within the EVCSP, which, as section 7.41 of the general plan acknowledges, “calls for conversion of agricultural land for commercial and industrial development over a 40-year period.” Though EVCSP policy EV2.0205(a)4 calls for the preservation of “*existing viable agricultural activities in the [East Valley Corridor]* as long as feasible while the area transitions to more intensive uses” (italics added), the project site includes no “existing viable agricultural activities.” Thus, EV2.0205(a)4 does not apply to the project site.

E. *The City Complied with Section 1A.60 of the General Plan (Traffic Service Levels)*

FAIR claims the City violated section 1A.60(a) of the general plan in approving the project despite its adverse impacts on levels of traffic service in the City. We disagree.

1. Relevant Background

Section 5.20 of the general plan, titled “standards for traffic service,” explains that a traffic “level of service” or “LOS” “is a qualitative measure of traffic service along a roadway or at an intersection,” and that a LOS “ranges from A to F, with LOS A being best and LOS F being worst. LOS A, B and C indicate conditions where traffic can move relatively freely. LOS D describes conditions where delay is more noticeable and average travel speeds are as low as 40 percent of the free flow speed. LOS E indicates significant delays and average travel speeds of one-third the free flow speed or lower;

traffic volumes are generally at or close to capacity. Finally, LOS F characterizes flow at very slow speeds (stop-and-go), and large delays (over a minute) with queuing at signalized intersections; in effect, the traffic demand on the roadway exceeds the roadway's capacity.”

The full text of section 1A.60(a) states: “To assure the adequacy of various public services and to prevent degradation of the quality of life experienced by the citizens of Redlands, all new development projects shall assure by appropriate mitigation measures that, at a minimum, traffic levels of service are maintained at a minimum of LOS C throughout the City, except where the current level of service is lower than LOS C, *or as provided in Section 5.20 of the [general plan] where a more intense LOS is specifically permitted.* In any location where the level of service is below LOS C at the time an application for a development project is submitted, mitigation measures shall be imposed *on that development project* to assure, at a minimum, that the level of traffic service is maintained at levels of service that are no worse than those existing at the time an application for development is filed, *except as provided in Section 5.20b.*” (Italics added.)

Section 5.20 of the general plan includes three “guiding policies” for its standards of traffic service: “5.20a Maintain LOS C or better as the standard at all intersections presently at LOS C or better. [¶] 5.20b Within the area identified in GP Figure 5.3, including that unincorporated County area identified on GP Figure 5.3 as the donut hole, maintain LOS C or better; *however, accept a reduced LOS on a case by case basis upon*

approval by a four-fifths (4/5ths) vote of the total authorized membership of the City Council.^[10] [¶] 5.20c Where the current level of service at a location within the City of Redlands is below the Level of Service (LOS) C standard, no development project shall be approved that cannot be mitigated so that it does not reduce the existing level of service at that location except as provided in Section 5.20b.”

Using the LOS standards of section 1A.60 of Measure U and section 5.20 of the general plan as standards of significance, the EIR concluded the project would *directly* reduce and therefore adversely impact traffic levels of service at several locations in the City from level LOS C or lower, to even lower levels of service. The directly impacted areas are the Interstate 10 westbound ramp at Alabama Street, the Interstate 210 eastbound and westbound ramps at San Bernardino Avenue, and the intersections of Church Street/San Bernardino Avenue, and Church Street/Lugonia Avenue. The EIR also concluded that mitigation measures would reduce these direct impacts to less than significant levels. Additionally, the EIR concluded the project would contribute to *cumulative* traffic impacts at 20 intersections in the City or in the “Redlands Sphere” of the County of San Bernardino and concluded the cumulative impacts would “remain significant and unavoidable due to the uncertain timing of the completion of improvements.”

¹⁰ The area identified on GP figure 5.3 of the general plan includes the project site and areas where the EIR concluded the project would directly reduce levels of traffic service from existing levels LOS C or lower, to even lower levels.

