MEMORANDUM

SHASTA COUNTY DEPARTMENT OF RESOURCE MANAGEMENT
1855 Placer Street, Redding, CA 96001

Environmental Health
Suite 201
225-5787

Air Quality Management
Suite 101
225-5674

Planning Division
Suite 103
225-5532

Administration & Community Education Section
Suite 200
225-5789

Building Division
Suite 102
225-5761

TO: Vice-Chair Jim Chapin and Shasta County Planning Commissioners

FROM: Paul A. Hellman, Director of Resource Management PH

DATE: March 30, 2022

SUBJECT: Comment Letter from Remy Moose Manley, LLP, Regarding the Final Environmental Impact Report for the Tierra Robles Planned Development Project

---

This memorandum addresses the attached comment letter from Remy Moose Manley, LLP, on behalf of Protect Against Tierra Robles Overdeveloped Lands (PATROL), dated January 13, 2022, regarding the Final Environmental Impact Report (EIR) for the Tierra Robles Planned Development Project.

Steve Nelson of $S_2 \sim J_2$ Engineering, Inc., Project Manager/Engineer for the Tierra Robles Planned Development Project, submitted the attached letter dated March 16, 2022, which addresses the PATROL comment letter.

The County's EIR consultant and outside legal counsel have independently reviewed and advised staff concerning the Nelson letter. Based upon staff's review of the letter and its consideration of the review by its advisors, staff concurs with Nelson's responses to the PATROL comment letter. Based upon the responses contained in the Nelson letter and the supplemental responses below, staff does not agree with the conclusion of the PATROL letter that the County must revise the analysis in the EIR in order to provide the public with an opportunity to comment on a complete, accurate, and legally compliant environmental analysis of the project and its impacts.

Enhanced Wildfire Prevention and Protection Mitigation Measures

The County has reviewed and considered the proposed enhanced mitigation measures to address wildfire ignition and community evacuation impacts on pages 6 through 8 of the PATROL letter. As noted on page 5.16-34 of the Partial Recirculated Draft EIR (RDEIR), the Project is not required to adopt every mitigation measure that is proposed or suggested. As outlined in recent CEQA case law, *Covington v. Great Basin Unified Air Pollution Control District*, An EIR "must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. (San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 596, 122 Cal. Rptr. 100) While the response need not be exhaustive, it should evince good faith and a reasoned analysis." (Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1029 [68 Cal. Rptr. 2d 367].) Finally, an agency need not "adopt every nickel and

dime mitigation scheme brought to its attention or proposed in the project EIR," but it must incorporate "feasible mitigation measures" "when such measures would 'substantially lessen' a significant environmental effect." (San Franciscans for Reasonable Growth v. City and County of San Francisco (1989) 209 Cal.App.3d 1502, 1519 [258 Cal. Rptr. 267].

Additional mitigation measures suggested in the comment letter are evaluated below:

1. **Concept:** In compliance with Shasta County Fire regulations the Developer and Tierra Robles Community Services District (TRCSD) or Tierra Robles Homeowners Association (TRHOA) will ensure that all building envelopes will be adjusted to guarantee a minimum of 100 feet of defensible space on all sides of every building within the Project.

   Analysis: California Public Resources Code (PRC) Section 4291 requires 100 feet of defensible space, which the Shasta County Fire Department (SCFD) requires as well and is codified in Section 16.10.290 of the Shasta County Municipal Code. The Tierra Robles Wildland Fuel/Vegetation Management Plan indicates that the Project will be in compliance with PRC Section 4291 and outlines which fuels will be treated and maintained. The SCFD reviewed the Tierra Robles Wildland Fuel/Vegetation Management Plan and found it to be consistent with SCFD regulations. Additionally, SCFD requires that building envelopes shall not be located in or directly above natural chimneys, narrow canyons, or mountain saddles.

   Conclusion: Since this mitigation is incorporated into the project design, is required by code, and would not further reduce the Project's wildfire risk, this additional mitigation measure is unnecessary.

2. **Concept:** The Developer will provide perimeter roadways around the subdivision to provide access to Fire personnel and equipment, as well as ensure fire breaks and defensible space between all building structures and adjacent wildlands.

   Analysis: Neither the Shasta County Fire Safety Standards nor the State development standards require a perimeter access road for fire personnel. The proposed Project would facilitate the design and development of a 166-unit residential subdivision including a road system, onsite wastewater treatment system, designated open space, and resource management areas (RMAs). CAL FIRE/SCFD has recommended appropriate requirements and conditions of approval, including compliance with the proposed Wildland Fuel/Vegetation Management Plan, Oak Management Plan, and Design Guidelines which will be implemented and enforced through the proposed Planned Development zone district and Vesting Tentative Tract Map 1996. An Emergency Fire Escape Road (EFER) connecting the Tierra Robles Lane and Chatham Ranch Lane cul-de-sacs will be constructed in accordance with Section 6.11 of the Shasta County Fire Safety Standards. Additionally, the construction of a fire perimeter road would increase permanent impacts on biological resources by removing additional trees and native vegetation, increase the potential for disturbing cultural resources, increase impacts from surface water runoff and erosion, add increased construction emissions, and reduce the amount of proposed open space.

   Conclusion: Fire buffers and vegetation management are already included in the project design and the Tierra Robles Wildland Fuel/Vegetation Management Plan. CAL FIRE/SCFD has reviewed the project design and Wildland Fuel/Vegetation Management Plan and is satisfied with the proposed access roads, emergency access and fire clearing requirements around the access points. Therefore, this additional mitigation measure is unnecessary.

3. **Concept:** The Developer will provide at least five easements to interconnect with adjacent future development to ensure additional access for wildfire evacuation to Project residents and surrounding residents.

   Analysis: The Shasta County Fire Safety Standards do not address the need for multiple ingress/egress roads based on density or future development. The Project proposes a through road system which meets the County's requirements. The County cannot require the developer to acquire easements from private property owners that are not required by existing County regulations. The owners of offsite properties may negotiate easements to interconnect with the project site for evacuation purposes separate from the County's entitlement process for the proposed Project if they choose to do so.

   Conclusion: Because the proposed Project complies with the ingress/egress requirements of the Shasta County Fire Safety Standards, this additional mitigation measure is unnecessary.

4. **Concept:** The TRCSD or TRHOA will develop a Fire Protection Plan (FPP) for reducing fire risk on and around the Project Site. The FPP will become a required element of the TRCSD or TRHOA by laws, operating procedures and CC&Rs for all potential buyers and residents. The FPP will be in addition to the Tierra Robles Wildland Fuel/Vegetation Management Plan.

   Analysis: The requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1, as specified in the following excerpt from this measure:

   > The TRCSD or TRHOA shall provide annual fire fuel monitoring and compliance reports to the Shasta County Fire Department documenting conformity with fire fuel prescription activities and methods, including reporting of any enforcement actions taken to fulfill the requirements of the above referenced guidelines and standards. The specific reporting methods to be used to ensure compliance shall be determined by the TRCSD and approved by the Shasta County Fire Department prior to issuance of a building permit that would allow construction of the first onsite residence.

   Conclusion: Because the requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1, this additional mitigation measure is unnecessary.

5. **Concept:** The TRCSD or TRHOA will be required to enforce the FPP with all buyers and residents. The TRCSD or TRHOA Board will conduct a yearly review of the FPP and will make revisions as necessary to ensure continuing enhanced wildfire mitigation and enforcement. The TRCSD or TRHOA has the responsibility to enforce the FPP with all buyers and residents.

   Analysis: The requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1. Please see item 4 above.

   Conclusion: Because the requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1, this additional mitigation measure is unnecessary.

6. **Concept:** TRCSD or TRHOA shall ensure, pursuant to the FPP, that it will hire a qualified third-party compliance inspector approved by the Shasta County Fire Department to conduct a fuel management zone inspection and submit a Fuel Management Report to the TRCSD or TRHOA and Shasta County Fire Department before June 1 of each year certifying that vegetation management activities throughout the

project site have been timely and properly performed. The TRCSD or TRHOA Board will review the Fuel Management Report and will vote whether to verify ongoing compliance of the defensible space, vegetation management, and fuel modification requirements and with any other continuing obligations imposed under the FPP.

Analysis: The requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1, which requires that the TRCSD or TRHOA must provide annual reports to the Shasta County Fire Department. Additionally, the specific reporting methods to be used to ensure compliance shall be determined by the TRCSD or TRHOA and approved by the Shasta County Fire Department prior to issuance of a building permit.

Conclusion: Because the requirements of this proposed mitigation measure are requirements of proposed Mitigation Measure 5.8-1, this additional mitigation measure is unnecessary.

7. **Concept:** The TRCSD or TRHOA Board will ensure that all buyers and residents follow the FPP and take the necessary steps to enforce compliance.

   Analysis: The requirements of this proposed mitigation measure would be enforced by the TRHOA through the Codes, Covenants and Restrictions (CC&Rs) that are required to be filed with the California Department of Real Estate. Every buyer of future lots will be made aware of the CC&Rs and TRHOA obligations. Please see Master Response 4 in Section 15.3 of the Final EIR.

   Conclusion: Because the requirements of this proposed mitigation measure are incorporated into the project design and would not further reduce the Project's wildfire risk, this additional mitigation measure is unnecessary.

8. **Concept:** The Developer/TRCSD/TRHOA will post a bond in an amount sufficient to remedy any deficiencies in all mitigation, maintenance, inspection, and reporting requirements related to the FPP and the Tierra Robles Wildland Fuel/Vegetation Management Plan.

   Analysis: The requirements of this proposed mitigation measure would be enforced by the TRHOA through the CC&Rs. Please see Master Response 4 in Section 15.3 of the Final EIR regarding assurances that HOAs have sufficient funds to cover their obligations.

   Conclusion: Because the requirements of this proposed mitigation measure are incorporated into the project design and would not further reduce the Project's wildfire risk, this additional mitigation measure is unnecessary.

9. **Concept:** Every 2 years after the first Dwelling Units are occupied, the TRCSD or TRHOA Board will meet with the purpose of reviewing evacuation policies and the TRCSD or TRHOA will demonstrate that they are clearly understood and communicated with residents. TRCSD or TRHOA will also work with the Shasta County Fire Safe Council to promote the creation of a Palo Cedro Fire Safe Council within the Project and the surrounding community.

   Analysis: Proposed Mitigation Measure 5.8-1 already requires the TRCSD or TRHOA to meet on an annual basis and to provide annual fire fuel monitoring and compliance reports to the Shasta County Fire department documenting conformity with fire fuel prescription activities and methods, including reporting of any enforcement actions taken to fulfill the requirements of the above referenced guidelines and

standards. There is no code requirement for the applicant to create a community group with members of the surrounding community. In the event of an emergency evacuation, the Sheriff's Office manages the evacuation procedures based on the nature and timing of the emergency. Once on scene, the Sheriff's Office, in consultation with fire protection personnel, will determine what needs to be done to protect lives and property. Predetermining evacuation routes to be utilized by area residents in all emergency events could be detrimental to the safety of residents and contradict the directions of public safety officials.

Conclusion: Because the requirements of This proposed mitigation measure are incorporated into the project design and would not further reduce the Project's wildfire risk, this additional mitigation measure is unnecessary.

10. **Concept:** The TRCSD or TRHOA shall establish a Good Neighbor Fire Safe Fund, which will provide grants to needs-based applicants to be awarded by the TRCSD or TRHOA to aid the Palo Cedro community within 10 miles of the project site to reduce offsite fire risks, increase fire prevention, protection, and response measures, and avoid adverse impacts of fire, for the Project's residents and neighboring communities.

    Analysis: There is no nexus between the proposed Project's fire management responsibilities that will be implemented through the Tierra Robles Wildland Fuel/Vegetation Management Plan and for risks of offsite properties up to 10 miles away. Fire clearing in accordance with applicable state and Shasta County standards is the responsibility of offsite property owners and is enforced by CAL FIRE/SCFD. Furthermore, the County does not have any authority to enforce such a mitigation measure.

    Conclusion: This proposed mitigation measure would not reduce the Project's wildfire risk and there is no known established metric demonstrating the extent to which this mitigation would reduce wildfire risk associated with the Project. For these reasons, this additional mitigation measure is considered infeasible and unnecessary.

11. **Concept:** The Good Neighbor Fire Safe Fund may issue grants for the following purposes, but not limited to:

    a) Developing and adopting a comprehensive retrofit strategy for at risk structures or other buildings;
    b) Funding fire-hardening retrofits of residential units and other buildings;
    c) Performing infrastructure planning, including for access roads, water supplies providing fire protection, or other public facilities necessary to support wildfire risk reduction standards;
    d) Partnering with other local entities to implement wildfire risk reduction;
    e) Updating local planning processes to otherwise support wildfire risk reduction to residents during times of power shutdowns or other emergencies; and
    f) Other fire-related risk-reduction activities that may be approved by the TRCSD or TRHOA Board.

    Analysis: There is no nexus between the proposed Project's fire management responsibilities that will be implemented through the *Tierra Robles Wildland Fuel/Vegetation Management Plan* and for risks of offsite properties. Fire clearing in accordance with applicable state and Shasta County standards is responsibility of offsite properties owners and is enforced by CAL FIRE/SCFD. Furthermore, the County does not have any authority to enforce such a mitigation measure.

    Conclusion: This proposed mitigation measure would not reduce the Project's wildfire risk and there is no known established metric demonstrating the extent to which this mitigation would reduce wildfire risk

associated with the Project. For these reasons, this additional mitigation measure is considered infeasible and unnecessary.

Inconsistencies with General Plan Elements and Policies Relating to Fire Safety and Fire Hazards

The County does not concur that the EIR fails to identify and analyze all inconsistencies with General Plan elements and policies relating to fire safety and fire hazards. General Plan policies and objectives of the Public Safety Group: Fire Safety and Sheriff Protection are discussed in Section 5.10 of the Draft EIR and in Section 5.19 of the RDEIR.

In adopting Objective FS-1, the County Board of Supervisors did not create an outright prohibition against development within high risk fire hazard areas, which comprise the majority of the unincorporated area of Shasta County. Rather, this objective was intended to ensure that developers and the County are cognizant of issues related to development in these areas.

The Fire Safety and Sheriff Protection Element of the General Plan sets forth three broad policies to implement the objective of discouraging and/or preventing development from locating in high fire hazard severity zones, none of which suggest that development within these areas should be prohibited or, in areas where new development should be prevented, what should be done to discourage development that may increase wildfire risk.

In the absence of more detailed guidance regarding the implementation of Objective FS-1 and in light of the related policies, the County relies on the implementation of the Shasta County Fire Safety Standards, the development pattern established by the General Plan, the zoning code, and the environmental review process to determine where and under what circumstances new development is appropriate within high risk fire hazard areas.

As stated in policy FS-e, developers, occupants, and operators of projects in these areas bear the true costs of the provision of services that are necessary to support development in these areas which in and of itself could discourage development beyond what may be accomplished by the Shasta County Fire Safety Standards.

The County acknowledges that compliance with current and future building code standards does not guarantee homes will not be adversely impacted by wildfires. However, coupled with other preventative measures such as fuel management and open space preservation as part of a planned development and continually managed by a homeowners association, wildfire risks are significantly reduced.

Enforcement of Mitigation Measures by the Tierra Robles Homeowners Association

The PATROL letter does not provide any credible evidence that the Tierra Robles Homeowners Association would not be able to satisfy its management or financial responsibilities. It is noteworthy that of the 11 additional mitigation measures recommended in the PATROL letter, nine involve enforcement by the Tierra Robles Community Services District or Tierra Robles Homeowners Association.

As specified in Master Response-4 in Section 15.3 of the Final EIR, there are two court decisions involving homeowners associations the provide solid legal assurances that the obligations imposed upon a homeowners association are properly discharged. The two decisions, *Ekstrom v. Marquesa at Monarch Beach HOA* (2008) 168 Cal.App.4th 1111, and *James F. O'Toole Co., Inc. v. Los Angeles Kingsbury Court Owners Assn.* (2005) 126 Cal. App. 4th 549, give local agencies strong assurances that the obligations imposed upon a homeowners association will be discharged as contemplated, and that the homeowners association will in fact raise the

necessary funds to discharge its obligations. Furthermore, a homeowners association has some advantages over a community services district for the purpose of generating property-based funding to implement property-related services, including mitigation measures on an ongoing basis. California voters approved a cap on assessment increases by community services districts; however, the California legislature eliminated caps on a homeowners association board of directors' obligation to increase assessments. The levy and any increase in the levy of a community services district's taxes is subject to Proposition 218 which requires property owner approval. Proposition 218 specifically permits property owners to vote to repeal a local tax, assessment fee or charge through the initiative process. In contrast, homeowners associations have a statutory duty to levy property assessments to fund all of its financial obligations. For this reason, throughout California local agencies are often requiring homeowners associations to act as the contingent operator in the event the local agency is unwilling or unable to carry out a community services district's designated functions and duties. Unlike a local government agency, a homeowners association cannot declare bankruptcy; therefore, rather than form a new community services district for the proposed development which would place a burden upon the County, the formation of a homeowners association can carry that obligation.

Prior to marketing new subdivisions such as Tierra Robles in California, subdividers must obtain a public report from the California Department of Real Estate (DRE). Public reports contain information of vital importance to prospective buyers including covenants, conditions, and restrictions which govern the use of property, costs and assessments for maintaining homeowners associations and common areas, and other material disclosures. As part of this process, DRE must review and approve of the reasonableness of a homeowners association's budget.

$S_2 \sim J_2$
ENGINEERING, INC.

CA Lic. #35182

18700 Janach Ct
Cottonwood, CA 96022

Phone: 530-347-5168
E-Mail: sdnelson@shasta.com

March 16, 2022

Paul Hellman
Director
Shasta County Department of Resource Management
1855 Placer Street, Suite 103
Redding, CA 96001

RE: Tierra Robles Project - late public commenter letters on CEQA analysis

Dear Mr. Hellman,

Many comment letters were submitted to the Shasta County Planning Commission on the eve of the previously-scheduled hearing for the proposed Tierra Robles housing project. After reviewing the letters, it is apparent that misunderstandings persist regarding the Project and the environmental analysis that the County has done to comply with the California Environmental Quality Act (CEQA). Thus, Shasta Red, the Project applicant would like to submit this letter for the County's consideration and to help bring greater understanding.

The Project site (Site) is an approximately 715-acre parcel that has been used for ranching for many years.[1] The County General Plan designates the site as Rural Residential.[2] The site's zoning is a mix of Rural Residential and Unclassified.[3] That is, the Site is and has for many years been designated by the County for residential use.

Around 2004, the Site's owners, recognizing the Site's designation by the County for residential development, sought a partner/buyer that would develop the site in a careful and thoughtful manner that would respect the natural environment and be an asset to the community. Shasta Red was honored to be selected to fill that role and has spared no expense to plan a housing development that meets those goals. To that end, Shasta Red has proposed to preserve significant portions of the Site as open space and build 166 water-smart homes that honor and embrace the Site's environmental setting.[4]

[1] Draft Environmental Impact Report (EIR) at 5.10-1.
[2] Draft EIR at 5.10-2.
[3] Draft EIR at 5.10-2.
[4] Final Recirculated EIR (REIR) at 1-4.

Although change can be difficult, it should be understood that the Site is designated for residential use. It is not a question of *whether* the Site will be developed for residential use; rather, the only question is *how* residential development will occur on the Site.

On one hand, the Site's residential development can occur in a patchwork, ad hoc, unplanned and haphazard process via small lot splits by potentially 188 different property owners and developers. [5] This approach would likely *not* be subject to CEQA, *not* require environmental review, *not* include mitigation measures to reduce environmental effects, *not* include a homeowners association to maintain the Site, *not* require harmonious architecture, *not* require preservation of open space, *not* be subject to discretionary review, and *not* include other off- and on-site improvements to benefit the surrounding community that are imposed via the discretionary review process.

On the other hand, the Site's residential development can occur in a planned, orderly, thoughtful process in a single, planned development of 166 homes. This approach *would* be subject to full CEQA review, *would* require environmental analysis, *would* include numerous mitigation measures to reduce environmental effects (including fire and water impacts), *would* require a homeowners association to maintain the Site, *would* require discretionary review (which includes numerous conditions of approval to benefit the County and community), *would* include harmonious architecture, *would* include off- and on-site improvements that benefit the community, and *would* involve preservation of substantial portions of the Site as open space.

We believe the latter approach, which is what is being proposed, is the superior approach and provides a win-win outcome. Shasta Red is committed to being a good steward of the land and developing the Site in a manner that will be an asset to the community and harmonious with the environment.

Nevertheless, some community members have expressed concern with the Project. Again, we understand that change can be difficult. We take the community's concerns seriously and seek to build better understanding. We hope that this letter helps assuage concerns.

After reviewing the comment letters, the concerns that most frequently raised are: (1) wildfire (including emergency evacuation), (2) water, and (3) enforcement of mitigation obligations. These items are addressed below. Although these concerns were raised by multiple commenters, this letter focuses on the comment letter from a group named PATROL that seems to best encapsulate the comments.

I. Wildfire

The State CEQA Guidelines include questions to be addressed in an environmental impact report (EIR) as to a Project's wildfire effects. Those questions are whether a Project would:

- Substantially impair an adopted emergency response plan or emergency evacuation plan;

[5] Based solely on the designations, the County determined that the Site could conservatively yield 188 residential units. Draft EIR at 5.10-3; Final EIR at 14.12

- Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment;
- Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

The Recirculated EIR (REIR) analyzed each of these items and determined that the Project's impacts would be less than significant.

Nevertheless, certain late commenters on the EIR have expressed concerns regarding wildfire. These commenters suggest that: (1) the EIR did not fully evaluate whether the Project would exacerbate wildfire risks; (2) the EIR inadequately analyzed the Project's impacts on evacuation; (3) the EIR compressed the analysis of project features versus mitigation; (4) the EIR needs to consider additional wildfire mitigation; and (5) the Project conflicts with the General Plan regarding fire safety. These comments are addressed below.

a. <u>The Project will not significantly increase the risk of wildfire.</u>

Noting that 90% of wildfires in Shasta County are caused by humans, PATROL's comments asserts that the addition of 445 new residents to the area will "significantly increase the likelihood that someone will ignite a wildfire." PATROL also comments that adding many new structures and flammable or ignitable materials will exacerbate the risk of fire that could spread quickly to nearby communities.

It is critical to reiterate the *many* Project features and measures discussed in the CEQA documentation that ensure the Project will *not* significantly exacerbate wildfire risks.[6] Specifically:

- Construction would involve ignition-resistant construction methods and materials to improve the ignition resistance of buildings, especially from firebrands.
- Construction would be consistent with the 2019 California Building Code (or the most current version) and the California Fire Code (Part 9 of Title 24 of the California Code of Regulations). These codes include specific requirements for wildfire-urban interface areas that include, but are not limited to, creating and maintaining defensible space and managing hazardous vegetation and fuels.
- All proposed roadways, driveways, and buildings would be constructed in accordance with the Shasta County Fire Safety Standards.
- A Wildland Fuel/Vegetation Management Plan (Fuel Management Plan) has been prepared by multiple biological and forest management experts to ensure the reduction of flammable vegetation from around buildings, roadways and driveways in accordance

[6] Draft REIR at pp. 5.19-23 et seq.; see also Draft REIR at pp. 5.19-12 to 5.19-13.

with the California Department of Forestry and Fire Protection/Shasta County Fire Department requirements.[7]

- The Fuel Management Plan divides the proposed Project into distinct Resource Management Areas based on common vegetative and topographic features. The Resources Management Areas include general management prescriptions applicable to all Resource Management Area as well as specific prescriptions tailored to individual conditions of each Resource Management Area.
- Implementation of the Fuel Management Plan would include on-the-ground maintenance activities that would hand treat accumulated fuel build-ups to reduce the threat of catastrophic wildfire.
- Potential fire fuels will be strategically reduced by removing brush and limbing trees as prescribed in the Fuel Management Plan.
- Onsite vegetation management requirements would maintain areas within 100 feet of structures, and in designated management and open space areas to reduce potential fuel and clear access for emergency vehicles.
- Management of vegetation would be designed to slow the rate of fire spread, reduce fire intensity, and modify fire behavior.
- Routine tree thinning would occur to reduce fuels.
- New, paved roadways would be added, which will act as fire breaks.
- The new paved roads will also significantly improve access for firefighting vehicles. All on-site roadways would be designed in compliance with the Shasta County Fire Safety Standards as outlined in Chapters 8.10 and 16 of the Shasta County Code of ordinances.
- Utility lines will be placed underground to reduce potential wildfire risks associated with power lines.
- The Project would add fire hydrants to the site, which would significantly improve firefighting abilities.

In short, the Project has gone above and beyond to ensure not only that the risk of wildfire will not be exacerbated, but that the risk will actually be reduced. When compared to the existing, natural site conditions, with no fire hydrants, no paved roads, no vegetation fuel management, no hardened structures, etc., the Project will be a net positive in reducing wildfire risks. It is worth noting the County's fire experts that reviewed the Project had no objections to the Project's design or measures to reduce fire risk.

Further, a recent analysis demonstrates that no master-planned community built after the adoption of California Building Code Chapter 7A has suffered extensive structural loss from

[7] This report was authored by Steven Kerns, an expert Certified Wildlife Biologist, in association with Dr. Phil McDonald, PH. D Forest Science and Registered Forest Ecologist for United States Department of Agriculture Forest Service, Pacific South West Research Station; and Dr. Jerry Walters, PH. D Agronomy and Soil Science, Forest Researcher for United State Department of Agriculture Forest, Pacific South West Research Station.

fire.[8] This is due to the fire-hardened homes built to the latest Chapter 7A standards, fire-resistant landscaping, HOA maintenance and enforcement, reliable fire access, community design and siting to minimize fire risks, etc. These things are all part of the Project.

Even assuming none of the above, the addition of 445 residents would not significantly increase the wildfire risk. According to the 2020 Census, the population of Shasta County was 182,155. In 2020, Cal Fire reported a total of 6 wildfires occurring in Shasta County.[9] Even assuming each one of the 6 wildfires were caused by humans and by separate individuals, that would mean that there was one fire for every 30,359 Shasta County residents, or a 0.00003294% chance that a Shasta County resident caused a wildfire. The addition of 445 residents (even assuming all residents in the Project are new to Shasta County) would result in an increased likelihood of merely 0.00000008% (seven zeros after the decimal point).

Considering the extensive project features discussed above that will drastically reduce wildfire fuel and substantially improve firefighting abilities, and the miniscule percentage increase in wildfire risk due to the new residents, there is no basis to conclude that the Project's new residents, structures, or landscaping will significantly increase the likelihood of wildfire. The EIR's conclusion that the Project will have a less than significant impact regarding exacerbating wildfire risk is accurate and supported by substantial evidence.[10]

b. <u>The CEQA documentation fully analyzed the Project's impact on emergency evacuation.</u>

As acknowledged by PATROL, the draft REIR includes an expert analysis of the Project's potential effects on emergency evacuation scenarios. PATROL asserts that the EIR dismisses emergency evacuation "as a potential impact entirely." But this is not so. The draft REIR

---

[8] See **Exhibit A**, Letter to California Board of Forestry and Fire Protection (Jan. 19, 2022) and attachments.

[9] https://www.fire.ca.gov/incidents/2020/

[10] The Draft REIR's less than significant conclusion is supported by comparable situations in recent cases.

- See **Exhibit B**, *Maacama Watershed Alliance v County of Sonoma* (2009) UNPUBLISHED 40 Cal.App.5th 1007 (upholding mitigated negative declaration's 'less than significant' wildfire determination for a project in a very high fire hazard severity zone because the project was subject to the County's permit requirements; included fire suppression measures, such as sprinklers; had adequate emergency access for firefighters; and would be required to maintain vegetative fuels in compliance with fire regulations).
- See *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 193-194 (upholding mitigated negative declaration's 'less than significant' wildfire determination because project would incorporate new water line and fire hydrants versus existing conditions).
- See **Exhibit C**, *San Dieguito Community. Council v. County of San Diego*, 2015 Cal.App. Unpub. LEXIS 9273 (Dec. 22, 2015) at pp. *46-47 (upholding determination of less than significant fire safety impact because project was reviewed by the County fire authority and local fire protection district, complied with the County fire code, and provided adequate defensible space).

includes numerous pages analyzing this potential impact, and that analysis is supported by an expert technical report.[11]

PATROL primary critique appears to be centered on a disagreement over the County's conclusion that the Project's impact would be less than significant.

Under CEQA, the lead agency (here, the County) is responsible for determining whether an adverse environmental effect identified in an EIR should be classified as significant or less than significant. (14 Cal. Code Regs., § 156064(b)(1).) "[T]he significance of an activity may vary with the setting;" as a result, an inflexible definition of significant effects is not possible. (*Ibid*.) The lead agency has discretion to determine significance based on policy judgments, and it may vary depending n the nature of the area affected. (*North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 624; *Cover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243.) The standard of significance may be developed by the experts preparing the EIR, and the lead agency has discretion to accept experts' opinion regarding the appropriateness of the significance conclusion. (See *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 204.) A lead agency may also exercise its own judgment in determining an appropriate standard of significance. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243.)

When an impact is deemed less than significant, a brief statement of the reasons for finding that an impact is not significant is all that is required. (*North Coast Rivers Alliance v. Marin Mun. Water Dist*. (2013) 216 Cal.App.4th 614, 637; *Clover Valley, supra*, at 243; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 493; *Protect Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1113.)

