Filed 8/26/11

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

BEVERLY SCHENCK, Plaintiff and Appellant, v. COUNTY OF SONOMA, Defendant and Respondent;	A129646 (Sonoma County Super. Ct. No. SCV-244017)
LIQUID INVESTMENTS, INC., et al., Real Parties in Interest and Respondents.	

This is an appeal from a judgment in an action challenging the approval of a project for development of a beverage distribution facility on grounds that the County of Sonoma failed to comply with the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)[1] before issuing a mitigated negative declaration. Plaintiff Beverly Schenck claims proper notice of the administrative proceedings was not given to public agencies and the findings of no significant impact on the environment are contrary to the evidence. We conclude that a single error in the notice procedure was not prejudicial, and the substantial evidence does not support a fair argument that a proposed project may have a significant effect on the environment. We therefore affirm the judgment.

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts IV and V of the Discussion.

[1] All further statutory references are to the Public Resources Code, unless otherwise specified; all references to Guidelines are to the "Guidelines for Implementation of the California Environmental Quality Act" (Cal. Code Regs., tit. 14, § 15000 et seq.), the regulations promulgated to clarify the statutory law of CEQA.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On July 19, 2006, the real parties in interest, Liquid Investments, Inc. and Mesa Beverage Company, Inc., (Mesa) filed an application with the Permit and Resource Management Department (the Department) of defendant County of Sonoma for approval to develop and construct a 155,149-square-foot warehouse and beverage distribution facility, along with an associated office, maintenance building, and paved parking area, on a vacant 12.5-acre parcel located north of Santa Rosa near Highway 101 on the east side of North Laughlin Road, adjacent to Mark West Creek.[2] The proposed project was intended to replace an existing facility operated by Mesa nearby at 205 Concourse Boulevard. As proposed by Mesa, the new facility would operate continuously from Sunday to Friday evenings, employing a total of 116 employees, including office and warehouse workers, truck drivers and loaders. The proposed development project lies within the existing airport industrial area of the County, which is zoned MP and designated for industrial use, so only design review approval from the County was required prior to issuance of building permits.

Following an initial design study and evaluation by the Department staff of traffic impacts, environmental noise, biological impacts, cultural resources and hydrology, along with a preliminary design review hearing on October 18, 2006, design changes were recommended. A traffic study completed by an independent consulting firm, TJKM Transportation Consultants (TJKM), in November of 2006, identified five intersections that would be impacted by proposed development, three of them on Airport Boulevard, and recommended improvements to reduce future cumulative traffic impacts to less-than-significant levels. Mesa incorporated the recommended changes into the site plan.

The Department staff thereafter prepared an initial mitigated negative declaration which concluded that with incorporated mitigation measures "there will be no significant environmental impacts resulting from this project." A public hearing before the Design Review Committee (the Committee) was scheduled for June 6, 2007. Notice of the

[2] We will refer to the real parties in interest collectively as Mesa; we will refer to the County of Sonoma as the County or defendant.

hearing was sent to specified federal, state and local government agencies, including the Regional Water Quality Control Board and the Bay Area Air Pollution Control District.

At the public hearing local residents expressed concerns with adverse impacts of the project on traffic, noise, lighting, aesthetics, and biological resources. Mesa subsequently provided further information to the Department staff and made minor modifications to the project design. A revised mitigated negative declaration was then prepared and a final public design review hearing was held on September 19, 2007. The Committee voted to approve the modified design with additional conditions related to landscaping, lighting, road improvements, driveway restrictions, storm-water and adjacent wetlands protection, and construction of sound walls.

The decision of the Committee was appealed to the Planning Commission. After a public hearing, the Planning Commission denied the appeal and adopted Resolution No. 08-004, which approved the mitigated negative declaration as completed in compliance with CEQA, and granted the design review permit.

Review of the project application then proceeded by way of an appeal by plaintiff Beverly Schenck to the County Board of Supervisors (the Board) on February 15, 2008. Schenck requested that the County require Mesa to provide an environmental impact report (EIR), with analysis of traffic, noise and biological impacts, as well as an assessment of project alternatives.

In March of 2008, Mesa enlisted TJKM to complete and submit an updated traffic study for the project to "estimate daily traffic for the proposed Mesa Beverage facility" on North Laughlin Road. The TJKM traffic study assumed the volume of daily product generated at the new "North Laughlin facility" would be the same as that of the existing "Concourse Boulevard facility," so the daily employee traffic and truck operations would also be essentially identical. Traffic counts for the two driveways at the Concourse Boulevard facility were observed and collected, and compared to the trip production rates estimated for the project in the November 2006 traffic impact study. The observed trip totals were significantly lower – approximately 18 percent – than the estimates stated in the prior TJKM study.

A third revised mitigated negative declaration was issued by the County on March 24, 2008, which incorporated the updated statement of traffic impacts. A review of the most recent TJKM study by the County Department of Transportation and Public Works determined that traffic impacts would "be less than previously reported at the five impacted intersections," and would be reduced to less-than-significant levels with the mitigation fees to be paid by the developer upon issuance of building permits. The County set a public hearing before the Board to consider plaintiff's appeal and the revised mitigated negative declaration.

