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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

COMMUNITY VENTURE PARTNERS,

Plaintiff and Respondent,

v.

MARIN COUNTY OPEN SPACE
DISTRICT,

Defendant and Appellant.

A154867

(Marin County
Super. Ct. No. CIV1701913)

Marin County Open Space District (District) approved a project to make certain improvements to, and allow bicycle use on, the Bob Middagh Trail in Mill Valley (Project). Community Venture Partners (CVP) filed a petition for writ of mandate seeking to set aside the District’s approval of the Project. The trial court granted the petition, finding that the District violated the California Environmental Quality Act (CEQA) (Pub. Resources Code, §§ 21000 et seq.)¹ by failing to evaluate the Project’s potential environmental impacts before approving it. The court further found that, even assuming the District had approved the Project at the appropriate time, the District’s environmental review documents were inadequate because they did not address “reasonably foreseeable social effects and safety risks” of the Project. The trial court also

¹ Unless otherwise indicated, all further statutory references are to CEQA provisions as set forth in Public Resources Code sections 21000–2117. Where applicable, the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000–15387) will be noted as “Guidelines” throughout the opinion.

granted CVP mandamus relief based on the District's alleged violation of its internal rules governing the evaluation of proposals related to the Middagh Trail. (Code Civ. Proc., § 1085.)

We reverse the portion of the judgment finding that the District violated CEQA but affirm the grant of mandamus relief under Code of Civil Procedure section 1085.

I. BACKGROUND

A. The Road and Trail Management Plan

In 2007, the County of Marin (County) adopted the "Marin Countywide Plan" (Countywide Plan). The Countywide Plan focuses on, among other things, conserving biological resources and water resources; protecting against environmental hazards such as seismic activity and landslides; and sustainably managing, enhancing, and expanding open spaces and trails within the county.

Consistent with the Countywide Plan, in 2014, the District finalized the "Road and Trail Management Plan" (RTMP), a plan to "[e]stablish and maintain a sustainable system of roads and trails"; "[r]educe the environmental impact of roads and trails on sensitive resources, habitats, riparian areas, and special-status plant and animal species"; and "[i]mprove the visitor experience and safety for all users, including hikers, mountain bikers, and equestrians."

B. The RTMP's Environmental Impact Report

In connection with adoption of the RTMP, the District published the RTMP Draft Tiered Program Environmental Impact Report in 2013. The District circulated the draft for public review and comment and modified it to address those comments.

The District recirculated the revised document, the "Recirculated Draft TPEIR" (Draft EIR), for public review. In the Draft EIR, the District responded to public comments to the previous draft and invited new comments, which the District would include in the final EIR.

In 2014, the District finalized the Draft EIR (RTMP EIR). The RTMP EIR consists of the Draft EIR; a list of persons, organizations, and public agencies commenting on the Draft EIR; comments received from them; the District's responses to

significant environmental issues raised by the public comments; and modifications to the Draft EIR based on the District's responses to the public comments.

C. The District's Six-Step Process for Evaluating Project Proposals

To implement the RTMP, the District solicits project proposals from the public, including those requesting changes in use of and adjustments to the network of roads and trails in the District. The RTMP sets forth the District's six-step process for screening and evaluating such proposals.²

In step 1, the District solicits road and trail project proposals from the public. In step 2, the District screens proposals for consistency with the District's policies and goals (including those specified in the RTMP) and "filter[s] out" proposals that would be inconsistent with those guidelines. In step 3, proposals successfully emerging from step 2's screening are evaluated and scored to measure the proposals' potential for impacts on existing road and trail segments. Proposals that yield a net reduction, or no net increase, in a region's baseline of biophysical impacts and that enhance visitor experience and safety are included in a "reprioritized list of road and trail projects," while projects that increase biophysical impacts are not prioritized (or may be amended and resubmitted for review). A higher score in step 3 of the evaluation process represents a greater potential for impacts on natural resources or a less sustainable road or trail. In step 4, the highest priority proposals are analyzed for possible inclusion in the District's budget. In step 5, County staff present proposed budgets to the County's Board of Supervisors and the District's Commission, and the public has an opportunity to provide input on the proposed budgets. Finally, in step 6, the County's Board of Supervisors and the District's Board of Directors approve the proposed budgets during public meetings, and the public has a "last opportunity" to comment. The RTMP makes clear that construction

² The RTMP explains that projects can be organized into two groups: (1) those that are eligible to compete in the annual project review, selection, and funding process described therein, and (2) those that are not eligible to compete, because they involve essential functions and services that the District is already required to implement, such as periodic upkeep of a road or trail.

work on proposals adopted in the County’s budget “must be preceded by planning, design, and the fulfillment of environmental review and permitting requirements.”

D. The Bob Middagh Trail Project

In March 2015, the District hosted a community workshop regarding proposals for the Alto Bowl Open Space Preserve in Mill Valley, which included the subject project. The Project proposed making improvements to the Middagh Trail and opening it up to allow bicycles.

In August 2016, the District held a meeting and received public comments on proposals for road and trail projects within areas governed by the RTMP, including the Project. At an August 25, 2016 meeting, the District gave a presentation in which it recommended the Project’s proposal to allow bicycle use on, and make improvements to, the Middagh Trail. During the next 30 days, the District invited further public comment on the proposals. The District collected more than 400 comments, over 80 percent of which supported the Project.

After the public comment period concluded, on November 29, 2016, the District issued a memorandum from its Chief of Planning and Acquisition, stating as follows:

Recommendations Summary

The proposal to improve and open the Bob Middagh Trail to bicycle use was approved with design modifications as described in this summary. The change in use evaluation process determined that the addition of bicycle use on the Bob Middagh Trail could be accommodated in a safe and sustainable manner and would not have significant effects to natural or cultural resources if recommended design and management modifications are implemented. The addition of bicycles to the trail would also provide an important non paved bicycle route connection for the surrounding community. The intended purpose of this use would be for connectivity and not for the purpose of seeking technical challenges which could be considered attractions unto themselves. This recommendation would require design and management modifications to be implemented prior to allowing bicycle use on the trail. Additional design details, resources surveys, environmental compliance and permitting would be required prior to the implementation of design modifications.