Here, the County far exceeded these requirements, basing its significance conclusion on expert analysis and conclusions in a traffic evacuation study prepared by a subject matter expert, Cornelius Nuworsoo, Ph.D., AICP.

As summarized in the Draft REIR, the expert's evacuation study analyzed five different evacuation scenarios.[12] The traffic volume anticipated to flow through the study area was estimated according to best practice assumption in traffic flow analysis.[13] Notably, the traffic volume estimate represented a conservative *worst*-case analysis because it assumed all existing and planned housing units would be occupied at the time of the evacuation (a highly unlikely scenario), it assumed no early or voluntary evacuations prior to an emergency evacuation declaration (a highly unlikely scenario), and (contrary to some commenters' assumptions) the traffic calculations also included a 3.5% additional increment to account for large vehicles and trailers in the traffic.[14]

---

[11] Draft REIR at 5.19-13 to 5.19-23; Appendix RDEIR D-1, Tierra Robles Area Evacuation Traffic Study.
[12] Draft REIR at 5.19-14.
[13] *Ibid*.
[14] Draft REIR at 5.19-16; Final REIR at 15-16.

Per the expert's analysis, "with removal of Project traffic, network speeds and related clearance times *would not result in a substantial change*."[15] Indeed, the Project would *not* make a "noticeable difference on evacuation."[16] Stated another way, with the addition of the Project, "[t]he last sets of vehicles to arrive at refuge areas would *endure nearly the same levels of delay* through the network."[17] "Estimates of increases in their travel speeds would be no more than 0.3 miles per hour, *if any*."[18]

In the *majority* of evacuation scenarios studied, the expert analysis determined that the Project would cause *no* increase in evacuation clearance times, i.e., the time for the last vehicles to arrive at a safe refuge area.[19] In fact, many scenarios actually showed a *decrease* in clearance times due to the Project adding a critical new north-south road.[20] Out of 10 potential safe refuge evacuation areas (two for each evacuation scenario where Project traffic could have any effect), *only three* showed an increase in clearance times.[21] Of those three, the largest increase in clearance time was "no more than 15 minutes out of the maximum estimate of nearly 3.5 hours."[22]

Thus even under a conservative, worst-case scenario, the Project would cause *no increase* in clearance times under the *majority* of scenarios, and for the few scenarios where an increase in clearance times could occur, the longest potential clearance time increase would be only an 8 percent increase.[23] Based on the expert's analysis and conclusion that the Project "would not result in a substantial change," in clearance times, nor "substantially impair the execution of the County's [Emergency Operations Plan] EOP," the Draft REIR reasonably concluded that the Project's impact would be less than significant.[24] Consistent with CEQA's standards, the conclusion is well-explained and supported by substantial evidence.[25]

PATROL asserts that the expert analysis is flawed because there are other potential factors to consider, such as fire speed, traffic congestion, longer vehicles, and traffic from Shasta College. Notably, PATROL does not provide any contrary analysis; rather, it only poses questions and

---

[15] Draft REIR at 5.19-21, emphasis added.
[16] *Ibid*.
[17] *Ibid*., emphasis added.
[18] *Ibid*., emphasis added.
[19] Draft REIR at 5.19-22.
[20] *Ibid*.
[21] *Ibid*.
[22] *Ibid*.
[23] 183 minutes (or 3 hours and 3 minutes) to 198 minutes (or 3 hours and 18 minutes).
[24] Draft REIR at 5.19-23.
[25] PATROL's position that the impact should be deemed significant is particularly striking and disingenuous considering the authors of PATROL's letter, Remy Moose Manley LLP, argued in recent litigation that a project's impact was *correctly* deemed less than significant despite increasing evacuation times from 2.9 hours to 6.6 under cumulative conditions—***doubling the evacuation time***. (**See Exhibit D**, Remy Moose Manley LLP Opposition Brief in *Sierra Watch v. Placer County & Placer County Board of Supervisors*, 2019 CA APP Ct. Briefs LEXIS 5519 at pp. 43-45.) Presumably PATROL's members are aware of their legal counsel's contradictory positions.

raises concerns. This is not enough under CEQA. "Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt" are not factors which must be considered when determining a project's potential effect on the environment. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352; *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 434, fn. 5 [remarks constituting a speaker's concerns and suspicions about possible environmental effects are not evidence thereof].)

Further, CEQA does not require assessment of environmental impacts to be exhaustive or include all information that is available on the issue. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) The analysis in an EIR need not be perfect. (*North Coast Rivers Alliance v. Kawamura* (205) 243 Cal.App.4th 647, 677.) It need not address all variations of the issues or permeations of the data. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.th 645, 680; *National Parks & Conservation Association v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1365.) Further, a lead agency is not required to conduct every recommended test or perform all recommended research in evaluating a project's environmental impacts. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1125.) That additional study or analysis might provide helpful information does not make it necessary. (*North Coast Rivers Alliance v. Marin Mun. Water Dist*. (2013) 216 Cal.App.4th 614, 640.) An EIR is also not required to include an analysis of an unlikely worst-case scenario. (*High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 122.)

Even so, the speed of a potential fire does not change the expert's evacuation study conclusions that the Project would not result in a substantial change in clearance times, nor substantially impair the execution of the County's EOP because the evacuation time does not change with the fire's speed. Further, the traffic study *did* consider potential congestion (that is the essence of the evacuation's analysis) and conservatively estimated the number of vehicles by assuming all existing and planned housing units would be occupied at the time of the evacuation. Finally, as to Shasta College, the expert analysis names Shasta College specifically as a "potential temporary refuge area," i.e., a well-known, open site that is accompanied by large, unvegetated parking areas that could reasonably be relied on to be available in an emergency evacuation for short-term refuge for evacuated residents.[26] That is, students at Shasta College would likely be directed to stay at the College during an emergency evacuation because of its potential as a refuge area; thus, not adding to traffic. In sum, the EIR's conclusions are thorough and supported by substantial evidence.

c. <u>The CEQA documentation correctly evaluated the Project's mitigation in the impact analysis.</u>

Citing the case *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656, PATROL asserts that the EIR improperly compresses the analysis of potential impacts and mitigation measures, referencing impacts 5.19-4 and 5.19-5. However, *Lotus* is not analogous.

[26] Draft REIR at 5.19-14 to 5.19-15.

In *Lotus*, the court found the CEQA analysis inadequate because the analysis conflated project design features and mitigation measures by deeming what the court considered to be mitigation measures to instead be project design features. (*Ibid*.) The court explained that by doing so, the EIR at issue failed to "make the necessary evaluation and findings concerning the mitigation measures that are proposed." (*Ibid*.) According to the court, absent a determination regarding the significance of the impacts, "it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered." (*Ibid*.)

The Tierra Robles CEQA analysis does not suffer from the same errors. Impact 5.19-4 analyzes whether the Project would expose people or structures to significant risks, including downslope or downstream flooding or landslides as a result of runoff, post-fire slope instability, or drainage changes.[27] In contrast to the *Lotus* circumstances the Draft REIR analysis states that the impact would be potentially significant, but that the impact would be reduced to less than significant with mitigation (not project design features).[28] The analysis explains that mitigation measure MM 5.9-4 would require finished floor elevations to be a minimum of one foot above the 100-year floodplain to avoid potential flooding impacts.[29]

Similarly, Impact 5.19-5, which is related to *cumulative* impacts, notes that the impact would be potentially significant absent mitigation applied to the *direct* Project impact under Impact 5.19-2, which requires fuel reduction measures and vegetation management.[30] The reference in Impact 5.19-5's discussion to Mitigation Measure 5.8-1 is to show that the Impact 5.19-2 would be significant, but for mitigation, and hence also cumulatively significant, but for the same mitigation.[31]

For both Impact 5.19-4 and 5.19-5, there is no conflation of project design features and mitigation measures; rather, there is a discussion of mitigation measures reducing Project impacts to less than significant. Further, the Draft REIR's analyses "make the necessary evaluation and findings concerning the mitigation measures that are proposed," and make it possible "to determine whether mitigation measures are required" and "to evaluate whether other more effective measures than those proposed should be considered." In sum, the analyses comply with CEQA. (See *Lotus, supra*, at 656.)

d. <u>Because wildfire impacts are less than significant, no additional wildfire mitigation is required.</u>

PATROL and others request "additional mitigation measures that address the impacts relating to heightened risk of wildfire ignition and delays to community evacuation routes." As discussed in the EIR and responses above, the Draft REIR concluded that the Project's impacts regarding wildfire would be less than significant. CEQA only requires discussion of mitigation measures

[27] Draft REIR at 5.19-30 to 5.19-32.
[28] *Ibid*.
[29] *Ibid*.
[30] Draft REIR at 5.19-32 to 5.19-33.
[31] *Ibid*.

for significant environmental effects. (See Public Resources Code, § 21100(b)(3); 14 Cal. Code Regs., § 15126.4(a)(3); *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 336.) Thus, because the impacts are less than significant, there is no basis for requiring further mitigation.

e. The Project does not conflict with the General Plan regarding fire safety.

PATROL's comment letter states that the EIR failed to analyze all General Plan elements regarding fire safety and fire hazards. PATROL cites General Plan Objective FS-1, which, in addition to requiring new development to incorporate effective site and building design measures, also seeks to protect development from wildland fires "by discouraging and/or preventing development from locating in high-risk fire hazard areas." PATROL seems to argue that this objective prohibits development in high-risk fire hazard areas. It does not.

The General Plan language provides flexibility to *either* discourage *or* prevent development in high-risk fire hazard areas. This is not a prohibition on such development. Thus, there is no inconsistency between the Project and General Plan Objective FS-1. "Because EIRs are required only to evaluate 'any inconsistencies' with plans, no analysis should be required if the project is consistent with the relevant plans." (*Stop Syar Expansion v. County of Napa* (2021) 63 Cal.App.5th 444, 460, citations omitted.)

Further, "[a]n action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 896.) Thus, the "law does not require perfect conformity between a proposed project and the applicable general plan." (*Ibid*.) Considering the Project's measures to reduce wildfire and incorporate effective site and building design measures, the Project will further the objectives and policies of the General Plan and not obstruct their attainment. Thus, the Project is not inconsistent with the General Plan.

II. Water

The EIR includes a robust analysis of the Project's potential environmental effects regarding water supply. Specifically, the EIR discloses and analyzes the Project's anticipated water demand and whether sufficient water supplies would be available to serve the Project during normal, dry, and multiple dry years.

The Project includes numerous features that will cause it to be extremely water efficient. Based on the use of advanced water efficiency features and restrictions on outdoor landscaping, the combined indoor and outdoor water use for a new Project home is estimated to be approximately 0.45-acre feet per year (AFY). By way of comparison, the average existing urban and rural

residential users in the same water district (Bella Vista Water District) are estimated to use between 60% and 193% *more* water than the Project.[32] In short, the Project is water-smart.

Nevertheless, PATROL and other late commenters believe that the EIR fails to satisfy CEQA's requirements. PATROL raises three concerns: (1) that Mitigation Measure 5.17-4b, which requires the Project applicant to submit proof of supplemental water supplies before construction, is infeasible and "punts mitigation" to some future time; (2) that the water demand has been inaccurately calculated; and (3) that the water supply analysis does not comply with the standard described in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

Each of these allegations are incorrect.

a. Mitigation Measure 5.17-4b complies with CEQA.

PATROL asserts that Mitigation Measure 5.17-4b "impermissibly defers mitigation, both because it is infeasible and because it punts mitigation to some future time after project approval." PATROL provides no support for these assertions. What's more, the legal authority cited by PATROL actually undermines its position and supports the adequacy of the mitigation measure. As explained in the case cited by PATROL, *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906:

> "[W]hen a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. Moreover, … the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study."

As further explained in that decision:

> "where practical considerations prohibit devising such measures early in the planning process …, the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*Ibid*.)

Here, the EIR contains an explanation of how the mitigation is feasible to achieve (as discussed further below) and sets a performance standard that must be met before construction begins. This fully complies with CEQA.

b. The Project's water demand has been correctly calculated.

---

[32] See Bella Vista Water District - Urban Water Management Plan Update 2020 at pp. 29 and 34, estimating that the 4.025 residential users use approximately 2,882 AFY (0.72 AFY per user) and the 1,721 rural users use approximately 2,273 AFY (1.32 AFY per user).

PATROL asserts that the EIR has incorrectly calculated the Project's anticipated water demand, stating that Bella Vista Water District's calculation must be used. But the EIR provides a thorough explanation as to why its calculations are correct.[33] BVWD assumes that the Project's homes will have water demand similar to existing BVWD customers on large, rural lots. But that estimate fails to account for the Project's landscaping restrictions, water-efficient fixtures, and usage that is far more akin to BVWD's residential water customers. In fact, due to the modern, smart water fixtures and landscaping restrictions, the Project's homes will be 60% *more* efficient than BVWD's existing residential water users. The EIR's calculation is done by experts that have taken the Project's *specific* details into account. The conclusions are accurate and supported by substantial evidence.

c. The water analysis satisfies the standard in *Vineyard*.

Finally, PATROL asserts that the EIR's analysis fails to comply with the standards described by the California Supreme Court in *Vineyard*. PATROL notes that the Court identified four key principles for an adequate water supply analysis. And then claims that the EIR violated the principles because *Vineyard* allegedly requires a prediction of adequate water supplies that "is to be based on firm indications of the water will be available in the future." (PATROL at p. 10, quotes in original.) But the quoted language is applicable only to residential developments of more than 500 units. This does not apply to the Project.

Further, PATROL seems to overlook the gist of *Vineyard's* fourth principle, which states:

> "[W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." (*Vineyard, supra*, at 432.)

That is exactly what was done in the EIR.[34] The EIR first analyzed the environmental consequences of water being provided to the Project by the local water district (BVWD), it then also analyzed *contingency* sources of water and the environmental consequences of those supplies. This is wholly consistent with *Vineyard*.

As stated in the Draft REIR, the water supply for the Project would be from BVWD. During normal years, BVWD has a water surplus in excess of 7,874 to 9,204 AFY through the year 2040.[35] Further, the Project is included in BVWD's Urban Water Management Plans (2015) demand projections a surplus water is available to serve the Project's 80 AFY demand under normal-year circumstances.[36]

During dry and multiple-dry year conditions, in part because the Project might not yet be included in BVWD's existing water delivery baseline, the Project could potentially exacerbate

---

[33] Final REIR at 15-5 to 15-15.
[34] Final REIR at 15-5 to 15-15.
[35] Draft REIR at 5.17-17.
[36] Draft REIR at 5.17-17 to 5.17-18.

water shortages.[37] As such, the EIR includes mitigation requiring an alternatively water supply be provided during dry-year conditions until such time as the Project's demands have existed for three 100-percent water allocation years and are included in BVWD's baseline water demand.[38] In addition to the mitigation, the EIR also analyzes one (of many) potential water supplies that could satisfy the mitigation measure.[39] That is, as discussed in *Vineyard*, because it is impossible to determine the future water source, the EIR includes "some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." (*Vineyard*, *supra*, at 432.) Notably, the EIR also references multiple potential sources of supplemental water, all of which would have nominal environmental consequences (due to groundwater basin stability, existing agreements, etc.).

For example, as noted in the EIR, in addition to Clear Creek Community Services District, two other water providers could potentially provide supplemental water.[40] The McConnell Foundation has a contract to receive 5,100 AFY of Central Valley Project (CVP) water each year, without any shortage provision curtailment.[41] Additionally, BVWD has a long-term transfer agreement with the Anderson-Cottonwood Irrigation District for 1,536 AFY of CVP water.[42]

To the extent supplemental water supplies would need to come from groundwater, the applicable groundwater basins show stability, even when groundwater pumping has increased during dry years.[43] Thus, a nominal, temporary increase in pumping the satisfy the Project's potential water supply needs in a multiple dry-year scenario would *not* have a significant effect on the environment. This conclusion is supported by analysis in the EIR.[44] In short, the EIR has made "a sincere and reasoned attempt the analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty." (*Vineyard, supra,* at 432.) And Mitigation Measure MM 5.17-4b, "a measure for curtailing development if the intended sources fail to materialize," plays an important role in the impact analysis. (*Ibid*.)

PATROL argues that feasibility for the supplemental water has not been determined and that no agreement is in place for a water transfer. On this, there is no dispute. But, contrary to PATROL's protestations, this is not indicative of a CEQA violation. The *Vineyard* decision explains that no court "holds or suggests that an EIR for a land use plan is inadequate unless it demonstrates that the project is *definitely assured* water through *signed, enforceable agreements* with a provider and already built or approved treatment and delivery facilities." (*Ibid*., emphasis added.) The Court added that "[r]equiring certainty when a long-term, large-scale development

---

[37] Draft REIR at 5.17-18.
[38] *Ibid*.
[39] Draft REIR at 5.17-19 to 5.17-30.
[40] Draft REIR at 5.17-2; 5.17-19 to 5.17-30.
[41] Draft REIR at 5.17-2.
[42] Draft REIR at 5.17-2.
[43] See draft Enterprise Groundwater Sustainability Plan and Anderson Groundwater Sustainability Plan (available at https://www.cityofredding.org/departments/public-works/eagsa) at pages 3-12 and Figures 3-14 and 3-15 of Section 3.
[44] Draft REIR at 5.17-23 to 5.17-26.

project is initially approved would likely be unworkable, as it would require water planning to far outpace land use planning." (*Ibid*.) "CEQA should not be understood to require assurances of certainty regarding long-term future water supplies at an early phase of planning for large land development projects." (*Ibid*.) Thus, PATROL's critiques fall short and mischaracterize *Vineyard's* language.

III. Mitigation enforcement

The EIR includes many mitigation measures to be implemented in an effort to reduce potentially significant environmental effects. Although every mitigation measure must be implemented by someone and enforced by someone, PATROL seems to take issue solely with mitigation that is to be implemented by the Project's future Homeowners Association (HOA). PATROL states that the "EIR fails to explain how the County will ensure the HOA is adequately funded to start with and what will happen if it is not." PATROL also questions whether the HOA's responsibilities become the County taxpayers' obligations if the HOA is insolvent or has insufficient funding to implement mitigation. The implication seems to be that implementation of mitigation by the HOA (versus the project applicant or a government agency) is somehow substandard.

To the contrary, as explained in the EIR's Master Response 4 – Resource Management Areas, an HOA's obligations (as would be imposed by the mitigation measures) are more fully binding and assured when required of an HOA—even more than when required of a local government.[45] For example, an HOA cannot claim insufficient funds to perform the HOA's obligations and has the legal obligation—even in bankruptcy—to perform the mandatory duties imposed by the County pursuant to the imposition of conditions of approval associated with the Project's subdivision map.

The mitigation measures proposed in the EIR are enforceable through conditions of approval that are legally binding. (Public Resources Code, 14 Cal Code Regs., § 15126.4(a)(2).) And incorporating mitigation measures into conditions of approval is sufficient to demonstrate that the measures are enforceable. (Public Resources Code, § 21081.6(b); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116.) Further, as noted on the EIR's Mitigation Monitoring and Reporting Program, the mitigation measures (including those implemented by the HOA) are to be enforced and overseen by the Shasta County Resource Management Planning Division. To the extent there is any lack of funding or compliance, the Shasta County Resource Management Planning Division can compel the HOA to undertake the obligations—the same as with any mitigation that is required to be implemented in conjunction with a project. Thus, the Project's mitigation is enforceable, and the County will confirm satisfaction.

***

To reiterate what was stated at the beginning of this letter, Shasta Red is committed to being a good steward of the Site and protective of the environment and community. We are grateful for all the support that has been received and the foresight of those that recognize the benefits of

[45] Final REIR at 15-19 to 15-24.

developing the site in a respectful, harmonious nature versus seeing it develop with a greater density in a haphazard, ad hoc, unplanned manner.

Sincerely,

Steve Nelson

Project Manager / Engineer

EXHIBIT A

VIA: PublicComments@bof.ca.gov

January 19, 2022

Chair J. Keith Gilless
Vice Chair Darcy Wheeles
Member Mike Jani
Member Rich Wade
Member Susan Husari
Member Marc Los Huertas
Member Katie Delbar
Member Christopher Chase

Board of Forestry and Fire Protection
Attn: Edith Hannigan
Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Re: Supplemental comments on the Board of Forestry's proposed Fire Safe Regulations by Ruben Grijalva and a Coalition of California Home Builders and Businesses

Dear Chair Gilless,

As a former State Fire Marshal and Director of the California Department of Forestry and Fire Protection, and on behalf of the broad coalition of California home builders and businesses that have co-signed, we stand behind the Board of Forestry's efforts to improve the health and safety of Californians given the unprecedented wildfires we have witnessed in recent years and the growing threat of climate change. In the midst of a deepening housing crisis, we recognize the critical need to provide fire safe housing. We also appreciate the Board's and staff's efforts to consider and review our comments.

We remain deeply concerned, however, that the current draft Fire Safe Regulations undermine the Governor's efforts to solve the housing crisis by preventing the construction of new fire safe homes. Our prior comments, reiterated below, have not been addressed. The unintended consequences of the current draft will harm housing production without a commensurate fire safety benefit.

Master-planned communities built to modern standards offer a tremendous opportunity to deliver critical, resilient and fire safe housing to Californians. The State Fire Marshal's statistics and our detailed analysis[1] demonstrate that homes built to California Building Code standards adopted in Chapter 7A effectively reduce fire risks to homes built in the wildland urban interface (WUI). Remarkably, when those homes are built as part of a properly planned and mitigated master-planned community, the risk of significant structural loss is extremely low.[2] Despite the headlines in recent years about the loss of homes to California wildfires, it has gone substantially unreported that no master-planned community built after the adoption of California Building Code Chapter 7A has suffered extensive structural losses.

The evidence demonstrates that California's wildland fire problem comes from the existing home stock built before modern Chapter 7A standards or poorly-planned developments

---

[1] See Exhibit A (State Fire Marshal Housing Data Analysis). We extensively analyzed State Fire Marshal data regarding recent impacts from California's mega-fires and the data shows overwhelmingly that over 98.5% of structural damage or loss occurs with homes built before modern Chapter 7A standards, and even of those new homes that were damaged, most involved isolated new construction surrounded by existing, high-risk homes (e.g., new homes lost in the Camp fire). See our comments for additional details.

[2] See attached Exhibit B (Master-Planned Community Case Studies).

located in high-risk areas. These are homes commonly built in the WUI that are overgrown by many drought-ridden fuel types (brush, shrubs, trees, etc.) that are ready to burn rapidly. Many have narrow roads, inadequate fire access and evacuation routes, and inadequate water supplies.

In stark contrast, new master-planned communities must go through a strenuous environmental review under the California Environmental Quality Act and are typically planned, approved and implemented with numerous fire-safety features and measures, such as:

- Fire-hardened homes built to the latest Chapter 7A standards
- Community-wide fuel breaks, fire-resistant landscaping, and green belting
- Perpetual funding, maintenance and enforcement through an HOA
- Appropriate and reliable fire access and evacuation routes
- Adequate water supplies (studied pursuant to SB 610)
- Residential fire sprinklers
- Undergrounded project utilities
- Community design and siting to minimize fire risks (e.g., slope setbacks)
- New fire stations, fire equipment and/or funding for firefighters to provide for a rapid initial fire attack where it did not previously exist.

As currently drafted, the regulations would hamper or stop new, fire safe, master-planned communities, resulting in a blow to housing. The regulations do not account for fundamental differences between master-planned communities and one-off development. For example, the non-retroactivity provision does not account for the multiple phases of master approvals, village-level projects, subsequent internal maps, and minor amendments over time that are standard practice for master-planned communities. In short, unintended consequence from these regulations (as currently written) will obstruct master-planned communities without providing a fire safety benefit.

We respectfully request that the Board consider our detailed comments, attached. Our global concerns include:

1. Approved master-planned communities that address fire safety and protection should be grandfathered to avoid a regulatory do-loop that would severely harm the production of much needed housing.

2. The regulations must account for (and take advantage of) the differences and fire safety benefits associated with master-planned communities.

3. The regulations must provide flexibility and a right to seek exceptions to avoid unintended consequences, the risk of which is high given the substantial expansion in regulatory scope from the State Responsibility Area to the Local Responsibility Area.

The California wildfire problem and housing crisis did not happen overnight. These entrenched problems will not be resolved quickly. But master-planned communities present a unique opportunity for critical, resilient and fire safe housing. We once again thank the Board for this opportunity to comment. We remain committed to working with staff to address our comments and offer insights from our unique coalition of California home builders and businesses.

Sincerely,

Ruben Grijalva

Former State Fire Marshal and
CalFire Director

Dan C. Dunmoyer
President and CEO
California Building Industry Association

Robert C. Lapsley
President
California Business Roundtable

Matthew Hargrove
President & Chief Executive Officer
California Business Properties Association
Also on behalf of: NAIOP California
Building Owners and Managers Association of California (BOMA Cal)
Institute of Real Estate Management (IREM)
ICSC

Steve McCarthy
Vice President, Government and Regulatory Affairs
California Retailers Association

Adam J. Regele
Senior Policy Advocate
California Chamber of Commerce

Mike Roos
President
Southern California Leadership Council

Debra Carlton
Executive Vice President
State Public Affairs
California Apartment Association

Jeffrey Ball
President & CEO
Orange County Business Council

Lance Hastings
President & CEO
California Manufacturers & Technology Association

Tracy Hernandez
Chief Executive Officer
Los Angeles County Business Federation (BizFed)

Jelisaveta Gavric
Government Affairs
California Association of Realtors

Jeff Montejano
Chief Executive Officer
Building Industry Association of Southern California (BIASC)

Andrew C. Dodson
Vice President, Government Affairs
American Wood Council

Mark Christian, Director of Government Relations
American Institute of Architects, California (AIA California)

Dallin Brooks
Executive Director
Western Wood Preservers Institute

Laurel Brent Bumb
Chief Executive Officer
El Dorado County Chamber of Commerce

Matt Towery, President, Towery Homes
Home Building Association of Kern County

Edgar Arreola
Project Coordinator
Inland Empire Economic Partnership

Mike Prandini
President & CEO
Building Industry Association of Fresno/Madera Counties, Inc.

John Kabateck
California State Director
National Federation of Independent Business (NFIB)

MEMORANDUM
January 18, 2022

To: Dan Dunmoyer, President and CEO of CBIA
From: Bob Raymer[1]
Subject: Analysis of State Fire Marshal Property Loss Data

This memorandum evaluates Office of the State Fire Marshal data to determine how new homes constructed after January 1, 2010 fared in the ten worst property-loss fires dating back to 2017, compared to homes built prior to 2010.

I. METHODS

The State Fire Marshal maintains an extensive data retrieval service of fire incidents across the state, including those related to fires occurring in the Wildland-Urban Interface (WUI).[2] For the nine worst property-loss fires dating back to 2017, CBIA requested residential data that identified:

- Whether the dwelling was single-family or multifamily;
- damage assessment (destroyed, major damage, affected, no damage);
- valuation of the structure; and
- year the structure was built

The data provided by the State Fire Marshal is attached hereto. Regulatory standards applicable to new construction include:

- The State Fire Marshal's "fire hardening" building standards[3]

---

[1] Bob Raymer has degrees in Mechanical Engineering (Bachelor of Science), Engineering Technology/Physics (Bachelor of Science and Environmental Science (Bachelor of Arts). He is a licensed Professional Engineer in the State of California and has been involved in building code development and implementation at the state and national level for 40+ years.

[2] See California Incident Data and Statistics Program, available at https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/california-incident-data-and-statistics-program/.

[3] Cal. Code. Regs Title 24, Part 2, Chapter 7A

- Defensible space mandates[4]
- Cal Fire's Fire Safe Development Standards[5]

We selected January 1, 2010 as a conservative date after which these rules were being consistently implemented in new construction in the WUI in California. The results of our analysis are provided below.

II. SUMMARY OF FINDINGS

On average, for the nine worst property-loss fires dating back to 2017, only approximately 1% of the homes and apartments destroyed, damaged, or affected were new dwellings (built after 1/1/10) even though new dwellings make up roughly 7% of the state's total housing stock.

Between 1/1/10-1/1/2020, roughly 1 million homes and apartments were built out of a total housing stock of 14 million, based on building permit data tracked by the Construction Industry Research Board (CIRB). For all these fires, evidence indicates that substantial, initial residential development took place in the period of 1945-1980, decades before these critical rules were put in place.[6]

New homes fared extremely well compared with older neighborhoods during these major fires. Of the 31,000 data points retrieved from the State Fire Marshal, it was extremely rare to see more than two new homes on the samestreet destroyed or affected by the fires, while it was commonplace for entire neighborhoods of older dwellings to be destroyed. As opposed to custom home production where a single home is done separate of others, production-style home development is done in phases, usually 8-15 homes at a time. This typical production-style construction creates blocks or areas of fire-resistant homes, which are much more effective at withstanding wildfire intrusion and decreasing home-to-home spread. Notably, we are not aware of any master-planned community in California constructed after January 1, 2010 (i.e., a planned community with all new homes and typically including measures such as fuel breaks) suffering significant structural loss even during extreme fire events.

As illustrated below, we analyzed data from the nine worst property loss fires over the past seven years, and there was no case of more than three "new homes" in the same contiguous area being destroyed. There was only one case where three new homes next to each other were destroyed. These findings are in stark contrast to older homes, where it was commonplace for groups of homes to be destroyed at the same time, even entire neighborhoods. In this way, new

---

[4] Pub. Res. Code 4291.

[5] Cal. Code Regs. Title 14, Division 1.5, Chapter 7 Fire Protection, Subchapter 2, Articles 1-5 (SRA Fire Safe Regulations).