At the hearing before the Board on May 13, 2008, plaintiff offered evidence of reviews of the assessments of impacts on biological resources, noise, and traffic congestion in the revised mitigated negative declaration. The hearing was continued for the limited purpose of receiving written responses from Mesa to the information presented by plaintiff. In June and July of 2008, TJKM then offered additional studies and corrected analyses in response to plaintiff's review of traffic impacts. The TJKM studies acknowledged that while traffic impacts due to the new, relocated facility would shift at some of the five affected intersections, the ultimate result would not be a significant environmental impact.

A fourth mitigated negative declaration issued on July 23, 2008, took the updated TJKM traffic studies into consideration. Before a further hearing, Mesa provided additional information at the request of the Board on biological, greenhouse gas emissions, noise and traffic impacts, and mitigation measures. The fifth mitigated negative declaration, with minor revisions from the previous version and specification of additional minor mitigation measures, was then released and circulated on September 2, 2008.

Following the presentation of evidence at a public hearing on September 23, 2008, the Board adopted Resolution No. 08-0904 that denied plaintiff's appeal, adopted the fifth mitigated negative declaration and mitigation monitoring program, and approved the design review for the project subject to the stated conditions of approval. The resolution articulated the Board's finding "that the Proposed Project will not result in potentially

significant adverse environmental impacts that cannot be avoided by the performance of the specified mitigation measures."

Plaintiff challenged the County's compliance with CEQA and approval of the project by way of a petition for peremptory writ of mandate and injunctive relief filed in the trial court on November 18, 2008. After denial of plaintiff's request for a preliminary injunction and the presentation of argument on the petition for writ of mandate, on December 29, 2009, the trial court filed an order that found the County failed to furnish proper notice of the Board's intent to adopt the mitigated negative declaration to the Bay Area Air Quality Management District (the BAAQMD or the District). The court further found that the County failed to "show lack of prejudice" associated with the defective notice, despite the incorporation of the District's "standards" and "thresholds of significance" into the mitigated negative declaration.[3] No other violations of the CEQA requirements were found by the court. A writ of mandate was granted to require Mesa to provide adequate notice to the BAAQMD, with the "results of such notice" to determine the "further course of action" needed to "cure the defects and ensure proper CEQA review of this project." The court retained jurisdiction over the matter to ultimately determine the issue of the County's compliance with the notice provisions of CEQA.

On January 11, 2010, the County sent the BAAQMD notice of intent to adopt a mitigated negative declaration, and a request for "comments on both the project and the proposed mitigated negative declaration" within 30 days. Upon review of the notice and the attached mitigated negative declaration, the BAAQMD commented: "The air quality analysis provided in the MND/Initial Study appears to meet appropriate standards for impact assessment. The Project's estimated operational criteria emissions are below the Air District's existing thresholds of significance. The District supports the adopted mitigation measures as a means to implement all feasible measures to reduce the Project's emissions."

[3] The court also found that the County failed to consider the impacts of "construction-related traffic," but determined the deficiency was moot, as the project had already been completed.

Plaintiff filed an appeal from the trial court's order that was dismissed by this court. Thereafter, the County filed a "Certificate of Compliance" with the trial court's order on April 29, 2010, which informed the court "of the County's timely and complete compliance" with the order to provide proper notice to the BAAQMD, and requested dismissal of the petition for writ of mandate with prejudice. The parties subsequently filed a stipulation that the County's Certificate of Compliance served as a return to the writ of mandate (Code Civ. Proc., § 1108), and to entry of the trial court's prior order as a "final, appealable judgment" in the case. Pursuant to the stipulation, on July 19, 2010, the trial court issued a final judgment in the terms of the prior order. This appeal followed.

DISCUSSION

I. The Notice to the BAAQMD.

We first examine plaintiff's contention that the County failed to give proper notice to the BAAQMD of the hearing and intent to adopt the final mitigated negative declaration. Examination of the record reveals that at the inception of the project the County provided notice of Mesa's application for design review to the BAAQMD and solicited comments on the project. The BAAQMD did not respond, but in the mitigated negative declaration the Department noted and adopted the BAAQMD's published CEQA guidelines, air quality plan, and quantitative criteria to assess the impact of the project on air quality. Upon doing so, the Department stated that the project had no features that would conflict with the BAAQMD's plans, and would not generate pollutants at levels above the threshold of cumulative quantitative significance set by the BAAQMD – that is, less than 2,000 vehicles per day.[4] Toward the close of the lengthy design review process in the present case, on July 23, 2008, the County published a revised mitigated negative declaration, and sent notice of the scheduled hearing before the Board to consider the revisions and plaintiff's appeal. The County provided public notice by publication in newspapers of general circulation in the area, postings on the

[4] The proposed project was the relocation of a facility that generated less than 700 trips per day.

property where the project was located and the civic center, and direct mailings to the owners and occupants of property contiguous to the project. (Guidelines, § 15072.) As required, the County also submitted the proposed mitigated negative declaration to the State Clearinghouse for distribution and review by the public agencies with jurisdiction by law over natural resources affected by the project. (Guidelines, §§ 15072, 15073.) The State Clearinghouse received the notice, and advised the County of its compliance with the review requirements for draft environmental documents, but did not forward the notice to the BAAQMD.

Plaintiff complains that the failure of the County to provide notice to the BAAQMD as a responsible state agency constitutes a lack of compliance with CEQA requirements. She further argues that the error violated the "public participation policies of CEQA," and requires that we set aside the approval of the project.

