

*Note: Recommendation No. 3d includes 2 new Policy documents

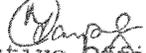
Department of Public Works

Bureau of Engineering
Report No. 1

May 14, 2021
CD Nos. All

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

MAY 14 2021
AND REFERRED TO THE CITY COUNCIL


Executive Officer
Board of Public Works

SIDEWALK REPAIR PROGRAM: RECOMMENDED BOARD ACTIONS AND RECOMMENDATIONS FOR CITY COUNCIL ACTION ON ENVIRONMENTAL IMPACT REPORT STATE CLEARINGHOUSE NO. 2017071063 AND SIDEWALK REPAIR PROGRAM PROJECT

RECOMMENDING THE BOARD OF PUBLIC WORKS (BOARD):

In accordance with the California Environmental Quality Act (CEQA) regarding the Sidewalk Repair Program Project (Project), review, consider, adopt, and forward this report and transmittals to the Los Angeles City Council (Council) with the following recommended Board actions and further recommendations for Council actions:

1. REVIEW and CONSIDER the information contained in the Project's Final Environmental Impact Report (FEIR), comprised of the Draft Environmental Impact Report (DEIR) and the text of the FEIR (Transmittal No. 1), and any other information in the record of proceedings.
2. APPROVE the Project's Tree Policy (Transmittal No. 2) and the Project's Mandatory Project Features Policy (Transmittal No. 3), with consideration of the Rule 38 Letter concerning the Project's proposed ordinance (Los Angeles Municipal Code [LAMC] 62.104.1) (Transmittal No. 4) and forward the Project's Street Tree Policy and Mandatory Project Features Policy to the Council for final consideration and approval.
3. RECOMMEND that the Council, in accordance with the CEQA regarding the Project:
 - A. REVIEW and CONSIDER the information contained in the Project's FEIR, comprised of the DEIR and the text of the FEIR (Transmittal No. 1), and any other information in the record of proceedings; and certify that the FEIR was completed in compliance with the CEQA; that potentially significant environmental effects of the Project have been disclosed and evaluated in compliance with the CEQA; and that the FEIR reflects and expresses the City of Los Angeles' (City)'s independent judgment and analysis as the CEQA Lead Agency.
 - B. ADOPT the Project's CEQA Findings, including the Statement of Overriding Considerations in Section VII of the CEQA Findings (Transmittal No. 5).
 - C. SPECIFY that the documents constituting the record of proceedings in this matter are located at the Office of the City Clerk, 200 North Spring Street, 3rd Floor, Los Angeles, CA 90012; the Board's Commission, 200 North Spring Street, 3rd Floor, Los Angeles, CA 90012; the Department of Public Works, Bureau of Engineering

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(BOE), Environmental Management Group, 1149 South Broadway, Suite 600, Los Angeles, CA 90015; and any other relevant City department.

D. APPROVE the Project's Street Tree Policy (Transmittal No. 2) and the Project's Mandatory Project Features Policy (Transmittal No. 3).

E. PRESENT and ADOPT the accompanying ordinance to add Section 62.104.1 to the LAMC to establish and codify the new Sidewalk Repair Program, a City program adopted for purposes of streamlining the approval of projects eligible for credit under the settlement agreement in the matter of *Mark Willits, et al. v. City of Los Angeles* (United States District Court Case No. CV10-05782).

TRANSMITTALS

1. Project FEIR, (State Clearinghouse No. 2017071063), including the DEIR, dated December 2019, and the text of the FEIR, dated April 2021.
<https://sidewalks.lacity.org/environmental-impact-report>.
2. Project Street Tree Policy.
3. Project Mandatory Project Features Policy.
4. Rule 38 Letter, ordinance to add LAMC 62.104.1 regarding the Project's proposed ordinance.
5. Project CEQA Findings, including Statement of Overriding Considerations, dated April 2021.

DISCUSSION

Background

Between December 2006 and March 2011, three separate lawsuits against the City were filed in which the plaintiffs alleged various claims arising under state and federal accessibility laws and involving the alleged conditions of existing City sidewalks. While the City did not admit any wrongdoing and affirmatively denied all of the allegations made by the plaintiff groups, during the pendency of the three lawsuits, the parties entered into the *Willits* Settlement Agreement (*Willits* Settlement).