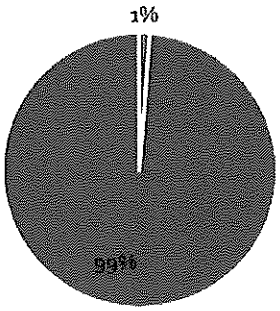
[6] See age-of-dwelling data provided by the State Fire Marshal as described herein.

homes not only are more fire protective individually as compared to older homes, but new homes (particularly aggregations of new homes) help resist the spread of fire within residential areas by decreasing home-to-home spread and ember intrusion-based spread.

III. FIRE SPECIFIC DATA[7]

A. Camp Fire

1. Total Structures Affected or Destroyed: 10,582



- Homes Built After 2010: 136
- Homes Built Before 2010: 10,446

2. Data

Total Homes Destroyed/Major Damage/Affected: 10,582

Built after 1/1/10: 112 destroyed = 0.0106 (3 homes on same street)

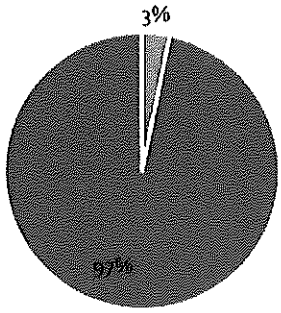
24 affected = 0.0022

136 total = 0.0129 or 1.3%

B. Carr Fire

1. Total Structures Affected or Destroyed: 1,082

[7] Information taken from State Fire Marshal data attached hereto.



- Homes Built After 2010: 36
- Homes Built Before 2010: 1,046

2. Data

Total Homes Destroyed/Major Damage/Affected: 1,082

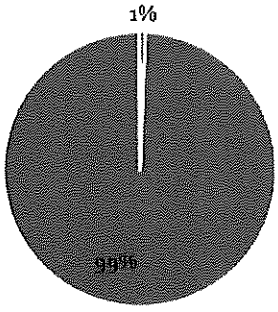
Built after 1/1/10: 24 destroyed = 0.0222 (9 homes on same street)

12 affected = 0.0111

36 total = 0.0333 or 3.3%

C. CZU Lightening Fire

1. Total Structures Affected or Destroyed: 998



- Homes Built After 2010: 7
- Homes Built Before 2010: 992

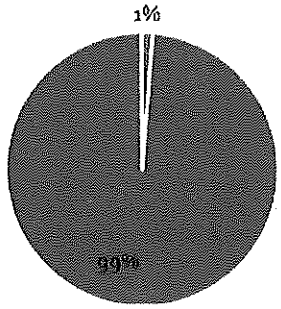
2. Data

Total Homes Destroyed/Major Damage/Affected: 998

Built after 1/1/10:	5 destroyed	**= 0.0050**	(no homes on same street)
	1 affected	= 0.0010	
	1 inaccessible	= 0.0010	
	7 total	**= 0.0070 or 0.7%**	

D. Glass Fire

1. Total Structures Affected or Destroyed: 737



- Homes Built After 2010: 10
- Homes Built Before 2010: 727

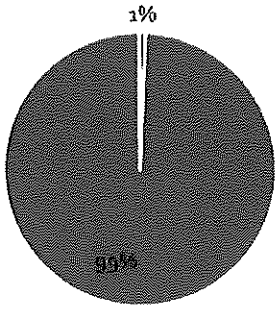
2. Data

Total Homes Destroyed/Major Damage/Affected: 737

Built after 1/1/10:	4 destroyed	= 0.0054	(No homes on same street)
	6 affected	= 0.0081	
	10 Total	**= 0.0136 or 1.4%**	

E. LNU Lightening Fire

1. Total Structures Affected or Destroyed: 1,559



- Homes Built After 2010: 12
- Homes Built Before 2010: 1,547

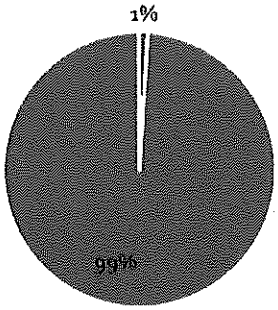
2. Data

Total Homes Destroyed/Major Damage/Affected: 1,559

Built after 1/1/10:	5 destroyed	= 0.0032	(2 homes on same street)
	7 affected	= 0.0045	
	12 Total	**= 0.0077 or 0.8%**	

F. North Complex Fire

1. Total Structures Affected or Destroyed: 732



- Homes Built After 2010: 8
- Homes Built Before 2010: 724

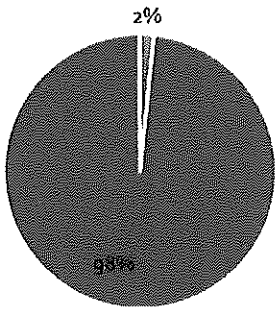
2. Data

Total Homes Destroyed/Major Damage/Affected: 732

Built after 2010:	7 destroyed	= 0.0096	(No homes on same street)
	1 affected	= 0.0014	
	8 Total	**= 0.0109 or 1.1%**	

G. Nuns Fire

1. Total Structures Affected or Destroyed: 687



- Homes Built After 2010: 12
- Homes Built Before 2010: 675

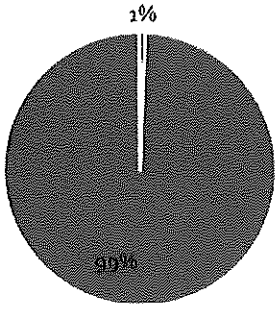
2. Data

Total Homes Destroyed/Major Damage/Affected: 687

Built after 2010:	10 destroyed	= 0.0146	(2 homes on same street)
	2 affected	= 0.0029	
	12 Total	**= 0.0175 or 1.8%**	

H. Thomas Fire

1. Total Structures Affected or Destroyed: 855



- Homes Built After 2010: 6
- Homes Built Before 2010: 848

2. Data

Total Homes Destroyed/Major Damage/Affected: 855

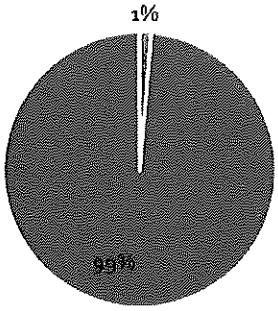
Built after 1/1/10: 5 destroyed = 0.0058 (4 homes on same street)

1 affected = 0.0012

6 Total = 0.0070 or 0.7%

I. Woolsey Fire

1. Total Structures Affected or Destroyed: 1,319



- Homes Built After 2010: 19
- Homes Built Before 2010: 1,300

2. Data

Total Homes Destroyed/Major Damage/Affected: 1,319

Built after 1/1/10:	12 destroyed	= 0.0091	(2 homes on same street)
	7 affected	= 0.0053	
	19 Total	**= 0.0144 or 1.4%**	

Exhibit B - Master-Planned Communities Case Studies

Defensible space, roads and vegetation-management areas (i.e., thinning zones and irrigated zones) create fire buffers around homes and defensible line for fire fighters.


Fire protection plan took predominate wind directions into account
Wind
Perimeter roads used in Fuel Modification
Streets provide emergency access and evacuation routes
Non-combustible roofs
Heat damage to orchards not homes
Irrigated Fuel Modification (Zone B)
Thinning Fuel Modification (Zone C)
No structures lost or damaged
Silverado Fire 2020


Fire burned on all side of development without loss or damage
In framing stage
Fuel modification installed prior to construction
Irrigated Fuel Modification (Zone B)
Thinning Fuel Modification (Zone C)
No structures lost or damaged
Silverado Fire 2020


Sreets provide emergency access and evacuation routes
Topography used to advantage
Wind
Fire protection plan took predominate wind directions into account
Multiple options for evacuation routes
Orchards used to advantage
Irrigated Fuel Modification (Zone B)
Thinning Fuel Modification (Zone C)
No structures lost or damaged
Silverado Fire 2020


Heat damage to orchards not homes
Wind
Fire protection plan took predominate wind directions into account
Fire-resistant homes with non-combustible roofs
Fuel modification distance used to advantage
In framing stage
Irrigated Fuel Modification (Zone B)
Thinning Fuel Modification (Zone C)
No structures lost or damaged
Silverado Fire 2020


Fuel modification worked as designed
Wind
Fire protection plan took predominate wind directions into account
Fire-resistant homes with non-combustible roofs
Buffer zone: Low growth, irrigated, properly spaced, maintained
Streets provide emergency access and evacuation routes
No structures lost or damaged
Silverado Fire 2020

"Notably, all the homes damaged or destroyed in the Freeway Complex Fire were constructed prior to 1996. Thus, they were not protected by the CFC provisions required by the City's ordinance for WUI areas. However, the homes in Casino Ridge met the requirements of the 1996 ordinance. They were also protected by a relatively new fuel modification program. Firefighters stated they were able to focus resources and efforts on other areas of the city as this community was developed to withstand a wildfire with little firefighting intervention." (*OCFA After Action Report – Freeway Complex Fire 2008*)

NOTE: Current Codes provides even more protection

Fire front approaching the Casino Ridge community

2nd Run

3rd Run

1st Run

Casino Ridge

No Homes lost or damaged in Casino Ridge with fire on all four sides

Image USDA Farm Service Agency

Yorba Linda, Orange County, CA
Casino Ridge Community
(*Freeway Complex Fire 2008*)

2002 LA County - Stevenson Ranch 2004

Additional Materials

1. L. Sommer, *Living With Fire: This California Neighborhood Was Built to Survive a Wildfire. And It Worked*, KQED (June 3, 2019), available at https://www.kqed.org/science/1941685/this-california-neighborhood-was-built-to-survive-a-wildfire-and-it-worked.

> "On Oct. 21, 2007, the Santa Ana winds carried the Witch Fire into town, the flames funneled through low valleys or "avenues of fire," as Cox calls them. 'It was like raining fire,' he said. 'I remember going down some streets down here, La Breccia, and it's like, man, if I go down there, I don't know if I'm going to make it back out.' Even before the fire actually hit, Cox had a problem.
>
> 'The fire wasn't even close, but we had homes burning,' he said. 'I would drive down the road and it was, like: How did that house catch on fire?' The answer was embers, blown far ahead of the fire front. They'd land on a wood roof or leaf-filled gutter, or even get sucked into an attic vent. In many fires, the majority of homes are ignited this way. Cox and his crew rushed around the evacuated neighborhoods, trying to stop the flames from spreading to neighboring homes.
>
> But then they got to one subdivision that was, surprisingly, calm.
>
> 'The only thing we had to do was put out a couple palm trees and the plastic trash cans that were burning,' Cox said.'The houses were perfectly OK. It was amazing.'
>
> Why? ***The neighborhood had been designed and built with wildfire in mind***."

(Emphasis added.)

2. D. Kessler, P. Reese, *Millions bracing for wildfire season wonder if their homes are safe*, Sacramento Bee (April 11, 2019), available at https://www.redding.com/in-depth/news/2019/04/11/california-wildfire-prevention-protection-home/3412609002/.

> "A landmark 2008 building code designed for California's fire-prone regions — requiring fire-resistant roofs, siding and other safeguards — ***appears to have protected the Carrells' home and dozens of others like it from the Camp Fire.***"

(Emphasis added.)

3. A. Fausto, *Silverado fire evacuees return to O.C. neighborhoods surrounded by scorched earth, but no homes destroyed*, OC Register (October 30, 2020), available at https://www.ocregister.com/2020/10/28/firefighters-make-big-progress-on-silverado-fire-reaching-25-containment/.

> "***No homes were reported damaged so far, as firefighters continued to make progress against the blaze***. Crews working overnight held the fire to 13,354 acres, with no growth from Tuesday night. It grew by 36 acres through the course of Wednesday, and had charred 13,390 acres by 7 p.m. Wednesday, Cal Fire officials said. Containment rose to 32%, up from 5% Tuesday night."

4. D. Murphy, *In California's Inferno, an Oasis of Fire Safety Planning Stands Out*, New York Times (November 2, 2003), available at https://www.nytimes.com/2003/11/02/us/in-california-s-inferno-an-oasis-of-fire-safety-planning-stands-out.html.

> "But as Southern Californians search for lessons from the state's worst fire season on record, this ***planned community at the edge of the Santa Susana Mountains is being viewed as a primer in fire survival***.
>
> '***Not one house lost, not one life lost,***' said Gail Ortiz, who works for the City of Santa Clarita. 'It is what everyone is talking about.'
>
> ...
>
> But with much of Southern California ablaze, and thousands of firefighters deployed in losing battles from the mountains to the desert, ***Stevenson Ranch became a dream firefighting assignment*** as winds unexpectedly pushed flames from the so-called Simi fire into the Santa Clarita Valley."

(Emphasis added.)

5. *Fire Adapted Communities: The Next Step in Wildfire Preparedness*, University of Nevada, SP-11-01 (2019), available at https://surviving-wildfire.extension.org/wp-content/uploads/2019/08/UNCE_FAC_sp1101.pdf.

> "Fire Adapted Community: Carson City's Wellington Crescent subdivision was threatened by the Waterfall Fire in 2004. ***The community fuelbreak, good access, ignition-resistant building construction and defensible landscapes helped ensure that no homes or lives were lost***."

(Emphasis added.)

6. *Land use planning can reduce wildfire risk to homes and communities*, Headwaters Economic (April 2020), available at https://headwaterseconomics.org/wp-content/uploads/HeadwatersEconomics_LUPLanning_Wildfire_Report_April_2020.pdf.

> "Wildfires are crucial to ecosystem functionality and revitalization of forests and landscapes. Attempting to extinguish all wildfires is costly, dangerous, and unrealistic. Homes and communities need to be designed ahead of time to survive a wildfire. ***By applying land use planning tools—such as development plans, regulations, and building codes—communities can become better fire-adapted and resilient in the face of increasing wildfire potential***."

Additional Materials

1. L. Sommer, *Living With Fire: This California Neighborhood Was Built to Survive a Wildfire. And It Worked*, KQED (June 3, 2019), available at https://www.kqed.org/science/1941685/this-california-neighborhood-was-built-to-survive-a-wildfire-and-it-worked.

> "On Oct. 21, 2007, the Santa Ana winds carried the Witch Fire into town, the flames funneled through low valleys or "avenues of fire," as Cox calls them. 'It was like raining fire,' he said. 'I remember going down some streets down here, La Breccia, and it's like, man, if I go down there, I don't know if I'm going to make it back out.' Even before the fire actually hit, Cox had a problem.
>
> 'The fire wasn't even close, but we had homes burning,' he said. 'I would drive down the road and it was, like: How did that house catch on fire?' The answer was embers, blown far ahead of the fire front. They'd land on a wood roof or leaf-filled gutter, or even get sucked into an attic vent. In many fires, the majority of homes are ignited this way. Cox and his crew rushed around the evacuated neighborhoods, trying to stop the flames from spreading to neighboring homes.
>
> But then they got to one subdivision that was, surprisingly, calm.
>
> 'The only thing we had to do was put out a couple palm trees and the plastic trash cans that were burning,' Cox said.'The houses were perfectly OK. It was amazing.'
>
> Why? ***The neighborhood had been designed and built with wildfire in mind.***"

(Emphasis added.)

2. D. Kessler, P. Reese, *Millions bracing for wildfire season wonder if their homes are safe*, Sacramento Bee (April 11, 2019), available at https://www.redding.com/in-depth/news/2019/04/11/california-wildfire-prevention-protection-home/3412609002/.

> "A landmark 2008 building code designed for California's fire-prone regions — requiring fire-resistant roofs, siding and other safeguards — ***appears to have protected the Carrells' home and dozens of others like it from the Camp Fire.***"

(Emphasis added.)

3. A. Fausto, *Silverado fire evacuees return to O.C. neighborhoods surrounded by scorched earth, but no homes destroyed*, OC Register (October 30, 2020), available at https://www.ocregister.com/2020/10/28/firefighters-make-big-progress-on-silverado-fire-reaching-25-containment/.

> "***No homes were reported damaged so far, as firefighters continued to make progress against the blaze.*** Crews working overnight held the fire to 13,354 acres, with no growth from Tuesday night. It grew by 36 acres through the course of Wednesday, and had charred 13,390 acres by 7 p.m. Wednesday, Cal Fire officials said. Containment rose to 32%, up from 5% Tuesday night."

4. D. Murphy, *In California's Inferno, an Oasis of Fire Safety Planning Stands Out*, New York Times (November 2, 2003), available at https://www.nytimes.com/2003/11/02/us/in-california-s-inferno-an-oasis-of-fire-safety-planning-stands-out.html.

> "But as Southern Californians search for lessons from the state's worst fire season on record, this ***planned community at the edge of the Santa Susana Mountains is being viewed as a primer in fire survival.***
>
> ***'Not one house lost, not one life lost,'*** said Gail Ortiz, who works for the City of Santa Clarita. 'It is what everyone is talking about.'
>
> ...
>
> But with much of Southern California ablaze, and thousands of firefighters deployed in losing battles from the mountains to the desert, ***Stevenson Ranch became a dream firefighting assignment*** as winds unexpectedly pushed flames from the so-called Simi fire into the Santa Clarita Valley."

(Emphasis added.)

5. *Fire Adapted Communities: The Next Step in Wildfire Preparedness*, University of Nevada, SP-11-01 (2019), available at https://surviving-wildfire.extension.org/wp-content/uploads/2019/08/UNCE_FAC_sp1101.pdf.

> "Fire Adapted Community: Carson City's Wellington Crescent subdivision was threatened by the Waterfall Fire in 2004. ***The community fuelbreak, good access, ignition-resistant building construction and defensible landscapes helped ensure that no homes or lives were lost.***"

(Emphasis added.)

6. *Land use planning can reduce wildfire risk to homes and communities*, Headwaters Economic (April 2020), available at https://headwaterseconomics.org/wp-content/uploads/HeadwatersEconomics_LUPLanning_Wildfire_Report_April_2020.pdf.

> "Wildfires are crucial to ecosystem functionality and revitalization of forests and landscapes. Attempting to extinguish all wildfires is costly, dangerous, and unrealistic. Homes and communities need to be designed ahead of time to survive a wildfire. ***By applying land use planning tools—such as development plans, regulations, and building codes—communities can become better fire-adapted and resilient in the face of increasing wildfire potential.***"

EXHIBIT B

Maacama Watershed Alliance v. County of Sonoma

Court of Appeal of California, First Appellate District, Division Four

September 6, 2019, Opinion Filed

A155606

Reporter

40 Cal. App. 5th 1007 *; 253 Cal. Rptr. 3d 543 **; 2019 Cal. App. LEXIS 977 ***; 2019 WL 4926956

MAACAMA WATERSHED ALLIANCE et al., Plaintiffs and Appellants, v. COUNTY OF SONOMA et al., Defendants and Respondents; JAMES BAILEY and KNIGHTS BRIDGE VINEYARDS LLC, Real Parties in Interest.

Notice: NOT CITABLE—ORDERED NOT PUBLISHED

Subsequent History: [***1] The Publication Status of this Document has been Changed by the Court from Unpublished to Published October 7, 2019.

Time for Granting or Denying Review Extended Maacama Watershed Alliance v. County of Sonoma, 2019 Cal. LEXIS 9129 (Cal., Dec. 3, 2019)

Review denied and ordered not published by Maacama Watershed Alliance v. Bailey, 2020 Cal. LEXIS 134 (Cal., Jan. 2, 2020)

Prior History: Superior Court of Sonoma County, No. SCV261451, René A. Chouteau, Judge.

Maacama Watershed Alliance v. County of Sonoma, 2019 Cal. App. Unpub. LEXIS 5946 (Cal. App. 1st Dist., Sept. 6, 2019)

Counsel: Law Office of Edward E. Yates and Edward E. Yates for Plaintiff and Appellant.

Bruce Goldstein, County Counsel, and Holly E. Ricket, Deputy County Counsel, for Defendant and Respondent.

Perkins Coie, Brien F. McMahon, Michelle W. Chan and Jacob E. Aronson for Real Parties in Interest.

Judges: Opinion by Tucher, J., with Pollak, P. J., and Brown, J., concurring.

Opinion by: Tucher, J.

Opinion

[**548] TUCHER, J.—Maacama Watershed Alliance and Friends of Spencer Lane (collectively, appellants) appeal a judgment entered after the trial court [*1011] rejected their challenge to the decision of defendants County of Sonoma and its board of supervisors (collectively, the County) to adopt a mitigated negative declaration and approve a use permit allowing real party in interest Knights Bridge Vineyards LLC (Knights Bridge) to construct and

operate a winery (the project). Appellants contend the County should instead have prepared an environmental impact report (EIR) because there is a fair argument that construction and operation of the winery will cause a number of significant [***2] environmental effects. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The project site is on Spencer Lane in Knights Valley, a rural part of Sonoma County. The 86-acre parcel lies in an area zoned land extensive agriculture, a designation that allows wineries and tasting rooms as conditional uses. As approved, the project includes a two-story, approximately 5,500-square-foot winery building with an adjoining 17,500-square-foot wine cave, wastewater treatment and water storage facilities, fire protection facilities, and mechanical areas, covering an approximately 2.4-acre area. The project site already contains two residences and 46 acres of vineyards. The nearby area is primarily made up of vineyards; the only permitted winery in Knights Valley is 1.4 miles away. The steelhead are federally listed as a threatened species.

The County's staff reviewed reports considering effects of the project on geology, groundwater, wastewater, and biological resources, among other topics. As explained in more detail below, the staff concluded that, with recommended mitigation, the project would not have a significant effect on the environment, and recommended that the County adopt a [***3] mitigated negative declaration and approve the project. This the County's board of zoning adjustments did on September 17, 2015. Finding there was no substantial evidence the project would have a significant environmental effect, it approved the use permit with conditions and adopted a mitigated negative declaration (the 2015 MND) and mitigation monitoring program.

Appellants appealed the decision to the board of supervisors (the Board). County staff reviewed issues raised in the appeal and in subsequent comments and prepared a revised MND (the 2016 MND). After further comments and review, particularly regarding the potential for impacts on groundwater and water quality, the County prepared a second revised MND (the 2017 MND or the MND). At a public hearing, the Board then approved the project subject to conditions and adopted the 2017 MND.

Appellants brought a petition for writ of mandate, which the trial court denied.
[*1012]

DISCUSSION

I. *CEQA and Standard of Review*

(1) The California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA)[1] requires a public agency to prepare an [**549] EIR """whenever it can be fairly argued on the basis of substantial evidence that the

[1] All undesignated statutory references are to the Public Resources Code. CEQA is implemented in the CEQA guidelines, which are found at title 14 of the California Code of Regulations, section 15000 et seq. References to the "Guidelines" are to the CEQA guidelines.

project may have significant [***4] environmental impact.'"" (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 899 [69 Cal. Rptr. 3d 105] (*Porterville Citizens*); see § 21151, subd. (a).) "'May' means a reasonable possibility." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 [21 Cal. Rptr. 3d 791] (*Pocket Protectors*).) A significant effect on the environment is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Guidelines, § 15382; see Pub. Resources Code, §§ 21060.5, 21151, subd. (b).)

(2) The test for whether an EIR must be prepared is "whether there is substantial evidence in the record to support a "'fair argument"' that a project may entail significant environmental effects, even if there is other substantial evidence there will not be such an impact. [Citations.] '... Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.'" (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884 [233 Cal. Rptr. 3d 278] (*Jensen*); see §§ 21064, 21080, subd. (c)(1).) But if the lead agency determines there is no substantial evidence in the record before it that the project may have a significant effect on the environment, it may issue a negative declaration. (*Jensen*, at p. 884.) If the project may have significant effects, but mitigation [***5] measures will make the effects insignificant, the agency may adopt a mitigated negative declaration. (§ 21080, subd. (c)(2).)

We review an agency's decision to issue a negative declaration for "'prejudicial abuse of discretion,' which 'is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 171 [127 Cal. Rptr. 3d 710, 254 P.3d 1005]; see § 21168.5.) ""Judicial review of these two types of error differs significantly: While we determine de novo whether the agency [*1013] has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements, we accord greater deference to the agency's substantive factual conclusions. [Citation.] In CEQA cases, as in other mandamus cases, we independently review the administrative record under the same standard of review that governs the trial court."'" (*Jensen, supra*, 23 Cal.App.5th at p. 886.) The agency's "decision to rely on an MND under CEQA is reviewed for abuse of discretion under the 'fair argument' standard." (*Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 939 [102 Cal. Rptr. 3d 19].) In carrying out this review, although we do not defer to the lead agency's determination, we give it the benefit of the doubt ""on any legitimate, disputed issues of credibility."'" (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 928.) The question is whether there is substantial [***6] evidence in light of the record as a whole that it cannot be fairly argued that the project may cause a significant environmental impact. (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 540–541 [230 Cal. Rptr. 867].)

(3) "The petitioner bears the burden of proof to demonstrate by citation to [**550] the record the existence of substantial evidence supporting a fair argument of significant environmental impact." (*Jensen, supra*, 23 Cal.App.5th at p. 886, citing *Porterville Citizens, supra*, 157 Cal.App.4th at p. 899; accord, *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379 [43 Cal.Rptr.2d 170].) Personal observations of local residents may qualify as substantial evidence supporting a fair argument. (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 928.) However,

"mere argument, speculation, and unsubstantiated opinion, even expert opinion, is not substantial evidence for a fair argument. [Citations.] 'The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.' [Citations.] Neither is the mere possibility of adverse impact on a few people, as opposed to the environment in general." (*Id.* at pp. 928–929.) The standard for the agency "is not whether *any* argument can be made that a project might have a significant environmental impact, but rather whether such an argument **[***7]** can *fairly* be made." (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003 [165 Cal. Rptr. 514].)

With these principles in mind, we consider appellants' contentions.
[*1014]

II. *Geology and Erosion*

A. *Background*

Consideration of the project's potential for geologic impacts took place over the course of several years. In 2013, Bauer Associates (Bauer) completed a geotechnical investigation of the project (the Bauer report), which included review of published literature and Bauer's previous work at and near the site; field geologic mapping; deep core borings and trenches; study of boring cores and trench walls; monitoring of groundwater levels in borings and trenches; characterization of landslide conditions; and analysis of slope stability. Bauer found that a portion of the Knights Bridge property was underlain by a large, inactive landslide that could exceed 30,000 years in age, and that two additional landslides had ensued, up to 14,000 years ago, with possible subsequent "localized slope adjustments." The planned winery and cave were outside the boundaries of the landslide. Bauer concluded that slope stability on the project site was acceptable and that the project would not cause significant impacts for purposes of CEQA if designed in accordance with **[***8]** Bauer's recommendations and current building codes. The recommendations included planting graded slopes with quick growing vegetation or protecting the slopes from erosion by other means; limiting the grade of slopes; and diverting seepage and surface water runoff from the slope surfaces.

The Bauer report was subject to two peer reviews. The first was an "internal peer review" by Michael J. Dwyer of Consulting Engineering Geologic Services, who had acted as an outside consultant as Bauer carried out its investigation. Dwyer concluded the Bauer report had properly identified and characterized the geologic conditions at the project site and had confirmed the absence of, or adequately mitigated through its recommendations, the geological and seismic hazards. Dwyer opined that the project did not have potentially significant geologic impacts that could not be mitigated through the recommendations.

The County retained an independent contractor, Cotton, Shires and Associates (Cotton Shires) to conduct a second peer **[**551]** review. Although Cotton Shires disagreed with some of the Bauer report's conclusions about the nature of some of the deposits on the project site, its review concluded that the **[***9]** project was feasible from a geotechnical standpoint, and that Bauer's recommendations would adequately mitigate concerns about slope stability.

Kjeldsen Biological Consulting carried out a biological assessment. It concluded the project would not affect special status species onsite or offsite if best management practices were implemented, particularly silt and erosion control measures during and after construction.
[*1015]

Appellants' geological expert, Raymond Waldbaum, reviewed the Bauer report. He contended the Bauer report's interpretation of landslide risk and slope stability was not supported by the data in the report. He also stated that the Bauer report lacked adequate geologic maps and cross-section data.

Cotton Shires responded to Waldbaum's critique. It concluded, "Though we have disagreed with Bauer Associates regarding some aspects of the site geology, they agreed to use geologic models and strength parameters for their slope stability analysis that we found to be generally acceptable. Though it appears unlikely that we will ever agree about the origin of the matrix-supported deposits that are found near the surface at the eastern portion of the winery building site, Bauer Associates [***10] has agreed to incorporate mitigation measures designed to address the potential debris flow hazard in this area."

In a second letter, Waldbaum noted, inter alia, that the cave excavations would generate a significant volume of material, or "cave spoils." He argued that disposing of the cave spoils could create slope instability or excessive erosion, and that mitigation of the hazards of cave soil disposal should not be deferred. He also contended that there was insufficient information about stormwater drainage and the potential for inappropriate discharge locations to cause slope instability.

On behalf of appellants, Kamman Hydrology & Engineering, Inc. (Kamman), and Dr. Stacy K. Li of Aquatic Systems Research expressed concern that there was insufficient information about where the cave spoils would be placed, in order to mitigate impacts to Bidwell Creek, and that no spoils management plan was available for public review. Appellants also submitted a letter to the County arguing that sediment from increased use of roads could be carried to Bidwell Creek and adversely affect its habitat.