A central feature of CEQA is that "*before* adopting a negative declaration, the agency is required to give notice to the public and allow time for comments." (*Dixon v. Superior Court* (1994) 30 Cal.App.4th 733, 743 [36 Cal.Rptr.2d 687].) To implement the provision in section 21080.3, subdivision (a), that the lead agency must consult "with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California," the "Guidelines require the lead agency to send notice of its intent to adopt a negative declaration, together with a copy of a proposed negative declaration, 'to every . . . Trustee Agency concerned with the project and every other public agency with jurisdiction by law over resources affected by a project.' [Citation.] Also, if one or more trustee agencies, or public agencies with jurisdiction over resources affected by the project, is a state agency, the Guidelines require the lead agency to send the proposed negative declaration to the State Clearinghouse maintained by the Office of Planning and Research, which distributes it to the state agencies." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1386, fns. omitted [43 Cal.Rptr.2d 170].)

The County was required to consult with the BAAQMD, as a public agency with jurisdiction over resources affected by the project (§ 21063; Guidelines, § 15386), before

conducting an initial study, and subsequently was required to notify the BAAQMD of the intention to adopt a mitigated negative declaration. (§ 21080.3, subd. (a); Guidelines, §§ 15063, subd. (g), 15072, subd. (a); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 340 [29 Cal.Rptr.3d 788].) In our examination of the County's compliance with the notice requirements of CEQA, "we independently review the administrative record to determine whether County proceeded in a manner consistent with the requirements of CEQA. [Citations.] As recently summarized by our Supreme Court: '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 . . . by independently determining whether the administrative record demonstrates any legal error by the County and whether it contains substantial evidence to support the County's factual determinations.' [Citation.]" (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 266 [118 Cal.Rptr.3d 736].)

Upon determining that an initial study was required, the County properly consulted informally with the public agencies responsible for resources affected by the project, including the BAAQMD. (Guidelines, § 15063, subd. (g).) The defect in the notice procedure occurred when the County failed to give notice to the BAAQMD of the intent to adopt the revised mitigated negative declaration. We disagree with Mesa's contention that the published and posted notices satisfied CEQA requirements. The Guidelines do not provide for alternative means of notice *instead* of direct mailing to public agencies. Rather, the lead agency must send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies, and "shall *also* give notice" by publication, posting and mailing. (Guidelines, §§ 15072, subd. (b), 15073, subd. (d), italics added.) The County sent copies of the proposed mitigated negative declaration to the State Clearinghouse for distribution, but the notice was not forwarded to the BAAQMD. Nor did the BAAQMD receive notice directly from the County.

The flaw in the notice procedure, although technical in nature, constituted noncompliance with CEQA, despite the solicitation of comments from the BAAQMD during the initial study period, and even though the agency previously failed to express an opinion to the County that the project would have significant effect on the environment. (See *Gentry v. City of Murrieta, supra,* 36 Cal.App.4th 1359, 1387.) " 'Full compliance with the letter of CEQA is essential to the maintenance of its important public purpose.' [Citation.] ' "[W]e must be satisfied that [administrative] agencies have fully complied with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion." [Citation.] At least, when these protective provisions go to the heart of the protective measures imposed by the statute, failure to obey them is generally "prejudicial"; to rule otherwise would be to undermine the policy in favor of the statute's strict enforcement.' [Citation.] Depriving the public of the full public comment period 'thwart[s] the legislative intent underlying CEQA.' [Citation.] '[S]ubstantial rather than complete compliance with CEQA-mandated notice procedures [is] an abuse of discretion requiring vacating of the administrative decision.' [Citation.]" (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 922 [45 Cal.Rptr.3d 102].)

The noncompliance does not necessarily compel reversal. " 'Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. [Citation.]' [Citation.]" (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1384–1385, fn. omitted [119 Cal.Rptr.3d 481] (*Sunnyvale West*).) "Only if the manner in which an agency failed to follow the law is shown to be prejudicial, or is presumptively prejudicial," must the decision to approve a project be set aside. (*Sierra Club v. State Bd. of Forestry* (1994), 1236 [876 P.2d 505, 32 Cal.Rptr.2d 19].)

However, the " ' "conventional 'harmless error' standard has no application when an agency has failed to proceed as required by the CEQA." [Citation.]' [Citation.]" (*Sunnyvale West, supra,* 190 Cal.App.4th 1351, 1388.) The "error is prejudicial where failure to comply with the law results in 'a subversion of the purposes of CEQA by

omitting information from the environmental review process.' " (*Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491 [82 Cal.Rptr.2d 705], quoting from *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1023 [192 Cal.Rptr. 325].) "Section 21005, subdivision (a), states: 'The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute 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.' " (*Sunnyvale West, supra,* at p. 1385; see also *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 268–269 [115 Cal.Rptr.3d 631] (*California Oak*).) " 'The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial. [Citations.]' " (*Sunnyvale West, supra,* at p. 1392, quoting *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 [91 Cal.Rptr.2d 66].)

We find that the failure to send notice to the BAAQMD was not prejudicial under the governing standard and the facts presented. First, the BAAQMD was given notice of the application for design review, but did not offer any input. The County then assumed the role of the BAAQMD by implementing the published CEQA quantitative criteria in the initial study to determine that the project had far fewer vehicle trips per day than the threshold level of cumulative significance. Further traffic studies did not alter the conclusion of no significant impact on air quality under the established BAAQMD criteria, which was repeatedly articulated and explained in the series of revised mitigated negative declarations.