The Council approved the terms of the *Willits* Settlement in April 2015, and Judge Consuelo Marshall of the Federal District Court approved the settlement in August 2016. The *Willits* Settlement provides that the City will expend approximately \$1.3 billion on sidewalk repairs during the agreement's 30-year compliance period. The total amount of funding is broken down into annual commitments specified in 5-year increments. For example, the City shall expend \$31,000,000 per year for the first five years of the

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compliance period, increasing to \$63,000,000 per year in the final five years of the compliance period.

Following the district court's final approval of the *Willits* Settlement, the City Administrative Officer released a report that recommended consideration of new sidewalk repair policies for a City program that: (1) is permanent and ongoing, (2) is consistent with the *Willits* Settlement, (3) shares responsibility for maintenance and repair with adjacent property owners, and (4) ensures accessibility in areas with the most significant safety hazards. The *Willits* Settlement defines pedestrian facilities as "any sidewalk, intersection, crosswalk, street, curb, curb ramp, walkway, pedestrian right-of-way, pedestrian undercrossing, pedestrian overcrossing, or other pedestrian pathway or walkway of any kind that is, in whole or in part, owned, controlled, or maintained by or otherwise within the responsibility of the City of Los Angeles."

Currently, individual sidewalk projects under the *Willits* Settlement are reviewed on a case-by-case basis under the CEQA. The CEQA Guidelines, Sections 15300 to 15333, identify classes of projects that are categorically exempt from provisions of the CEQA because they do not ordinarily result in a significant effect on the environment. Individual sidewalk repairs typically fit the definition of a Class 1 existing facility repair and maintenance, as identified under the CEQA Guidelines, Section 15301(c). However, the DEIR was prepared because the Project consists of a new proposed ordinance that revises the manner in which implementation of sidewalk repairs under the *Willits* Settlement will be implemented.

The Environmental Impact Report (EIR) process, as defined by the CEQA, requires preparation of an objective, full-disclosure document to: (a) inform agency decision makers and the general public of the direct and indirect environmental effects of a proposed project, (b) identify, where feasible, mitigation measures to reduce or eliminate any identified significant adverse impacts, and (c) identify and evaluate alternatives to the proposed project that might lessen or avoid some or all of the identified significant impacts of the project.

Project Objectives

- The fundamental Project objective is to ensure the continued and efficient compliance with the requirements of the *Willits* Settlement, while amending the existing program for sidewalk and curb ramp improvements within the City, in accordance with the applicable accessibility requirements, including those required by the Americans with Disabilities Act.

The following additional Project objectives have also been identified:

- Retain existing street trees that are the cause of sidewalk barriers to the extent feasible, provided the sidewalk improvements would not result in street tree mortality or compromise public safety.
- If the removal of one or more street trees is required, ensure compliance with the City's replacement requirements adopted to ensure no net street tree canopy loss at the end of the Project implementation period.
- Identify the criteria and process for ministerial approval of future sidewalk improvements and street tree removals and replacements, with the goal of avoiding the need to undertake individualized environmental review of every repair of every City sidewalk or of every street tree removal and replacement, and the potential legal challenge to each such approval; thereby streamlining the *Willits* Settlement implementation and providing certainty to the City and its disability community.

Project Description

The Project would be implemented citywide, over an area that covers approximately 467 square miles. The Project is a citywide program intended to modify the manner in which sidewalk repair projects are undertaken pursuant to the City's obligations under the *Willits* Settlement, which includes various City actions that will provide improved access to persons with mobility disabilities in accordance with local, state, and federal accessibility requirements. The Project includes a proposed ordinance that will guide the construction of future sidewalk repairs; curb ramp repairs; crosswalk paving; street tree retention, removal and replacement; canopy pruning; root pruning; and applicable utility work for 30 years within the City. The proposed new ordinance (LAMC 62.104.1) (Transmittal No. 4) revises the way sidewalk repairs pursuant to the *Willits* Settlement, are reviewed and approved, and is intended generally to improve and streamline the implementation process. The primary components of the ordinance include:

- Specific parameters to enable most sidewalk repairs to proceed as ministerial approvals, not subject to further environmental review applicable to discretionary actions.
- A streamlined discretionary approval process for sidewalk repair projects falling outside the specific parameters allowed for a ministerial sidewalk repair approval.
- A streamlined discretionary approval process for sidewalk repair projects involving the proposed removal of three or more street trees.
- A revised Street Tree Retention, Removal and Replacement Policy establishing a 2:1 street tree replacement to removal ratio requirement for the first 10 years (starting from July 2017), a 3:1 ratio for years 11 to 21, and a 2:1 ratio for the last

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nine years of the 30-year program (The Sidewalk Repair Program Street Tree Policy, which will be adopted with the ordinance) (Transmittal No. 2); and

- Mandatory Project Design Features (PDFs) generally consisting of regulatory compliance measures and standard construction conditions and procedures (The Sidewalk Repair Program Mandatory Project Features Policy, which will be adopted with the ordinance) (Transmittal No. 3).

The new ordinance would enable, notwithstanding anything in the City code to the contrary (except for the City's Cultural Heritage Ordinance, City Administrative Code [LAAC] Section 22.171), all sidewalk repair projects under the *Willits* Settlement to be subject to ministerial approval by the City Engineer or designee, so long as the individual project meets the following specified parameters:

- (1) The sidewalk repair lasts no more than 30 non-consecutive construction days in duration and requiring an excavation depth of no greater than 30 feet;
- (2) It would not cause a substantial adverse change to the significance of a known historic, tribal cultural, unique archaeological, or unique paleontological resource, as those terms are defined by the CEQA; and
- (3) It involves the removal of two or fewer street trees.

If the individual project does not meet all the specific parameters listed above, it would be subject to (notwithstanding anything in the City code to the contrary, except for the Cultural Heritage Ordinance, LAAC Section 22.171), discretionary approval by the City Engineer or designee, unless it involves the removal of three or more trees in which case the discretionary approval would be made by the Board (note: the Board's approval process was added to the Project after the DEIR in response to comments).

For these discretionary approvals, the FEIR would serve as programmatic analysis of the impacts, and further project-level environmental review would be performed as necessary, depending on whether the project is within the scope of the EIR pursuant to the CEQA Guidelines, Section 15168, or if any applicable exemptions are appropriate.

Environmental Review

Scoping

A Notice of Preparation (NOP) and Initial Study were circulated from July 27, 2017 to September 15, 2017. During this extended 45-day review period, the lead agency requested comments on the scope and content of the environmental information to be included in the DEIR. Copies of the NOP and Initial Study were made available for review

at 35 library locations and mailed to more than 500 governmental and agency stakeholders. Six digital announcements to approximately 567 email addresses comprised of community residents, stakeholders, and interested constituents from the NOP and Initial Study process, public agencies, non-profit groups, etc., were sent during the public review period. Electronic advertisements on the public meetings and the Project were placed in Facebook, EmpowerLA, the Los Angeles Sentinel, the La Opinion (digital), and the Los Angeles Times (digital). Public notices were printed in the Los Angeles Times, the Daily Breeze, and the La Opinion newspapers. Sidewalk Division staff attended 11 neighborhood council meetings, prior to the end of the scoping period, to invite stakeholders to comment on the NOP and attend the scoping meetings. All 15 Council District Offices were contacted to post announcements about the environmental review process via their communications channels, and nine Council District Offices posted announcements. Three public scoping meetings were held to obtain input on the NOP and Initial Study, and the scope and contents of the EIR.

DEIR

The DEIR (included in Transmittal No. 1) was released on December 26, 2019 and was circulated for 157 days for public and agency review and comment. A Notice of Availability and Notice of Completion for the DEIR was mailed to interested parties and posted with the County of Los Angeles Clerk's Office and the Governor's Office of Planning and Research, State Clearinghouse on December 26, 2019. A notice regarding the public review period and time and location for seven public meetings on the DEIR was published in the Los Angeles Times and the La Opinion. The DEIR was made available at 15 Council District Offices, 30 Branch Libraries, BOE offices and was also available at BOE's sidewalk repair website, at <https://sidewalks.lacity.org/>.