Summit Engineering, Inc. (Summit), which had earlier prepared a hydrology report, submitted a stormwater [***11] management plan and fill placement drawings in 2017. The measures shown in the stormwater management plan include erosion barriers, such as fiber rolls and dams, and a stabilized construction entrance. At the County's request, O'Connor Environmental, Inc. (O'Connor), performed a peer review assessing, inter alia, the effects of cave spoils placement on water quality. In response to the concerns raised by Kamman, O'Connor explained on May 15, 2017, that erosion control measures included in Summit's site grading plan and best management practices would be implemented; cave spoils would be placed in specified areas where ground slopes were gentle (2 percent or less), would be covered with straw mulch, would be isolated by erosion control barriers and would be placed at least 100 feet from Bidwell Creek, twice the distance required by the County's grading plan standards; and there would be a series of gravel check [*1016] dams to control potential erosion from the spoils. These measures, according to O'Connor, "are expected to prevent significant [**552] erosion of cave spoils that could degrade water quality in Bidwell Creek."

Before the 2017 MND was adopted, another geologist, Dr. Jane E. Nielson, provided [***12] comments critical of it. She stated that the project site adjoined one large and two small landslides, that the wine cave tunnels would be dug into the same volcanic rock sequence that produced the largest of the landslides, and that any debris released from tunneling or a collapse due to tunnel construction could alter the flow of the creek ecosystem and add sediment and other pollutants. She argued the MND was inadequate because it lacked a map showing precise locations of all elements of the project, detailed geologic maps, and cross-sections of the project area; because the experts had expressed different opinions on the soil and rock materials at the project site; because it did not fully describe the bedrock or provide test data to prove the tunneling was feasible; and because neither the MND nor the supporting studies included a plan for creating the tunnels. Dr. Nielson also suggested the placement of cave spoils, 2.3 feet deep across 6.2 acres, could lead to erosion into Bidwell Creek, and that the MND did not assess the stability of the natural soils upon which the cave spoils would be placed or consider the potential for increased erosion.

The 2017 MND concluded the project, [***13] as mitigated, would have no significant effects on biological resources, geology, or water quality.

Soil Erosion. The MND explained that if the project were to cause substantial erosion and transport of sediment into the creek, it could affect steelhead or coho habitat, but the project's conditions required best management practices during construction to minimize erosion. The project would generate approximately 21,000 cubic yards of cave spoils, which would be used as fill in specified areas of the vineyard and would meet a 100-foot setback from Bidwell Creek in compliance with the site's zoning and with the creek's designation under the Franz Valley Area Plan as a minor riparian corridor. Surface runoff would be routed through vegetated swales and vegetated buffer areas for treatment to mitigate pollutant loads in accordance with County requirements.

The MND explained that the County's grading ordinance requirements and the best management practices it had adopted were specifically designed to maintain potential water quality impacts at a less than significant level. It also noted that Knights Bridge had submitted a stormwater management plan and fill placement drawings showing the [***14] type and location of the best management practices that would be implemented. Based on the implementation of these practices, the small footprint of the project, and the distance to Bidwell [*1017] creek, the MND concluded that "impacts to special status species from project-generated sediment entering the creek would be less than significant." It also concluded the project would not alter the existing drainage pattern of the site in a manner that would result in substantial erosion.

Slope Stability. The MND's discussion of slope stability noted the presence of a large, ancient, and inactive landslide on the project site, and explained that it had been determined that the proposed winery and caves were outside the limits of the landslide. The potential for large-scale remobilization of the landslide was very low and acceptable from a geotechnical engineering viewpoint. Localized, smaller landslides and shallow sloughing could occur, perhaps including steeper areas upslope of the winery. Mitigation measures, as recommended in the Bauer report, included construction of diversion/catchment walls to contain 150 cubic yards of material; level buffer areas upslope of structures; [**553] adhering to all grading [***15] and surface-groundwater control recommendations;

development and implementation of an erosion control and revegetation plan; monitoring of excavations by a geotechnical engineer or engineering geologist; and implementation of any additional measures deemed necessary based on geologic conditions observed during excavations.

B. *Analysis*

As we have explained, appellants have the burden to point to substantial evidence in the record supporting a fair argument that the project (as mitigated) may have significant environmental effects. (See *Jensen, supra*, 23 Cal.App.5th at p. 886; *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 390 [83 Cal. Rptr. 2d 836].)

Appellants contend there is evidence to support a fair argument that the project's earthmoving and erosion may have a significant impact on the habitat provided by Bidwell Creek. They argue first that the MND does not provide sufficient information to evaluate these effects. In particular, they contend the MND does not include a geologic map or geologic cross-sections. On the contrary, reports prepared by Richard C. Slade & Associates LLC (Slade), consulting groundwater geologists, and referred to in the MND, contain geologic maps and cross-sections.

Appellants also point out that Bauer and Cotton Shires differed on certain **[***16]** geologic conclusions—that is, about the origin of certain deposits on the property. Despite this difference of opinion, Bauer and Cotton Shires agreed that, with the mitigation measures contemplated by Bauer, the project would be geotechnically feasible.

Appellants contend that Waldbaum's and Nielson's criticisms of the data, findings, and conclusions of the County's consultants are sufficient to support **[*1018]** a fair argument that digging the caves will adversely affect slope stability. We are unpersuaded. The Bauer report contained an extensive discussion of the geology of the project area. In response to Waldbaum's criticism of the Bauer report, Cotton Shires submitted a detailed memorandum discussing the potential for slope instability and explaining that Bauer had incorporated mitigation measures designed to address the potential debris flow hazards in an acceptable manner. Although Nielson argued that reports upon which the MND relied did not fully describe the geology of the area and the MND was inadequate, she does not provide evidence that the project is reasonably likely to cause landslides or otherwise generate environmentally harmful releases of debris. (See *Pocket Protectors, supra*, 124 Cal.App.4th at pp. 928–929 [speculation and unsubstantiated **[***17]** expert opinion not substantial evidence for fair argument].)

We similarly reject appellants' contention that there is substantial evidence to support a fair argument that erosion from the project, particularly runoff from the cave spoils, will cause significant effects on Bidwell Creek and degrade the habitat the creek provides for salmonids. Nothing in the record indicates there is a fair argument that placement of the spoils on a 2 percent grade, at least 100 feet from the creek, covered with straw mulch, and isolated by erosion control measures, will significantly affect water quality in the creek. Nor is there evidence that compliance with the County's grading ordinance, its adopted best management practices, and the erosion control measures specified by Summit for use before and after construction will be insufficient to achieve that goal.

(4) **[**554]** Appellants also suggest that, because the geology of the site was not adequately investigated, the County improperly deferred mitigation of environmental impacts by relying on best management practices and the

standards of the County's grading ordinance to mitigate unknown future effects. We disagree. "Deferral of the specifics of mitigation **[***18]** is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in[to] the mitigation plan." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [15 Cal. Rptr. 3d 176].) That standard is met here. The record shows a detailed geological investigation, and the conditions of approval require Knights Bridge to conform to Bauer's recommendations for slope stability, including "construction of diversion/catchment walls to adequately retain 150 cubic yards of material, the provision of level buffer areas upslope of structures, adhering to all grading and surface/groundwater control recommendations, and development/implementation of an erosion control and revegetation plan." Bauer had recommended that graded slopes be planted with quick growing, dense vegetation or protected from erosion by other methods when grading was complete. In addition, a geological engineer or engineering geologist must monitor excavations during construction to confirm that the **[*1019]** observed conditions conform to what was anticipated and implement any necessary additional measures based on observed conditions. This is not a case of mitigation that will be formulated after a mitigated negative declaration is approved. **[***19]** (See *Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at pp. 1396–1397 [where there was substantial evidence to support fair argument project would affect kangaroo rat, proposed mitigation could not be left for future formulation]; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884 [274 Cal. Rptr. 720].) We see nothing improper in adopting measures that reduce the project's expected environmental effects to a level of insignificance, but require monitoring and adjustments in the event of unanticipated conditions.

III. *Groundwater Supply*

Appellants contend there is substantial evidence to support a fair argument the project's groundwater use will significantly affect salmonids in Bidwell Creek, groundwater supply in neighboring wells, and fire suppression.

The County found the project would have a less than significant impact on groundwater supply and recharge. It explained that there were four wells on the project site, and that one of them, the "Residential Well," would be designated as the sole supply well for the project. Two other wells, the upper irrigation well and the Rattle Snake Hill well, would be used for the existing vineyards, and the fourth well, the lower irrigation well, would be capped and no longer used.

The original analysis of groundwater supply and recharge from the proposed project, completed in December **[***20]** 2013 by Slade, assumed the project would use 2.2 acre-feet of groundwater per year, less than 9 percent of the estimated average annual groundwater recharge within the boundaries of the project site, and only a small fraction of the estimated 433 acre-feet of groundwater storage on the site. Taking into account the adjacent parcels and calculating anticipated future use, Slade concluded available groundwater would likely be only minimally affected.

The project was later revised to recycle water, reducing the project's net groundwater demand to 0.5 acre-feet per year. **[**555]** Then before the project was approved, Knights Bridge agreed to ensure *no net increase* in groundwater use over current conditions by reducing use elsewhere on the project site by at least 0.5 acre-feet per year. The County required conditions of approval to ensure conformity with these standards: designating the

residential well as the dedicated supply for the project; requiring the residential well to be fitted with a groundwater-level measuring system; an easement allowing the County's employees and agents to collect watermeter readings and groundwater-level [*1020] measurements; monthly monitoring of groundwater elevations [***21] and quantities of groundwater extracted; a watermeter to measure all water use associated with the winery operation with monthly reporting of water use; and no net increase in groundwater use through measures including converting irrigated vineyards to dry farming, forgoing the right to replant existing vineyards, or removing existing vines.

Appellants argue that there is a disagreement among the experts about the boundaries of the aquifers that supply water for the project and for Bidwell Creek. In particular, they point to concerns raised by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and Kamman. In January 2016, NMFS submitted a comment letter. It noted that Bidwell Creek had been designated as critical habitat for threatened Central California Coast (CCC) steelhead, which inhabit the creek seasonally, and for endangered CCC coho salmon, which are currently extirpated from the system. NMFS opined that the MND did not adequately assess the project's potential effects on Bidwell Creek streamflow and on steelhead and coho salmon. In particular, it argued that the then-current MND did not analyze the relative elevations of the aquifer and the stream, which would [***22] influence the amount of groundwater accretion to the streamflow in Knights Valley. Moreover, according to NMFS, examination of well log data for nearby properties suggested that the Knights Valley aquifer was in a state of overdraft, that the streamflow was being affected by unsustainable groundwater extraction, and that the proposed project would likely worsen that condition. Presently, Bidwell Creek stops flowing for much of the summer. NMFS also suggested the analysis should have considered a larger geographic area in order to characterize effects on streamflow, since groundwater pumping across the basin could cumulatively influence water table elevation and connection to surface flow. NMFS argued that monitoring groundwater extraction would not mitigate the project's potential impacts; "[o]nly actions that appreciably offset or improve groundwater levels and/or Bidwell Creek streamflow should be considered mitigation measures for the potential impacts of the Project."

Slade responded to NMFS's comments on July 31, 2016. It stated that the project property was "completely underlain by the Sonoma Volcanics, and the Project well (the Residential Well) produces groundwater from the [***23] Sonoma Volcanics." Bidwell Creek was in the Knights Valley groundwater basin, and the residential well was outside that basin's boundaries and did not extract groundwater from it, remove water that is tributary to it, or contribute groundwater to it. Confirming this view, Slade had performed a pumping test that showed a lack of connection between the residential well and water levels in nearby wells and, thus, with aquifers in the Knights Valley groundwater basin. Slade also explained that, based on anticipated project groundwater demands (before Knights Bridge undertook to ensure no net increase in [*1021] groundwater use), the project [**556] would use only 2 to 3 percent of the estimated annual recharge at the property.

Another commenter, Kamman, had argued that the water level in the lower irrigation well was close to that of Bidwell Creek, which suggested that they were hydraulically connected and that pumping might affect groundwater flow to the creek. Slade responded that the lower irrigation well had been capped and was not being used for vineyard irrigation.

NMFS followed up on Slade's response on November 7, 2016. It noted the evidence that recharge to the Knights Valley aquifer occurs [***24] *principally* as infiltration from streambeds and from precipitation that falls on the basin floor, but argued that this fact does not preclude other forms of recharge to the basin, such as recharge from the Sonoma Volcanics at the project site. Kamman submitted new comments on behalf of appellants on October 27, 2016, making the same point. Kamman also made the point that a geologic cross-section showed that "groundwater movement beneath the volcanic hills underlying the site is towards the Knights Valley Groundwater Basin and must be providing some contribution of groundwater recharge to the basin." Kamman opined that pumping in wells that reduced groundwater storage in the Sonoma Volcanics beneath the project site would reduce the amount of groundwater available for flow and recharge of the Knights Valley groundwater basin, and that any reduction in groundwater contributions to Bidwell Creek could affect its habitat value.

In its May 15, 2017 peer review, O'Connor recommended further analysis of the project's potential effects on Bidwell Creek, and on July 3, 2017, Slade prepared a response. Slade reiterated that geologic data suggested the volcanic rock aquifer from which the residential [***25] well extracts groundwater is not in direct contact with Bidwell Creek. But, assuming that some portion of the water from the volcanic rock aquifer moved to the alluvium that fed into Bidwell Creek's streamflow, Slade calculated that the additional pumping of the residential well to meet project demands would reduce groundwater flow from the Sonoma Volcanics aquifer by 1.5 percent, and that only a small portion of that water would move into the creek. Moreover, the project's peak demand month would be September, a month in which the creek is typically dry, and hence pumping would not reduce streamflow during that month. Slade concluded that any effects on Bidwell Creek from pumping the residential well for the project would be, at most, imperceptible.

Project opponents submitted evidence that neighboring well yields had been declining. In its July 31, 2016 response to comments, Slade argued that these reports were "not supported by water level or water use/metering data," and could possibly be accounted for by unrelated well performance issues and specific geologic conditions.
[*1022]

In its peer review, O'Connor pointed out that the "accepted use rate[]" for residential water demand was one [***26] acre-foot per year for primary residences. The total estimated water use for the winery was projected to be 0.74 acre-feet per year, with recycling measures reducing net consumption to 0.5 acre-feet per year. Annual groundwater demand in the "Cumulative Impact Area" composed of the project parcel and adjacent parcels, including vineyard irrigation and domestic use, would be about 38 percent of annual recharge; the amount attributable to the winery project would be about 0.5 percent of mean annual groundwater recharge in the cumulative impact area. The NMFS later pointed out that even a very small difference in streamflow [**557] elevation can affect habitat conditions for salmonids.

The evidence would certainly support a finding that the project will not cause significant effects on groundwater supplying Bidwell Creek and neighboring wells. The question before us, however, is whether there is substantial evidence to support a fair argument the project *will* have significant effects. We conclude the County properly found there was not. The project's water demand will be less than that of a residence, and a small fraction of mean annual

groundwater recharge. The record indicates the aquifer underlying [***27] the project and that underlying Bidwell Creek are not in contact, but even assuming there is a geologic connection, there is no evidence the project would have any perceptible effect on the water flowing from one aquifer to the other, and thence to the creek.

Moreover, the conditions of approval require entirely offsetting the project's water use so there is no net increase in water use over the project site. Appellants contend these conditions are "illusory," but we disagree: They include monitoring of the well supplying the project and of groundwater elevations, and requiring Knights Bridge to reduce water use elsewhere on the property by specified methods with documentation for any methods it wishes to use in the future to meet the performance standard of "no net increase." Appellants argue that Knights Bridge will be free to use any well on the property to supply the project; however, we interpret the condition that the residential well is the "dedicated project supply well" to mean that it must be the project's exclusive source of water, and neither Knights Bridge nor the County have suggested otherwise. And if the winery's net water use exceeds 0.5 acre-feet per year or the project [***28] does not meet the "no net increase" performance standard, the County may bring the matter back for the board of zoning adjustments to review additional measures to reduce water use. These facts support the County's finding that there is no substantial evidence to support a fair argument that the project will significantly affect groundwater resources.

Appellants also contend the County's general plan required it to conduct a cumulative groundwater impact study and consult with neighboring well [*1023] owners before granting the permit. But appellants are no longer litigating compliance with the general plan. The question before us on this appeal is whether appellants have shown evidence to support a fair argument that the project will have significant environmental effects. On this record, we conclude they have not.

IV. *Visual Impacts*

(5) Appellants contend the County ignored the visual impacts of the project. Aesthetic issues are a proper subject of CEQA review. (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1141 [236 Cal. Rptr. 3d 513].) Under the Guidelines, an agency should consider "whether a proposed project would '[s]ubstantially degrade the existing visual character or quality of the site and its surroundings.' (CEQA Guidelines, appen. G., § I, subd. (c), [***29] ... [environmental checklist form].) The CEQA Guidelines specifically note that 'the significance of an activity may vary with the setting.')" (*Protect Niles*, at p. 1141, italics omitted.)

The 2017 MND stated that the site was not designated as a scenic resource by the Sonoma County general plan, and that the winery would be centrally located in an 86-acre parcel and not visible from public roads. The MND concluded the project would cause no visual impacts.

[**558] Project opponents submitted evidence that an existing 10-bedroom residence on the property was visible from Highway 128, and it appears that both Highway 128 and Frantz Valley Road are scenic corridors. At the hearing on the appeal, a member of County staff told the supervisors that the upper level of the winery might be visible from some areas on Franz Valley Road or Highway 128, depending on the vegetation. She also said that the winery would be set into the hillside, rather than on top of the ridgetop; there would be trees behind the winery; and the winery would be required to have a dark-colored exterior, a nonreflective rooftop, and landscaping. The project's

conditions of approval reflected these limitations: they specified that before a building [***30] permit was issued, the project would be subject to review and approval by the design review committee, that the design would be evaluated "on the basis of harmony with site characteristics in regard to height, texture, color and roof characteristics," that exterior finishes would be dark, earthy colors and the roof dark and nonreflective, and exterior lighting would be low mounted, downward casting and fully shielded to prevent glare. Also, existing trees would be preserved in accordance with an arborist's report that had been prepared, and trees would be planted to screen the structure from public roads.

[*1024]

An errata sheet amended the MND to omit the statements that the winery would not be visible from public roads. It stated, "The upper level of the building may be visible from public roadways."

Appellants have not met their burden to show there is substantial evidence supporting a fair argument that the project will cause significant aesthetic impacts. They point primarily to evidence that an existing residence on the property is visible from Highway 128, but they described this residence as "at the very top of the property," and "on the ridge above the winery site." Pictures of the [***31] residence show that the building is light colored and largely unshielded by vegetation. These things are not true of the winery: County staff testified that although the upper portion of the winery might be visible from local roads, vegetation could block that view, and in any event, it would not be on a ridgetop where an "architectural hard line" would be visible, but set into the hillside. The conditions of approval require dark colors on the exterior and landscaping to provide screening. So the unsightliness of the existing residence is not substantial evidence that the winery building, in an area zoned for wineries and tasting rooms, will create a significant aesthetic impact.

(6) In reaching this conclusion, we recognize that lay public commentary may constitute substantial evidence supporting a fair argument of significant aesthetic effects. (See, e.g., *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 375–376 [241 Cal. Rptr. 3d 421] [a large number of people testified that project in historical center of Georgetown was too big, boxy, or monolithic to blend in; sufficient evidence that project might impair "central district's unique and treasured Gold Rush character"]; *Pocket Protectors, supra*, 124 Cal.App.4th at p. 937 [opinions of area residents based on direct observation may be relevant to aesthetic impact [***32] of long double rows of houses on narrow street and insufficient landscaping].) For the reasons we have explained, however, in this case the opinions of local residents, based largely on the views of a different structure, do not constitute substantial evidence that the winery will have a significant aesthetic impact.

[**559] Appellants contend that the County failed to assess the project's visual impacts and improperly relied on future design review as a substitute for CEQA analysis. They also argue that the County ignored its own zoning ordinance, which provides that "No permit shall be issued for any project requiring design review approval unless and until drawings and plans have been approved by the design review committee ... ." (Sonoma County Code, § 26-82-050(a)), and that this violation provides substantial evidence of a CEQA violation. In the circumstances of this case, these contentions do not persuade us that the County abused its discretion in concluding there was no fair argument that the project's aesthetic impacts would be significant. The [*1025] conditions of approval themselves

require vegetation and a dark, nonreflective exterior, rather than merely relying on a later determination of these [***33] matters. They do not improperly defer mitigation, since they set standards to guide the County in reviewing the project's design. (See *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [32 Cal. Rptr. 3d 177].)

V. *Fire Hazards*

A. *Judicial Notice*

(7) Appellants have asked us to take judicial notice of a June 11, 2018 agenda item for the Board entitled "Emergency Operations Center After Action Report, Community Alert & Warning Program Assessment and Emergency Management Program Assessment," which discusses the wildfires of October 2017, including the Tubbs and the Nuns fires. We deny the request for judicial notice. The agenda was not part of the administrative record, and it was created—and considered events that occurred—*after* the County approved the project. (See *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1192 [187 Cal. Rptr. 3d 155] [denying request for judicial notice of report that was not part of administrative record]; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578–579 [38 Cal. Rptr. 2d 139, 888 P.2d 1268] [extra record evidence that could not have been produced at administrative level in exercise of reasonable diligence admissible in traditional mandamus proceedings only if it existed before agency made decision]; Guidelines, § 15162(c) ["Information appearing after an approval does not require reopening of that approval"].)

B. *The Merits*

Appellants contend an EIR is necessary to examine the project's [***34] fire hazards. The Board found: "The project is consistent with the Public Safety Element of the General Plan related to fire hazard ... because it includes fire protection features, including a fire engine turnaround, access road of adequate width, and water storage. Water storage for fire suppression, including both fire-fighting and water feed for sprinklers in the winery structure and wine caves, will be located on a concrete pad behind the winery structure and at a sufficient height that allows for effective gravity feed. The County Fire Marshal's Fire Safe Standards require that fire sprinklers be installed in new structures to contain or prevent fires from spreading from structures to wildlands fires. ... Compliance with the Fire Safe Standards will ensure that the exposure of people and property to fire hazards would be reduced to a degree that the risk of injury or damage is less than significant." The MND also concluded the project's wildland fire risk was less than significant.

[*1026]

(8) Appellants argue that a fair argument exists the project will significantly [**560] increase the risk of fire hazards, including wildfires. As they point out, a project may have a significant environmental [***35] effect by increasing the risk of fire hazards. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193 [227 Cal. Rptr. 3d 413].) They argue that the project is in a very high fire hazard severity zone (see Gov. Code, § 51178), that it has limited groundwater capacity, and that the County failed to consider the severity of fire hazards in violation of its general plan. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 [248 Cal. Rptr. 352] ["The agency should not be allowed to hide behind its own failure to gather relevant data"].) And they

contend the County failed to address the risks posed by a facility with an extensive electrical system and the logistics and limitations faced by the local volunteer fire department.

(9) We are unpersuaded. The project is subject to the County's permit requirements, and it includes fire suppression measures, such as sprinklers in the winery and wine caves and an emergency water supply in compliance with County standards, as well as adequate emergency access for firefighters. There is no indication that the activities at the winery will cause an elevated risk of fire. Knights Bridge will be required to maintain vegetative fuels in compliance with fire regulations. And to the extent appellants are arguing that fire protection services are already stretched thin, "[t]he need for additional fire protection services [***36] is not an *environmental* impact that CEQA requires a project proponent to mitigate." (*City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 843 [195 Cal. Rptr. 3d 614].) Appellants have not pointed to substantial evidence for a fair argument that there is a reasonable possibility the project, as conditioned, will significantly increase the risk of wildfires.

Appellants also contend the County failed to consider whether the project's groundwater use will contribute to lower groundwater levels and affect the availability of water during fire season. We have already concluded that the County properly found there is no fair argument the project as approved will significantly affect groundwater supplies.

(10) Although appellants do not here obtain the relief they have sought, we note that a persistent explanation for this outcome is the success appellants already achieved in getting modifications to the project and the analysis of its environmental effects. In response to early concerns raised by appellants and others, Knights Bridge and its consultants made important concessions, for instance by reducing the project's water demand, agreeing not to increase net groundwater use on the project site, and developing a plan for the cave spoils. The record lacks substantial [***37] evidence to support a fair [*1027] argument that, as now mitigated, the project is reasonably likely to cause significant environmental effects. The County properly adopted the mitigated negative declaration.

DISPOSITION

Appellants' March 21, 2019 request for judicial notice is denied. The judgment is affirmed. Appellants are to pay costs on appeal.

Pollak, P. J., and Brown, J., concurred.

End of Document

EXHIBIT C

San Dieguito Cmty. Council, Inc. v. Cty. of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

December 22, 2015, Opinion Filed

D067126

Reporter

2015 Cal. App. Unpub. LEXIS 9273 *

SAN DIEGUITO COMMUNITY COUNCIL, INC., Plaintiff and Appellant, v. COUNTY OF SAN DIEGO, Defendant and Respondent; RANCHO CIELO ESTATES, LTD., Real Party in Interest and Respondent.

Subsequent History: Review denied by San Dieguito Community Council, Inc. v. County of San Diego, 2016 Cal. LEXIS 1395 (Cal., Mar. 9, 2016)

Prior History: [*1] APPEAL from a judgment of the Superior Court of San Diego County, No. 37-00066179-CU-WM-NC, Robert P. Dahlquist, Judge.

Disposition: Affirmed.

Counsel: Kevin K. Johnson, Jeanne L. MacKinnon and Heidi E. Brown for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, John E. Ponder, Karin Dougan Vogel and Whitney Hodges for Defendant and Respondent and for Real Party in Interest and Respondent.

Judges: IRION, J.; MCCONNELL, P. J., O'ROURKE, J. concurred.

Opinion by: IRION, J.

Opinion

This case arises from the seventh amendment (Amendment) to the Rancho Cielo Specific Plan (Specific Plan) and the related addendum (Addendum) to the environmental impact report (EIR) for the real estate development of Rancho Cielo Estates (Development) in the San Dieguito community of San Diego County. Proposed by the developer, Rancho Cielo Estates, Ltd. (Rancho Cielo), and a related entity, the Amendment and Addendum

concern five parcels within the Development — changing the land use designations of four of the five parcels and transferring a portion of one parcel's unused dwelling unit allotment to a neighboring parcel. In August 2013, the County of San Diego (County), through its Board of Supervisors (Board), approved the proposed modifications (2013 Project) and [*2] adopted the Addendum and the Amendment.

San Dieguito Community Council, Inc. (SDCC) filed the underlying action against the County as defendant/respondent, and Rancho Cielo and the related entity as real parties in interest, challenging the County's approval of the Amendment and the Addendum.[1] SDCC alleged that the County failed to comply with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.,[2] and sought a writ of mandate directing the County to vacate its approval of the Amendment and Addendum.

The trial court denied SDCC's petition for writ of mandate and entered judgment against SDCC and in favor of the County and Rancho Cielo on all claims. SDCC focuses on three aspects of the Amendment and Addendum: (1) deletion of a commercial center within the Development; (2) deletion of a water reclamation system within the Development; and (3) transfer of some residential units from one parcel to another.

We will affirm the judgment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Amended Specific Plan*

The Development is located two miles east of Rancho Santa Fe, four miles southwest of the City of Escondido, [*3] four miles south of the City of San Marcos, seven miles east of Leucadia and Encinitas, and immediately north and west of Lake Hodges and the Del Dios area.

In 1981, based on an EIR, the County approved the Specific Plan (SP 81-04) for the Development. The Specific Plan covered 3,525 acres and allowed for, inter alia, approximately 890 residential units, two commercial centers, a fire station, and a water reclamation plant. The two commercial centers were the Village Center (within the Development) and the Neighborhood Commercial Center (just outside the gates to the westerly entrance).

Over the next 22 years, the Board approved six amendments to the Specific Plan. In general, the Development had been downsized to 2,668 acres and 719 residential units — 639 "country estates," 42 "village estates" and 38 "planned development units." The country estate residences were scattered throughout the Specific Plan area, the village estate units were clustered in the center of the Specific Plan area, and the planned development residences were located in the eastern portion of the Specific Plan area. These six amendments provided in part:

---

[1] The related entity did not appear in the trial court.

[2] Further undesignated statutory references are to the Public Resources Code.

1984 Specific Plan Amendment (SPA) 84-01. This amendment redesigned the areas containing [*4] the village estates, the Village Center and the Neighborhood Commercial Center, increasing from 10 to 15 the number of developable acres in the Neighborhood Commercial Center. Along with this amendment, the County approved a 1984 supplemental environmental impact report (SEIR).

1984 SPA 84-05. This amendment added five additional country estate lots and redesigned 10 other country estate lots — none of which affect the two parcels (H and VC) or the water reclamation system at issue in the appeal. Along with this amendment, the Board adopted a negative declaration.

1996 SPA 96-001. This amendment reduced certain residential lot sizes within the country estates and relocated the fire station from the Village Center to the Neighborhood Commercial Center. Along with this amendment, the Board approved an addendum to the EIR and SEIR.

2001 SPA 98-001. This fourth amendment was approved primarily to respond to changes resulting from the acquisition of a right-of-way for and the construction of a pipeline by the Olivenhain Municipal Water District (OMWD) for its water storage project, by which the OMWD connected several existing water storage reservoirs.[3] A related approval included adding two, deleting seven [*5] and relocating two country estate lots on different parcels. Along with this amendment, the Board approved an addendum to the 1981 EIR and the 1984 SEIR.

2002 SPA 00-006. This fifth amendment further considered OMWD's project and OMWD's provision of water and sewer service for the Development, including the construction of an OMWD pump station within in the Development by which wastewater would be pumped to an offsite treatment plant. In response to OMWD's water storage project, this amendment also allowed for the transfer of four lots from one side of a creek to the other side. Along with this amendment, the Board approved an addendum to the 1981 EIR and the 1984 SEIR.