The critical factor is that even without notice to the BAAQMD the information gathering and presentation mechanisms of CEQA were not subverted or even compromised. Before approval of the project, the County and the public was provided

with the disclosures necessary make an informed assessment of air quality impacts. The lack of notice did not result in the omission of relevant information from the review and decisionmaking process. Finally, after review of the notice of intent to adopt the revised mitigated negative declaration the BAAQMD confirmed that the project's "estimated operational criteria emissions are below the Air District's existing thresholds of significance." The failure to provide notice to the BAAQMD was not prejudicial.

II. The Writ Relief Granted by the Trial Court.

Plaintiff claims the trial court "violated CEQA" by issuing an order on the petition for writ of mandate that directed the County to provide notice to the BAAQMD, and specified: "The results of such notice will determine what further course of action, if any, is needed to cure the defects and ensure proper CEQA review of this project." The County subsequently provided notice to the BAAQMD, received a response, and issued a "Certificate of Compliance" with the court's order. Plaintiff characterizes the trial court's order as "an improper interlocutory remand," and maintains that the court was "required to set aside Project approval for failure to provide notice to a responsible agency."

We find nothing in the trial court's order that contravened the remedial procedures sanctioned by CEQA. Section 21168.9 "provides alternative remedies which allow the trial court to tailor the remedy to fit the violation." (*San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (2001) 89 Cal.App.4th 1097, 1102 [109 Cal.Rptr.2d 108].) The statute provides "that 'If a court finds . . . that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes . . . [¶] [a] mandate that the determination, finding, or decision be voided by the public agency, in whole or in part' or '[a] mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.' (§ 21168.9, subd. (a)(1), (3).)" (*Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1266 [102 Cal.Rptr.3d 394].) "Section 21168.9 thus gives trial courts the option to void the finding of the agency (§ 21168.9, subd. (a)(1)), or to order a lesser remedy which suspends a

specific project activity which could cause an adverse change in the environment (§ 21168.9, subd. (a)(2)), or to order specific action needed to bring the agency's action into compliance with CEQA (§ 21168.9, subd. (a)(3)). The choice of a lesser remedy involves the trial court's consideration of equitable principles." (*San Bernardino Valley Audubon Society, supra,* at p. 1104.) Section 21168.9, subdivision (b) specifies: "The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division."

Here, the trial court fashioned a remedy appropriate to the perceived violation. The County was directed to provide notice to the BAAQMD, and the court retained jurisdiction to take measures necessary to determine the compliance with CEQA. The court's order was consistent with equitable principles and section 21168.9, subdivision (a)(3), as a specific lesser remedy needed to bring the agency's action into compliance with CEQA. In any event, the defect in the notice procedure was not prejudicial even without the subsequent notice and letter of approval from the BAAQMD, so the writ relief was unnecessary. Further, plaintiff forfeited any objection to the form of relief or compliance with CEQA procedures by failing to object at the administrative level or in the trial court. (See *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 250 [103 Cal.Rptr.3d 124]; *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909 [69 Cal.Rptr.3d 105].)

III. The Notice to Caltrans and the Regional Water Board.

Plaintiff also challenges the notice given to the Regional Water Board and Caltrans. She acknowledges that the Regional Water Board and Caltrans received the proposed fourth mitigated declaration through the State Clearinghouse as required by section 21082.1, subdivision (c)(4), but asserts that once those two agencies responded with comments the County was obligated to notify them of the scheduled public hearing on the project pursuant to Guidelines section 15072.

Section 21092 requires that the lead agency preparing a negative declaration "shall provide public notice of that fact within a reasonable period of time prior to certification

of the environmental impact report, adoption of the negative declaration, or making the determination." The notice must "specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review." (§ 21092, subds. (a) & (b)(1).)[5] Subdivision (e) of section 15073 of the Guidelines provides: "The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. *A notice*

[5] Subdivisions (a) and (b) of section 21092 read in full: "(a) Any lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

"(b)(1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

"(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

"(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

"(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

"(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

"(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll."

provided to a public agency pursuant to Section 15072 satisfies this requirement." (Italics added.) Section 15072, in turn, directs that the lead agency must provide notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, and trustee agencies, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies an adequate review period, and must mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by publication or posting.

As we read the record, in accord with sections 15072 and 15073, subdivision (c) of the Guidelines, the County provided the Regional Water Board and Caltrans, along with other listed agencies, with notice through the State Clearinghouse of the intent to adopt the attached revised mitigated negative declaration. The Regional Water Board and Caltrans were the only agencies that offered comments, which were subsequently addressed by the County in the fifth and final mitigated negative declaration. (§§ 21092, 21092.5, subds. (a), (b); Guidelines, § 15073, subd. (c); see also Guidelines, § 15023, subd. (c).) Section 15073, subdivision (e) of the Guidelines unambiguously states that a notice sent pursuant to section 15072 satisfies the requirement for notice of the public hearing to be held for the project. Subsequent notice of the continued hearing on plaintiff's appeal and the proposed adoption of the mitigated negative declaration, with the dates of the scheduled public hearing, was provided through publication and posting. Having furnished notice to the Regional Water Board and Caltrans pursuant to Guidelines, section 15072, the County satisfied Guidelines, section 15073, subdivision (c). The County thus substantially complied with the statutory notice content requirements, which under subdivision (b)(2) of section 21092 avoids invalidation of the approval of the mitigated negative declaration.