Next Steps

It is anticipated that the MCOSD [Marin County Open Space District] will begin construction of the Bob Middagh Trail beginning in the spring of 2017. The next steps for these projects are outlined below:

- Budget Approval
- Site Bio Assessment
- Final Trail Design Refinement
- Environmental Review and Regulatory Permitting
- Agency Permitting
- Nesting Surveys
- Construction

E. The District's Evaluation of Other Proposals

In addition to the Project, the District evaluated other road and trail project proposals within the Alto Bowl Open Space Preserve. Some called for building new or opening existing trails for bicycle use. Others sought to prohibit bike access on the Middagh Trail. The District compiled its scoring results in a document using two tables. In one table, the District identified several proposals that advocated bicycle use on the Middagh Trail, briefly described the proposals, and assigned scores to them using its baseline analysis as prescribed in the RTMP's step 3. In the second table, the District listed proposals it deemed "[n]ot [s]coreable." The scoring sheet did not explain why certain proposals were non-scoreable, nor did it include all submitted proposals.

F. The District's Consistency Assessment

On May 11, 2017, the District prepared a 196-page document entitled "Consistency Assessment," which compared potential impacts associated with the Project to those identified in the RTMP EIR, "as described in CEQA Guidelines Section 15162." Its purpose was to determine if the Project presented new information or new environmental effects that required revisions to the mitigation measures in the RTMP EIR. In the Consistency Assessment, the District found that the Project would "increase the sustainability of the trail," "substantially reduce impacts from erosion and runoff into nearby drainages," "minimize habitat fragmentation," and "reduce the trail's physical impacts to the preserve and watershed." It also concluded that the Project would not

result in new significant or substantially more severe impacts than those evaluated in the RTMP EIR.

On the same day, the District also issued its “Road and Trail Project Approval” memorandum, stating that the District approved the Project and certified that it conforms to the Countywide Plan and the RTMP.

G. CVP’s Petition for Writ of Mandate

CVP filed a petition for writ of mandate challenging the District’s approval of the Project. CVP contended that the District’s approval of the Project violated CEQA. Relying on the District’s November 29, 2016 memorandum, CVP argued that the District violated CEQA by approving the Project on that date, before the District had evaluated its environmental effects. CVP further claimed that neither the RTMP EIR nor the Consistency Assessment adequately analyzed potential user conflicts between current hikers and equestrians and mountain bikers on the Middagh Trail.

CVP also brought a mandamus claim under Code of Civil Procedure section 1085, asserting that the District abused its discretion by not following its six-step evaluation process and by failing to score alternative proposals.

H. The Trial Court’s Order

The court granted the writ and ordered the District to set aside approval of the Project. The court determined that the District approved the Project in November 2016 and that it violated CEQA because it was required, but failed, to conduct an initial study of the Project before approving it. (Guidelines, § 15063.) The court further found that, even assuming the District’s approval occurred in May 2017 and construing the Consistency Assessment as a substitute for an initial study, the District nonetheless violated CEQA because the Consistency Assessment failed to address “reasonably foreseeable social effects” on existing users of the Middagh Trail. The court noted that the District did not consider the “negative social effects on the enjoyment and recreational experiences” for current hikers and equestrians, and the “likely increased risk of accidents between current users and the newly added mountain bike riders.”

The court also granted CVP traditional mandamus relief (Code Civ. Proc., § 1085), finding that the District acted arbitrarily and capriciously by violating its own evaluation rules and failing to score eligible proposals.

II. DISCUSSION

A. CEQA

1. General CEQA Principles

“CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment.” (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382.) CEQA is designed “to compel government at all levels to make decisions with environmental consequences in mind.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I.*))

If an agency determines that a project not exempt from CEQA may have a significant effect on the environment, the agency must prepare an environmental impact report (EIR) before approval of the project. (See §§ 21100, subd. (a), 21151, subd. (a), 21080, 21084, subd. (a).) The agency notifies the public that a draft EIR is being prepared (§§ 21092, 21092.1), circulates it to the public (Guidelines, § 15087), and evaluates the draft EIR in light of public comments (*id.*, § 15088). The agency then prepares a final EIR incorporating comments on the draft EIR and the agency’s responses to significant environmental points raised. (*Id.*, §§ 15090, 15132, subds. (b)–(d).)

An EIR must include a detailed statement summarizing (1) all of a project’s significant effects on the environment, (2) any unavoidable or irreversible significant effects on the environment, (3) mitigation measures, (4) alternatives to the proposed project, and (5) the growth-inducing impacts of the proposed project. (§ 21100, subd. (b).) The lead agency must certify that the final EIR has been completed in

compliance with CEQA and that the information therein was considered by the agency before approving the project. (*Id.*, § 15090.)

“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.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 (*Vineyard Area Citizens*).) The court reviews the administrative record for prejudicial abuse of discretion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132–1133; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) “ ‘[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.’ ” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935.)

The California Supreme Court recently addressed this procedural/factual issues dichotomy and explained, “ ‘Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,” for, on factual questions, our task “is not to weigh conflicting evidence and determine who has the better argument.” ’ ” (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 512.)

Substantial evidence “includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact,” but it does not include “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.” (§ 21080, subd. (e)(1), (2).) In reviewing for

substantial evidence, we may not set aside the approval of an EIR on the ground that a different conclusion would have been equally or more reasonable. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 435.)

2. Timing of Project Approval

CVP argued, and the trial court agreed, that the District violated CEQA by approving the Project on November 29, 2016, before fully evaluating the Project’s potential environmental impacts. (Guidelines, § 15063, subd. (a).) We disagree. The record and applicable case law demonstrate that the District approved the Project on May 7, 2017, after conducting the requisite environmental review.

a. The Legal Framework: Save Tara

Under CEQA, if an EIR is required, it must precede project approval.³ (§§ 21100, subd. (a), 21151, subd. (a); Guidelines, § 15004, subd. (a).) Under the Guidelines, “approval” means “the decision by a public agency which commits the agency to a definite course of action in regard to a project.” (Guidelines, § 15352, subd. (a); see *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134 (*Save Tara*).) “The problem is to determine when an agency’s favoring of and assistance to a project ripens into a ‘commit[ment].’ To be consistent with CEQA’s purposes, the line must be drawn neither so early that the burden of environmental review impedes the exploration and formulation of potentially meritorious projects, nor so late that such review loses its power to influence key public decisions about those projects.” (*Save Tara, supra*, 45 Cal.4th at pp. 130–131.) We independently review the issue of whether an agency has approved a project for purposes of CEQA before the requisite environmental review. (*Id.* at p. 131.)

In *Save Tara, supra*, 45 Cal.4th at pp. 124–125, 132, the Supreme Court confronted the question of whether the City of West Hollywood’s conditional development agreement with a private developer constituted a project approval prior to environmental review. There, developers proposed to develop city-owned housing units

³ The parties agree that the proposal to introduce bicycle use on the Middagh Trail is a “project” as defined in CEQA. (§ 21080, subd. (a); Guidelines, §§ 15002, subd. (d), 15378.)

for low-income seniors. (*Id.* at p. 122.) The City conditionally agreed to sell the property to a private developer and provide it with a \$1 million loan. (*Id.* at p. 124.)