2003 SPA 00-003. This amendment transferred 147 acres, including 46 country estate lots, and relocated a proposed sewer pump from the Specific Plan area to a newly created area, the Cielo del Norte Specific Plan, outside the Development. The Board approved the environmental effects of this amendment in an August 2003 EIR submitted in support of the Cielo del Norte Specific Plan.[4]

Thus, by 2003 the Specific Plan and the six SPA's (collectively, the Amended Specific Plan) approved final maps creating parcels H and Village Center (parcel VC), as well as construction of 528 residential units, including 42 village estates on parcel H. Tens of millions of dollars of infrastructure had been completed, and approximately 200 houses had been built.

B. *The Amendment and the Addendum*

---

[3] OMWD's project is described as a system of reservoirs, water treatment plant, pipelines and a dam intended to enhance water delivery.

[4] The 2003 EIR in support [*6] of the Cielo del Norte Specific Plan is not at issue in this appeal.

As relevant to this appeal, the 2013 Project proposed by the Amendment (1) focused on parcel H, which had allowed for the development of 42 village estate units, and parcel VC, which had allowed for the development of the Village Center; and (2) reclassified the water reclamation facility to country estates and the reclaimed water reservoir sites to open space for biological preservation. More specifically, the 2013 Project proposed reducing the residential units on parcel H from 42 to 24 (17 on parcel H and seven transferred to parcel VC) and deletion of the water reclamation facility.

County staff explained (1) that the water reclamation system was no longer necessary, because OMWD was already providing all the water and sewer services for the Amended Specific [*7] Plan area, and (2) that the density of the overall Amended Specific Plan would remain at the approved 0.27 dwelling units per acre. County staff also conducted environmental review and advised that the 2013 Project would not cause any new significant environmental impacts that were not previously considered and, as appropriate, mitigated in the Amended Specific Plan.

In May 2013, by a vote of 8-0-1, the San Dieguito Community Planning Group unanimously recommended approval of the 24 single-family homes and the elimination of the water reclamation system. In July 2013, by a vote of 5-0-2, the County's planning commission recommended approval of the zoning reclassifications required to effect the 2013 Project. In August 2013, by a vote of 5-0, the Board approved the 2013 Project and adopted the Amendment and Addendum, along with two related tentative maps and two related site plans.[5]

C. *The Trial Court Proceedings*

In September 2013, SDCC filed the underlying action against the County and Rancho Cielo (together, Respondents). In a verified petition for writ of mandate and complaint for declaratory and injunctive relief, as relevant to the issues on appeal SDCC alleged that in the process of approving the 2013 Project — i.e., in adopting the Amendment and Addendum — the County violated CEQA.[6] The County and Rancho Cielo filed their respective responses and answers to SDCC's petition/complaint.

Following full briefing based on a complete record of the administrative [*9] proceedings, the trial court entertained oral argument and took the matter under submission. In October 2014, the court issued a lengthy minute order,

---

[5] In the formal notice approving the 2013 Project, the County described the 2013 Project as follows: "The proposed project includes five parcels, with a Specific Plan Amendment to the Rancho Cielo Specific Plan for the change in land use designations to four out of the five parcels: Three parcels changed from water reclamation to biological open space and one parcel changed [*8] from Village Center to Village Estates. Additionally, the project includes the subdivision of two parcels, which are proposed for development of 24 single family lots; 17 lots within Parcel H and seven lots within the Village Center Parcel, with a density transfer of seven lots from Parcel H. Zoning Reclassifications and site plans are also included to implement the Specific Plan Amendment."

[6] To the extent SDCC alleged other claims in its petition/complaint, we do not reach them, because SDCC has not asserted error related to them in its opening brief. (*Medrazo v. Honda of North Hollywood* (2012) 205 Cal.App.4th 1, 14, 140 Cal. Rptr. 3d 20 [appellant forfeits claim by not raising meaningful analysis of claim in opening brief].)

discussing and ruling on the various issues raised in the briefing. As applicable to the issues on appeal, the minute order provided as follows: (1) the court reviewed the 2013 Project under section 21166 and the substantial evidence standard given the existing EIR, not determining de novo whether the 2013 Project was a "new" project to be reviewed under section 21151 and the fair argument standard;[7] and (2) the administrative record contained substantial evidence supporting the County's findings regarding water reclamation, traffic, fire and reallocation of residential units.

In November 2014, the court entered judgment denying relief to SDCC. In December 2014, SDCC timely appealed.

II.

DISCUSSION

In an appeal from judgment following a petition for writ of mandate in a CEQA case, "'[o]ur task on appeal is "the same as the trial court's." [Citation.] Thus, we conduct our review independent of the trial court's findings.' [Citation.] Accordingly, we examine the [agency's] decision, not the trial court's." [*10] (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 257, 42 Cal. Rptr. 3d 537 (*Banker's Hill*).)

SDCC raises the following issues on appeal: (1) whether the County was required to review the 2013 Project under section 21151, rather than under section 21166; (2) whether the County failed to analyze properly the deletion of previously approved mitigation measures; (3) whether consideration of the 2013 Project required the County to prepare an EIR or SEIR rather than an addendum; (4) whether the findings in the Addendum are supported by substantial evidence in the administrative record; and (5) whether the Addendum contains a significant error requiring court intervention.

Before analyzing these issues, we will first present a brief overview of CEQA and establish the appropriate standard of review.

A. *CEQA Law*

The policy of the state of California is that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions." (§ 21001, subd. (d).) To this end, "'"[t]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage."'" (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 729, 187 Cal. Rptr. 3d 96.) In order to implement this policy and purpose, CEQA and its Guidelines[8] "have established a

---

[7] We will discuss these statutes and standards in the Discussion, *post.*

[8] Codified at title 14, chapter 3, of the California Code of Regulations (14 Cal. Code Regs. § 15000 et seq.), the Guidelines are regulations authorized by section 21083 and adopted by the Secretary of the Natural Resources Agency to implement CEQA. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319, fn. 4, 106 Cal. Rptr. 3d 502, 226 P.3d 985.) When interpreting CEQA, "'we accord the Guidelines great weight except where they are clearly

three-tiered process to ensure that [*11] public agencies inform their decisions with environmental considerations." (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112, 62 Cal. Rptr. 2d 612; see Guidelines, § 15002, subd. (k) [describing three-tier process].)

The first tier "'requir[es] that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity.'" (*Banker's Hill, supra*, 139 Cal.App.4th at pp. 257-258; see Guidelines, § 15060.) Unless exempt under the Guidelines, in which event "'no further environmental review is necessary,'" the agency proceeds to the second tier and "conducts an initial study to determine if the project *may* have a significant effect on the environment."[9] (*Banker's Hill*, at p. 258; see § 21080, subd. (d); Guidelines, § 15063, subd. (a).) If the study concludes there will be no significant effect, the agency issues a negative declaration; if there will be a significant effect, the [*12] process advances to the third tier, and the agency prepares an EIR. (*Banker's Hill*, at pp. 258-259; see Guidelines, § 15063, subd. (b).)

However, this three-tiered process is not required for every step taken during the development of a project, even where the proposal may have an effect on the environment. "Once a proper EIR has been prepared, no [SEIR] is required unless (1) '[s]ubstantial changes' are proposed in the project, requiring 'major revisions' in the EIR; (2) substantial changes arise in the circumstances of the project's undertaking, requiring major revisions in the EIR; or (3) new information appears that was not known or available at the time the EIR was certified. (§ 21166; see also Guidelines, [*13] § 15162; [citation].) '[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 (§ 21167, subd. (c)), and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.'" (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 54-55, 105 Cal. Rptr. 3d 181, 224 P.3d 920.)

Rather, where the proposed project requires "some changes or additions" to the EIR, but none of the above-described three conditions in section 21166 has occurred, the agency "shall prepare an addendum to a previously certified EIR." (Guidelines, § 15164, subd. (a).) "An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration." (*Id.*, subd. (c).) "The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project. [P] . . . A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence." (*Id.*, subds. (d), (e).)

---

unauthorized or erroneous.'" (*Ibid.*) For convenience, when we cite to a section of the Guidelines, we will be referring to a section of title 14 of the California Code of Regulations (e.g., Guidelines § 15000, et seq.).

[9] "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (Guidelines, § 15382.)

B. *Standard of Review*

Section 21168 provides in relevant part that, [*14] where a plaintiff/petitioner like SDCC alleges noncompliance with CEQA in any action or proceeding to review a public agency's determination "*made as a result of a proceeding in which by law a hearing is required to be given, [where] evidence is required to be taken and discretion in the determination of facts is vested in a public agency*, . . . [P] . . . the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." (Italics added.) In contrast, in such an action or proceeding, "*other than an action or proceeding under Section 21168*, . . . the inquiry shall extend only to whether there was a prejudicial abuse of discretion." (§ 21168.5, italics added.)

In distinguishing the two types of cases, our Supreme Court has explained, "[s]ection 21168.5 . . . governs traditional mandamus actions," whereas "[s]ection 21168 establishes the standard of review in administrative mandamus cases." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, fn. 5, 253 Cal. Rptr. 426, 764 P.2d 278.) The present action is one of administrative mandamus, because the County "conduct[ed] a hearing at which evidence was taken in a judicial (adjudicative) sense." (*Ibid.*) Thus, pursuant to section 21166, we will apply the substantial evidence [*15] standard of review.[10]

In this context, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact," but 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); see Guidelines, § 15384, subd. (a) [substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached"].) The application of this standard of review is no different in CEQA actions than in other cases:

"'In reviewing the evidence on . . . appeal all conflicts must be resolved in favor of the [prevailing [*16] party], and all legitimate and reasonable inferences indulged in to uphold the [finding] if possible. It is an elementary, but often overlooked principle of law, that when a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [finding]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.'"

(*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571, 38 Cal. Rptr. 2d 139, 888 P.2d 1268 [CEQA action], quoting from *Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429, 45 P.2d 183 [negligence action following collision of train and truck].)

---

[10] SDCC argues for a de novo standard of review of the threshold issue whether the 2013 Project was a "new" project not considered in the Specific Plan to be analyzed under section 21151, as opposed to a modification of the Specific Plan to be analyzed under section 21166. We will elaborate on the application of the standard of review applied to this issue at part II.C.1., *post*.

We determine de novo whether the agency used the correct CEQA procedures. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131, 84 Cal. Rptr. 3d 614, 194 P.3d 344 (*Save Tara*).)

C. *Analysis of Issues on Appeal*

1. *Section 21166, Not Section 21151, Applies to the County's Review of the 2013 Project*

SDCC argues that the 2013 Project was not a modification to an existing plan that had already received environmental review, but rather an altogether *new* project under CEQA, requiring the County to have conducted an *initial* determination whether the project may have a significant effect on the environment under section 21151. In so arguing, SDCC emphasizes the different review an agency [*17] must provide of a new project under section 21151, as opposed to the review of an adjustment to an existing project under section 21166.

Where a new project is presented (and not exempt or subject to a negative declaration), section 21151 provides in part that "local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an [EIR] on any project that they intend to carry out or approve which *may have a significant effect on the environment.*" (*Id.*, subd. (a), italics added.) For purposes of section 21151, "a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment'"; this is known as the "fair argument" standard. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal. Rptr. 2d 231, 864 P.2d 502.) This is a "'low threshold'" for the preparation of an EIR, reflecting a preference to resolve doubts in favor of full environmental review. (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 282, 118 Cal. Rptr. 3d 736.)

In contrast, *once an EIR has been certified*, section 21166 expressly precludes a subsequent or supplemental EIR absent changed circumstances or new information.[11] Section 21166's "presumption against additional environmental review" (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 928, 110 Cal. Rptr. 3d 865 (*San Diego Navy*)) implements the legislative policy favoring "prompt resolution of challenges to the decisions of public agencies regarding [*18] land use" (*Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 111, 56 Cal. Rptr. 3d 728 (*Citizens*)). Section 21166 applies a deferential standard, "'because in-depth review has already occurred, [and] the time for challenging the sufficiency of the original EIR has long since expired.'" (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1050, 76 Cal. Rptr. 3d 428 (*Moss*).)

Respondents argue that SDCC forfeited this argument, because prior to this appeal SDCC did not allege or argue that the County violated section 21151 by failing to consider whether the 2013 Project was a new project. Respondents rely on section 21177, subdivision (a) (to assert grounds for noncompliance with CEQA in lawsuit,

---

[11] After preparation of an EIR for a project, the responsible agency is precluded from requiring a subsequent or supplemental EIR unless "[s]ubstantial changes are proposed in the project which will require major revisions of the [EIR]"; "[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]"; or "[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available." (§ 21166.) This standard is repeated at Guidelines, section 15162.

they must be presented to agency prior to agency determination) and *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417, 194 Cal. Rptr. 357, 668 P.2d 664 (*Sea & Sage*) (issues not raised in trial court cannot be raised on appeal). Although SDCC [*19] did not present the identical argument by identifying the specific statutes at issue, given the record Respondents will not be prejudiced by our consideration of SDCC's legal argument as to the appropriate standard of review. In the initial proceedings SDCC argued to the County that Rancho Cielo's proposal "may result in environmental impacts which have not been analyzed as required by CEQA" — which, as we discussed *ante*, strongly suggests consideration of section 21151. Further, in initiating the underlying action, SDCC alleged as error the County's failure to prepare a new (i.e., not a supplemental) EIR. Consistently, in the trial court briefing, SDCC expressly argued that the 2013 Project was a new project to which section 21166 was inapplicable, citing authority that advocated for application of section 21151. Finally, Respondents briefed the issue both in the trial court and on appeal; notably, in the trial court, Respondents did not argue that SDCC forfeited the issue, and the court ruled on the merits.

We agree with SDCC that we must first determine whether the proposed changes are a "project" subject to initial review under CEQA. (See *Save Tara, supra*, 45 Cal.4th at p. 131.) In this context, a project subject to CEQA is "[a]n activity directly undertaken [*20] by any public agency" which "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (§ 21065, subd. (a); see Guidelines, §§ 15002, subd. (d), 15378.) SDCC contends the project is merely the 2013 Project, whereas Respondents contend the project is the entire Amended Specific Plan. To assist us, the Guidelines advise that "'[p]roject' means the *whole* of an action . . . ." (Guidelines, § 15378, subd. (a), italics added.)

The parties disagree as to the standard of review we are to apply in determining whether the County properly analyzed the 2013 Project under section 21166, rather than under section 21151. SDCC argues for a de novo standard, whereas Respondents contend the substantial evidence standard applies. They are not the only ones who disagree: "Courts have reached different conclusions about the appropriate level of judicial scrutiny to be applied to an agency's determination about whether a project is 'new,' such that section 21151 applies, or whether it is a modification of a previously reviewed project, such that section 21166 applies." (*Moss, supra*, 162 Cal.App.4th at p. 1051.)

In *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 45 Cal. Rptr. 3d 306 (*Save Our Neighborhood*), the Third District held that this threshold issue is a question of law for the court.[12] (*Save Our Neighborhood*, at p. 1297.) A year later, in *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 64 Cal. Rptr. 3d 79 (*Mani Brothers*), Division Two of the Second [*21] District disagreed with this

---

[12] Other decisions suggest the same conclusion, even if in dictum. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1503, 31 Cal. Rptr. 3d 353 (*Lincoln Place*) ["The question of what constitutes a 'project' for purposes of CEQA review is a question of law which we review de novo."]; *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637, 10 Cal. Rptr. 3d 560; *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 984, 28 Cal. Rptr. 2d 305; *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 470, 11 Cal. Rptr. 2d 792.)

aspect of *Save Our Neighborhood* in cases in which there has been a previously certified EIR: "Treating the issue as a question of law, as the court did in *Save Our Neighborhood*, inappropriately undermines the deference due the agency in administrative matters. That principle of deference is otherwise honored by the substantial evidence test's resolution of any '"reasonable doubts in favor of the administrative finding and decision."'"[13] (*Mani Brothers, supra*, 153 Cal.App.4th at p. 1401.)[14]

For purposes of the present dispute, we agree with the authorities that review for substantial evidence the agency's threshold decision to proceed under section 21166 rather than under section 21151. In particular, we agree with the logic and reasoning in *Mani Brothers*. Initially, to consider as a question of law whether the proposed changes are a new project or a modification to an approved project, as in *Save Our Neighborhood*, "inappropriately undermines the deference due the agency in administrative matters." (*Mani Brothers, supra*, 153 Cal.App.4th at p. 1401.) Moreover, "decid[ing] as a matter of law if the later project is a revision of a previously approved project or an entirely new project, *without consideration of the environmental impacts of the later project*, violates the legislative mandate that 'courts . . . shall not interpret this [*23] division or the state guidelines . . . in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.'" (*Ibid.*, quoting from § 21083.1.) Labeling a project "'new'" or "'modified'" based on size, nature or character "imposes a new analytical factor beyond the framework of CEQA" — particularly where (as here) there is a previously certified EIR — since such factors are "meaningful *only* to the extent they affect the environmental impacts of a project." (*Mani Brothers*, at p. 1401.)

---

[13] Other decisions suggest the same conclusion, even if in dictum. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 202, 164 Cal. Rptr. 3d 274 [substantial evidence test used to evaluate agency's decision to proceed under § 21166 rather than under § 21151]; *Abatti v. Imperial Irrigation Dist.* (2012) 205 Cal.App.4th 650, 675, 140 Cal. Rptr. 3d 647 (*Abatti*); *Moss, supra*, 162 Cal.App.4th 1041, 1052, fn. 6, 1058; *Citizens, supra*, 149 Cal.App.4th at p. 110; *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1083, 52 Cal. Rptr. 3d 312; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703, 7 Cal. Rptr. 3d 868; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1018, 100 Cal. Rptr. 2d 413; *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1793, 16 Cal. Rptr. 2d 358; *Stone v. Board of Supervisors* (1988) 205 Cal.App.3d 927, 252 Cal. Rptr. 692; *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1544, 252 Cal. Rptr. 79 (*Fund for Environmental Defense*); *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1071, 230 Cal. Rptr. 413 (*Bowman*).)

[14] Under Evidence Code sections 452, subdivision (d)(1) and 459, we note that the California Supreme Court has granted review in *Friends of the College of San Mateo Gardens v. San Mateo Community College Dist.* (Jan. 15, 2014, S214061). That case includes the issue of the proper standard of review when a lead agency is presented with [*22] a proposed modification to a project and performs a subsequent environmental review and prepares an SEIR, a subsequent negative declaration, or an addendum and raises the question: Is the agency's decision reviewed under a substantial evidence standard of review (*Mani Brothers, supra*, 153 Cal.App.4th at p. 1401) or subject to an initial de novo determination whether the modification of the project constitutes a new project altogether (*Save our Neighborhood, supra*, 140 Cal.App.4th at p. 1297)? (<http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2059337&doc_no=S214061> [as of Dec. 21, 2015].)

We must now determine whether substantial evidence supports the County's decision to proceed under section 21166 — where an SEIR may not be required, unless "[s]ubstantial changes are proposed in the project which will require major revisions of the previous EIR . . . *due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects.*" (Guidelines, § 15162, subd. (a)(1), italics added; see *Mani Brothers, supra*, 153 Cal.App.4th at pp. 1401-1402.)

In applying the substantial evidence standard, we presume the County's decision is supported by substantial evidence, and SDCC bears the burden of proving otherwise. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497, 19 Cal. Rptr. 3d 1.) As in any other case being reviewed for substantial evidence, an appellant [*24] in a CEQA appeal may not refer only to the evidence in support of the appellant's position (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626, 91 Cal. Rptr. 3d 571); an appellant must describe in its opening brief the evidence favorable to the agency, show why it is lacking, and failing to do so is fatal to the challenge on appeal (*Citizens, supra*, 149 Cal.App.4th at pp. 112-113). The reason for this is that "if the appellants fail to present us with all the relevant evidence, then the appellants *cannot* carry their burden of showing the evidence was insufficient to support the agency's decision because support for that decision may lie in the evidence the appellants ignore." (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749-750, 39 Cal. Rptr. 3d 189 (*State Water*).) Where an opening brief fails to recite and discuss the record that supports the agency's decision, the appellant is deemed to have forfeited the substantial evidence argument. (*Id.* at p. 749.)

Here, SDCC argues only for de novo review of this issue, not presenting (or arguing against the substantiality of) the evidence in support of the County's decision to proceed under section 21166. In particular, SDCC did not set forth the evidence in support of a finding that the 2013 Project was a modification of the Amended Specific Plan as opposed to a new project altogether. By relying only on evidence in the record that it contends will support [*25] a finding that the 2013 Project was a new project, SDCC has forfeited consideration of whether the County erred in proceeding under section 21166.

In any event, although not required to do so (*Citizens, supra*, 149 Cal.App.4th at p. 113), we have reviewed the record and are satisfied that it contains substantial evidence that the "whole of the action" (Guidelines, § 15378, subd. (a)) is the Amended Specific Plan and the 2013 Project merely modifies it; the 2013 Project is not an entirely new project. Moreover, even if we review the issue de novo as suggested by SDCC and *Save Our Neighborhood*, our analysis and conclusion are the same *given* Save Our Neighborhood*'s description of when an addendum may and may not be used* (i.e., when the proposed activity is a new project): An addendum may be used where there is "*only one project that undel*[*goes*] *changes* after completion of the initial environmental review," but may not used where "*the project is replaced* by another project that happens to be similar in nature."[15] (*Save Our Neighborhood, supra*, 140 Cal.App.4th at p. 1300, italics added.)

---

[15] In *Save Our Neighborhood*, the agency approved in 1997 the North Point Project, which called for the construction of a 106-unit motel, restaurants, lounge, gas station, convenience store and carwash on the property. (*Save Our Neighborhood, supra*, 140 Cal.App.4th at p. 1291.) The North Point [*26] Project was never constructed, and in 2004 a different developer submitted plans for the Gateway Project, which called for the construction of a 102-unit motel with convention facilities and a gas station

Here, the Village Center, the development of residential units on parcel H, and the water reclamation facility were all within the scope of the previously completed environmental reviews for the Amended Specific Plan — i.e., one project covering 2,668 acres — at the time the County reviewed the 2013 Project. As indicated in the 1984 SEIR, the Amended Specific Plan had approved future development of the Village Center and the Neighborhood [*27] Commercial Center; between 1984 and 2013 the uses originally planned for the Village Center were relocated either to the Neighborhood Commercial Center or elsewhere in the Development; and the 2013 Project proposed deleting the Village Center. Similarly, the 1984 SEIR had approved development of 42 residential units on parcel H; over the years, the total number of units in the Development decreased, and many were redesigned and relocated; and the 2013 Project further modified the Development, reducing those 42 residential units to 24 and transferring seven to parcel VC. Likewise, whereas the original 1981 EIR had allowed for the future development and permitting of a water reclamation system to service the Development, the 2013 Project reclassified the physical facility to country estates and the reservoir sites to open space for biological preservation. These three changes do not involve replacement of one project by another; all are part of only one project, the Amended Specific Plan, after completion of its initial environmental review.

Thus, regardless whether we review the decision to proceed under section 21166 for substantial evidence or de novo, the County properly analyzed the 2013 Project [*28] under section 21166, not under section 21151.[16] The whole of the action is the entire Development, as set forth in the Amended Specific Plan, and the 2013 Project merely modified it; the 2013 Project was not an altogether new project.[17]

2. *The Record Contains Substantial Evidence Supporting the Deletion of Certain Previously-adopted Mitigation Measures*

SDCC argues that the use of the Addendum (as opposed to an SEIR) to deal with the 2013 Project's modifications related to the water reclamation system and the Village Center violated CEQA safeguards associated with implementation of earlier mitigation measures. We disagree.

---

with a convenience store and carwash. (*Id.* at pp. 1291-1292.) The court ruled that the agency erred by reviewing the proposal as a modification to an existing project (under § 21166) rather than as a new project (under § 21151) based on the de novo determination that the Gateway Project was "a new project" that merely had many of the same characteristics as an earlier never developed project for the same site. (*Id.* at p. 1297.) In contrast, using the language of *Save Our Neighborhood*, here we have "only one project that underwent changes after completion of the initial environmental review." (*Id.* at p. 1300.)

[16] Because we conclude that the Board properly reviewed the 2013 Project under section 21166, we do not reach SDCC's various arguments as to the purported errors of the review under section 21151.

[17] In a different section of its opening brief (toward the end), SDCC argues that *because the 2013 Project is a new project*, writ relief should be granted requiring the County to prepare an EIR, an SEIR or a negative declaration according to section 21151, subdivision (a). However, since the 2013 Project is not a new project, section 21151 and its requirements for documentation are not implicated.

Initially, we accept SDCC's premise that both the water reclamation system and the [*29] Village Center were included in the 1981 EIR as mitigation, or at least as partial mitigation, factors.[18] SDCC is further correct in relying on section 21081.6 as a statutory directive to agencies to ensure that mitigation measures be implemented. (*Lincoln Place, supra*, 130 Cal.App.4th at p. 1508.) Once mitigating conditions are imposed by an EIR, however, the responsible agency is not precluded from modifying or deleting them. (*Ibid.; Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359, 110 Cal. Rptr. 2d 579 (*Napa Citizens*) ["we find nothing in established law or in logic to support the conclusion that a mitigation measure, once adopted, never can be deleted"].)

However, SDCC is wrong in suggesting that any such modification or deletion may be accomplished exclusively through an SEIR. As we introduced *ante*, an SEIR is required *only* upon the agency's determination that the proposed activity involves either substantial changes or new information. (§ 21166; Guidelines, § 15162, subd. (a).) Further, the Guidelines expressly authorize the use of an addendum "if some changes or additions are necessary [to the EIR] but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (Guidelines, § 15164, subd. (a); see *Mani Brothers, supra*, 153 Cal.App.4th at pp. 1397-1399 [use of an addendum versus an SEIR].) This is not a new concept; for almost 30 years now, courts have approved the use of an addendum to evaluate changes to an EIR-approved project. (*Bowman, supra*, 185 Cal.App.3d at p. 1081 [amendments to subdivision map]; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 812, 173 Cal. Rptr. 3d 794 [amendments to airport master plan].)

Mitigation measures in an EIR may be modified or deleted if the responsible agency provides a legitimate reason for making the change and substantial evidence supports the reason. (*Napa Citizens, supra*, 91 Cal.App.4th at p. 359.) Stated differently, the agency may not delete a mitigation measure without [*31] reviewing the continuing need for it, stating the agency's reasons for the change, and supporting the decision with substantial evidence. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167-1168, 180 Cal. Rptr. 3d 154 (*Sierra Club*).) The agency must include the reasons for and the effect of deleting a mitigation measure "in a supplemental EIR *or other CEQA document such as an addendum*." (1 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2d ed. 2015) § 14.35, p. 14-45, italics added.)

Mitigation measures must be "feasible." (Guidelines, § 15126.4, subd. (a)(1).) In this context, "'[f]easible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account

---

[18] In emphasizing the mitigating impacts of water reclamation in the original 1981 EIR, SDCC suggests that "since that time drought and water shortages have become even more acute." In support of that comment, SDCC asks us to take judicial notice of an executive order dated April 1, 2015, and an emergency regulation adopted May 5, 2015 — documents that SDCC contends demonstrate that water saving efforts are of statewide environmental concern. Those documents were not before either the Board at the time it approved the Amendment and Addendum or the superior court at the time it ruled on SDCC's complaint/petition. Accordingly, we deny SDCC's motion for judicial notice. [*30] (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379, fn. 2, 112 Cal. Rptr. 3d 853, 235 P.3d 152 [reviewing courts do not take judicial notice of evidence not presented to the fact-finding tribunal "absent exceptional circumstances"].)

economic, environmental, social, and technological factors." (§ 21061.1.) Correspondingly, "no public agency shall . . . carry out a project for which an [EIR] has been certified" where "economic, legal, social, technological, or other considerations . . . make *infeasible* the mitigation measures . . . identified in the [EIR]." (§ 21081, subd. (a)(3), italics added.) Before eliminating a previously-adopted mitigation measure, therefore, the responsible agency must first find that it is "infeasible" or "ill-advised" according to *Napa Citizens, supra*, 91 Cal.App.4th at page 359 (land use plan), or "impractical or unworkable" according to *Lincoln Place, supra*, 130 Cal.App.4th at pages 1508-1509 [*32] (all CEQA projects). In *Napa Citizens*, for example, the Court of Appeal agreed that prior mitigation conditions could be deleted, because they were "infeasible" and "ill-advised" based on the substantial evidence establishing (1) deleting a mitigation condition regarding traffic would result in "only a minor contributing factor" to the otherwise adverse impact of the project; (2) the agency lacked the funds to implement the previously-approved mitigation conditions; and (3) the agency lacked control over effecting the conditions. (*Napa Citizens*, at p. 359.)

We will now turn to the record to determine whether substantial evidence supports the deletion of mitigation measures related to the water reclamation facility and the Village Center. Initially, we note that SDCC improperly focuses on why the two mitigation measures remain feasible, rather than the substantiality of the evidence supporting their deletion — potentially forfeiting consideration of the issue on appeal. (*State Water, supra*, 136 Cal.App.4th at p. 749.) Nonetheless, we will review the evidence in support of the Amendment and Addendum.

a. *Water Reclamation System*

In 1981, the original EIR noted that "the costs and energy usage of producing reclaimed water can become excessive," concluding that any wastewater reclamation at the Development should be "both satisfactory to the regulatory agencies and economical." Over the years, the County considered the satisfaction of both the regulators and the economics.