In any event, the notice procedure related to Caltrans and the Water Board did not result in any prejudicial impact on the CEQA process. The County and the public

previously received the comments of the public agencies to the fourth mitigated declaration. The comments of Caltrans and the Water Board with respect to traffic, noise, water quality and biological analyses were addressed by the Department staff and in additional information provided by Mesa before the hearing. Specified mitigation measures included traffic mitigation fees, a wetlands delineation, dedication of a riparian corridor along Mark West Creek, and planting of native vegetation. The fifth and final mitigated negative declaration subsequently released and circulated by the County was not altered in substance from the prior version, and no new impacts were identified. No information was omitted from the environmental review and decisionmaking process.

IV. The Impacts on Water Quality.

We move to plaintiff's substantive challenges to the findings in the mitigated negative declaration that the project as approved has no significant impact on the environment. She claims that substantial evidence establishes a significant impact on water quality and traffic, and therefore an environmental impact report rather than a negative declaration was required.

"CEQA provides that generally the governmental agency must prepare an EIR on any project that may have a significant impact on the environment. [Citations.] Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. [Citations.] 'The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. . . .' [Citations.]" (*Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1331 [73 Cal.Rptr.3d 202].)

"Conversely, a negative declaration – rather than an EIR – is appropriate when the administrative record before the governmental agency does not contain substantial evidence that the project may have a significant effect on the environment." (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1578–1579 [27 Cal.Rptr.3d 28].) "Alternatively, if there is no substantial evidence of any net significant environmental effect in light of revisions in the project that would mitigate any potentially significant effects, the agency may adopt a mitigated negative declaration.

[Citation.] A mitigated negative declaration is one in which '(1) the proposed conditions "avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." [Citation.]' [Citations.]" (*Citizens for Responsible & Open Government v. City of Grand Terrace, supra,* 160 Cal.App.4th 1323, 1331–1332.) "If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has '[e]liminated or substantially lessened all significant effects on the environment where feasible' and that any unavoidable significant effects on the environment are 'acceptable due to overriding concerns' specified in section 21081. (Guidelines, § 15092.)" (*Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1210 [66 Cal.Rptr.2d 102].)

Plaintiff, as the party challenging the agency's decision to adopt a mitigated negative declaration, "bears the burden to present substantial evidence of a fair argument that the mitigation measures are inadequate to avoid the potentially significant effects." (*Citizens for Responsible & Open Government v. City of Grand Terrace, supra,* 160 Cal.App.4th 1323, 1332.) "[T]he term 'substantial evidence' is defined by the Guidelines to mean '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.' [Citations.] CEQA specifically provides that 'substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact' [citation] and excludes 'argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' [Citations.] Thus, the existence of a public controversy is not a substitute for substantial evidence." (*County Sanitation Dist. No. 2 v. County of Kern, supra,* 127 Cal.App.4th 1544, 1580.) "[A] project 'may' have a significant effect on the environment if there is a 'reasonable possibility' that it will result in a significant impact." (*Id*. at p. 1581.) "A project will have a significant effect on the environment if

it will cause 'a substantial, or potentially substantial, adverse change in' [citation] 'the physical conditions [that] exist within the area [that] will be affected by [the] project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.' (§§ 21060.5 [defining 'environment'], 21068 [defining 'significant effect on the environment']; see Guidelines, §§ 15360, 15382.)" (*Id.* at p. 1587.)

" 'If there is substantial evidence of a significant environmental impact, evidence to the contrary does not dispense with the need for an EIR when it still can be "fairly argued" that the project may have a significant impact.' [Citations.] However, contrary evidence is considered in assessing the weight of the evidence supporting the asserted environmental impact." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617 [49 Cal.Rptr.2d 494].)

" 'An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case . . . 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.' [Citation.] Further, ' "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." ' [Citation.]" (*California Oak, supra,* 188 Cal.App.4th 227, 262.) "Consequently, 'we independently "review the record and determine whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact, while giving [the lead agency] the benefit of a doubt on any legitimate, disputed issues of credibility." ' [Citations.]" (*County Sanitation Dist. No. 2 v. County of Kern, supra,* 127 Cal.App.4th 1544, 1579.)

Directing our attention first to the impact of the project on the water quality and riparian habitat of Mark West Creek, plaintiff claims that the County's finding "ignored the comments" of the Regional Water Board's letter of August 21, 2008, which offered some analysis of the adequacy of mitigation measures. Upon review of the revised mitigated negative declaration the Regional Water Board sent a letter that "strongly support[ed]" the "positive mitigation measures suggested in the MND" and the "efforts of the County staff," but expressed concern that "implementation of the Project may result

in significant impacts to water quality." The Regional Water Board pointed out the existing status of Mark West Creek as an "impaired" watercourse, and recommended measures to protect both the water quality within the creek and the adjoining riparian zones. The letter also specifically criticized the mitigated negative declaration for the lack of "any significant post-construction monitoring plan ensuring implementation of mitigation measures regarding impacts to water quality and sensitive habitats." The remainder of the Regional Water Board's comments conveyed standardized suggestions and proposed conditions to fully mitigate impacts and satisfy water quality objectives: full compliance with regulations for storm water management; inclusion of established water quality "best management practices" in the final document; submittal of mitigation measures to the Regional Water Board; replacement and monitoring of all beneficial uses and wetland functions lost during any phase of the project; articulation of specific measures for the riparian corridor; and treatment of post-construction storm water runoff.