Seven public meetings were held during the period between January 29, 2020 and February 15, 2020, to solicit comments on the DEIR. In addition to the comments received at the public meetings, approximately 300 comment letters or emails on the DEIR were received from agencies and individuals. Copies of comments received and responses from the City are included in the FEIR.

FEIR Response to Comments

The most prevalent topics and issues from the comment letters, and the FEIR's responses, are summarized below:

- Changes in the street tree canopy from the removal of trees under the Project. The DEIR's conservatively-projected removal of 12,860 street trees over 30 years is approximately 1.8% of the City's 711,248 overall street tree count. The Project's Street Tree Policy, including an increase in replacement ratio from 2:1 to 3:1 for years 11 to 21, would reestablish the canopy through the planting of 30,404 street trees by the end of the Project, including a net gain of approximately 17,544 street trees from the baseline. The replacement street tree canopy is also expected to

continue to increase further for an additional 15 years after the last replacement street trees are planted, such that the Project would result in an overall gain in total street tree canopy covers (0.72%) above the baseline, by year 45.

- Street tree canopy modeling comments. The DEIR's expert technical modeling of tree canopy-related impacts was prepared by biological technical experts and reviewed by other technical experts and City staff experts. The model was well supported by substantial evidence, including the use of average street tree canopy size based on actual City project data and well-established databases, a 15-year maturation rate of replacement trees, an 8 percent static mortality rate based on direct experience and confirmed by actual data, and tree removal and canopy calculations confirmed by actual data.
- Other environmental impacts including shading, greenhouse gases (GHG), and sustainability. These impacts were thoroughly analyzed in the DEIR, including the use of a project-specific threshold on shading that the Project did not exceed above what is required under state law and City guidelines; expert GHG analysis using the U.S. Forest Service calculator that showed the carbon sequestration of the replacement trees would result in less than significant GHG, energy, and heat island impacts and a net benefit beyond 30 years; and a comprehensive sustainability consistency analysis, including consistency with the Los Angeles Green New Deal (which was released after the Project's NOP).
- Project's streamlined the CEQA and approval process. The Project's approach of combining project-level and programmatic analysis in the EIR for the Project is consistent with the CEQA statute and guidelines. Comments raising due process are legal issues and/or conclusions that do not pertain to the adequacy of the CEQA analysis. In any event, due process is generally not implicated in sidewalk repair reviews and approvals because they are not adjudicatory in nature and there is no individual property interest in sidewalks.
- Public notification procedures, particularly with tree removals. Public notification and due process are not CEQA issues, and due process is generally not implicated in sidewalk repairs. However, in response to the comments, the Project's notification procedures were modified such that the existing tree removal notification requirements were retained, including notice to the affected Council District Office, the Department of Neighborhood Empowerment, and the Community Forest Advisory Committee, as well as a 30-day posting notice and the entry of the project on the Bureau of Street Services Street Tree Removal

Notification System for the proposed removal of three or more trees. In addition, the Project already included an existing enhancement to current notification procedures with a seven day posting notice for the removal of two or fewer street trees.

- Alternatives analysis under the CEQA. The DEIR thoroughly analyzed a number of alternatives, including four in detail. The alternatives analysis is further addressed below.

FEIR and CEQA Findings

As set forth in detail in the FEIR, including Chapter 3 of the DEIR, and as summarized in the Executive Summary of the DEIR and in the CEQA Findings (Transmittal No. 5), the FEIR found that for most individual sidewalk repairs under the Project, and for the Project cumulatively, the environmental impacts of the Project would be less than significant. In very rare circumstances where the significance of a cultural or tribal cultural resource cannot be maintained, and in certain instances near sensitive noise receptors that is inherent in this type of construction on pedestrian facilities, the impacts would be significant and unavoidable despite imposition of the Project's PDFs. The impacts are summarized below:

Less than significant impacts, without any required mitigation, for the following resource areas:

- Aesthetics (except rare projects that would impact known cultural and tribal cultural resources, including cumulative impacts)
- Air Quality
- Biological Resources
- Cultural Resources (except rare projects that would impact known cultural resources, including cumulative impacts)
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Public Services
- Recreation
- Transportation/Traffic
- Tribal Cultural Resources (except rare projects that would impact known tribal cultural resources, including cumulative impacts)
- Utilities and Service Systems
- Wildfire Hazards

Significant and Unavoidable Adverse Impacts, with no feasible mitigation, for the following resource areas:

- Aesthetics (rare projects only) - Significant and unavoidable adverse impacts to aesthetics, including cumulative impacts, would occur where the Secretary of the Interior's (SOI's) Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (SOI's Standards) cannot be fully implemented and a historic resource is demolished, destroyed, or damaged in such a way that its integrity and importance is impacted.
- Cultural Resources (rare projects only) - Significant and unavoidable adverse impacts to historical, archeological, and paleontological resources, including cumulative impacts, would occur in Scenario 3 construction projects where despite the implementation of the SOI's Standards, archaeological treatment plans (ATPs), and paleontological management treatment plans, the significance of the historical, archaeological, and/or paleontological resource cannot be maintained.
- Noise - Significant and unavoidable adverse impacts related to construction noise and construction vibration, including cumulative impacts, would occur in instances where: a 10-foot distance for commercial sensitive receptors and a 20-foot distance for residential sensitive uses cannot be maintained from the construction noise source; an 8-foot distance cannot be maintained from the closest occupied space façade of the closest sensitive receptor; and/or a 23-foot distance cannot be maintained from the vibratory equipment to the nearest occupied space of a sensitive receptor.
- Tribal Cultural Resources (rare projects only) - Significant and unavoidable adverse impacts to tribal cultural resources, including cumulative impacts, would occur in construction projects where despite the implementation of the SOI's Standards and ATPs, the significance of the tribal cultural resource cannot be maintained.

CEQA Findings: No feasible mitigation is available to render the significant and unavoidable effects less than significant, despite the imposition of the Revised Street Tree Policy and Mandatory Project Features Policy. The effects therefore, remain significant and unavoidable. The City concludes, however, that the Project's benefits outweigh its significant and unavoidable impacts, as set forth in the Statement of Overriding Considerations below.

Project Alternatives

In accordance with the CEQA Guidelines, alternatives to the proposed Project were considered in the DEIR to foster informed decision-making and public participation. According to the CEQA Guidelines, Section 15126.6(a), an EIR “shall describe a range of reasonable alternatives to the proposed project, or to the location of the proposed project, which would feasibly attain most of the basic objectives of the proposed project, but would avoid or substantially lessen any of the significant effects of the proposed project, and evaluate the comparative merits of the alternatives.” The CEQA Guidelines state that an EIR need not consider every conceivable alternative or consider the alternatives that are infeasible. As set forth in detail in the FEIR, including Chapter 5 of the DEIR and as summarized in the Executive Summary of the DEIR, and in the CEQA Findings (Transmittal No. 5), a total of nine project alternatives were identified during the EIR process. Of these nine alternatives, four alternatives to the Project, including the required No Project Alternative, were considered and further analyzed by the City. The other alternatives were eliminated from further consideration and were not subject to detailed analysis in the EIR because they failed to meet most of the Project objectives, are infeasible, and/or do not avoid any significant environmental effects of the Project.

The alternatives that were considered with further analysis were the following:

- No Project Alternative: Sidewalk repairs throughout the City would continue to be undertaken pursuant to the City’s obligations under the *Willits* Settlement using existing ordinances and policies. Under the No Project Alternative, impacts to aesthetics, biological resources, energy, and greenhouse gas emissions were analyzed to be greater than the Project, without the benefit of the increased street tree replacement ratio.

Finding: Sidewalk repairs and street tree removals would still occur; however, the projects would be approved and implemented at a slower rate compared to the Project due to the need for case-by-case approval under existing policies. As a result of the continuation of the existing 2:1 replacement ratio, the street tree canopy would not reach net canopy at the end of the project implementation period.