Approximately \$475,000 of the loan was slated for predevelopment costs, including environmental reports and governmental permits and fees, with the remaining “improvement portion” of the loan designated for the construction phase. (*Id.* at pp. 124–125.) Relocation of the existing tenants and all actions necessary to comply with CEQA were to occur before the City would convey the property to the developer and the construction phase would begin. The draft agreement stated that its purpose was to “ ‘caus[e] the reuse and redevelopment of [the property] with affordable housing for seniors and a neighborhood pocket park, while retaining the historic integrity of the Site.’ ” (*Id.* at p. 124.)

The draft agreement also contained conditions precedent to the City’s obligation to convey the property and disburse the “improvement portion” of the loan, including the satisfaction of all CEQA requirements “ ‘as reasonably determined by the City Manager.’ ” (*Save Tara, supra*, 45 Cal.4th at p. 124.) The City Manager, however, could waive these conditions. (*Ibid.*)⁴

The Supreme Court determined that the City’s draft agreement and execution of the revised agreement constituted project approval under CEQA. (*Save Tara, supra*, 45 Cal.4th at p. 140.) The Court applied and elaborated upon the “general principle that before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that

⁴ After project opponents asserted the City violated CEQA by failing to prepare an EIR before approving the loan and draft agreement, the City and developer executed a revised agreement that removed the City Manager’s ability to waive CEQA compliance and stated the City retained discretion over “ ‘any actions necessary to comply with CEQA’ ” and had no duty to approve any CEQA documents. (*Save Tara, supra*, 45 Cal.4th at pp. 124, 126.) Although the revised agreement eliminated this waiver provision, the Court noted that the City’s “apprehensive citizenry” would appropriately be “skeptical as to whether the city council would give adverse impacts disclosed in the EIR full consideration before finally approving the project.” (*Save Tara, supra*, 45 Cal.4th at p. 141.)

would ordinarily be part of CEQA review of that public project.’ ” (*Id.* at p. 138) It explained that the critical question based upon all the surrounding circumstances is “whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures, that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.” (*Id.* at p. 139.)

In reaching its decision, the Supreme Court relied on the stated purposes in both agreements “to ‘cause the reuse and redevelopment’ of [the property] in accordance with the project.” Similarly, a City Council resolution approving the draft agreement set forth the City’s intent to “ ‘facilitate development of the project,’ ” while permitting public comment only on “ ‘ the *design* of project elements.’ ” (*Save Tara, supra*, 45 Cal.4th at p. 140, italics added.) It was also significant that the developer was not required to repay the nearly half-million-dollar predevelopment portion of the loan unless the City gave the project final approval. (*Ibid.*) Thus, if the City did not approve the Project, it would “waste[]” \$475,000, which the Court found to be “not a trivial outlay” “[f]or a relatively small government like City’s.” (*Id.* at p. 140.)

In addition, while both versions of the agreement conditioned conveyance of the property and disbursement of the second half of the loan on CEQA compliance, the draft agreement “significantly circumscribed” the City’s authority to enforce CEQA requirements, as it allowed the City Manager to “reasonably determine[]” whether CEQA requirements had been met, “language that could have left City open to charges it acted unreasonably, had it ultimately declined to certify the EIR or make any needed CEQA findings.” (*Save Tara, supra*, 45 Cal.4th at p. 140.) The draft agreement also omitted any provision allowing appeal of the Manager’s decision to the City Council, which improperly delegated the Council’s responsibility under CEQA. (*Id.* at p. 141.)

Circumstances surrounding approval of the agreements further confirmed the City’s commitment to and improper approval of the development project before CEQA compliance. Officials publicly announced that a \$4.2 million grant “will be used” for the project. (*Save Tara, supra*, 45 Cal.4th at p. 141.) The City Council stated at a meeting

that alternatives to the project had already been ruled out. (*Id.* at pp. 141–142.) The mayor also announced that the City “ ‘must continue on a path that fulfills this obligation’ to redevelop the property.” (*Id.* at p. 141.) Further, tenant relocation before EIR certification and final project approval constituted a “significant step in a redevelopment project’s progress, and one that is likely to be irreversible.” (*Id.* at p. 142.)

Although *Save Tara* involved an agreement between a public agency and a developer regarding a private project, the principles articulated therein apply equally to public projects such as the change in use project here. (See *City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846, 859.)

b. Application of Save Tara to the District’s Actions

The trial court found that the District approved the Project as of November 2016 before evaluating the Project’s environmental impacts. This was error.

Based on our independent review of the record, we find that District did not approve the Project on November 29, 2016. Although the November 29, 2016 memo from the County’s Chief of Planning and Acquisition states that the project was “approved,” that term was used in a section entitled “*Recommendations Summary*,” within a document entitled “Update Regarding *Pending Proposed* Projects in the Alto Bowl Open Space Preserve.” (*Italics added.*) The same memo notes that the Project was subject to several contingencies, including additional design details, resources surveys, site biological assessment, and, critically, environmental compliance and permitting. The District also indicated that “[a] complete bio assessment of the flora and fauna of the site” and “[p]lant surveys” would be required to assess impacts to natural resources. The District thus expressly conditioned the Project’s approval upon CEQA review.

The public statements in the November 29, 2016 memo stand in sharp contrast to those in *Save Tara*. The statements in *Save Tara* included the City Manager’s comments that the City “ ‘has approved the sale of the property’ ” and “ ‘will commit’ up to \$1 million in financial aid”; the mayor’s announcement that a HUD grant “ ‘will be used’ ” for the project; statements in the City’s newsletter that the City “ ‘will redevelop the

property’ ”; and the City’s housing manager’s statement at a City Council meeting that “while there were ‘options to consider’ regarding project design, options for other uses of the property (as a park, library, or cultural center) had already been ruled out.” (*Save Tara, supra*, 45 Cal.4th at pp. 141–142.) By contrast, the statements in the memo establish that the District at most prioritized and recommended the Project for consideration as an option in the District’s budget, consistent with steps 3 and 4 of the six-step process. (*Id.* at p. 142, fn. 13 [“expressions of enthusiasm for a project by an agency’s staff members should not be confused with official approval”; such statements in isolation “could rarely, if ever, be deemed approvals for CEQA purposes”].)