2. Analysis

FAIR argues the EIR concluded the project would directly reduce traffic “levels of service,” from “LOS C” or lower, at several intersections and freeway onramps in the City, and acknowledged there was no assurance that measures to reduce these impacts would be implemented. FAIR also claims the EIR’s traffic impacts analysis is flawed in several respects and substantially understates the project’s impacts on traffic service levels. Thus, FAIR claims the project approvals must be set aside because they conflict with the general plan. (§ 66473.5.) We reject these claims.

As indicated, sections 1A.60(a) and 5.20b of the general plan authorized the city council to approve the project, even though it would reduce traffic service levels to below LOS C, or from LOS D, E or F to even lower levels, if the city council decided to accept the lower LOS levels by approving the project by four-fifths vote of its authorized membership. The four-fifths “override” requirement of section 5.20b was met here. The city council voted to approve each of the project approvals by four-fifths votes of its authorized members.¹¹ Thus, contrary to FAIR’s argument, the project approvals are *not inconsistent* with sections 1A.10(a) and 5.20 of the general plan. (§ 66473.5.)

Respondents argue the four-fifths override votes were unnecessary because “[t]he City determined that, with mitigation, the City would maintain LOS C or, at least,

¹¹ The project approvals included resolution No. 7193 certifying the EIR, resolution No. 7192 approving the socio-economic and cost-benefit study, resolution No. 7194 approving the conditional use permit for the project, and resolution No. 7198 approving the tentative parcel map for the project.

existing levels of service, and thus the [p]roject [was] consistent with the General Plan.” Respondents are correct. As the EIR explained: “[T]he City’s General Plan policies require that projects that may reduce the LOS to below level C mitigate for both direct and cumulative impacts. As set forth herein, the City has imposed mitigation measures that will mitigate all direct impacts to below a level of significance, thus ensuring that the [p]roject will not worsen the existing level of service either inside or outside the City’s boundaries. Further, the City has imposed requirements that the [p]roject provide fair share payments to fund future improvement that will mitigate for the [p]roject’s portion of any potential cumulative impact. These mitigation requirements are consistent with the City’s interpretation of its own General Plan policies, and thus these policies do not impose any prohibition against [p]roject approval, nor do they impose a requirement for a four-fifths override.”

The City thus interpreted section 1A.60(a) as allowing it to approve the project provided its direct impacts on traffic service levels were fully mitigated and the project applicant paid its “fair share” of improvements to mitigate the project’s cumulative impacts on traffic service levels—even though the project’s cumulative impacts would, as the EIR concluded, “remain significant and unavoidable due to the uncertain timing of the completion of [the] improvements.”

FAIR argues the City’s interpretation of section 1A.60(a) is unreasonable and unsupported by the language of the provision. FAIR argues section 1A.60(a) “makes no distinction” between a given project’s direct impacts on traffic service levels and

cumulative impacts on traffic service levels, and respondents’ “suggestion that the traffic level of service may drop below LOS C, or below an existing condition, if that drop results from cumulative impacts is entirely without merit and unsupported by the record.” We disagree. As we have noted, our review of the City’s interpretation of its general plan provisions is highly deferential (*Friends of Lagoon Valley v. City of Vacaville, supra*, 154 Cal.App.4th at p. 816) and must be upheld as long as it is reasonable—that is, as long it is compatible with the objectives and policies of the general plan (*California Native Plant Society v. City of Rancho Cordova, supra*, 172 Cal.App.4th at pp. 637-638, 642).