Therefore, the No Project Alternative is undesirable, infeasible, and should be rejected because it fails to meet the fundamental Project objective of ensuring the continued and efficient compliance with the requirements of the *Willits* Settlement, and fails to meet the Project objectives of ensuring no net street tree canopy loss at the end of the project implementation period and avoiding the need to undertake individualized environmental review of every repair to provide certainty to the City and the disabled community in *Willits* Settlement implementation.

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- Alternative 1: Ordinance to repair sidewalks and avoid removal of any street trees. This alternative would involve an alternative ordinance to implement repair of sidewalks and avoid removal of any street trees. Under Alternative 1, while the nature of sidewalk repair construction activities would generally be similar to that of the Project, there would be less construction activities, no street tree replacements, and no operational impacts. Under Alternative 1, impacts to aesthetics, air quality, biological resources, energy, greenhouse gas emissions, noise, public services, transportation, and utilities were analyzed to be comparatively less than the Project, but not to the extent that any of significance determinations would change. Impacts to land use were analyzed to be greater than the Project, as net street tree canopy at the end of the project implementation period would not be reached.

Finding: Less sidewalk repairs are likely to be completed on an annual basis during the 30-year project term without the streamlined process of the Project. The slower progress of sidewalk repairs would impede the important social factors associated with efficiently and continually repairing sidewalks for safe use by persons with mobility challenges and providing these citizens with certainty. Further, as a result of the continuation of the existing 2:1 replacement ratio, street tree canopy would not reach net canopy at the end of the project implementation period. Therefore, Alternative 1 is undesirable, infeasible, and should be rejected because it fails to meet the fundamental Project objective of ensuring the continued and efficient compliance with the requirements of the *Willits* Settlement, and fails to meet the Project objectives of ensuring no net street tree canopy loss at the end of the project implementation period and avoiding the need to undertake individualized environmental review of every repair to provide certainty to the City and the disabled community in *Willits* Settlement implementation.

- Alternative 2: Ordinance to exclude sidewalk repairs and street tree removals within 23 feet of the nearest occupied space façade of a sensitive use (residential or commercial). Under this alternative, sidewalk repair projects that are within 23 feet of the nearest occupied façade of the closest sensitive receptor (commercial or residential) would continue to be evaluated on a case-by-case basis, as under existing conditions. It is anticipated that even with the occasional exclusion of specific sidewalk repair sites under Alternative 2, a comparable amount of sidewalk repairs would ultimately occur under this alternative each year, and cumulatively, because funds would be re-directed to those remaining sidewalk repair segments located at least 23 feet from the nearest occupied space façade of a sensitive use.

Under Alternative 2, impacts to noise were analyzed to be less than significant and less than the Project.

Finding: Given the large geographic scope of the project area (the entire City), the large number of repair projects to be undertaken, the proximity of sidewalks to adjacent structures, and the number of sensitive receptors in the project area, Alternative 2 would result in a large number of repair projects requiring individualized CEQA review. Further, the slower progress of sidewalk repairs would impede the important social factors associated with efficiently and continually repairing sidewalks for safe use by persons with mobility challenges and providing these citizens with certainty. Therefore, Alternative 2 is undesirable, infeasible, and should be rejected because it fails to meet the fundamental Project objective of ensuring the continued and efficient compliance with the requirements of the *Willits* Settlement; would partially fail to meet the Project objective of avoiding the need to undertake individualized environmental review of every repair to provide certainty to the City and the disabled community in *Willits* Settlement implementation; and would result in only slightly fewer impacts on the environment with regard to noise.

- Alternative 3: Ordinance will exclude sidewalk repair projects that have the potential to affect known historic, tribal cultural, unique archaeological, or unique paleontological resources; such projects would proceed as discretionary projects under existing codes and policies. It is anticipated that even with the occasional exclusion of specific sidewalk repair sites under this alternative, a comparable amount of sidewalk repairs would ultimately occur under Alternative 3 each year, and cumulatively, because funds would be re-directed to those remaining sidewalk repair segments that lack potential to substantially and adversely affect known historic, tribal cultural, unique archaeological, or unique paleontological resources. Under Alternative 3, impacts to cultural resources and tribal cultural resources were analyzed to be less than significant and less than the Project.

