

South of Market Community Action Network v. City and County of San Francisco
(March 25, 2019) 33 Cal.App.5th 321

The City approved a general plan amendment and development agreement for a mixed-use business and residential project (the 5M project) encompassing a downtown city block. The EIR certified for the project analyzed, at equal levels of detail, two options for development: one that was residential oriented and one that was office oriented. Both schemes would preserve and rehabilitate the historic Chronicle and Dempster Printing Buildings, demolish other buildings on site, and construct four new buildings of from 195 to 470 feet in height. The overall gross square footage was basically the same in both schemes, although the office scheme had a larger building envelope and higher density than the residential scheme. The City circulated the draft EIR in 2013-2014 and certified the final EIR with project approval in 2015.

The trial court denied SOMCAN's plea for writ of mandate. The Court of Appeal upheld the denial.

SOMCAN argued that the project description was faulty because it looked at two options, without identifying either as "the project" (see the decision in *Washoe Meadows* for a similar argument that worked). The Court disagreed, and distinguished this case from *Washoe Meadows* because rather than five very different options, "the project description [in this case] clearly identified a mixed-use development project at a specific, defined location with two options for allocations of office and residential use." Further:

Plaintiffs' claim that the DEIR presented "multiple possible Projects rather than a finite description of a single project" is specious. Plaintiffs do not dispute the DEIR's project description met CEQA technical requirements, and do not describe any information that was required to be included in the project description but was not. (See Guidelines, § 15124 [describing information that must be included in EIR].) Nor was the information provided in the DEIR confusing, as plaintiffs contend. The DEIR described the 5M Project generally as a mixed-use project on a four-acre site in downtown San Francisco.

... Thus, the record reveals the EIR in this case described one project—a mixed-use development involving the retention of two historic buildings, the demolition of all other buildings on the site, and the construction of four new buildings and active ground floor space—with two options for different allocations of residential and office units. The analysis was not curtailed, misleading, or inconsistent. If anything, it carefully articulated two possible variations and fully disclosed the maximum possible scope of the project. The project description here enhanced, rather than obscured, the information available to the public

The approved 5M project incorporated aspects of both options. SOMCAN argued that this was improper because the approved project was not specifically analyzed. The Court disagreed, noting that all aspects of the approved project were analyzed in the EIR and that:

“CEQA does not handcuff decisionmakers ... The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed. Decisionmakers should have the flexibility to implement that portion of a project which satisfies their environmental concerns.” (*Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1041 (*Dusek*)).’ We do not conclude the project description is inadequate because the ultimate approval adopted characteristics of one of the proposed alternatives; that in fact, is one of the key purposes of the CEQA process.”

SOMCAN argued that the EIR used an obsolete 2012 list of reasonably foreseeable projects in its cumulative impact analysis. The Court disagreed, holding that the list was reasonable given that the draft EIR was released in 2013. The Court found that SOMCAN “point to no evidence in the record that the Great Recession rendered the project list defective or misleading, or that the City ignored ‘projects that were in the pipeline for the purpose of adjudging cumulative impacts.’” The Court deferred to the City’s selection of the methodology for cumulative analysis, including a separate projections-based approach for traffic, and the geographic area encompassed in its study.

SOMCAN argued that the EIR’s traffic analysis failed to include intersections adjacent to affected ones when analyzing significant impacts, consider the impact of the Safer Market Street Plan on traffic congestion, and adequately identify or discuss specific mitigation measures and evaluate community-proposed alternatives. The Court denied each of these arguments. In the first instance, SOMCAN “failed to demonstrate an abuse of discretion in the City’s selection of intersections to analyze for traffic impacts. The DEIR set forth detailed significance criteria and an analytical methodology for determining adverse traffic and circulation impacts, none of which plaintiffs specifically challenge.” In the second instance, the Court found that the Safer Market Street Plan was not a “probable future project” required to be considered in the cumulative traffic analysis, and “plaintiffs point to no evidence in the record to indicate the SMSPP would have any adverse impact on traffic and circulation related to the 5M Project.” In the third instance, the Court found that the City had properly considered a range of mitigation measures and had selected those most appropriate to the project’s significant impacts. The City was not required to include two alternatives suggested by SOMCAN because those alternatives did not meet project objectives and were similar to alternatives analyzed in the EIR.

SOMCAN claimed that because the project would allegedly conflict with City policy regarding shade and shadow, thereby resulting in a significant effect on a nearby park. However, the City had an adopted CEQA threshold for shade and shadow, separate from its planning policy. The Court held that “the shadow limits were policy restrictions, not a CEQA threshold, and the City’s action in raising the limits does not establish a CEQA violation.”

SOMCAN also claimed that the EIR failed to adequately discuss inconsistencies between the 5M project and applicable area plans and policies “and thus failed to serve as the required informational document under CEQA.” The Court found that the EIR sufficiently discussed

applicable plans and policies, and that SOMCAN had cited plans (including the draft Central SoMa Plan) that were not applicable to the 5M project or that had not been approved and therefore were not in effect. The Court concluded that: “The administrative record here reflects the City made a good faith effort to discuss inconsistencies with the applicable general plans. Plaintiffs have not met their burden to demonstrate otherwise.”

Lastly, SOMCAN alleged that the City’s statement of overriding considerations was not supported by substantial evidence because the City improperly considered the benefits of the project before considering feasible mitigation measures or alternatives. The Court rejected this argument. The EIR findings had provided substantial evidence as to why the alternatives were not adopted. The statement of overriding considerations properly discussed “weighing the benefits against the environmental impacts.”