Plaintiff asserts that the "expert opinion of the Regional Water Board" is sufficient evidence of a fair argument that the stated mitigation measures were inadequate to avoid the potentially significant impacts to water quality. Therefore, the court must set aside the mitigated negative declaration and "order the County to prepare an EIR."

We are persuaded that the mitigated negative declaration properly delineated measures to alleviate the concerns of the Regional Water Board and reduce impacts to water quality and riparian habitats to less-than-significant levels. According to a condition of approval of the project Mesa agreed to dedicate to the County for protection from development six acres of the parcel within the riparian corridor of Mark West Creek, and to provide a 100-foot buffer from the creek to any new development. The final mitigated negative declaration recognized the potential water quality and runoff impacts stated by the Regional Water Board and imposed measures and conditions of approval to provide adequate mitigation: preservation of existing wetlands, particularly along the southern boundary of the project, through "Best Management Practices" employed to "prevent sediment and other pollutants from leaving the Project Site during construction" and thereafter; no reduction in the capacity of the property to hold flood

water by incorporating in the water control plan properly sized "vegetated" bio-swales, catch basins and filters, landscape buffer areas dedicated to the County, and metered underground detention structures, all to prevent additional runoff on the project site; and improvement of existing storm drains in the public right-of-way. The plan for the project also imposed conditions of approval that required detailed grading site and erosion control plans subject to review by county inspectors, accepted drainage improvements, a setback line, a soils engineering report, and standard storm water mitigation guidelines. The specified mitigation measures and conditions adequately address the concerns stated by the Regional Water District and provide substantial evidence to support the administrative finding that the project, as revised, will not have a significant effect on water quality or riparian habitat.

V. The Impacts on Traffic.

Plaintiff also argues that substantial evidence in the record establishes a significant impact on traffic from the project. She offers several assertions, some of them related, of flawed analysis of the impacts on traffic congestion at specified intersections that will result from the project. We will separately deal with her multiple claims of traffic impact.

A. The Impact on the U.S. 101/Airport Boulevard Interchange.

Plaintiff contends that the final mitigated negative declaration reached an erroneous conclusion of no significant impact "on the U.S. 101/Airport Boulevard interchange." She identifies as a "violation of CEQA" the County's "failure to follow its own" standard of "significance for an impacted intersection," entitled the "Guidelines for Traffic Studies." Plaintiff submits that pursuant to the Caltrans standards for state highways incorporated into Attachment C of the County's Guidelines for Traffic Studies, the "control delay per vehicle is increased" at the U.S. 101/Airport Boulevard interchange, which is a "direct project-specific impact within the meaning of Guidelines § 15126.2(a)." Therefore, she asserts, the traffic impact at the interchange is significant, "requiring preparation of an EIR." Plaintiff also maintains that the final mitigated

negative declaration ignored the significant and unmitigated "cumulative impact" of the project on the U.S. 101/Airport Boulevard interchange.

A traffic study conducted in November of 2006 by TJKM was based on an estimate, taken from the average rates contained in the standard traffic engineering reference guide published by the Institute of Transportation Engineers, of an increase in the number of average trips per day following completion of the project. Five intersections that would be impacted by the proposed project were identified, and the study stated that one of them, the U.S. 101/Airport Boulevard interchange, currently set at a level of service (LOS) classification F, "will have a 15 second increase in delay which is a potentially significant impact." The final mitigated negative declaration noted that a review of the project by the Sonoma County Department of Transportation and Public Works determined that mitigation fees to be paid by the developer upon issuance of the building permit and contributed to the "phased" and funded " 'Caltrans Hwy 101 North' project" would result in a "LOS of C or better" and thereby mitigate the impact "to less than significant."

An additional and more focused traffic analysis was conducted by TJKM and supplemented in September of 2008, based not on average rate estimates, but rather on observed traffic counts for the two driveways at the existing facility and the assumption – which is not contested by plaintiff – that the volume of traffic at the new facility would not increase.[6] The maximum daily vehicle trip count figures were significantly lower than the estimates stated in the 2006 TJKM study. The conclusion was reached from the 2008 study that the traffic generated by the project will not result in a significant decrease of LOS at any of the five intersections, even if the existing facility at Concourse Boulevard "would be reused and generate traffic comparable to Mesa's existing use." Based on the 2008 study, along with the "mitigations identified by TJKM" and mitigation fees imposed on Mesa, the mitigated negative declaration stated: "There is no substantial evidence in the record that there is any traffic-related environmental impact, including

[6] The use of actual conditions was encouraged by the Institute of Traffic Engineers to provide a more accurate estimate of trip generation for the proposed project.

cumulative impacts, that might arguably be anticipated to occur as a result of the Proposed Project which has not been examined and mitigated to insignificance."

The County did not violate the Caltrans standards and Guidelines for Traffic Studies by finding that the U.S. 101/Airport Boulevard interchange would not suffer an adverse significant impact from the project. The 2008 study indicated that no decrease in the LOS would result at the U.S. 101/Airport Boulevard interchange, or any of the other four intersections, with contemplated mitigation measures.