E-mails between District staff and members of the public also weigh against finding that the District had committed to a “definite course of action” regarding the Project. For example, a staff member wrote to an individual, “You are aware that Parks has *recommended* the opening of the Bob Middagh trail to bikes following a thoughtful process and a carefully designed trail realignment in spots to mitigate possible erosion from its current configuration and to purposely slow down all users.” (Italics added.) In response to another person’s comment that “[i]t looks like the project itself has now been approved,” the District stated, “[t]his is essentially correct,” but made clear that “we have not completed CEQA. . . . We will be working to complete the CEQA review of both the Bob Middagh project and Gasline project this winter, after the trail logs (technical plots of the new trail segments) are completed.” In another e-mail, although a District staff member wrote that the staff “made the decision to improve and open the Bob Middagh Trail to bicycle use,” he explained that “move forward means continue with the next steps including design, budgeting, environmental compliance and permitting and implementation.”

In other e-mails, the District wrote that it remained open to continued dialogue with the public, including as to environmental review: “[T]here are opportunities to engage with us around the project including providing input related to project design, public meetings around our budget process and possible engagement around

environmental review.” The District also explained to one individual that the Project required further approval from its board.

Further, unlike in *Save Tara*, the District had not committed to or expended any financial resources for the Project in November 2016. Thus, there was no financial momentum indicating “a strong incentive to ignore environmental concerns.” (*Save Tara, supra*, 45 Cal.4th at p. 135; see also *Laurel Heights I, supra*, 47 Cal.3d at p. 395.) Moreover, because the District had not yet considered whether to include the Project in the District’s budget, the Project had only survived step 3 of the RTMP’s evaluation process. In contrast to the irretrievable capital outlay and likely “irreversible” measures taken by the City in *Save Tara*, at p. 127, the RTMP and the District’s statements demonstrate both that the Project could have been rejected during the remaining evaluation process, and that environmental review (with public comment) would be part of the District’s continued evaluation.

We thus conclude that the court erred in finding that the District violated CEQA by approving the Project in November 2016 before evaluating its environmental effects.

3. Applicability of Sections 21166 and 21094

The parties also disagree on whether section 21166 or 21094 applies to the District’s assessment of the Project, and therefore whether a further EIR was required.

a. Overview

CVP argues that the RTMP EIR was not sufficiently comprehensive to serve as the EIR for the Project because the RTMP EIR did not consider the Project’s potential effects on hikers and equestrians. CVP argues that the RTMP EIR qualifies only as the

first step of “tiered” environmental review pursuant to section 21094, and that the District must prepare a new EIR for the Project.⁵

By contrast, the District argues that the RTMP EIR adequately assessed the Project’s potential environmental impacts. Thus, the District contends its evaluation of the Project is governed by section 21166, which prohibits agencies from requiring subsequent or supplemental review for a later activity after certifying an initial EIR, unless the later activity would create significant new or substantially increased environmental impacts than those evaluated in the original EIR. The District maintains that it found that no new significant impacts that would require major revisions to the RTMP EIR. The District therefore concludes it was not required to prepare an initial study or an additional EIR for the Project.

We agree with the District. We review for substantial evidence an agency’s initial determination to proceed under section 21166 and Guidelines section 15162. (See *Friends of the College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937, 952–953 (*San Mateo Gardens*).) When an agency is justified in proceeding thereunder, we also review for substantial evidence an agency’s subsequent determination that a project is consistent with a prior EIR and presents no significant, unstudied adverse effect. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 174.) Under this standard, a court does not “ ‘ “ ‘weigh conflicting evidence and determine who has the better argument.’ ” ’ ” (*Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1248 (*T-Line Loop*).) “As a result, ‘occasions when a court finds no substantial evidence to support an agency’s decision to

⁵ “Tiering” means “the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.” (§ 21068.5; Guidelines, § 15152, subd. (a).)

proceed under CEQA’s subsequent review provisions will be rare, and rightly so; “a court should tread with extraordinary care” before reversing an agency’s determination.’ ” (*Ibid.*)

As we explain below, substantial evidence supports the District’s determination that the RTMP EIR was sufficiently comprehensive to cover the Project and, therefore, the District permissibly proceeded under section 21166. Substantial evidence also supports the District’s finding that the Project would not require “major revisions” to its RTMP EIR, such that no subsequent or supplemental EIR was necessary. Accordingly, the trial court erred in finding that the District was required to conduct further environmental review for the Project.

b. Legal Framework

CEQA provides for streamlined environmental review in a number of different situations. (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2017) CEQA Streamlining and Special EIR Processes, § 10:1.) One such situation is a “program EIR.” “A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: [¶] (1) Geographically, [or] [¶] (2) As logical parts in the chain of contemplated actions.” (Guidelines, § 15168, subd. (a); see, e.g., *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 233 (*Center for Biological Diversity*).) Here, the RTMP EIR addresses future road and trail projects within the Alto Bowl Preserve, the geographical area where the Project is located. The RTMP EIR also contemplates improvements to trails in the Alto Bowl Preserve, as well as changes of use including adding mountain bike use. Thus, we consider the RTMP EIR a program EIR.

Using a program EIR avoids the need to prepare multiple EIRs for the program and its activities if the program EIR is comprehensive, as explained by the District’s amici curiae. (*Center for Biological Diversity, supra*, 234 Cal.App.4th at p. 233.) “When the environmental effects of a large or complex project have been reviewed in a program EIR, ‘[s]ubsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be

prepared.’ ” (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 55 (*Green Foothills*); Guidelines, § 15168, subd. (c).)

If the later activity would have effects not examined in the program EIR, an agency must prepare an initial study, leading to another EIR. (Guidelines, § 15168, subd. (c)(1).) However, “[i]f the agency finds that pursuant to [s]ection 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.” (*Id.*, § 15168, subd. (c)(2) & (c)(5) [noting that many subsequent activities may be found within the scope of a comprehensive program EIR, such that “no further environmental documents would be required”].)

Section 21166, upon which section 15162 of the Guidelines is based, provides in pertinent part: “[N]o subsequent or supplemental environmental impact report shall be required by the lead agency . . . , unless one or more of the following events occurs: [¶] (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [¶] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”⁶

“[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation] and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.” (*Green Foothills, supra*, 48 Cal.4th at p. 55.) “[W]e apply a more deferential test to an agency’s decision not to

⁶ A “supplement” to an EIR is used instead of a “subsequent” EIR if a subsequent EIR is necessary and “[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.” (Guidelines, § 15163, subd. (a)(2).) “The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.” (*Id.*, subd. (b).)

prepare a further EIR under section 21166” once an EIR has been certified for an overall program. (*T-Line Loop, supra*, 6 Cal.App.5th at p. 1247)

By contrast, section 21094 addresses the preparation of a “tiered environmental impact report” for a “later project” that arises after “a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance.” (§ 21094, subd. (a).) Unlike section 21166, section 21094 mandates an agency to prepare an EIR on a later project that “may have a significant effect on the environment.” (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1319, italics omitted.) Thus, under section 21094, the standard of review is whether substantial evidence supports a fair argument that a later project may cause significant adverse effects not examined in a prior EIR. (*Id.* at p. 1313.) Section 21094 only applies, however, if an agency determines that the later project “(1) is consistent with the program . . . for which an environmental impact report has been prepared and certified, [¶] (2) [is c]onsistent with applicable local land use plans and zoning[,]. . . . [and] [¶] (3) [is n]ot subject to Section 21166.” (§ 21094, subd. (b), italics added.) Thus, by its own terms, section 21094 does not apply to later projects that are subject to 21166.