In 1984, the County's Environmental Review Board commented that "it remains unclear whether the Regional Water Quality Control Board standards can be met," warning that any failures in the reclamation system "would degrade the local groundwater and could imbalance the ecology of [*33] the San Dieguito or San Elijo Lagoons." In the same report, the Department of Public Works (the then-proposed operator of the Development's water reclamation facilities) expressed concerns that the potential water reclamation facility "is too costly, will consume too much energy, and may not be feasible."

By the time of the County's consideration of 2013 Project, the OMWD was providing all necessary water and sewer services to the Development. This included sufficient water for both "'firewise landscaping'" and a fuel modification plan, the purpose of which was to "mak[e] all proposed structures safe from future wildland wildfires." (Italics omitted.)

In both its initial study and the Addendum itself, the County disclosed the deletion of the water reclamation facility and explained its reasoning as follows: "The OMWD serves the [Development] with water and sewer service and these reclamation facilities are no longer required."

Based on the 1981 EIR's statement that such further analysis will be necessary after the availability of plans and the application for permits, SDCC suggests that additional environmental review of the water reclamation plant was necessary before the water reclamation [*34] system could be deleted. We disagree. The 2013 Project did not propose to develop the facility without environmental review; prior to performing this environmental review, the 2013 Project substituted something else in place of the system based on an analysis of infeasibility, and that is the decision we review for substantial evidence on appeal. Likewise, we disagree with SDCC's suggestion that any time a mitigation measure is deleted, the "unmitigated impact remains" or an EIR or SEIR is necessarily required. Here, the 2013 Project proposed that alternatives already in effect resulted in the lack of a need for the water reclamation plant; and that is the decision we review for substantial evidence on appeal.

Based on the foregoing, the County reviewed the continuing need for the water reclamation facility and the reason for deleting the facility; and the administrative record contains substantial evidence supporting the change. (*Napa Citizens, supra*, 91 Cal.App.4th at p. 359; *Sierra Club, supra*, 231 Cal.App.4th at pp. 1167-1168.) Accordingly, SDCC did not establish error related to the deletion of the water reclamation facility.

b. *Village Center*

The 1981 EIR described two planned commercial centers: the Village Center "at the top of the ridge" within the Development, and the Neighborhood [*35] Commercial Center outside the gates of the western entrance. The Village Center was proposed to cover 10 acres, and its intended uses included a convenience market, contract postal station, restaurant and association offices and recreational facilities. The Neighborhood Commercial Center was intended to be occupied by a market, pharmacy, nursery and leasable office space.

Initially, we reject Respondents' argument that the Village Center was not a mitigation measure identified in the 1981 EIR. The record reference provided by Respondents is found under the major heading of "TRAFFIC CIRCULATION," following the subheading "IMPACTS," and within the subheading "MITIGATION" — where the EIR specifically mentions the Village Center as one aspect of the Development that will serve as "partial mitigation to traffic impacts" by "reduc[ing] the number of trips onto external roads."

The 1984 SEIR described a relocation of the Village Center and a redesign of both the Village Center and the Neighborhood Commercial Center. The Village Center was moved to the southwest and reduced from 10 acres to six acres; the Neighborhood Commercial Center was expanded to cover use on both sides of the intersection outside [*36] the gates for its 50,000 square feet of commercial space on 10-15 developable acres.

By the time of the County's consideration of the 2013 Project, the proposed Village Center was potentially 5,000 square feet of commercial space, and 30,000 of the 50,000 square feet of commercial space in the Neighborhood Commercial Center within the Amended Specific Plan were vacant. In short, the evidence was that there was "no demand" for commercial development within the gated community. As one commissioner summarized (and the County planning official confirmed), "what was originally anticipated has actually turned out to not be needed and the market's driving that decision."

In addition, the County staff report advised that the recreational and association uses originally anticipated to be developed in the Village Center had already been relocated and developed to the south — thereby avoiding any loss of such uses.

Accordingly, we are satisfied both that the County reviewed the continuing need for the development of the Village Center and the reason for deleting it and that the administrative record contains substantial evidence supporting the change. (*Napa Citizens, supra*, 91 Cal.App.4th at p. 359; *Sierra Club, supra*, 231 Cal.App.4th at pp. 1167-1168.)

SDCC argues that the 1981 EIR promoted [*37] the Village Center as one way of reducing external trips onto roads adjacent to the Development, whereas the 2013 Project deleted the Village Center without an updated traffic study. Absent such a study, SDCC continues, development of the Village Center remains feasible. However, the fact that the record may contain evidence potentially supporting a finding that development of the Village Center is feasible is irrelevant to our role, which is limited to determination of the sufficiency of the evidence *in support of the finding actually made* (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631, 85 Cal. Rptr. 2d 386 (*Howard*)) — namely, that the Village Center was no longer necessary. Likewise, SDCC's characterization of the evidence related to the lack of demand for commercial space as "conflicting information" is not persuasive. "[T]he test is *not* the presence or absence of a substantial conflict in the evidence. Rather, it is simply whether there is substantial evidence in favor of the respondent." (*Ibid.*)

For these reasons, SDCC did not establish error related to the deletion of the Village Center.

3. *SDCC Did Not Meet Its Burden of Establishing Error in the County's Use of an Addendum Rather Than an SEIR*

In this argument, SDCC accepts the County's use of section 21166 in [*38] evaluating the 2013 Project, but contends that the County erred in preparing an addendum rather than an SEIR. More specifically, SDCC argues that the 2013 Project's deletion of the water reclamation facility and the Village Center are "'substantial changes'" that "'will require major revisions'" of the 1981 EIR, thereby necessitating an SEIR under section 21166. We disagree.

Initially, we incorporate our discussion at part II.C.1., *ante*, emphasizing that where (as here) the agency is reviewing a potential modification to a project for which an initial EIR has already been prepared, section 21166 provides a "statutory presumption against additional environmental review." (*San Diego Navy, supra*, 185 Cal.App.4th at p. 934.) ""The low threshold for requiring the preparation of an EIR in the first instance is no longer applicable; instead, agencies are prohibited from requiring further environmental review unless the stated conditions are met."" (*Id.* at p. 935.) This ""shift in the applicable policy considerations"" under section 21166 ""comes into play precisely because in-depth review has already occurred, . . . and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process."" (*Ibid.*)

In order for the changes to trigger the [*39] requirement that an SEIR be prepared, they must be "[s]ubstantial" and result in new or more severe "significant, environmental effects." (Guidelines, § 15162, subd. (a)(1) & (2); see *Fund for Environmental Defense, supra*, 204 Cal.App.3d at p. 1549 [addendum sufficient because changes did not raise new adverse environmental effects].) Thus, proposed changes that are within the scope of a previously approved

project do not trigger preparation of an SEIR under section 21166. (See *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1318, 154 Cal. Rptr. 3d 682 (*Concerned Dublin Citizens*) [where plan anticipated reallocation of residential units within plan, shift of units from one location within the plan to another within the plan did not require SEIR].)

In reviewing the agency's determination that an addendum is sufficient under section 21166, "the test is whether the record as a whole contains substantial evidence to support a determination that the changes in the project were not so 'substantial' as to require 'major' modifications to the EIR." (*Bowman, supra*, 185 Cal.App.3d at p. 1075; see *Abatti, supra*, 205 Cal.App.4th at p. 675 [substantial evidence standard of review for decision that EIR not required]; § 21168.) In applying this standard, we ""are not reviewing the record to determine whether it demonstrates a possibility of environmental impact, but are viewing it in a light most favorable to the [agency's] decision in order to determine *whether substantial evidence [*40] supports the decision not to require additional review.*"" (*Abatti*, at p. 675, italics added.)

Although no findings are required (*Citizens, supra*, 149 Cal.App.4th at p. 114), a "brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum." (Guidelines, § 15164, subd. (e).) Here, in the Addendum — under the heading "Environmental Review Update Checklist Form For [P]rojects with Previously Approved Environmental Documents," following two pages of background, a summary of the activities to be authorized by the Amendment (including a description of how the 2013 Project differs from Amended Specific Plan) and the disclosure that these activities would not result in "new" or "a substantial increase in severity" of environmental effects — the County provided the following brief explanation:

"No substantial changes are proposed in the [2013 P]roject and there are no substantial changes in the circumstances under which the project will be undertaken that will require major revisions to the previous EIR . . . due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects. [Guidelines, § 15162, subd. (a)(1) & (2).] Also, there is no 'new information of substantial [*41] importance' as that term is used in CEQA Guidelines Section 15162[, subdivision](a)(3). Therefore, the previously certified EIR is adequate upon completion of an ADDENDUM."

This explanation of "no substantial changes" resulting in new or more severe "significant environmental effects" than in the 1981 EIR is sufficient and, as we explain, supported by substantial evidence. (Guidelines, § 15162, subd. (a)(1) & (2).)

a. *Water Reclamation*

In support of the Seventh Amendment's proposal to reclassify the water reclamation facility sites, County staff explained and provided evidence that the water reclamation system was no longer necessary. The OMWD fully served the Development by providing all necessary water and sewer services — including sufficient water for both "'firewise landscaping'" and a fuel modification plan, the purpose of which was to "mak[e] all proposed structures safe from future wildland wildfires." (Italics omitted.)

SDCC is critical of the lack of evidence related to fire risks for which reclaimed water was to be used. However, SDCC's record reference for the threat of wildfires and the associated risks is to *the 1981 EIR* which confirms that this risk is not a substantially changed circumstance for purposes of analyzing the Addendum under Guidelines, [*42] section 15162, subdivision (a) and the issue on appeal. (*Concerned Dublin Citizens, supra*, 214 Cal.App.4th at p. 1318 [proposed changes within the scope of a previously approved project do not trigger preparation of an SEIR under § 21166].) Further, SDCC fails to consider the Addendum, which contains a 105-page "Conceptual Fire Protection Plan" that fully sets forth evidence of the fire risks in the Development and how they would be dealt with — specifically referencing the *sufficiency of water* for both the irrigation of fire breaks and for the safety of all proposed structures.

To the extent SDCC relies on community members' concerns about the availability or cost of water, neither influences our analysis. At best these concerns are evidence that merely supports a different finding; they do not establish a lack of substantial evidence in support of the Addendum. (*Howard, supra*, 72 Cal.App.4th at p. 631.)

Accordingly, SDCC did not meet its burden of establishing a lack of substantial evidence to support the 2013 Project's deletion (based on a lack of need) of the water reclamation system.

b. *Traffic*

SDCC argues that the administrative record does not contain substantial evidence to support the following statement in the Addendum: "'The amount of development, and therefore, trip generation and associated impacts on public [*43] roads are similar or less than that previously analyzed and approved.'" We note that SDCC did not include the sentence immediately prior to the quoted statement, by which the County limited its finding to the intersection of Calle Ambiente and Del Dios Highway outside the gates of the residential community.[19]

Initially, both the 1981 EIR and 1984 SEIR concluded that "traffic impacts were less than significant, with mitigation," and by the time of the review of the 2013 Project, all traffic-related mitigation measures identified in the 1981 EIR and 1984 SEIR had been completed — thereby evidencing "less than significant" traffic impacts. Second, as SDCC acknowledges, neither the Village Center nor 24 of the previously approved residential units would be constructed under the 2013 Project. Third, the uses originally proposed for the Village Center were relocated either to the expanded Neighborhood Commercial Center or to other areas within the gated community. Finally, the

---

[19] The County's presentation of the finding challenged by SDCC was limited to one intersection and provides in part: "The [2013 P]roject's traffic has been analyzed under the [1981 EIR]. [Two provisions of the 2013 Project propose 24] residential lots, respectively. The overall [Amended] Specific Plan anticipated the development of *42 V[illage]E[state] units and a Village Commercial site, which would produce more traffic than currently proposed. This development does not change the expected impacts or mitigation measures anticipated for the total project operation, at the intersection of Calle Ambiente, with the Del Dios Highway, all of which were analyzed in the EIR.* The amount of development, and therefore, trip generation and associated impacts on public roads are similar or less than that previously analyzed and approved. The original 1981 [EIR] analyzed 892 dwelling units and 20 acres of [*44] commercial development. That project generated 13,420 average daily trips (ADT). The analysis showed direct impacts to the Del Dios Highway . . . ." (Italics added.)

impacts to Del Dios Highway (outside the gates, near the Neighborhood Commercial Center) were deemed to be the same as in the EIR and SEIR; i.e., although there were impacts, they would not change based on the 2013 Project.

SDCC considers "simplistic" the County's evidence that, because the 2013 Project proposed the deletion of the Village Center and a reduction [*45] of residential units from 42 to 24, less traffic will be generated. In so doing, SDCC does not attempt to explain how or why this evidence is simplistic or insubstantial; nor does SDCC mention any other evidence (let alone attempt to establish its insubstantiality) in support of the County's finding. SDCC merely suggests that the County should have required an updated traffic study.

For these reasons, SDCC did not meet its burden of establishing a lack of substantial evidence to support the County's finding that the proposals in the Seventh Amendment did not generate more substantial or severe impacts to traffic than were analyzed in the EIR and SEIR.

c. *Fire Safety*

SDCC complains that, despite evidence from residents regarding the risks associated with fire safety in the Development, the only condition for approval of the Amendment was the installation of automation that would open all gates in the event of an emergency. SDCC's criticism fails to account for the evidence presented in August 2013 in direct response to concerns that had been raised as to fire safety protection.

In writing, the County staff advised the Board:

"a. Background

"The [2013 P]roject is located within the Rancho Santa Fe Fire Protection [*46] District (District). The [D]evelopment was designed and built as a 'shelter-in-place' community, which means that the [Amended] Specific Plan is designed to provide a shelter for use during wildfire events and that construction is high quality and fire resistant. It allows residents to remain within the [Amended] Specific Plan area, during a wildfire event if necessary. In addition to being a shelter in place community and having direct access to Del Dios Highway, secondary access is provided by access to Mount Israel Road to the east, Harmony Grove Road to the north, and Camino De Arriba to the east. These roads are currently paved and maintained, as well as accessible to all residents of the project.

"b. Fire Protection Plan

"[Rancho Cielo] prepared a *Fire Protection Plan (FPP) that was approved by the both the County Fire Authority and the Rancho Santa Fe Fire Protection District*, on January 2, 2013 and January 23, 2013, respectively. The FPP identifies that the project design does not exceed the required dead-end road length and the availability of secondary access points for use by residents in the case of an emergency event.

"To further alleviate the concerns related to emergency access, the [*47] tentative maps will each include a condition of approval to install an automatic gate opener at the main access guardhouse, at Calle Ambiente. This opener will automatically open all gates to the project during times of emergency; *particularly, during wildfire events. This project complies with the County requirements for adequate fire protection.*" (Italics added.)

Consistently, at the August 2013 meeting, a County staff member orally summarized: "The [2013 P]roject was reviewed by the County fire authority and local fire protection district. *The project complies with the County fire code and provides adequate defensible space and access.*" (Italics added.) Finally, as established in part II.B.3.a., *ante*, the record also contains substantial evidence of the sufficiency of water for the irrigation of fire breaks and for the safety of all proposed structures.

Accordingly, SDCC did not meet its burden of establishing a lack of substantial evidence to support the County's finding that the 2013 Project would not significantly impact fire safety.

4. *SDCC Did Not Meet Its Burden of Establishing Reversible Error Based on a Significant Error in the Addendum*

SDCC contends that because the Addendum [*48] failed to accurately state the existing zoning of parcel VC, the County's analysis of the 2013 Project's impacts is fatally flawed. We disagree.

We accept for purposes of this argument (and Respondents do not challenge) SDCC's representation that at all times prior to the approval of the Amendment and Addendum in August 2013, parcel VC was zoned C-36 for commercial and civic uses. In fact, as County staff properly disclosed to the Board at the August 7, 2013 meeting prior to which the Board approved the Amendment and Addendum, at that time the current plan and zone allowed only for commercial development on parcel VC — with townhomes as a possible secondary use incidental to commercial development on parcel VC.

Nonetheless, SDCC directs our attention to a 25-page, June 12, 2013 Environmental Review Update (which was part of the Addendum) that provides on page 7 that the "*current plan and zone allow for a total of 24 dwelling units across two sites*," one of which is parcel VC. (Italics added.) Inconsistently, earlier on page 4, the update correctly reported that "parcel [VC] was previously designated and zoned for a village commercial center." Thus, the italicized language was not accurate: [*49] The then-current relevant plan and zone (1) designated parcel VC commercial and civic, and (2) allowed for 42 residential units on parcel H; and the 2013 Project then under consideration proposed reducing the number of residential units to 24 (17 on parcel H and seven transferred to parcel VC). Based on this error, SDCC contends that the Board approved a rezoning (of parcel VC to allow for the seven residential units) "without due consideration of the internal and external traffic and public safety impacts."

Respondents argue that SDCC forfeited our consideration of this issue by raising it for the first time on appeal. (§ 21177, subd. (a); *Sea & Sage, supra*, 34 Cal.3d at p. 417.) In reply, SDCC refers us to portions of the administrative and trial court records where challenges were made to the representations regarding the zoning of parcel VC. While the exact argument there is not the argument SDCC has now crystallized on appeal, we exercise our discretion to consider it on the merits.

We agree with Respondents that, given the entirety of the record, the error pointed out by SDCC is not significant. *Other than the June 12, 2013 Environmental Review Update*, SDCC has not directed us to any statement in or related to the Amended Specific Plan [*50] or the Seventh Amendment — or anywhere else in the 34,808-page administrative record — where the zoning on parcel VC was other than commercial and civic use (C-36). Indeed, elsewhere in the Addendum and in the August 7, 2013 documentation presented to the Board in support of the

Seventh Amendment and Addendum — including in a live power point presentation — the zoning for parcel VC was accurately described as commercial and civic use under the C-36 designation.

To the extent SDCC suggests that a specific plan amendment is necessary to allow residential development on (and thus a reallocation of residential units to) parcel VC, we disagree. Parcel VC has been entitled to develop up to 40 dwelling units per acre since the 1981 EIR. Moreover, the Seventh Amendment expressly provides for a rezoning of parcel VC to residential units. Indeed, given that the Board approved the zoning change for parcel VC at the same meeting as approving the Addendum, we are not persuaded that the error on page 7 of the June 12, 2013 Environmental Review Update adversely affected the process.

SDCC has provided only rhetoric, not legal authority, for the proposition that allocation of units from one parcel to another, even where such allocation requires a change [*51] in zoning, cannot be accomplished under CEQA by way of an addendum under section 21166. In contrast, in *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 277 Cal. Rptr. 481, the county properly approved a new use permit under section 21166 and an addendum where new use required a rezone from agriculture uses to a commercial winery. (*Id.* at pp. 1473 & fn. 3, 1476.)

In any event, SDCC has not attempted to demonstrate prejudice from the error, and "there is no presumption that error is prejudicial." (§ 21005, subd. (b).) ""Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown."" (*Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 709, 177 Cal. Rptr. 3d 677 [noncompliance with 30-day public review period not prejudicial].) Thus, even if we assume significant error in the June 12, 2013 update, SDCC has not met its burden of establishing reversible error.

Accordingly, the error on the June 12, 2013 Environmental Review Update is insufficient to establish a significant error in the Addendum; and, regardless, SDCC has not established prejudice that resulted from the error.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

MCCONNELL, P. J.

O'ROURKE, J.

End of Document

EXHIBIT D

WATCH v. PLACER COUNTY & PLACER COUNTY BD. OF SUPERVISORS

Case No. C088130

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

September 23, 2019

Reporter
2019 CA APP. CT. BRIEFS LEXIS 5519 *

SIERRA WATCH, Petitioner and Appellant v. PLACER COUNTY and PLACER COUNTY BOARD OF SUPERVISORS, Respondents, SQUAW VALLEY REAL ESTATE, LLC, Real Party in Interest and Respondent

Type: Brief

Prior History: Appeal from the Superior Court of California, County of Placer. Case No. SCV0038777. Hon. Michael W. Jones, Judge of the Superior Court.

Counsel

* WHITMAN F. MANLEY (SBN 130972), ANDREA K. LEISY (SBN 206681), NATHAN O. GEORGE (SBN 303707), REMY MOOSE MANLEY, LLP, Sacramento, CA, Attorneys for Real Party in Interest and Respondent, SQUAW VALLEY REAL ESTATE, LLC.

Title

REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF

Text

[*1] CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Real Parties in Interest Squaw Valley Real Estate, et al.

2. a. [] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. [x] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person

(1) KSL Capital Partners, LLC

Nature of interest (*Explain*)

Ownership interest of 10% or more in Squaw Valley Real Estate, LLC

Full name of interested entity or person

(2) ASC Next, LLC

Nature of interest (*Explain*)

Ownership interest of 10% or more in Squaw Valley Real Estate, LLC

Full name [*2] of interested entity or person

(3)

Nature of interest (*Explain*)

[BLANK IN ORIGINAL]

Full name of interested entity or person

(4)

Nature of interest (*Explain*)

[BLANK IN ORIGINAL]

Full name of interested entity or person

(5)

Nature of interest (*Explain*)

[BLANK IN ORIGINAL]

[] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 9/23/2019

Whitman F. Manley

(TYPE OR PRINT NAME)

INTRODUCTION

In November 2016, after five years of planning, environmental review and scores of meetings, the Placer County Board of Supervisors (Board) certified an environmental impact report (EIR) and approved the Village at Squaw Valley Specific Plan (Village or Project) to modernize development envisioned for Squaw Valley (Valley), host [*3] of the 1960 Winter Olympics.

The Project reduces the number of residential units allowed in the 1983 Squaw Valley General Plan and Land Use Ordinance (SVGPLUO) from up to 3,554 bedrooms (with no height limits) to 1,493 bedrooms (with height limits). The Project envisions completing the unfinished Intrawest Village, and includes employee housing, Squaw Creek restoration and trail improvements, among many other public benefits. (AR:3:1741-1743, 1790-1794, 1:371-375, 17:9877-9878.) [1]

Most development will occur on a paved parking lot. (AR:3:1743, 17:9872.) Over 36 acres of open space-compared to 20 acres under the SVGPLUO-is preserved. (AR:13:7789.)

Appellant Sierra Watch (Appellant) opposed the Project, claiming it would harm Lake Tahoe. The Project is located miles outside the Tahoe Basin (Basin). Its sole impact is that some visitors will-like anyone in the region-visit the Tahoe Basin. The EIR disclosed this fact. The County imposed extensive mitigation, much of it aimed at reducing traffic. Squaw Valley Real Estate, LLC (SVRE) even agreed voluntarily to [*4] contribute substantial funding to the Tahoe Regional Planning Agency (TRPA).

Appellant nevertheless claims that the County had to comply with TRPA standards for projects located *within* the Basin. No court has ever embraced such a sweeping theory. Appellant also attacks the EIR's extensive analyses of wildland fire risk, construction noise, greenhouse gas emissions and transportation. These claims likewise fail.

FACTUAL AND PROCEDURAL HISTORY

In 1983, Placer County (County) adopted the SVGPLUO to "guide development and growth within the Squaw Valley area." (AR:90:53030, 53021-53096.) The SVGPLUO "envisioned development of additional lodging to implement a four-season destination resort." (AR:16:9443.)

In 2011, SVRE submitted a draft Village at Squaw Valley Specific Plan. (AR:15:8826, 17:9793.)

In 2012, the County launched its review process. (AR:5:2505.) Based on community input, SVRE steadily reduced the Project from 3,187 bedrooms to the approved 1,493 bedrooms. (AR:15:8826, 78:46388, 2:1092, 1102, 1107, 13:7789, 17:9868-9869.) SVRE also incorporated extensive Design Review Committee recommendations. (AR:15:8860-8861.)

---

[1] "AR:3:1741" refers to Administrative Record, volume 3, page 1741. The same citation format is used throughout this brief.

Appellant opposed the Project (AR:5:2646-2652), launching a [*5] publicity campaign that a former employee characterized as "distorted." (AR:75:44019.)

On August 11, 2016, the Planning Commission recommended approval. (AR:15:8813.) On November 15, 2016, the Board heard from opponents and supporters (AR:16:9459-17:9711), voting four to one to certify the EIR and approve the Project. (AR:17:9775-9781.)

On December 15, 2016, Appellant filed a petition to overturn the County's decision, alleging that the County violated the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). (JA:1:7-35.) Following a May 24, 2018, hearing, trial judge Honorable Michael W. Jones denied the petition. (JA:2:429-445.) Appellant appealed. (JA:2:476-477.)

Appellant filed another petition alleging that, in approving the Project, the County violated the Brown Act. Judge Jones denied that petition. Appellant appealed that one, too. (Related Case No. C087892.)

STANDARD OF REVIEW

To show an "abuse of discretion" in a CEQA case, the petitioner must demonstrate that the agency has not proceeded as required by law or its determinations are not supported by substantial evidence. (Pub. Resources Code, §§ 21168, 21168.5.) The court "adjust[s] [*6] its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Review of an EIR involves a "mixed question" of law and fact; "[t]he ultimate inquiry... is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (*Friant Ranch*), quoting *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 405 (*Laurel Heights I*).)

Appellant has the burden of proof. (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 919 (*Gilroy Citizens*).) To carry this burden, Appellant must present the evidence supporting the County's decision and explain why it is lacking. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1064 (*Treasure Island*).) Appellant must also show prejudice. (Pub. Resources Code, § 21005, subd. (b) ["there is no presumption that error is prejudicial"]; *Neighbors for Smart Rail v. Exposition Metro Line [*7] Construction Auth.* (2013) 57 Cal.4th 439, 463 (*Neighbors for Smart Rail*) [same].)

ARGUMENT

A. The EIR's discussion of impacts to the Lake Tahoe Basin satisfied CEQA.

Appellant claims that the EIR "essentially ignored" impacts on the Tahoe Basin and failed to describe the Project's regional setting." (Appellant's Opening Brief (AOB), pp. 24-46.) The trial court rejected this claim. (JA:2:458-460.) It was right to do so.

1. The EIR's description of the environmental setting complies with CEQA.

Appellant argues that the EIR's description of the environmental setting did not adequately describe environmental conditions in the Tahoe Basin, and asserts that the Court reviews this claim "de novo." (AOB, p. 22.) That is not the correct standard of review. The issue focuses on facts: the physical characteristics of the environment surrounding the Project. "[A]n agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328; see *Neighbors [*8] for Smart Rail, supra*, 57 Cal.4th at pp. 447-449 [substantial evidence standard applies to description of setting].)

Appellant claims the County argued, and the trial court agreed, that the EIR could limit its description of the environmental setting to the Project site. (AOB, p. 28.) The County never took that position. As the trial court noted, an EIR must "include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective." (JA:2:458, quoting Guidelines, § 15125, subd. (a).) [2] The EIR did that. Cases cited by Appellant that criticize an agency for wearing geopolitical blinders (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 575 (*Goleta*); *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 359-360 (*City of Marina*); *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 961 (*City of San Diego*)) are therefore inapposite.

The geographic scope of analysis "falls within the lead agency's discretion, based on its expertise." [*9] (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 338 (*SOMCAN*).) The description of the setting "shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives." (Guidelines, § 15125, subd. (a); see *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 219 (*Clover Valley*).) Here, the EIR provided enough information to understand Project impacts. Appellant fails to meet its burden to demonstrate otherwise.

The Draft EIR's (DEIR's) traffic and air quality analyses extended into the Tahoe Basin, precisely because some Project-related vehicles will venture there, just like other travelers in the region. (AR:4:1979-1980.) The transportation study evaluated corridors within the Tahoe Basin using standards established by the Tahoe Regional Planning Agency (TRPA). (AR:4:1979-1980, 2005-2009, 8:4381.) Similarly, the air quality analysis included Tahoe Basin data. (AR:4:2045, 8:4381, 4:2056-2063.)

---

[2] The State CEQA "Guidelines" appear at Cal. Code Regs., title 14, section 15000 et seq. This brief refers to the Guidelines as they existed in November 2016, when the Board approved the Project.

The EIR evaluated Project impacts both outside and within the Tahoe Basin where relevant to the Project's potential impacts, as CEQA requires. (AR:7:4016, 4033, 4076.) [3] Thus, the EIR did not describe Tahoe Basin visual resources because the site is not visible from there. (AR:8:4394; see AR:8:4382, 4393 [EIR focused on resource areas where impacts may occur].)

Appellant argues that the EIR's air and water quality analyses omitted necessary information. (AOB, pp. 31-34.) This argument fails.

a. The EIR's discussion of the water quality setting complied with CEQA.

The DEIR's Hydrology and Water Quality chapter (AR:4:2126-2209) noted that Lake Tahoe is a significant geographical feature in the region, but stated correctly that the site's location - the "Squaw Creek watershed, a tributary to the middle reach of the Truckee River (*downstream of Lake Tahoe*)" - is outside of the Tahoe Basin (AR:4:2126, italics added.) The DEIR did not discuss at length TRPA's efforts to improve Lake Tahoe's water quality. But there was no reason to expect such a discussion. The Project did not propose development in the Tahoe Basin (AR:4:2129) and would not result in stormwater runoff or other pollutants draining into the lake. (AR:7:4076; see AR:4:2143 [*11] [DEIR description of storm drainage].) Notably, TRPA's comments to the County focused on transportation; TRPA never asked the County to evaluate impacts on Lake Tahoe's water quality. (AR:7:4128-4131.)

Appellant argues that the EIR ignores other ways the Project could affect the lake's water quality. The only example Appellant cites, however, is the Project's contribution to "vehicle miles traveled" (VMT) within the Basin. (AOB, p. 31.) As explained below, the EIR addressed this issue at length.

b. The EIR's discussion of the air quality setting complied with CEQA.