We also disagree with plaintiff's contention that the County ignored or underestimated cumulative traffic impacts. " 'An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.' [Citation.]" (*Sierra Club v. West Side Irrigation Dist*. (2005) 128 Cal.App.4th 690, 701 [27 Cal.Rptr.3d 223].) "An adequate discussion of significant cumulative impacts ordinarily includes either '[a] list of past, present, and probable future projects producing related or cumulative impacts' or '[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.' [Citation.]" (*Sunnyvale West, supra,* 190 Cal.App.4th 1351, 1381.) " 'Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.' [Citations.]" (*Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 944 [77 Cal.Rptr.3d 239, 183 P.3d 1210].)

"However, mere awareness of proposed expansion plans or other proposed development does not necessarily require the inclusion of those proposed projects in the EIR. Rather, these proposed projects must become 'probable future projects.' [Citation.] As noted in *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [198 Cal.Rptr. 634], 'probable future projects' can be interpreted as reasonably probable future projects." (*Gray v. County of Madera*

(2008) 167 Cal.App.4th 1099, 1127 [85 Cal.Rptr.3d 50].) "A future activity must be addressed as part of a cumulative impact analysis if: '(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.' [Citation.]" (*Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 680 [47 Cal.Rptr.3d 846].) "When faced with a challenge that the cumulative impacts analysis is unduly narrow, the court must determine whether it was reasonable and practical to include the omitted projects and whether their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1215 [22 Cal.Rptr.3d 203].)

The County did not disregard the potential for use of the vacated Concourse Boulevard facility. The mitigated negative declaration noted "it is speculative and premature to consider" future effects of the existing facility. Occupancy of the Concourse Boulevard facility for any purpose was not part of any existing or reasonably foreseeable proposal. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189–1190 [30 Cal.Rptr.3d 738] (*Anderson First*).) The County had no way of knowing if the existing facility would be re-occupied, and if so what the nature of the future use and resulting traffic impacts would be. The mitigated negative declaration further pointed out that any future use of the existing Mesa facility may be subject to separate design review. The traffic study and report also concluded that even with re-occupancy of the Concourse Boulevard building, the additional traffic generated thereby would not cause a significant cumulative effect. Thus, analysis of the cumulative traffic impact was both unnecessary and unfeasible. (*Sierra Club v. West Side Irrigation Dist., supra,* 128 Cal.App.4th 690, 701–702.)

Finally, we discern in the record persuasive evidence to find that the mitigation measures imposed on Mesa will adequately ameliorate the cumulative impacts on the U.S. 101/Airport Boulevard interchange, and other affected intersections, to a level of

less than significance. Although plaintiff's expert suggested that the LOS at the intersections in the area of the project would be adversely impacted, and funds were not available to improve the intersections, substantial evidence of effective mitigation measures was presented. Approval of the project was conditioned on payment by Mesa of traffic impact mitigation fees targeted for the County's Capital Improvement Plan for the airport industrial area. According to the conditions of approval, the final amount of the mitigation fees would be determined by the Sonoma County Department of Transportation and Public Works from an engineer's estimate. Mesa was also required to pay a fair share of the cost of planned installation of signals at the U.S. 101/Airport Boulevard interchange and the North Laughlin/Airport Boulevard intersection – based on average daily trips at the facility – as determined in accordance with the Caltrans Guide for calculation of equitable mitigation measures. The Sonoma County Department of Transportation and Public Works determined that the mitigation fees would be directly contributed to the U.S. 101/Airport Boulevard interchange bridge project in the "final design phase" of development, with construction scheduled to begin within the following year.

The imposition of fees on Mesa to mitigate traffic impacts is not an unreasonably indefinite or nebulous mitigation measure. "Assessment of a traffic impact fee is an appropriate form of mitigation when it is linked to a reasonable plan for mitigation." (*Gray v. County of Madera*, *supra*, 167 Cal.App.4th 1099, 1122; see also *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026, 1053–1054 [88 Cal.Rptr.3d 530].) "A single project's contribution to a cumulative impact is deemed less than significant if the project is required to implement or fund its 'fair share' of a mitigation measure designed to alleviate the cumulative impact. [Citation.] Fee-based mitigation programs for cumulative traffic impacts—based on fair-share infrastructure contributions by individual projects—have been found to be adequate mitigation measures under CEQA. [Citation.] To be adequate, these mitigation fees, in line with the principle discussed above, must be part of a reasonable plan of actual mitigation that

the relevant agency commits itself to implementing." (*Anderson First, supra,* 130 Cal.App.4th 1173, 1188; see also *California Native Plant Society, supra,* at p. 1055.)

The County did not abuse its discretion by concluding that the payment of traffic impact fees constituted a reasonable mitigation program. The County identified specific plans for improvements designed to mitigate traffic impacts, and offered a commitment to allocating the mitigation fees to those projects. The precise timetables for the completion of the improvements were neither known nor delineated, but the County was not required to set forth with certainty the schedules for implementation of the identified roadway improvements. (See *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 818–819 [65 Cal.Rptr.3d 251]; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 364–365 [46 Cal.Rptr.3d 355, 138 P.3d 692].) "While it is true that a mere commitment to pay fees is inadequate if the fees bear no relation to actual mitigation [citation], that is not the case here. The Project will contribute money to specific mitigation measures," which are described in the mitigated negative declaration. (*Friends of Lagoon Valley v. City of Vacaville, supra,* at p. 819.) The stated fee-based traffic mitigation measures were adequate under CEQA.