Because the Project is a “later project” as that term is used in section 21094, the question remains whether the Project is “subject to section 21166.” (§ 21094, subd. (b).) We note that, while the RTMP EIR calls itself the “Road and Trail Management Plan *Tiered Program* Environmental Impact Report,” the “tiered” label does not automatically trigger application of section 21094’s tiering provisions. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1051 [“ ‘It is the substance, rather than the form, of [the environmental] document which determines its nature and validity’ ”].)⁷ We do not treat the RTMP EIR as a tiered EIR because it does not purport to “defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.” (See *Vineyard*

⁷ It appears the District’s “tiered” labeling refers to its attempt to tier the RTMP to the earlier, broader Countywide Plan. However, the only issue before us concerns the relationship between the RTMP and later projects.

Area Citizens, *supra*, 40 Cal.4th at p. 431; see also *Treasure Island*, at p. 1050, fn. 6, italics added [“We recognize that when an agency attempts to tier its environmental review for a *materially different project* onto a prior program EIR,” section 21094 applies].) We discuss below whether substantial evidence supports the District’s decision to proceed under section 21166 rather than section 21094.

4. The District’s Decision to Proceed under Section 21166

Section 21166 governs a later project that is “either the same as or within the scope” of a program described in an earlier EIR. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 202–203; see also Guidelines, § 15168, subd. (c)(2).) A decision to proceed under section 21166 and section 15162 of the Guidelines “rest[s] on a determination—whether implicit or explicit—that the original environmental document retains some informational value.” (*San Mateo Gardens*, *supra*, 1 Cal.5th at p. 951.)

Whether a project falls within the scope of a prior EIR “typically involves two subsidiary issues: whether the proposed project is consistent with the approved program; and whether the program EIR fully discussed the site-specific impacts of the later project.” (See Remy, et al., Guide to CEQA 11th Ed., pp. 650–651.) For example, in *T-Line Loop*, a municipal transportation agency properly proceeded under section 21166 after it found that a project to add 900 feet of rail to complete a loop on a light rail line was analyzed in its prior EIR and was consistent with the city’s ordinances, regulations, plans and policies and regional transportation development lines. (*T-Line Loop*, *supra*, 6 Cal.App.5th at pp. 1251, 1254, fn. 17.) By contrast, in *Sierra Club*, section 21166 did not control, because a proposed mining project was unquestionably inconsistent with the broader program where the applicant sought to change the permissible uses for a parcel of land that had been designated for agricultural and groundwater recharge uses only. (*Sierra Club*, *supra*, 6 Cal.App.4th at pp. 1320–1321.)

a. The Project is consistent with the RTMP

The District argues that substantial evidence supports its finding that the Project is consistent with the RTMP and RTMP EIR because both contemplate changes in trail use,

including allowing bicycle use. CVP does not dispute this. By arguing that section 21094 applies, CVP effectively concedes that the Project is consistent with the RTMP EIR, as section 21094 applies only if the agency has determined that a later project is “[c]onsistent with the program, plan, policy, or ordinance for which an [EIR] has been prepared.” (§ 21094, subd. (b)(2).) We agree with the District that the Project is consistent with the program evaluated in the RTMP EIR.

The RTMP expressly contemplates future road and trail projects that involve changes in use. And one of the RTMP’s stated purposes is to “[i]mprove the visitor experience and visitor safety for all users, including hikers, *mountain bikers*, and equestrians.” (Italics added.) In addition, the Project implements the RTMP’s policies and goals: As outlined in the District’s “Road and Trail Project Approval” memo, “the project would improve access and provide a range of desired user experiences within the Alto Bowl Preserve by improving the trail conditions, reducing slopes, and improving drainage for year-round access,” consistent with RTMP Policy No. 1. The memo also states that, consistent with RTMP Policy No. 3, the Project “would minimize impacts to sensitive resources by designing the alignment to sensitive species, improving drainage[;] reduce sedimentation to the local waterways[;] and maintain habitat for wildlife.” The memo also notes that “the project would enhance road and trail connectivity by providing a link between the communities of Corte Madera and Mill Valley,” in accordance with Policy No. 5.

Accordingly, substantial evidence supports the District’s determination that the Project is consistent with the RTMP EIR.

b. The RTMP EIR adequately assesses the Project’s potential environmental impacts

CVP argues that the RTMP EIR neither considered adding mountain bike use on the Middagh Trail nor addressed the Project’s potentially adverse effects on existing users. Specifically, CVP maintains that the District failed to consider the risk of increased accidents between bikers and hikers and equestrians; users’ fear of such risk; noise from adding bikes; disruption of the “experience of current users enjoying the quiet

setting of the Middagh Trail”; and aesthetic impacts related to erosion and trail rutting, the loss of visible bird and wildlife, and “groups of speeding bikers now appearing on the trail.” We disagree.

CEQA requires an EIR for project “that may have a significant effect on the environment.” (§ 21100.) “Environment” is defined as the physical conditions that exist within an area affected by a proposed project, including land, air, water, minerals, flora and fauna, noise, and objects of historic or aesthetic significance. (§ 21060.5; Guidelines, § 15360.) Appendix G of the Guidelines provides a sample list of factors when considering if a project may potentially have a significant impact on the environment. (Guidelines, Appen. G; see *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896 & fn. 5.) These factors include aesthetics, biological resources, air quality, geology, water quality, noise, and recreation. (See Guidelines, Appen. G.)

A project’s economic and social effects are not treated as effects on the environment. (Guidelines, § 15131, subd. (a).) Thus, economic and social effects that are not related to physical impacts need not be evaluated in an EIR. (*Ibid.*) While economic and social effects ordinarily need not be discussed in an EIR, *physical changes* to the environment caused by a project’s economic or social effects are secondary impacts that must be included in an EIR’s impact analysis if they are significant. (Guidelines, § 15064, subd. (e), italics added.) In addition, a project’s economic and social effects may be taken into account to assist in determining the significance of physical changes caused by the project. (Guidelines, § 15131, subd. (b).) The focus of CEQA review, then, changes to the “physical conditions” in an area. (§ 21060.5; Guidelines, § 15360.)