The City’s interpretation of section 1A.60(a) as *not* requiring *a given project* to bear the full costs of mitigating *cumulative impacts* on traffic service levels, or to assure that mitigation measures to reduce *cumulative impacts* will be fully implemented, was reasonable. The ostensible objective of section 1A.60(a) is to ensure that existing traffic service levels are maintained throughout the City, and, to this end, mitigation measures are imposed on “all new development projects.” As the City implicitly found, it would be unfair and unreasonable to require each and every new development project in the City to bear the full costs of mitigating cumulative impacts on traffic service levels, or to ensure that such cumulative impacts will be mitigated to less than significant levels. Thus, the City reasonably interpreted section 1A.60(a) as allowing the City to approve the project, provided it fully mitigated its direct impacts on traffic service levels, and paid its fair share of mitigating cumulative impacts. As the EIR pointed out: “In this way, the

City can assure that [each new development] [p]roject has provided mitigation for all effects that may reduce the existing level of service”

FAIR argues the EIR’s analysis of the project’s impacts on traffic service levels was “fatally flawed” in several respects and, as a result, substantially understated the project’s direct and cumulative impacts on traffic service levels. Thus, FAIR argues, insufficient evidence supports the City’s determination that the project was consistent with section 1A.60(a). As respondents point out, FAIR’s challenge to the traffic impacts analysis in the EIR is based on extra-record evidence, namely, the letter from Smith Engineering and Management (the Smith Letter) attached to the Buchanan Declaration.¹² Because the trial court properly concluded that FAIR could not rely on its extra-record evidence in challenging the project approvals in this writ proceeding, FAIR may not rely on that evidence now.

F. Substantial Evidence Supports the City’s Findings the Project Was Consistent with the Applicable Provisions and Policies of the General Plan (§ 66474)

Section 66474, part of the Subdivision Map Act (§ 66410-66499.37), requires a lead agency to *deny* approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of several findings, including: “(a) That the proposed map is not consistent with applicable general and specific plans [¶] (b)

¹² The Smith Letter asserts, among other things, that the EIR should have evaluated the project’s traffic levels using Friday P.M. peak hour traffic rates, rather than average weekday P.M. peak hour traffic rates, and should have conducted baseline traffic studies in December rather than in May.

That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans . . . [or] [¶] . . . [¶] (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.”

In adopting resolution No. 7198, the City found, among other things, that “the design of the subdivision and the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.” (Gov. Code, § 66474, subd. (e).) FAIR claims this was a “false finding,” and insufficient evidence supports it, because the City also found that the project would have significant and unavoidable impacts on air quality, both at the project level and cumulatively, along with cumulative health impacts and transportation impacts. Thus, FAIR argues, the City failed to proceed in a manner required by law (Code Civ. Proc., § 1094.5, subd. (b)) and the City’s approval of TPM 19060 for the project must be set aside.

As respondents point out, however, Government Code section 66474, subdivision (e) applies only in limited circumstances. Government Code section 66474.01 provides that a public agency may approve a tentative map “[n]otwithstanding subdivision (e) of Section 66474 [of the Government Code],” if an environmental impact report was prepared for the project and a finding was made, under section 21081, subdivision (a)(3) of the Public Resources Code that, “[s]pecific economic, legal, social, technological, or

other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report.”

In adopting resolution No. 7193, the City certified the EIR for the project and adopted a “statement of environmental effects, mitigation measures, findings, and overriding considerations.” The City found, pursuant to Public Resources Code section 21081, subdivision (a)(3), that all feasible mitigation measures had been adopted to reduce or avoid the significant and unavoidable air quality, health, and transportation impacts identified in the EIR. Thus here, the City was not required to deny its approval of TPM 19060, even though it found, as part of its CEQA findings, that the project would result in the environmental impacts on air quality, health, and transportation identified in the EIR. (Gov. Code, §§ 66474, subd. (e), 66474.01.)

And, though the City’s section 66474, subdivision (e) finding was in error, FAIR has not demonstrated any resulting prejudice or substantial injury. (§ 65010, subd. (b) [“No action, inaction, or recommendation by any public agency or its legislative body . . . on any matter subject to this title shall be held invalid or set aside by any court . . . by reason of any error . . . unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.”].)

Based on its Public Resources Code section 21081, subdivision (a)(3) findings, the City could have lawfully approved TPM 19060, notwithstanding the City’s findings of

adverse environmental impacts. (Gov. Code, § 66474.01.) Thus, FAIR has demonstrated no prejudice based on the City’s “false” Government Code section 66474, subdivision (e) finding.

V. DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.