The DEIR's Air Quality chapter (AR:4:2043-2066) described the Mountain Counties Air Basin, including data from four nearby monitoring stations, three of them in the Tahoe Basin. (AR:4:2045-2046 [including data from Tahoe City and South Lake Tahoe].) Table 10-3 listed air quality standards and attainment status for various air pollutants. (AR:4:2048-2049.) Mobile-source emissions were estimated based on Project-generated vehicle trips and VMT. (AR:4:2054.)

Appellant faults the EIR for not providing "contextual information." (AOB, p. 33.) Appellant never identifies what information was missing. The EIR included the [*12] best available data, and this data accurately portrayed regional air quality. (AR:4:2045; see AR:85:49691 [TRPA report noting limited monitoring stations in Tahoe Basin].) At best, Appellant simply disagrees about how much data is enough. That is insufficient reason to overturn the EIR. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 639-643 (*NCRA v. MMWD*).)

---

[3] Due to a record-preparation error, a fragment of [*10] this response appears at AR:7:4033. The response continues at AR:7:4076. The full response is at AR:69:40421-40422.

2. The EIR was not required to address the Project's consistency with TRPA's policies; moreover, the record showed no inconsistencies.

Appellant argues that the EIR violated CEQA because it did not include enough information on TRPA's plans to restore Lake Tahoe. (AOB, pp. 24-27.) [4] Appellant is wrong.

An EIR must "discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans [*13] include, but are not limited to, ... regional land use plans for the protection of the ... Lake Tahoe Basin." (Guidelines, § 15125, subd. (d).)

"Because EIRs are required only to evaluate 'any *inconsistencies'* with plans, no analysis should be required if the project is *consistent* with the relevant plans." (*NCRA v. MMWD, supra*, 216 Cal.App.4th at p. 632; see *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 918-919 (*City of Long Beach*) [same].) Moreover, an EIR must address "inconsistencies" only if those plans are "applicable." (Guidelines, § 15125, subd. (d).) A plan is "'applicable'" when "'it has been adopted and the project is subject to it[.]'" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 544.)

Here, TRPA's plans were not "applicable" because the Project proposed no development in the Tahoe Basin and did not need a permit from TRPA. (AR:7:4016-4017, 8:4343, 69:40421-40422.) [5] As the EIR explained:

> Even if the thresholds were applicable, [*14] most of the issue areas addressed by the TRPA [thresholds] would be unaffected by the proposed project. The project, for example, would not alter the amount of impervious surface or grading within the Basin and would not result in stormwater runoff that would drain into the Basin due to the distance and geography separating the project area from the Basin as defined. Therefore, most of the impact areas addressed by the TRPA thresholds, including water quality, soil conservation, vegetation preservation, wildlife, and fisheries would be unaffected by the proposed project.
>
> (AR:7:4076, 69:40422.)

The County's determination that the Project was consistent with *applicable* plans is entitled to deference. "'[I]t is, emphatically, *not* the role of the courts to micromanage' such decisions." (*NCRA v. MMWD, supra*, 216 Cal.App.4th at p. 632, quoting *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.)

Nonetheless, Appellant argues the County had to use TRPA's "environmental threshold carrying capacity" for VMT. (AOB, pp. 24-27, 32.) Appellant is wrong.

---

[4] The Guidelines refer to Lake Tahoe as having "regional or area wide significance." (Guidelines, § 15206, subd. (b)(4)(A).) Although Appellant hints otherwise (AOB, p. 27), this designation simply meant that the County had to follow certain procedures (Guidelines, §§ 15082, subd. (c)(1), 15205, subd. (b)(3)), which it did. (E.g., AR:2:692-693, 7:4129, 8:4381-4382.)

[5] Appellant claims that the County and SVRE first raised this issue at trial, as a lawyerly response to Appellant's arguments. (AOB, pp. 31-32.) This claim is false. SVRE's trial brief raised this issue and cited the record. (JA:2:256-257.)

TRPA maintains multiple threshold standards for various environmental resources. (*Sierra Club v. Tahoe Regional Planning Agency [*15]* (E.D. Cal. 2013) 916 F.Supp.2d 1098, 1105 (*Sierra Club v. TRPA*).) TRPA's thresholds are aimed at restoring Lake Tahoe. (AR:30:17610-31:17627, 69:40421-40422; see AR:2:611-616, 85:49683-49740.) The Tahoe Regional Compact directs TRPA to "improve environmental quality, in some instances dramatically, by commanding setting and attaining environmental thresholds." (*League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (E.D. Cal. 2010) 739 F.Supp.2d 1260, 1295 [distinguishing between CEQA, which focuses on mitigating a particular project's impacts, and the Compact, which focuses on restoring Lake Tahoe by improving existing conditions], affd. in part, vacated in part and remanded, (9th Cir. 2012) 469 Fed.Appx. 621; see *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 562, 565 [CEQA focuses on project impacts, not on restoring past harm].) Appellant thus demands that the County import into its CEQA analysis a "threshold standard" adopted by another agency, under Federal law, to achieve a different purpose, in an area that does not encompass the Project site.

Appellant cites no authority supporting this striking claim. Guidelines section 15086 provides that a lead agency must consult with agencies that "exercise authority over resources which may be affected by the project." The County consulted repeatedly with TRPA. [*16] (AR:2:692-693, 7:4129, 8:4381-4382, 39:22736-22824.) TRPA never stated that the County had to use TRPA's threshold standards. This "lack of comment ... was in itself evidence." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380 (*Gentry*).)

Appellant's reliance on *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918 (*Banning Ranch*) (AOB, pp. 44-45) is misplaced. There, the project was within the coastal zone and required a permit from the Coastal Commission. Environmentally Sensitive Habitat Areas (ESHA)-resources provided express protection by the Coastal Act-were present on the site. The Court held that the EIR should have identified where ESHA might be located. (*Id.* at pp. 935-939.)

Here, by contrast, the Project site was not within the Tahoe Basin, TRPA had no permitting authority, and-although there is no dispute that Lake Tahoe is a significant environmental resource-the EIR considered whether the Project would have significant impacts there, concluding that, other than for traffic, the answer was "no" (AR:69:40421-40422.)

Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments (2017) 3 Cal.5th 497 (*Cleveland I*) undermines Appellant's claim. There, the Supreme Court held that the lead agency did [*17] not need to evaluate a project's consistency with a GHG emission reduction target established by an executive order (*id.* at p. 504), finding that the EIR did not obscure the importance of the executive order's target, and explained why the agency did not use the target as a CEQA threshold. (*Id.* at pp. 515-516.)

Here, as in *Cleveland I*, the EIR acknowledged TRPA's threshold standards, and explained why the County did not use them as a CEQA threshold, stating: "the proposed project would not be located in the Basin and is not under the jurisdiction of TRPA, so effects on the TRPA thresholds are not used as standards of significance in this EIR (although, physical effects on the Basin are evaluated, where applicable)." (AR:7:4016.)

The sole TRPA threshold cited by Appellant pertained to VMT and, as the EIR explained, there was no way to translate a single project's VMT into impacts on Tahoe's air or water quality. Instead, TRPA monitors VMT basin-wide, focusing on peak traffic congestion on a summer day. (AR:2:613; see AR:4:2006-2007 [TRPA monitors VMT "for the entire basin"], 7:4016-4017.) The EIR described accurately the role VMT plays in TRPA's regulatory scheme, noting [*18] that even TRPA had not consistently applied a VMT threshold to individual projects. As the Supreme Court observed, an EIR is adequate if its responses to comments explain why, "given existing scientific constraints," further analysis is not possible. (*Friant Ranch, supra*, 6 Cal.5th at p. 521.) With respect to VMT and Lake Tahoe, that was the case here.

Appellant states that TRPA's plans "provide vital information about the Basin's environmental condition." (AOB, p. 32.) The record shows, however, that the Project was not inconsistent with those plans. TRPA adopted its "Regional Plan Update" (RPU) in 2012, finding that the RPU would attain and maintain its threshold standards as required by the Compact. (AR:80:47466; *Sierra Club v. Tahoe Regional Planning Agency* (9th Cir. 2016) 840 F.3d 1106 [upholding 2012 RPU].) The EIR explained that, even with the addition of Project-related VMT, basin-wide VMT would remain below TRPA's threshold. (AR:7:4016, 4129, 4132.)

Appellant points to research indicating that vehicles trips degrade air and water quality in the Tahoe Basin, and "indisputabl[e]" evidence that the Basin was dangerously close to reaching TRPA's cumulative threshold for VMT. (AOB, p. 26.) The County provided [*19] detailed responses to comments raising this concern. (AR:8:4343, 4380-4386, 4393-4394, 4738.) Where comments asked for information on VMT, the County provided that information. (AR:7:4016-4017, 8:4382-4383, 69:40421-40422; see AR:2:611-618, 834-835 [responses to late comments].)

The record shows that the relationship between VMT and physical impacts on the lake is tenuous. TRPA acknowledged that its "original supposition that there is a relationship between VMT and air and water pollutant loads needs to be further evaluated." (AR:85:49732; see AR:2:614-615 [due to improved vehicle emissions controls, VMT threshold may require reevaluation].) In fact, the record showed that: (1) VMT was below TRPA's threshold since at least 2007, (2) the trend was downward, and (3) TRPA itself had questioned the efficacy of the VMT threshold to evaluate potential air and water quality impacts on the lake. (AR:2:613-616, 7:4016, 4132, 36:21011, 85:49731-49732.) [6] Appellant ignores this information, fails to "lay out the evidence favorable to the [County] and show why it is lacking" (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 (*Defend the Bay*)), and thus fails to meet its burden to show "based on all of the evidence in the record, the [County's] determination was unreasonable." (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 (*Pfeiffer*).) "'A reviewing court will not independently review the record to make up for [an] appellant's failure to carry his burden.'" (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330 (

---

[6] Appellant suggests the EIR was required to evaluate the Project's consistency with all of TRPA's threshold standards. Appellant's argument, however, focuses solely on VMT. (AOB, pp. 24-46.) Arguments pertaining to TRPA's other threshold standards are therefore waived. ([*20] *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 206-207 (*Mission Bay Alliance*).)

South County), quoting *Defend the Bay, supra*, 119 Cal.App.4th at p. 1266; see *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749-750 [failure to cite relevant evidence forfeits argument].)

The cases cited by Appellant are inapposite. In *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74 (*Cadiz*), the EIR concluded that the risk that a proposed landfill would contaminate the aquifer was insignificant, but did not provide enough information to determine whether this risk was worth taking. "[T]he public ha[d] a right to know whether a large source of [*21] water, which may be used for drinking water and other domestic uses, is being subjected to potential contamination." (*Id.* at p. 94, footnote omitted.) The EIR thus failed to disclose "critical information necessary to evaluate the significance of the [project's] impact on a valuable resource...." (*Id.* at p. 95.)

In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 1111-1113 (*Protect the Historic Waterways*), the EIR contained a "bare conclusion" that reduced stream flows were insignificant; elsewhere, the court upheld the EIR's brief statement explaining why reduced flows would not harm riparian habitat. In S *antiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831, no data or analysis supported the conclusion that a gravel mine would not affect water supplies.

Here, by contrast, the EIR described existing traffic levels, quantified the volume of traffic that the project would generate (including the proportion that would venture into the Tahoe Basin), and evaluated the resulting impacts. The study area included corridors within the Tahoe Basin (AR:8:4380-4381), and the EIR used TRPA's standards to determine whether Project traffic there would be "significant." (AR:4:2006-2007.) [*22] The EIR also estimated VMT. (AR:4:2050, 2054, 2057-2059, 2289, 6:3361-3362, 3417-3419, 3432-3434.) VMT was not relevant to evaluating traffic impacts because the analysis focused on level of service (LOS) and potential for delay, not trip length. (AR:4:2004-2009, 8:4393, 69:40421-40422, 2:611 [explaining VMT versus LOS].)

Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215 is similarly distinguishable. The Board of Forestry believed that it lacked the authority to require the applicant for two timber harvesting plans to submit information concerning the plans' effects on sensitive species. Based on this mistaken view of the legal limits on the Board's authority, "[the] record contained no site-specific data regarding the presence of four old-growth-dependent species...." (*Id.* at p. 1236.)

The County never took the position that it lacked the authority to gather information on Tahoe Basin VMT. Indeed, the County gathered precisely that information, based on data, plans and analyses obtained from TRPA. (AR:2:611-616, 7:4016-4017, 4132, 36:21011, 85:49731-49732.) Even if Appellant had cited contrary data (which it fails to do), the County had discretion to rely on this information. (*NCRA v. MMWD, supra*, 216 Cal.App.4th at pp. 625-628; *Association [*23] of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 (*AIR*).)

The other cases cited by Appellant (AOB, pp. 27-31) all involved resources directly threatened by proposed projects, where the EIR provided no description of those resources. For example, *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859 involved a proposal to increase the agency's diversion of river water. The EIR failed to disclose the extent to which historic diversions had harmed protected fish species, or a Federal agency's contemporaneous proposal to reduce diversions as a result of that harm. (*Id.* at pp. 873-

875; see *Banning Ranch, supra*, 2 Cal.5th at pp. 935-936 [EIR omitted information regarding ESHA on project site]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1219 [EIRs for two proposed shopping malls, located 3.6 miles apart, did not address the malls' combined effects]; *Cadiz, supra*, 83 Cal.App.4th at pp. 91-93 [EIR omitted information on aquifer beneath proposed landfill]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122-1123 [EIR mischaracterized agricultural operations in vicinity of proposed dam]; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 [on-site [*24] wetlands and adjacent wildlife preserve ignored].)

In this case, the EIR disclosed the Project's proximity to Lake Tahoe, analyzed the impacts of Project traffic travelling into the Basin, discussed the ways in which TRPA regulated traffic and VMT, and addressed whether the Project would interfere with those efforts. (E.g., AR:7:4016-4017, 4132; see AR:2:611-618, 36:21011, 85:49731-49732.) The EIR's description of the setting was adequate. (Guidelines, § 15125, subd. (d); *NCRA v. MMWD, supra*, 216 Cal.App.4th at pp. 644-645.)

Appellant asserts that "prejudice is presumed" when an EIR contains insufficient information on the setting. (AOB, p. 29.) Not so. Appellant must show the lack of information was prejudicial. (Pub. Resources Code, § 21005, subd. (b); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 709 ["'Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown' [Citation.]"]; *Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 463 ["Insubstantial or merely technical omissions are not grounds for relief."].) Appellant does not attempt to meet its burden.

3. The EIR's analysis of Lake Tahoe impacts is amply supported.

Appellant argues [*25] that the standards used to assess the Project's impacts on Tahoe is reviewed "de novo." (AOB, p. 22.) Appellant misstates the standard of review. "A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant ...." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111, disapproved on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) An agency has discretion to determine the standards used to make this determination. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068 (*Save Cuyama Valley*); *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 204-205 (*Mount Shasta); Clover Valley, supra*, 197 Cal.App.4th at pp. 243-245 [agency has discretion to make "policy decision" regarding threshold]; *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336 (*CREED*) [same]; Guidelines, § 15064, subd. (b).)

Appellant claims the DEIR did "not discuss" the Project's individual or cumulative impacts on Lake Tahoe's air or water quality. (AOB, p. 36.) This portrayal of the EIR is inaccurate. The air quality analysis evaluated whether [*26] the Project would cause or contribute to violations of air quality standards inside or outside the Tahoe Basin.

(AR:4:2056-2063 [less than significant with mitigation].) Project runoff would not affect lake water quality directly or cumulatively. (AR:4:2126-2209, 7:4076 [less than significant with mitigation].)

Appellant asserts that TRPA informed the County that the DEIR's approach was inadequate. (AOB, p. 36.) This assertion is false. To quote TRPA's letter:

> Our respective staffs have engaged in productive discussion on how to address these Lake Tahoe Region impacts (referred to herein as "in-basin" impacts). We greatly appreciate the cooperation and collaboration with Placer County and the time and attention expended to explain proposed mitigation and other mechanisms that could be applied to address the in-basin impacts.

(AR:7:4129.) TRPA endorsed impact fees and assessments to support regional transit, pledged to help expand transit, and asked the County to clarify how transit resources would be allocated. TRPA did not question the DEIR's air or water quality analyses. (AR:7:4128-4133.) As the agency responsible for ensuring Tahoe's threshold standards are met, TRPA's silence [*27] is telling. (*Gentry, supra*, 36 Cal.App.4th at p. 1380.)

The EIR explained that even though the County did not use TRPA's VMT standard as a separate threshold, the Project would not cause an exceedance of that standard, using the same information and approach that TRPA applied to projects *within* the Basin. (7:4016-4017, 69:40421-40422.) The EIR estimated that, on a peak day, the Project would cause an increase of 23,842 VMT. (AR:7:4016-4017, 7:4132, 8:4382-4383, 11:6532-6549.)

Appellant argues the County had to find this increase significant. (AOB, p. 37.) As the EIR explained, however, TRPA applies its "VMT threshold" basin-wide, as a limit on total traffic in the Basin. The EIR presented data on existing VMT, added Project VMT, and compared the sum to TRPA's threshold. To wit:

> *Existing (baseline) + Project (pre-mitigation) = Existing + Project 1,937,070 VMT + 23,843 VMT = 1,960,913 VMT*

The sum was below TRPAs basin-wide limit of 2,030,938 VMT. (AR:2:611-616, 7:4016, 85:49690, 85:49731-49732.) This remained true even if other proposed projects were added to this total. (AR:2:615-616.) Indeed, all record evidence points to the same conclusion: The Project will neither cause [*28] nor contribute to exceeding TRPA's basin-wide VMT threshold.

The EIR noted that TRPA had not consistently applied the VMT threshold to individual projects. Instead, TRPA required payment of TRPA's Traffic and Air Quality Mitigation Program fee to support actions that reduce VMT. The EIR further noted that Mitigation Measure (MM) 9-7 would generate permanent, ongoing funding to expand transit services, including service between Squaw Valley and Tahoe, and thus served the same function as TRPA's fee. (AR:7:4017.)

Appellant advances four arguments attacking this analysis. None has merit.

First, Appellant argues that the DEIR never mentioned TRPA's threshold standards. (AOB, p. 37.) Not so. The DEIR discussed these standards. (AR:4:2006-2007.) The FEIR elaborated. TRPA originally established the VMT

threshold to address air quality, but the threshold also served as a surrogate for other environmental conditions, including traffic congestion and Lake Tahoe water quality due to exhaust deposition. (AR:7:4016-4017.) As the County's expert explained, "a link between a specific number of VMT and attainment of Lake clarity goals is difficult to determine." (AR:2:613.) The consultant provided [*29] information regarding cumulative, basin-wide VMT and confirmed the EIR's conclusions. (AR:2:611-616; see AR:7:4016-4017.) Controlling stormwater run-off presented "the greatest opportunity to achieve needed load reductions." (AR:2:612.) Because the Project was outside the basin, however, it did not contribute to the stormwater runoff problem. Instead, the EIR focused, appropriately, on reducing traffic. (AR:2:615.)

Second, Appellant claims that the County was legally compelled to use TRPA's project-specific thresholds for in-basin projects-200 daily trips or 1,150 VMT-rather than the applicable traffic LOS threshold. (AR:4:2004-2009.) This claim is incorrect. Differentiating between significant and insignificant impacts necessarily involves agency discretion. (Guidelines, § 15064, subd. (b); *Save Cuyama Valley, supra*, 213 Cal.App.4th at p. 1068; *CREED, supra*, 197 Cal.App.4th at p. 336 ["lead agencies are allowed to decide what threshold of significance [they] will apply to a project."]; *Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at pp. 541-544 [upholding traffic thresholds]; see *Friant Ranch, supra*, 6 Cal.5th at p. 514 ["a decision to use a particular methodology [*30] and reject another is amenable to substantial evidence review"].)

The Project EIR summarized the approaches used to assess VMT for projects located within and outside the Basin. (AR:7:4016-4017, 2:615-616.) Two in-Basin projects that used the 200-trip threshold (including the Homewood project cited by Appellant) were mitigated through payment of TRPA's Traffic and Air Quality Mitigation fee, which TRPA uses to support transit. (AR:7:4017; see *Sierra Club v. v. TRPA, supra*, 916 F.Supp.2d at pp. 1137-1142 [describing and upholding fee program as CEQA mitigation].) Although the Project is not subject to TRPA's fee, the EIR identified, and the County approved, mitigation requiring SVRE to fund the same things. (AR:7:4017.)

Third, Appellant argues that the County did not estimate cumulative VMT. (AOB, p. 38.) This argument is false. "Cumulative development, including the [Village] project, the Tahoe Basin Area Plan and Tahoe City Lodge project, Martis Valley West, Truckee (general plan buildout), and other cumulative development in the Squaw Valley/Alpine Meadows area (same projects as considered in the [Village] EIR), was dynamically modeled using the 'TRPA TransCAD' model." (AR:2:616.) [*31] [7] Appellant criticizes the analysis as "unreliable." (AOB, p. 41.) As the County explained, however, even if every possible contributor to VMT were added together, the total remained below TRPA's threshold of 2,030,938 VMT. (AR:2:615-616, 4:2348-2353.)

Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421 (*Ojai*), cited by Appellant, is inapposite. There, the Court found that the EIR should have "set forth ... the basis for any conclusion that analysis of cumulative impact of offshore emissions was wholly infeasible and speculative." (*Id.* at p. 430.) Here, the EIR

---

[7] Appellant argues the County erred by analyzing VMT only in the cumulative context. (AOB, pp. 37-38.) But TRPA itself applies its VMT "cap" only basin wide. (AR:7:4016-4017.)

explained why cumulative air quality impacts were insignificant. (AR:4:2375-2378; see AR:2:616.) An "EIR need not contain a full-blown cumulative impacts discussion if the impacts are found to be insignificant." (*Ojai, supra*, 176 Cal.App.3d at p. 429.)

Fourth, Appellant dismisses MM 9-7. (AOB, p. 39.) This measure required SVRE to fund transit and thereby reduce VMT (AR:2:636, 7:4017-4019), even if its effectiveness "cannot be easily quantified." [*32] (AR:2:615; see AR:7:4017.) Even TRPA, in imposing its fee on in-Basin projects, does not quantify the VMT reductions that will result. (AR:2:613-616.) Appellant's argument therefore amounts to a demand that the County quantify something that cannot be quantified, and that not even TRPA quantifies. In any event, fee-based programs like this are adequate mitigation under CEQA. (*City of Marina, supra*, 39 Cal.4th at p. 364; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 136-141 (*Save Our Peninsula*) [traffic fee upheld].)

Appellant cites *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 653-654 and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264, to argue that an agency cannot cite mitigation measures as an excuse for foregoing analysis. (AOB, p. 39.) But the County did not simply cite MM 9-7 and stop. Rather, the County analyzed traffic and transit impacts and noted, correctly, that MM 9-7 would fund transit and thereby reduce traffic. (AR:2:636, 7:4017-4019; see AR:89:52273-52274 [TRPA endorsement].)

The primary case relied upon by Appellant- *Banning Ranch*-provides a counterpoint. There, the project was in the coastal zone and required a coastal development permit. The site [*33] contained ESHA, where development was generally prohibited. Coastal Commission staff asked the city to identify potential ESHA. The city declined. The city violated CEQA by failing to integrate its CEQA process with the Coastal Act. (2 Cal.5th at pp. 936-938.)

Here, the Project required no permit from TRPA, and there was no parallel permitting process to "integrate." (AR:69:40421-40422, 8:4343, 4381-4382.) The County consulted with TRPA (AR:2:692-693, 698, 7:4129, 8:4381-4382, 39:22736-22824), and disclosed the Project's potential effect on TRPA's basin-wide VMT threshold. (AR:2:611-616, 7:4016, 85:49690, 85:49731-49732.) The *Banning Ranch* Court noted that courts "must be careful not to second-guess good faith efforts to coordinate environmental review." (*Id.* at p. 942, fn. 10.) Here, the EIR estimated in-basin VMT and responded in detail to comments. (E.g., AR:7:4016-4017, 4132, 4033, 4076, 8:4382-4383; see AR:2:807-811, 2:831-832.) The record reflects precisely the sort of good-faith effort called for by *Banning Ranch.*

Appellant dismisses SVRE's voluntary commitment to pay $ 440,862 to TRPA. (AOB, p. 41 fn. 6.) This commitment arose out of a late letter submitted the California Attorney [*34] General (AG). (AR:2:619-627.) The AG's letter and subsequent consultations culminated in SVRE's request to include this commitment-calculated based on TRPA's fee program applied to the proportion of Project traffic arising in the Tahoe basin-in the development agreement, even though the Project was not subject to TRPA's fee program. (AR:2:634-636, 7:4017, 16:9427-9429, 16:9452-9457 [AG acknowledgment of payment], 36:21006-21013, 41:23671, 42:24759-43:24810; see AR:16:9450-9452 [TRPA payment is in *addition* to $ 3 million contribution to transit].)

Appellant disparages this commitment even though it provides the same mitigation applicable to projects *within* the Basin. Consider the perversity of Appellant's argument. The AG submitted a belated, critical comment. Rather than ignoring it, SVRE met with the AG, reaching agreement regarding how to address its concern. As a result, SVRE will provide significant funding for the programs that Appellant purports to champion. Appellant argues that none of that matters. If the Court accepts Appellant's argument, then there will be little incentive to reach out to stakeholders as occurred here.

4. The County's responses to late comments [*35] confirmed the EIR's conclusions.

Appellant argues that responses prepared by the County's consultants after the FEIR was published are irrelevant. (AOB, pp. 39-42.) The argument fails both legally and factually.

These responses addressed comments submitted *after* the County released the FEIR. (AR:2:620-624, 634-636, 681-686, 692-694, 748-750, 834-835.) The County was not required to respond to late comments (*Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 972 (*RASP 380*).) That the County responded is hardly cause for criticism. Nor was there anything wrong with citing these responses to confirm the EIR's analysis. (*Goleta, supra*, 52 Cal.3d at pp. 568-570.)

Under Appellant's theory, an agency's only response when faced with such belated criticism-even to letters submitted on the eve of the agency's final hearing (AR:38:21995-21996, 22058-22060)-would be to re-open the EIR process. The cases cited by Appellant do not support that theory. In *Laurel Heights I, supra*, 47 Cal.3d at pp. 400-406, the EIR was inadequate because it omitted *any* analysis of project alternatives, even though the Guidelines expressly required the EIR to contain such an analysis; the agency could not cite internal memoranda [*36] to plug this gap. Similarly, in *Save Our Peninsula, supra*, 87 Cal.App.4th at pp. 130-131, the EIR never described impacts from a proposed water transfer, even though the transfer was intrinsic to the project; the agency's internal "erratum" could not supply this missing information.

Here, by contrast, information on Tahoe and VMT was in the EIR; the further responses elaborated on and confirmed that information; and there was nothing obscure or inaccessible about either the EIR or the consultant's further responses. Under such circumstances, the real issue is whether the further responses required recirculating the DEIR. (*Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Trans. Auth.* (2015) 241 Cal.App.4th 627, 664-666; *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 904-906 (*WPCARE*).) Because the responses did not change the EIR's conclusions, recirculation was not required. (AR:1:235-237.)

Appellant's theory is also bad policy. It would allow project opponents to submit late comments, and then demand that the agency reopen the CEQA process. The courts reject this view. (*Laurel Heights Improvement Assn. v. Regents of the University of Cal.* (1993) 6 Cal.4th 1112, 1132 (*Laurel Heights [*37] II*) [recirculation requirement "not intend[ed] to promote endless rounds of revision and recirculation of EIRs"]; *South County, supra*, 221 Cal.App.4th at p. 328 [recirculation is "'an exception, rather than the general rule,'" citation omitted]; *Citizens for*

Responsible Equitable Environmental Development v. City of San Diego (2011) 196 Cal.App.4th 515, 528 [criticizing opponent for last-second submittals].)

B. The EIR provided ample information regarding wildland fire risks and evacuations.

The Board found that the Village, as mitigated, would not interfere with adopted emergency evacuation plans, and that people or structures would not be exposed to a significant risk from wildland fires. (AR:1:354-356, 3:1597-1599.) Appellant attacks these findings (AOB, pp. 46-55), but misstates the applicable standard of review. "Disagreements regarding the adequacy of an EIR's impact analysis will be resolved in favor of the lead agency if any substantial evidence supports the lead agency's determination." (*Clover Valley, supra*, 197 Cal.App.4th at p. 243; see *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-935 (*Tracy First*) ["substantial evidence" test applies to challenge to agency's conclusion that energy impact will not be significant]; [*38] *Friant Ranch, supra*, 6 Cal.5th at p. 516 ["to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation.]"].)

CEQA includes an "environmental checklist form" that directs the lead agency to consider whether the project will "[i]mpair implementation of or physically interfere with an adopted ... emergency evacuation plan," or "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires...." (Guidelines, Appendix G, PP VII(g), (h); see *id.*, § 15126.2, subd. (a) [EIR must address "health and safety problems caused by the [project's] physical changes"].)

The Village EIR addressed these issues. (AR:5:2580-2583, 2741, 4:2268.) The County had discretion to rely on Appendix G to guide its analysis. (*City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 841 (*City of Hayward*).)

As the EIR noted, the State has designated much of the region and Project site a "very high fire hazard severity zone." (AR:4:2257-2269.) Appellant emphasizes this designation. The actual risk, however, [*39] is not what this designation suggests. (See *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193-195 (*Clews*) [school site's designation as "very high fire hazard severity zone," standing alone, was not substantial evidence that fire or evacuation impacts were significant].)