Of the impacts CVP claims the District omitted from the RTMP EIR, CEQA requires us to consider only the effects on wildlife, biological resources, aesthetics, and noise, as they are physical conditions within the Project area. We discuss each in turn.

i. Wildlife and biological resources

The RTMP EIR addressed the Project's potential impact on wildlife and biological resources. The RTMP EIR incorporates by reference the District's responses to public concerns concerning proposed bicycle use that were included in the Draft EIR. Chapter 6 of the Draft EIR contains an analysis of specific studies concerning the potential impacts of trail use, including mountain biking. Citing one study, the District noted that "mountain biking did not appear to have significantly different impacts on vegetation or soils than other forms of use." Citing another study, the District indicated that "[t]he results of one study indicate that there is little difference in wildlife response to hikers vs. mountain bikers." That study also "found no wildlife management related reason for managing mountain biking any differently than hiking." However, to protect the surrounding wildlife, the Draft EIR sets forth a policy prohibiting bicycle use off-trail and on nonsystem roads and trails, defined as roads and trails that are not located within preserves and not maintained by the District. The RTMP EIR, which incorporates the Draft EIR, thus analyzed the potential impact of bicycles on natural resources.

ii. Aesthetics

The RTMP EIR also adequately addresses the impacts biking would pose on the aesthetics of the District's open space preserves. The RTMP EIR refers to Chapter 14 of the Draft EIR, which notes that "modifications to the visual environment due to the construction of new or rerouted trails would be small in scale and not very visually intrusive." The Draft EIR also states that, "[e]ven if the new road or trail is visible, these unpaved features do not block views of the landscape and are visually consistent with the open space nature of the preserves." Further, any replacement of existing trail alignments with new trail alignments under the Project would have the same width and approximate length of existing trails. Thus, the District reasonably concluded that designating the Middagh Trail for bicycle use would have no impact on the visual environment and, consequently, that no mitigation measures would be necessary.

iii. Erosion and trail damage

In addition, the RTMP EIR addresses potential impacts from bicycle use on erosion of the District's open space preserves. As noted above, in the Draft EIR, one study referenced in the Draft EIR determined that "mountain biking did not appear to have significantly different impacts on vegetation or soils than other forms of use." Another study concluded that "horseback riding may have a greater potential for impacts than other trail uses due to pollution from horse waste and the spread of invasive species." One study referenced in the RTMP EIR that "assess[ed] mountain bike impacts in the southwestern U.S. found that impacts to designated mountain bike trails, such as user-increased trail width, were similar or less than impacts to hiking trails and less than impacts to equestrian or off-highway vehicle trails." As noted above, another study concluded that there was "no wildlife management related reason for managing mountain biking any differently than hiking." The District also cited to a National Park Service study evaluating sources of trail degradation by erosion and other factors. The study showed that hikers and bikers had the lowest impacts on erosion, while horses and ATVs had the highest impacts. And as noted above, the District's policy in the RTMP EIR prohibits bicycle use off-trail and on nonsystem roads and trails to help minimize water quality impacts, such as erosion from off-trail mountain bike riding.

Contrary to CVP's assertions, the record reflects that the District did consider the potential impact of bicycle use on erosion and trail damage.

iv. Noise

While the District acknowledged in the Draft EIR that changes in use could indirectly increase noise levels in specific locations within a preserve, it found that "[i]mplementation of the RTMP would not substantially increase overall visitation to preserves." The District also found that "[o]ngoing or periodic, large-scale recreational activities could provide an unlikely, though potential, source of noise if they occurred adjacent to residences." The District acknowledged that "[y]elling by recreational users was identified as annoying in comments received" by the District. However, the District stated it relied on current noise ordinances, including Section 02.02 of the Marin County

Code which specifically addresses noise within the District’s open space preserves. The ordinance prohibits any “loud, unnecessary or unusual noise which disturbs the peace and quiet within any area within the district or which causes discomfort or annoyance to any reasonable person of normal sensitivity utilizing any facility of the district.” (Marin County Code, § 02.02.100.)

The District thus considered the potential impact of noise levels from bicycle use, and its reliance on currently applicable noise ordinances was reasonable.

v. “User conflict” effects CVP alleges were excluded

The remaining effects from bicycle use that CVP alleges were omitted from the RTMP EIR are purely social effects that do not require CEQA analysis.

We reject CVP’s argument that the District was required to evaluate the increased risk of bike accidents with other trail users. In support of its assertion, CVP relies on *Bicycle Trails Council of Marin v. Babbitt* (N.D. Cal. 1994 No. C-93-0009 EFL) WL 508892 (*Babbitt*), affd. (9th Cir. 1996) 82 F.3d 1445. There, bicycle advocates challenged the National Park Service’s (NPS) trail plan that included restricting or prohibiting bicycle access on certain trails. (*Babbitt*, at * 20.) Proponents submitted letters recounting stories of collisions or near misses with bikers on trails. (*Ibid.*) Relying on those letters and a county study containing statistics of accidents, the district court upheld the NPS’s decision to approve its rules. (*Id.* at * 19.) CVP cites to these letters in support of its position that similar accidents between bikers and current users on the Middagh Trail are foreseeable effects of the Project. (*Id.* at * 20.) However, CVP’s reliance on this portion of *Babbitt* is misplaced, as the district court applied federal administrative law under a far less stringent, rational basis standard of review for upholding the NPS’s adoption of its rules. (*Ibid.*) The anecdotal evidence presented in *Babbitt* thus does not govern or illuminate our analysis.

Moreover, CVP ignores the aspect of *Babbitt* that has persuasive value—its analysis of the National Environmental Policy Act (NEPA). (See *Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 902–03 [NEPA cases are persuasive authority in California].) The opponents in *Babbitt*

argued that the NPS violated NEPA by failing to prepare an environmental impact statement evaluating the increased risk of accidents between bicyclists and motor vehicles resulting from the trail closure. (*Babbitt, supra*, WL 508892 at *20.) The district court disagreed, concluding that “[a]n increased risk of accident is not an impact to the physical environment.” (*Id.* at * 21.) The court explained that a “risk is, by definition, unrealized in the physical world.” (*Ibid.*) Thus, it concluded the opponents failed to show that the trail plan had any significant impact on the physical environment such that NPS was required to prepare an environment impact statement. (*Ibid.*) We are likewise persuaded that the social effects identified by CVP are not tied to physical conditions that require CEQA review.