Finding: Although it cannot be said with certainty the exact number of individual sidewalk repair projects that would be excluded from the ordinance under Alternative 3, given the large geographic scope of the project area (the entire City), as well as the known presence of historic, tribal cultural, unique archaeological, or unique paleontological resources in the project area, it can be assumed that such circumstances would be encountered at some point during the project term. Further, the slower progress of sidewalk repairs would impede the important social factors associated with efficiently and continually repairing sidewalks for safe use by persons with mobility challenges and providing these citizens with certainty. Therefore, Alternative 3 is undesirable, infeasible, and should be rejected because it fails to meet the fundamental Project objective of ensuring the continued and efficient compliance with the requirements of the *Willits* Settlement; would partially

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fail to meet the Project objective of avoiding the need to undertake individualized environmental review of every repair to provide certainty to the City and the disabled community in *Willits* Settlement implementation; and would result in only slightly fewer impacts on the environment with regard to cultural resources and tribal cultural resources.

Of the alternatives considered, Alternative 1 is the environmentally superior alternative due to the implementation of an ordinance that would streamline sidewalk repairs and avoid all street tree removals. However, as set forth above, Alternative 1 is undesirable, infeasible, and should be rejected because it fails to meet the fundamental Project objective of ensuring the continued and efficient compliance with the requirements of the *Willits* Settlement, and fails to meet the Project objectives of ensuring no net street tree canopy loss at the end of the project implementation period and avoiding the need to undertake individualized environmental review of every repair to provide certainty to the City and the disabled community in *Willits* Settlement implementation.

Statement of Overriding Considerations

As set forth in the preceding sections, the City's approval of the Project will result in significant unavoidable effects relating to aesthetics, cultural resources, noise, and tribal cultural resources, including cumulative impacts, in certain limited instances. Despite the occurrence of these significant effects, however, the City, in accordance with the CEQA Guidelines, Section 15093, chooses to approve the Project because, in the City's view, the economic, social, and other benefits that the project will produce will render the significant effects acceptable. The following statement identifies the specific reasons why, in the City's judgment, the benefits of the Project as approved, outweigh its unavoidable significant effects. Any one of these reasons is sufficient to justify approval of the Project.

1. The Project is consistent with the City's goal to ensure the continued compliance with the terms of the *Willits* Settlement, while amending the existing program for sidewalk and curb ramp improvements within the City, in accordance with the applicable accessibility requirements.

As discussed in Section 2.3 of the DEIR, the fundamental objective of the Project is to "ensure the continued and efficient compliance with the requirements of the *Willits* Settlement while amending the existing program for sidewalk and curb ramp improvements within the City, in accordance with the applicable accessibility requirements, including those required by the Americans with Disabilities Act." The *Willits* Settlement obligates the City to expend \$31,000,000 per year (increasing after year five to maintain present value) on sidewalk repairs to ensure compliance with

accessibility laws. As discussed in the DEIR, including in Sections 2.2.2.3 and 2.4.3.2, the City currently reviews sidewalk repairs on a case-by-case basis under various ordinances and codes, including access requests, the rebate program, and approvals for removal of street trees. This process can be slow, tedious, and subject the City to lawsuits, as a result of the individual environmental review. Accordingly, due to the substantial number of repairs to be made, the potential number of approval processes, and the obligation under the *Willits* Settlement to perform a minimum number of repairs per year, the City seeks a more efficient process to ensure timely compliance with all its obligations.

2. The Project will enable efficient and high-quality repairs of City sidewalks and help ensure sidewalks remain in compliance with Federal and State accessibility laws in order to provide access to important public facilities for persons with disabilities.

For the reasons as set forth in the Statement of Overriding Considerations No. 1 above, the Project's streamlined process will enable more efficient implementation of sidewalk repairs, which would help ensure access to important pedestrian facilities for persons with disabilities and the general public. In addition, as discussed in Section 2.3 of the DEIR, one of the Project objectives is to identify criteria that would provide certainty to the City and the disabled community in *Willits* Settlement implementation of sidewalk repairs. The express incorporation of applicable PDFs, as described in Chapter 3 of the DEIR and summarized in Section ES.3 of the DEIR, which generally consists of regulatory compliance measures and standard construction conditions, procedures, and best practices, would help ensure high-quality sidewalk repairs in the most efficient manner.