B. The Impact on the North Laughlin Road/Airport Boulevard Intersection.

Plaintiff also challenges the finding in the mitigated negative declaration that no significant impact on the traffic at the North Laughlin Road/Airport Boulevard intersection will result from the project. She objects to the County's failure to analyze the traffic impacts at the intersection "in comparison to existing baseline conditions," as CEQA requires. Plaintiff makes the additional, related argument that the County improperly evaluated traffic impacts with "planned roadway improvements" at the intersection – that is, as a "theoretical intersection with a traffic signal," rather than as an "existing intersection" without signal controls. She insists that proposed improvements may only be included in an analysis of impacts if the evidence indicates the improvements are "fully funded." Plaintiff requests that we set aside the mitigated negative declaration and order the County to "prepare an EIR to study the Project's impacts at the North Laughlin Road/Airport Boulevard intersection."

We agree with plaintiff that environmental impacts must be assessed from the perspective of existing, "baseline" conditions. "Section 15125, subdivision (a) of the Guidelines sets forth the *general* rule agencies are required to follow in determining the proper baseline. It states: 'An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will *normally* constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.' (Italics added.)" (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 336 [118 Cal.Rptr.3d 182].) "[T]he impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework." (*Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 321 [106 Cal.Rptr.3d 502, 226 P.3d 985]; see also *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1167 [77 Cal.Rptr.3d 578, 184 P.3d 709].)

"Though the baseline conditions are generally described as the ' "existing physical conditions in the affected area," ' or the ' " 'real conditions on the ground' " ' [citation], ' "the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods" ' [citations]. Environmental conditions may also change during the period of environmental review, and temporary lulls or spikes in operations that happen to occur during the period of review should not depress or elevate the baseline. [Citation.] Accordingly, '[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. [Citation.]'

[Citation.]" (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont, supra,* 190 Cal.App.4th 316, 336–337.)

The mitigated negative declaration did not violate the CEQA directive to evaluate impacts with respect to existing conditions at the North Laughlin Road/Airport Boulevard intersection. The TJKM 2008 traffic study properly focused on existing conditions as impacted by the project. (See *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707 [58 Cal.Rptr.3d 102].) The study determined that the proposed project would increase delays at the intersection as it was then configured by 2.1 seconds during afternoon peak traffic hours, and less than one-tenth of a second during morning peak hours – which would not constitute a significant traffic impact. The LOS at the intersections would not be diminished. With the traffic mitigations identified by the TJKM study and specified in the mitigated negative declaration, along with the required traffic impact mitigation fees, the evidence demonstrated no traffic-related environmental impacts at the North Laughlin Road/Airport Boulevard intersection.

The fact that the planned improvement in the North Laughlin Road/Airport Boulevard intersection contemplated by the mitigation measures—the installation of a signal light—was not "fully funded" with a set construction commencement date as of the approval of the project does not invalidate the finding of no significant impact. " ' "Of course a commitment to pay fees without any evidence that mitigation will actually occur is inadequate." [Citations.]' [Citation.]" (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 938 [99 Cal.Rptr.3d 621].) "Mitigation measures adopted by the agency must be fully enforceable. '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. . . .' [Citation.] 'Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. . . .' [Citation.]" (*Id.* at p. 937.) A mitigation plan premised on the collection of fees from the developer is not sufficient if there is no evidence of what improvements would actually be funded by the fees, or if no specific means of seeking increased state funding for highway projects to mitigate adverse traffic impacts is

articulated. (See *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 785 [32 Cal.Rptr.3d 177]; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 379–381 [110 Cal.Rptr.2d 579].)

But here, specific improvements are definitively contemplated by the County in the Capital Improvement Plan, and described in the mitigated negative declaration. (*Friends of Lagoon Valley v. City of Vacaville, supra,* 154 Cal.App.4th 807, 819.) Mesa must contribute a fair share for the improvements by paying traffic impact fees, and other funding for the planned improvements is properly delineated. The evidence establishes that the County is committed to implementation of the planned road improvements in the fee-based mitigation program. (Cf. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140–141 [104 Cal.Rptr.2d 326].) The administrative record does not contain substantial evidence that the project, with mitigation measures, may have a significant effect on the environment. Therefore, adoption of the mitigated negative declaration was not error.

DISPOSITION

Accordingly, the judgment is affirmed.

_____
Dondero, J.

We concur:

_____
Marchiano, P. J.

_____
Banke, J.

Trial Court	Sonoma County Superior Court
Trial Judge	Honorable Robert S. Boyd
For Plaintiff and Appellant	William D. Kooper, Esq.
For Defendant and Respondent County of Sonoma	Bruce D. Goldstein, County Counsel Sue A. Gallagher, Deputy County Counsel
For Real Parties in Interest and Respondents Liquid Investments, Inc., and Mesa Beverage Co., Inc.	CLEMENT, FITZPATRICK & KENWORTHY Clayton E. Clement, Esq. Anthony Cohen, Esq.

Schenck v. County of Sonoma; Liquid Investments, Inc., et al., RPI, A129646