CVP’s complaints that current users will experience less recreational enjoyment due to “groups of speeding bikers,” noise, or fear from bike accidents are similarly not concerns tied to the physical environment. Rather, they concern the subjective and psychological feelings of trail users towards other users. “CEQA does not require an analysis of subjective psychological feelings or social impacts.” (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 579 [the psychological and social impact on the community’s character due to closure of a horse boarding facility and construction of homes was not a significant environmental effect requiring a new EIR]; accord *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839 [no CEQA violation where EIR did not analyze a retail store expansion project’s likely elimination of “close and convenient shopping” because such impact was psychological and social and had no significant effect on the environment].) Similar to a project allowing off-leash dog use on a state beach in *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, the effects of which CVP complains are purely social: “While evidence in the record suggests that recreational users vigorously disagree regarding the propriety of the dogs, leashed and unleashed, at the State Beach and that the presence of dogs may decrease the enjoyment of some visitors to the state park or deter others from visiting at all, these effects are essentially social.” (*Id.* at p. 1206.) As appropriately noted by the District’s amici curiae, CEQA does not require analysis of

“the psychological or social impacts stemming solely from the prospect of sharing the trail with other users.” (Guidelines, § 15131, subd. (a).) The trial court erred in concluding otherwise.

We note that, although not required, the District did address public concerns of user displacement and potential conflict with bikes. For example, the Draft EIR includes a policy that “will permit bicycling and saddle animals on trails designated and signed for their use.” Policy 4 prohibits off-road and off-trail bicycle use. Policy 13 prohibits biking activities that exceed the established speed limit or are reckless or pose a danger to the rider or other trail users. Policy 14 mandates that mountain bikers yield to both hikers and equestrians and announce their presence by using a bell or calling out when overtaking other trail users. Policy 17 aims to prevent displacement of equestrians and pedestrians by mountain bikers and considers designating trails as single-use or priority-use for user groups historically using those trails. CVP overlooks the District’s adoption of these policies.

In sum, because the Project is consistent with the RTMP EIR and because the RTMP EIR adequately discussed the environmental impacts of the Project, the District properly proceeded under section 21166 and Guidelines section 15162.

5. The District’s Decision Not to Prepare Another EIR

Having determined that substantial evidence supports the District’s decision to proceed under CEQA’s subsequent review provisions (§ 21166; Guidelines, § 15162), “the next—and critical—step is to determine whether the agency has properly determined *how* to comply with its obligations under those provisions.” (*San Mateo Gardens, supra*,

1 Cal.5th at p. 953.)⁸ “[U]nder section 21166 we apply the deferential substantial evidence test in reviewing the determination that no further CEQA review was required.” (*T-Line Loop, supra*, 6 Cal.App.5th at p. 1251.) CVP has the burden to show a lack of substantial evidence supporting the decision not to prepare a further EIR. (*Id.* at p. 1252.)

CVP cannot meet its burden. CVP contends that, even if section 21166 applies, “the District still abused its discretion in failing to conduct further CEQA review on the substantial use change proposed by the Project.” We disagree. CVP’s insistence upon a further EIR rests again on the flawed assertion that the District was required to consider social effects of the Project in the EIR. As explained above, those social effects are not reviewable under CEQA.

Having reviewed the record, we find that substantial evidence supports the District’s finding that the Project raises no new significant impacts that would require major revisions to the RTMP EIR. The District properly relies on its 196-page Consistency Assessment, which “compare[s] environmental impacts associated with the proposed project to those identified in the 2014 RTMP EIR.” (§ 21166; Guidelines, §§ 15162, 15168, subd. (c)(2).) The Consistency Assessment analyzes whether the RTMP EIR and the Project have similar impacts and mitigating measures with respect to several environmental factors contained in the “Environmental Checklist Form” in Appendix G of the Guidelines. That checklist may be used in determining whether a project may have a significant effect on the environment and whether it is necessary to prepare a negative declaration or an EIR. (See *Oakland Heritage Alliance v. City of Oakland, supra*, 195 Cal.App.4th at p. 896 & fn. 5.) These environmental factors include

⁸ CEQA does not require any specific procedure for agencies to follow in determining whether a further EIR is required. (See *T-Line Loop, supra*, 6 Cal.App.5th at p. 1256.) The Guidelines provide that a brief explanation of the findings should be included in an addendum or elsewhere in the record. (Guidelines, § 15164, subd. (e).) “The method used to determine whether a subsequent or supplemental EIR is required is not important. . . . Any procedure showing that the agency considered the relevant issues and the basis for its decision is sufficient.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2017) Any Procedure That Results in Fact-Based Determination Is Sufficient, § 19.45.)

aesthetics, biological resources, cultural resources, mineral resources, noise, geology or soils, and recreation. (Guidelines, Appen. G.)

Specifically, the Consistency Assessment tracks the language of section 21166 and section 15162 of the Guidelines and asks the following questions within the context of each of those environmental factors: (1) “Do Proposed Changes Involve New or Substantially More Severe Significant Impacts?”; (2) “Do Any New Circumstances Involve New or Substantially More Severe Impacts?”; (3) “[Is There]Any New Information of Substantial Importance Requiring New Analysis or Verification?”; and (4) “Do Previously Adopted [RTMP EIR] Policies and BMPs [best management practices] Address/Resolve impacts?”⁹ The District summarizes its responses to these questions in a checklist, followed by paragraphs consisting of background information, relevant photographs, the Project’s relationship to the RTMP, applicable policies and best management practices, and the District’s conclusion.

For example, under “Aesthetics,” the District addressed whether the Project would (a) have a substantial adverse effect on a scenic vista; (b) substantially damage scenic resources such as trees, rocks, or historic buildings; (c) substantially degrade the existing visual character or quality of the site; or (d) create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

⁹ Section 21166 and Guidelines section 15162 provide that no subsequent EIR shall be prepared for a later project unless the agency finds that: “(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; [¶] (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or [¶] (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted” shows new significant effects either “not discussed” or “substantially more severe” than shown in the previous EIR, or that mitigation measures or alternatives are “considerably different.” (Guidelines, § 15162, subd. (a); § 21166, subd. (a)–(c).)

Under category (a) regarding scenic vistas, the District explains in the “Background” section that “scenic vista” means “an area that is designated, signed, and accessible to the public for purposes of viewing and sightseeing.” The District then describes existing resources within the Alto Bowl Preserve, including grasslands, mixed oak woodlands, and some riparian vegetation. It also attaches photographs of pertinent roads and trails in the Alto Bowl Preserve.