3. The Project will establish a new, more efficient ministerial approval process for certain individual sidewalk repair projects and associated street tree removals, thereby enabling the City to undertake more sidewalk repairs and fulfill its obligations under the *Willits* Settlement more efficiently.

For the reasons set forth in the Statement of Overriding Considerations Nos. 1 and 2 above, the Project's more efficient, streamlined process would enable the City to undertake more high-quality sidewalk repairs and fulfill its obligations under the *Willits* Settlement more efficiently. In addition, as discussed in Section 2.3 of the DEIR, one of the Project objectives is to "identify the criteria and process for ministerial approval of future sidewalk improvements and street tree removals and replacements, with the goal of avoiding the need to undertake individualized environmental review of every repair of every City sidewalk or of every street tree removal and replacement and the potential legal challenge to each such approval; thereby streamlining the *Willits* Settlement implementation and providing certainty to the City and its disability

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community.” As discussed in Section 2.5.2 of the DEIR (as modified by the FEIR), the Project would include an ordinance that would set up a ministerial approval process by the City Engineer or designee for routine sidewalk repairs that were analyzed not to result in any unacceptable impacts.

4. The Project will ensure no net loss of the City’s existing street tree canopy.

As set forth in Section 2.3 of the DEIR, one of the Project objectives is to “ensure compliance with the City’s replacement requirements adopted to ensure no net street tree canopy loss at the end of the Project implementation period.” As discussed in Section 2.5.2 and 2.5.4 of the DEIR, the Project would include the adoption of a Revised Street Tree Retention, Removal and Replacement Policy. The Policy would establish a 2:1 street tree replacement to removal ratio requirement for the first 10 years (starting from July 2017), a 3:1 ratio for years 11 to 21, and a 2:1 ratio for the last nine years of the 30-year program. With implementation of this policy in the Project, along with the benefits from the Project of a more efficient, streamlined process including certain ministerial approvals, as set forth in the Statement of Overriding Considerations Nos. 1-3 above, the increased replacement ratios in the policy would result in no net street tree canopy loss at the end of the Project implementation period.

5. The Project will ensure efficient repair of sidewalks which play an integral role in providing access to transit, economic districts, residential housing and other activities in the City.

For the reasons set forth in the Statement of Overriding Considerations Nos. 1 and 3 above, the Project’s more efficient, streamlined process including certain ministerial approvals would enable the City to undertake more high-quality sidewalk repairs and fulfill its obligations under the *Willits* Settlement more efficiently. In addition, the Project’s intent to undertake more efficient sidewalk repairs would further the City’s long-term sustainability goals, including repairing sidewalks that play an important role in providing access to activities such as transit, economic districts, and residential housing; and furthering multi-modal facilities, high quality pedestrian access for a safe and comfortable walking environment, and improve the built environment for all modes of travel, including pedestrian, for all users including people with disabilities.

Project Schedule

Implementation of the Project would be over a 30-year period. Individual sidewalk projects in compliance with the *Willits* Settlement commenced on July 1, 2017. The 30-year compliance period will continue to June 30, 2047. The above recommended actions are

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necessary steps in revising the way these sidewalk repairs are reviewed and approved. Implementation of the Project anticipates approval of sidewalk repair projects under the revised streamlined process as early as July of 2021. Therefore, Council action is desired by June 30, 2021.

FISCAL IMPACT STATEMENT

Funding for this Project is expected to be similar to the ongoing individual sidewalk repair projects, which is currently provided by the Sidewalk Repair Fund, Measure R Traffic Relief and Rail Expansion Fund, Road Maintenance and Rehabilitation Program Special Fund, and the City's proprietary departments.

Expenditures associated with the implementation of this Project will continue to be identified as additional funding is allocated in future year budgets.

(MEM AV RMK JKS JF)

Report reviewed by:

Respectfully submitted,

BOE (ADM and SWD)

 Electronically Signed by Deborah Weintraub
on 05/05/2021 10:53:23 AM

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