Under “Project Impacts,” the District states that “[d]esignating the Bob Middagh Trail for bicycle use would have no impact on the visual environment.” It dedicates nearly one full page to explaining that trail improvements, reroutes, and trail decommissioning involve small modifications to the visual environment. The District also found that tree removals would be minor, and that visual change would not be detectable. Next, under “Relationship to the RTMP,” the District cites to the RTMP where it similarly concluded that new or rerouted trail construction would present small modifications to the visual environment and would not be very visually intrusive.

Finally, under “Conclusion,” the District states that “the proposed project would have minor short-term visual impacts consistent with those anticipated under the RTMP EIR (less than significant) and therefore the proposed project would not result in new significant or substantially more severe impacts different from those evaluated in the RTMP EIR.”

The District repeats this same analysis for every environmental factor listed in Appendix G of the Guidelines. (Guidelines, Appen. G.) The District concludes that the Project would neither pose new or more significant effects nor reveal new or different mitigation measures than those identified in the RTMP EIR with respect to aesthetics; agricultural and forestry resources; air quality; biological resources; cultural resources; hydrology and air water quality; geology, soils, and seismicity; greenhouse gas emissions; hazards; land use and planning; mineral resources; noise; population and housing; recreation; public services; transportation and traffic; and utilities and service systems. The District also found the Project will not result in new significant cumulative impacts beyond those assessed in the RTMP EIR.

This record reflects an exhaustive study of all anticipated environmental impacts and mitigation measures to lessen adverse impacts. Accordingly, substantial evidence supports the District's decision not to prepare an initial study or subsequent or supplemental EIR. Indeed, the trial court appropriately recognized that the "Consistency Assessment appears to be of exceptional quality," and that "the District commendably engaged in substantial public participation helping guide its decision."

In sum, we conclude that the District properly declined to prepare an initial study or separate EIR for the Project under section 21166. Accordingly, we reverse the trial court's finding that the District violated CEQA.

B. Mandamus Petition

Separate from its CEQA challenge, CVP also sought a writ of mandate under Code of Civil Procedure section 1085. CVP argues, and the trial court agreed, that the District's failure to "score" certain project proposals violated the District's rules in the RTMP relating to evaluation of proposals. We agree and affirm this aspect of the judgment.

1. Legal Framework

In relevant part, Code of Civil Procedure section 1085, subdivision (a), permits a court to issue a writ of mandate "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . board, or person." When a court reviews an administrative decision pursuant to Code of Civil Procedure section 1085, it merely asks whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires." (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 53.) In mandamus actions, we review an agency's action de novo. (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 247.)

2. The District's Evaluation of Proposals

a. Steps 1 and 2 of the RTMP's Evaluation Process

As explained above, the District's RTMP sets forth a six-step decisionmaking process for potential road and trail projects. As pertinent here, under step 1, the District solicits project proposals and reviews them once per year. The District distinguishes between the types of road and trail projects that are eligible to compete in the evaluation process and those that are not. Projects that may compete include those that involve "reconstruction," which is defined as "[a]ctions taken to correct significant defects or to repair, replace, or restore major components of a road or trail that have been destroyed, damaged, or significantly deteriorated during the life of the facility." Examples of reconstruction include "resurfacing, replacing, or restoring the trail tread; installing new water bars and other drainage features, stabilizing a severely eroded hillside, and replacing a bridge. Reopening a trail or road that has not been maintained is also considered reconstruction." Another type of project eligible to compete is "rerouting," which means "[a]ctions taken to change the alignment of a road or trail or any portion of its length."

Under step 2, the District screens submitted proposals for consistency with the RTMP's policies.

b. The District's Scoring Results

After finalizing the RTMP EIR, the District received several proposals related to the Middagh Trail from individuals and organizations. The proposals included the Project in question here, as well as others advocating no project or no change in use on the Middagh Trail. Pursuant to step 2, the District released its scoring results, which were organized in two tables. One table included only those proposals scored by the District. The second table listed proposals "that Were Not Scoreable or Did Not Show Net Baseline Improvement." Among the unscored proposals were the "[n]o [p]roject" proposal, which advocated for no change of use on the Middagh Trail, and a proposal from the Mill Valley Homeowners' Association, which sought to update a heavily used

fire road, including widening, stabilizing, and constructing wide step switchbacks on deeply eroded trails.

Other proposals were submitted but not included in either scoring results table. These include a proposal from a Mr. and Mrs. Orth on behalf of the Meadowcrest Homeowners association, advocating (among other things) the installation of horse-friendly steps on the trails connecting Horse Hill Trail to the Middagh Trail and surfacing the Alto Bowl Fire Road and Middagh Trail with crushed granite to encourage foot traffic. Another proposal not included in the table was a proposal by Friends of Marin Open Space to reroute a short section of the Horse Hill Trail and to remediate the trail by continuing foot use only.

3. Analysis

The trial court did not err in granting the writ, as it correctly concluded that some of the unscored proposals were in fact scoreable based on the RTMP's own methodology for evaluating proposals. As an example, the trial court explained that the "Orth/Meadowcrest Homeowners' proposal" could be scored because it "advocated a physical change to the trail bed by installing crushed granite." This proposal satisfies the definition of "reconstruction" and was therefore a project eligible for scoring under the RTMP. The same is true with respect to the Mill Valley Homeowners' Association's proposal, which involved rerouting. The Friends of Marin Open Space's proposal similarly advocated rerouting and was therefore scoreable.

By failing to score certain proposals that met its criteria for competing in the evaluation process, the District failed to adhere to its own rules governing the assessment of project proposals. This amounted to an abuse of its discretion. (See, e.g., *Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 217 [employee who was denied disability benefits alleged a mandamus claim against Department of Insurance for violating mandatory duty under Insurance Code statutes to review a new group disability insurance policy form for compliance with the law prior to approving the policy for distribution in the state].) While a footnote in the District's scoring sheet states that some of the proposals were not scored because they either lacked "sufficient detail to be scored using

the criteria based tool” or “would [n]ever produce measurable changes to the evaluation criteria, regardless of the level of detail provided,” it is unclear which of the proposals the District ruled out based on these perceived deficiencies. Further, the omission of scoreable proposals from the scoring sheet, such as the above-described proposals that advocated reconstruction and rerouting, also demonstrates that the District’s evaluation of proposals was arbitrary.

We conclude the trial court correctly granted CVP’s mandamus petition.

III. DISPOSITION

We reverse the portion of the judgment finding that the District violated CEQA. We affirm the portion of the judgment granting CVP mandamus relief under Code of Civil Procedure section 1085.

BROWN, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.