As Squaw Valley Fire Department (SVFD) Fire Chief Pete Bansen stated, "Squaw Valley is pretty favorable in terms of fuels and topography and the unlikely host event for a large wildland fire." (AR:17:9832.) The facts bear out this statement. The site is mostly a paved parking lot. Surrounding terrain consists mainly of ski runs and bare rocks. (AR:3:1743, 17:9832-9833 [Chief Bansen describes setting], 21:12176-12179 [surrounding terrain is open rock, cleared ski runs and healthy forests and meadows], 18:10308-10309 [few fires have occurred, and fires have been small and quickly extinguished], 21:12187 [project site already mostly paved or developed].)

One large, regional fire-2014's King Fire-came within six miles of the valley, but that event showed that SVFD's system works: an event was canceled, and SVFD's communication system was successfully deployed. (AR:7:4013-4014, 21:12179, 21:12184-12185, 18:10308-10309.) [*40]

Squaw Valley Road, which connects to State Route (SR) 89, provides access. (AR:4:2220, 4:2274.) Appellant claims that Squaw Valley Road and SR 89 are "gridlock[ed] at peak periods." (AOB, p. 47.) The EIR acknowledged that the Project will add to existing, peak congestion along these roads. (AR:4:2030-2039.) Appellant neglects to point out, however, that most congestion occurs in winter, when skiers are visiting the site, inclement weather disrupts traffic, and-to state the obvious-wildland fire risk is zero. (AR:4:2030-2034.) Summer and fall traffic is much lighter. (AR:4:2041.) Both roads flow freely 99% of the time. (AR:18:10278-10280.)

The DEIR described and attached SVFD's adopted "Wildland Fire Evacuation Plan" (AR:4:2268, 4:2274, 7:3860-3863), which identifies evacuation routes, establishes communications and evacuation protocols, and provides guidance to reduce risk. The plan calls for using the Village's existing parking lots as a gathering place if evacuation routes are blocked. (AR:7:3863.)

The Project will not impede this plan: the same evacuation routes would be used, and Village parking structures would continue to serve as refuge for visitors and residents. (AR:3:1766-1767, [*41] 4:2274, 2:1152-1153.)

The EIR noted that temporary road closures during construction could hinder evacuation (AR:4:2274) and recommended a Construction Traffic Management Plan (CTMP). (AR:4:2274; see AR:4:2042 [CTMP must "preserv[e] [] emergency vehicle access"].) The Board adopted this measure. (AR:1:315-317, 354-355, 460-461, 2:1042-1043.)

The EIR also acknowledged that the Project would bring additional people to the area. The EIR proposed, and the County adopted, MM 15-6a, which requires compliance with CalFire standards regarding defensible space, emergency access, and fire flows. (AR:4:2275-2276; see Cal. Code Regs., title 14, §§ 1270-1276.03; AR:4:2267-2268 [SVFD performs annual inspections to ensure compliance], 2:1062-1063 [MMRP].)

SVFD commissioned a study to determine whether SVFD had enough capacity to serve the Village. Citygate-the consultant-analyzed this capacity considering the "unique characteristics, topography, weather, and population present and proposed in the Olympic Valley." (AR:28:16187; see AR:110:65018-65022 [consultations with SVFD].) Citygate reviewed plans and standards, interviewed staff, and toured the site. (AR:28:16187.) As Citygate noted, Village access [*42] is generally good, except during inclement winter weather when wildland fire risk is nonexistent. (AR:28:16194.) Citygate recommended that SVRE augment fees and property tax revenue to add staff and construct a new substation at the valley's western end. (AR:28:16196-16199.) The EIR incorporated these recommendations (AR:3:1766-1767, 4:2219-2220, 2252-2253, 2274-2276, 5:2427), and the Board adopted them. (AR:2:1061-1062 [MMRP].) Appellant ignores both the analysis and mitigation.

Appellant's 130-page comment letter demanded, among many other things, further analysis of wildland fires and evacuations. (AR:8:4649-4650, 4694-4695.) The County responded. (AR:7:4011-4014, 8:4795-4798.) The

response noted that the CTMP would ensure that emergency access would be maintained during construction. (AR:7:4011.) Appellant scoffs. Plans like the CTMP, however, are appropriate mitigation (*City of Hayward, supra*, 242 Cal.App.4th at pp. 851-855 [traffic demand management plan]; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029-1030, 1034-1037 [traffic and parking mitigation]; *Neighbors for Smart Rail, supra*, 57 Cal.4th at pp. 465-466 [parking plan]), and the CTMP's requirement is unambiguous: "preserv[e] [] emergency vehicle access." [*43] (AR:2:1042-1043; see *Clover Valley, supra*, 197 Cal.App.4th at pp. 236-237 ["no take" of protected species]; see AR:2:661 [County will monitor and enforce CTMP].) [8]

As requested, a traffic consultant estimated the time to evacuate Squaw Valley using highly conservative assumptions. (AR:18:10297-10307 [100% occupancy throughout valley; full Project buildout; no "shelter in place"; evacuation coinciding with peak summer traffic; all traffic turning left on SR 89 and merging with other northbound traffic (i.e., if Tahoe Basin traffic is diverted from SR 89, there would be more capacity, and the evacuation of Squaw Valley would take less time)].) Under existing conditions, 2.9 hours would be needed to evacuate the Valley. [*44] With the Project, 5.0 hours would be needed (6.6 hours under cumulative conditions). Under worst-worst-worst conditions (Project + cumulative conditions + special event), the time would be 10.7 hours. (AR:18:10301-10307, 7:4013-4014; see AR:18:10310 [hotel guests voluntarily evacuate earlier than year-round residents, who are reluctant to leave homes].) Emergency personnel would be able to account for evacuation times in deciding whether and when to issue an evacuation order. (AR:7:4013-4014.)

Appellant argues the memorandum is irrelevant because it was not in the FEIR. (AOB, p. 51.) The argument is unpersuasive. The FEIR cited the memorandum (AR:11:6123) and summarized its assumptions and findings. (AR:7:4013-4014; Guidelines, § 15148 [EIR references to other studies permitted].)

Appellant does not even mention the west-end substation, even though it will provide emergency responders with direct access to both ends of the valley, thus addressing Squaw Valley Road congestion. (AR:7:4011-4012, 18:10310.) As County staff summarized, SVRE must "support a 24-hour a day full-service fire station that would be completely funded, dedicated, constructed, staffed and equipped, dedicated [*45] to [SVFD] at no cost to the district." (AR:17:9794; see AR:1:28-29, 133, 351-352, 458-459, 2:661-662, 17:9676, 9887-9888.)

Appellant scoffs at shelter-in-place as "cryptic" and ineffective, but cites no expert evidence supporting this view. (AOB, p. 53.) In fact, shelter-in-place at the Village has long been part of SVFD's emergency planning (AR:7:3862-3863); the Project fits into that plan. As SVFD Fire Chief Bansen (an expert, as opposed to Appellant's lawyer) stated, "sheltering in place is a very, very favorable way of approaching the situation in Squaw Valley in our opinion." (AR:17:9834; see AR:36:21145 [peer review fire consultant describes "shelter in place" as a "common tactic"; consultant's recommendations incorporated into Project].)

---

[8] Appellant raises passing concerns about a propane farm. (AOB, p. 47.) The valley is already served by propane. (AR:3:1766.) The Village would add a second underground "tank farm" at a maintenance facility. (AR:3:1766; see AR:3:1753.) The facility would be regularly inspected, just like existing facilities. (AR:21:12196, 8:4797, 36:21174.) Compliance with regulatory requirements sufficed. (*Tracy First, supra*, 177 Cal.App.4th at pp. 932-934 [building energy standards].)

The FEIR stated that SVRE would prepare an Emergency Preparedness and Evacuation Plan (EPEP), listed the EPEP's required contents, and noted that the EPEP would integrate with existing County and SVFD plans. (AR:7:3969-3970, 7:4012-4013; see AR:27:15339-15362 [County-adopted "East Side" evacuation plan].)

Appellant suggests this expanded analysis does not count because it appeared in the FEIR, not in the DEIR. This suggestion is false. [*46] Responses to comments and revised analysis are part of the EIR. (*Cleveland I, supra*, 3 Cal.5th at pp. 516-517; *Defend the Bay, supra*, 119 Cal.App.4th at p. 1273.) So are appendices. (*City of Maywood v. Los Angeles Unif. School Dist.* (2012) 208 Cal.App.4th 362, 423-424 (*City of Maywood*).)

Appellant places much emphasis on a May 16, 2016, letter from SVFD Chief Bansen. (AOB, pp. 51-52.) Chief Bansen stated that the FEIR glossed over the unpredictability of wildfires and the difficulty of evacuations, and that maintaining emergency access along Squaw Valley Road has been challenging. (AR:2:657-660.)

Appellant ignores the response to Chief Bansen's concerns, which noted that SVRE had prepared the EPEP and engaged in further consultations with SVFD regarding the west-end substation, increased staffing and equipment. (AR:2:661-662.)

With a gift for understatement, Appellant concedes that the EPEP is "helpful." (AOB, p. 54.) It is. The EPEP provided a comprehensive inventory of existing conditions, fire-related threats, applicable plans and regulations, mitigation measures, defensible space and building standards, communication and training requirements, and evacuation plans, including shelter-in-place. (AR:21:12168-12303; [*47] see AR:17:9823-9826 [County Planner Alex Fisch describing EPEP at Planning Commission hearing].)

Appellant claims the EPEP is irrelevant because it was not in the EIR. (AOB, p. 54.) The claim fails. The EPEP elaborated on information in the EIR. (AR:4:2219-2220, 4:2252-2254, 4:2257-2259, 4:2267-2268, 4:2274-2276, 7:3969-3970, 7:4011-4014, 8:4795-4797, 18:10297-10311.) In determining whether evidence supports the County's conclusions, the Court is not restricted to the EIR; rather, the issue is whether information in the record *as a whole* supports the County's conclusions. (*Clover Valley, supra*, 197 Cal.App.4th at p. 222 [city could rely on "additional responses" prepared after EIR publication]; *Goleta, supra*, 52 Cal.3d at pp. 568-570 [agency could rely on all record evidence, not merely EIR, in evaluating alternatives]; *Protect the Historic Waterways, supra*, 116 Cal.App.4th at p. 1013 [challenge to finding regarding significance of impact turns on whether conclusion was supported by substantial evidence " *in the record*," italics added].)

City of Maywood, supra, cited by Appellant (AOB, p. 49), is distinguishable. There, the record "[did] not contain any evidence that the [*48] [school district] considered or otherwise addressed" the city's concerns about pedestrian safety at a proposed school. (208 Cal.App.4th at p. 395.) Here, by contrast, the EIR addressed fire risk and evacuation; the EPEP and supplemental responses elaborated; and the information was publicly available and discussed. (AR:17:9824-9826 [description of EPEP at Planning Commission hearing], 16:9344-9361 [power-point presentation to Commission]; see *City of Maywood, supra*, 208 Cal.App.4th at pp. 423-424 [expert's finding that students would not traverse rail line supported conclusion that no significant safety impact would occur].)

A far better analogue is *Clews, supra*, 19 Cal.App.5th 161, which Appellant unsuccessfully struggles to distinguish. (AOB, pp. 54-55.) In that case, the city adopted a negative declaration and approved a school at a high-risk location. The school's location did not, by itself, constitute a "fair argument" that the school would have significant impacts on fire risk or evacuations. Instead, the issue was whether, "[v]iewing the record as a whole," there was a "fair argument" that the project would "materially affect evacuation routes in the area." (*Id.* at [*49] p. 194.) The answer was no, citing the school's modest size, its adherence to fire codes, and the availability of evacuation routes. (*Ibid.*)

Clews involved the "fair argument" standard of review, under which the Court shows no deference to the lead agency's conclusions. "Where, as here, the agency prepares an EIR, the issue is whether substantial evidence supports the agency's conclusions, not whether others might disagree with those conclusions." (*NCRA v. MMWD*, 216 Cal.App.4th at pp. 626-627 [distinguishing negative declarations from EIRs].)

The facts here differ, but they too amply support the Board's conclusions. Almost the entire site is paved and developed; surrounding terrain is "favorable" (AR:17:9835); the Project augments SVFD's existing staffing and facilities; and the County approved an EPEP that builds on existing plans, designates evacuation routes and procedures, and allows visitors and area residents to continue to use the Village as a place of refuge. All fire professionals endorsed SVRE's commitments. (AR:17:9833-9835, 10073-10075.) None objected.

Appellant believes any increased risk is necessarily significant. (AOB, pp. 49-50.) Appellant cites no support [*50] for this view, other than its own lay opinion. But "[a] less than significant impact does not mean no impact at all." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 899; see *National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1359 (*National Parks*) [CEQA "allow[s] for a finding of an insignificant degree of impact, not necessarily a zero impact. [Citation.]"]; *City of Long Beach, supra*, 176 Cal.App.4th at pp. 912-916 [consultants' reports supported conclusion that project would not cause significant hazards].)

Appellant's argument, if accepted, would usurp the Board's discretion. The County acknowledged that wildland fires and mass evacuations are not "zero risk" events. (AR:16:9356.) As Chief Bansen stated at the Planning Commission hearing, however, "my feeling is that a mass evacuation of Squaw Valley is a very, very, very unlikely event." (AR:17:9833.) He concluded:

> I think the evacuation and emergency preparedness plan that has been developed for the project is very good [and] appropriate. We're in a very favorable situation in Squaw Valley. ... Thanks to nature and the configuration of the mountains and the prevailing wind and the [EPEP]...works well with the plan [*51] that we have already developed, the Squaw Valley fire plan that the Placer Office of Emergency Services has developed for the east side of the county. I think it is safe to say we're confident of our ability to effectually communicate the nature of the threat. And we think we will be even more capable of doing that in the future and to direct the respon[se] in an appropriate and timely manner.

(AR:17:9835; see AR:17:10073-10075 [peer review by Meeks Bay Fire Protection District Fire Chief John Pang, endorsing EPEP]; 36:21140-21151 [consultant peer review endorsing EPEP].)

Appellant cites none of this.

"CEQA allows, if not encourages, public agencies to revise projects in light of new information revealed during the CEQA process." (*Treasure Island, supra*, 227 Cal.App.4th at p. 1062.) The same is true here. SVRE collaborated with Chief Bansen and other experts and prepared the EPEP, the County approved it (AR:2:1067, 1077), and the Project improved. In short, "[t]his is a case where CEQA worked." (*Clover Valley, supra*, 197 Cal.App.4th at p. 206, footnote omitted.) The trial court's decision to reject this claim (JA:2:460-461) was correct.

C. The EIR's analysis and mitigation [*52] of construction noise complies with CEQA.

Appellant argues that the EIR fails to disclose construction-related noise impacts. (AOB, pp. 55-62.) The trial court rightly disagreed. (JA:2:466-467.) The Court reviews the EIR's construction noise analysis for substantial evidence. (*Friant Ranch, supra*, 6 Cal.5th at p. 512; *Banning Ranch, supra*, 2 Cal.5th at pp. 934-936.) Appellant must show no substantial evidence supports the County's findings. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.)

The EIR analyzed Project noise impacts (AR:4:2067-2099, 2378-2380, 7:3804-3859), finding that construction noise could have a significant impact on sensitive receptors (AR:4:2083-2087) due to the relatively large scale of construction occurring over a lengthy period in a "relatively quiet mountain environment." (AR:4:2379.) [9] The EIR also found that nighttime construction-although "relatively rare, [*53] occurring only at most a few days per year and only in some years, when such activities are unavoidable" (AR:8:4783)-may increase noise levels by 5 decibels (dB). (AR:1:260, 271, 4:2083; AR:7:4030 [explaining need for sporadic nighttime construction].) The EIR identified, and the County adopted, mitigation (AR:4:2086-2087, 2:1047-1051), concluding that construction noise would nevertheless remain significant. (AR:1:262-263, 271.)

Appellant argues that construction may disrupt residents "daily for 25 years." (AOB, p. 57.) As the EIR explained, however, construction would not occur all at once over 25 years (AR:7:4030, 4045-4046, 68:40374, 40378), but would "vary day-to-day" during the construction season (May 1 to Oct. 15) depending on construction activity (AR:3:1777, 4:2084-2085) with "sequence and pace" driven by the market. (AR:3:1772, 1777; 4:2084-2085, 5:2401.) The Specific Plan echoes these realities. (AR:3:1214, 1217.) Night-time construction would be rare and occur only when unavoidable. (AR:7:4030.)

The EIR included data on existing noise levels (AR:4:2072-2076, 7:3854-3855; JA:2:466) and identified nearby sensitive receptors (AR:4:2072-2074, 2:849-850), including residences near [*54] Squaw Valley Road, the East

---

[9] Appellant cites *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123, claiming the EIR must take the setting into account in determining the significance of noise impacts. (AOB, p. 58.) The EIR did that, acknowledging that existing noise levels vary seasonally but are generally quiet. (AR:4:2072-2076, 2379.)

Parcel, and the existing parking lot. The EIR recognized that, at times, construction activities could occur within 50 feet of sensitive receptors (AR:4:2085) with potential effects including sleep disturbance. (AR:4:2068-2069, 4:2084, 8:4783-4784; see AR:4:2070 [10dB nighttime penalty; 5dB evening penalty].) The EIR conservatively estimated daytime and nighttime construction noise. (AR:4:2082-2087, 7:3806-3811.)

Appellant relies on *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019 (*LAUSD*). (AOB, p. 58.) There, the EIR ignored the cumulative effects of incremental increases in project noise and concluded traffic noise would be insignificant because existing ambient noise already exceeded recommended levels. (*Id.* at pp. 1024-1028.) Conversely, here, the EIR identified existing noise levels and estimated both project and cumulative noise. (AR:4:2072-2076, 2083-2086, 2378-2380.)

Appellant claims the EIR had to identify noise levels and durations at specific locations throughout the plan's 25-year build out (AOB, pp. 56-58.), [10] but ignores both the nature of seasonal construction and the programmatic nature of specific plan approvals. (*California Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 271, fn. 25 [level of specificity of EIR determined by nature of project]; Guidelines, §§ 15145, 15146].) A detailed construction schedule spanning 25 years simply does not exist. (AR:2:1099, 8:4784; RT, pp. 115-116.) Appellant relies on *Cleveland Nat'l Forest Foundation v. San Diego County Assn. of Gov.* (2017) 17 Cal.App.5th 413, 444-445 (*Cleveland II*) where the EIR had "known data gaps" that ignored over half the agricultural land threatened by the project. (AOB, p. 57.) Here, no such gaps existed in the data. (AR:4:2067-2087.)

Appellant ignores the County's responses explaining that the analysis requested involved nonexistent information (AR:2:849-850, 68:40373-40384); accordingly, the EIR focused on a "worst-case" scenario (AR:4:2083-2085, 1:271, 4:2378-2379, 8:4782), modeling peak noise generated during the "single most active possible construction year." (AR:3:1772, 1777, 4:2084-2085 [20% build-out/300 bedrooms], 5:2401-2402 [cumulative construction noise impacts].) The County required future map applications to include a "Subsequent [*56] Conformity Review." If future maps trigger potential inconsistencies (i.e., exceeding 45 dBLdn for interior nighttime noise), additional review is needed. (AR:3:1206-1209; 2:1050-1051 [MM 11-4b]; see *RASP 380, supra*, 9 Cal.App.5th at pp. 966-967 [upholding requirement for follow-up studies].)

Appellant claims the EIR erred by focusing on receptors located within 50 feet of construction activities. (AOB, p. 57.) This approach is standard. (See *Pfeiffer, supra*, 200 Cal.App.4th at p. 1578 [average noise levels at 50 feet]; AR:7:3808-3809 [FTA standard]; *Mount Shasta, supra*, 210 Cal.App.4th at p. 209.) It is also a methodological issue entitled to deference. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 419-422.)

Appellant points to the site-specific information regarding the Academy, claiming the County could do the same analysis for all receptors. (AOB, p. 59.) The East Parcel is relatively small (just 8.8 acres), with limited flexibility to accommodate the proposed buildings. (RT, p. 117-118; AR:2:1105, 1117.) In responding to comments, the County

---

[10] Appellant says it alerted the County to this issue (AOB, p. 58.), citing a short passage (AR:8:4673-4675), devoid of expert support, in [*55] its 130-page comment letter.

realized it *could* provide more detail about the effects on the Academy, so it did. (AR:8:4783, 7:3956-3958, 4045-4047.) Such [*57] precision was impossible for the Village. (AR:7:4029-4031, 3:1751, 1269, 1504, 4:2092.) The County rightfully refused to speculate. (Guidelines, § 15145; *AIR, supra*, 107 Cal.App.4th at p. 1396.)

Appellant argues the EIR erred in not analyzing the potential health effects from construction noise. (AOB, p. 58.) Appellant is wrong. An EIR need not "apply a separate health-based threshold in determining the significance of noise impacts." (*Mission Bay Alliance, supra*, 6 Cal.App.5th at pp. 194-196.) Here, the EIR appropriately identified maximum daytime and intermittent nighttime/weekend construction noise (AR:3:1777, 4:2083-2085), and disclosed and mitigated occasional nighttime construction that may disrupt sleep (AR:4:2084-2088, 2096, 3:1571 [MM 11-4b]). The EIR explained the impossibility of providing site-specific noise levels at every conceivable sensitive receptor based on yet, unknown, construction details. (AR:2:849-850; *Laurel Heights I, supra*, 47 Cal.3d at p. 396; *Sierra Club v. TRPA, supra*, 916 F.Supp.2d at pp. 1146-1150 [distinguishing *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344].) Appellant barely hinted at this issue in the record or at trial (AR:8:4675; [*58] JA:2:231, 306) and cites no evidence linking intermittent construction noise to health effects.

Friant Ranch, supra, 6 Cal.5th at pp. 519-521, cited by Appellant, is inapposite. That EIR, for a 2,500-unit, age-restricted community in a polluted air basin, failed to link estimated project emissions to health effects and offered no explanation why doing so was infeasible. *Berkeley Keep Jets* is also inapplicable. There, an airport expansion included increased nighttime cargo plane flights; yet, the EIR omitted any analysis of nighttime single-event noise despite expert opinion of potential health effects from sleep disruption. (91 Cal.App.4th at pp. 1377-1382.) Here, the EIR disclosed maximum nighttime noise levels from occasional construction, noted the potential for sleep disturbance, identified mitigation, and explained why site-specific analysis for all sensitive receptors was infeasible. (AR:4:2083-2086, 20986, 3:1571, 7:4045-4046, 8:4783-4784.) The record contained no evidence linking occasional nighttime construction noise with foreseeable health impacts.

Lastly, Appellant dismisses the County's noise ordinance (AOB, p. 62.), despite its relevance. (AR:4:2080 [Article 9.36.030].) [*59] Under the ordinance, the County could have found daytime construction noise exempt and therefore insignificant. (See *National Parks, supra*, 71 Cal.App.4th at pp. 1358-1359; *Sierra Club v. TRPA, supra*, 916 F.Supp.2d at pp. 1146-1150.) [11] Instead, the County found construction noise significant and imposed mitigation, requiring SVRE to locate staging areas away from sensitive receptors, to maintain construction equipment, and to protect receptors with noise-attenuating buffers. (AR:4:2086, 1047-1051 [MMs 11-1a-11-5].) For construction occurring outside the Ordinance-exempt time frame that may generate more than 45 dBALeq/65 dBALmax at 50 feet, SVRE must apply for an exception and provide notice to adjacent landowners (AR:2:1047-1048), and prepare site-specific noise studies showing compliance with County standards before building

---

[11] *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281 is distinguishable. (AOB, p. 62.) That EIR omitted the factual basis for concluding that compliance with General Plan traffic standards sufficed to avoid congestion impacts. Here, by contrast, the EIR cited the noise ordinance then analyzed construction noise impacts.

residential units. [*60] (AR:3:1571.) At 30% buildout, SVRE must install a rubberized hot mix asphalt overlay or equivalent treatment on Squaw Valley Road. (AR:2:1051 [MM 11-5], 1:329-330 [traffic noise reduced by 4 to 6 dB], 2:1042-1043 [MM 9-8].) These measures are adequate. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 34-36; *Laurel Heights I, supra*, 47 Cal.3d at p. 418; *RASP 380, supra*, 9 Cal.App.5th at pp. 966-967.) [12] As in *Pfeiffer, supra*, 200 Cal.App.4th at pp. 1577-1578 [upholding mitigation for construction noise that restricted hours, located equipment away from sensitive receptors, and deployed noise buffers]), and unlike *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1170 (AOB, p. 61); here, the County acknowledged that mitigation would not entirely avoid construction noise impacts and explained why additional mitigation was infeasible. (AR:1:260-263, 2:849-850, 8:4784; *RASP 380, supra*, 9 Cal.App.5th [*61] at p. 972 [upholding decision not to impose more construction noise mitigation]. Compare *City of San Diego, supra*, 61 Cal.4th at pp. 962-963 [agency rejected mitigation based on legal error] [AOB, p. 60].) Substantial evidence supports the EIR's construction noise analysis.

D. Revisions to the DEIR's analysis of greenhouse gas emissions did not require recirculation, and the County's adopted mitigation was adequate.

1. Substantial evidence supports the County's decision not to recirculate.

Appellant argues the County violated CEQA by not recirculating the DEIR. (AOB, pp. 62-70.) The substantial evidence standard applies. (*Laurel Heights II, supra*, 6 Cal.4th at p. 1135; *San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 630 ["disagreement with the FEIR's analysis is insufficient"].)

Appellant argues that, under *Friant Ranch, supra*, 6 Cal.5th 502, review is de novo where the EIR is "fundamentally and basically inadequate." (AOB p. 23.) *Friant Ranch* did not overrule *Laurel Heights II*. The substantial evidence test continues to apply. (*Clover Valley, supra*, 197 Cal.App.4th at p. 224 [substantial evidence supported decision that EIR was not "fundamentally [*62] and basically inadequate"].)

Recirculation is required where "significant new information" is added to the EIR prior to certification. (Pub. Resources Code, § 21092.1.) This standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs." (*Laurel Heights II, supra*, 6 Cal.4th at p. 1132.) Recirculation is "an exception, rather than the general rule." (*Ibid.*)

"The Guidelines describe the types of 'significant new information' requiring recirculation of a draft EIR. [Citation.] These include disclosure of '[a] new significant environmental impact,' '[a] substantial increase in the severity of an environmental impact,' and the addition of a 'feasible project alternative or mitigation measure considerably different from the others previously analyzed'" that project proponents decline to adopt. (*Treasure Island, supra*, 227

---

[12] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281 (*Preserve Santee*) is inapposite. (AOB, p. 60.) There, the city improperly deferred mitigation by relying on "an unformulated plan's eventual directives" and the preserve manager's "discretion to implement the plan" to protect a listed butterfly. Neither occurred here.

Cal.App.4th at p. 1063, quoting Guidelines, § 15088.5.) Recirculation is also required where "[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (Guidelines, § 15088.5, subd. (a)(4).)

As the trial court found (JA:2:465-466), substantial [*63] evidence supports the County's conclusion that revisions to the GHG analysis did not require recirculation. (AR:1:235-237.) The DEIR measured the significance of GHG emissions using thresholds recommended by the Placer County Air Pollution Control District (PCAPCD). (AR:4:2286, 2291.) Under this guidance, emissions above 1,100 metric tons of CO2 equivalent per year (MTCO2e/year) were significant. (AR:4:2293-2295, 113:66810.) An efficiency analysis, based on the California Air Resources Board's "Scoping Plan," was used to determine Project consistency with Assembly Bill (AB) 32. (*Ibid.*) The DEIR recognized, however, that the efficiency analysis alone-assuming full build-out by 2020-was "unrealistic," and analyzed emissions after 2020, when most development would occur. (AR:4:2291-2295.) The DEIR did not base its conclusions on this efficiency metric. Rather, the DEIR concluded that GHG emissions were significant because they would be substantial and might not be consistent with future GHG reduction targets. (AR:4:2295.)

After the DEIR was published, *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch*) held that the numeric threshold-1,100 [*64] MTCO2e/year-was permissible (*id.* at pp. 230-231), but that an efficiency analysis requires an evidentiary basis translating the Scoping Plan's statewide goals into a locally applicable target. (*Id.* at pp. 225-229.) Following *Newhall Ranch*, the FEIR acknowledged that the Scoping Plan lacked information necessary to forge an evidentiary link between the Scoping Plan and Project GHG efficiency. (AR:7:3972, 3974, 4083.) "The DEIR's significance conclusions remain[ed] unchanged." (AR:7:4083.) As the FEIR explained: "the DEIR ultimately relied upon the PCAPCD numeric threshold of 1,100 MTCO2e/year as the basis for significance conclusions, and this threshold approach was expressly noted by the Supreme Court as permissible. . . ." (AR:7:4084, 2:844, 4:2292-2296, 7:3978, 4088, 4092-4098; see *Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 228 [air district's approval of GHG analysis was substantial evidence of its adequacy].)

Appellant claims that the DEIR's significance threshold "assumed that climate impacts would be insignificant if the Project met AB 32's statewide [GHG] reduction target ... in 2020" and that the EIR concluded that that "the Project 'may be less efficient than needed' [citation] after 2020." [*65] (AOB, p. 64.) Appellant mischaracterizes the record. The DEIR compared GHG at full buildout to PCAPCD's numeric threshold, performed the efficiency analysis based on a hypothetical 2020 buildout, and discussed GHG significance at full buildout, concluding that the impact was significant because the Project would generate substantial GHG emissions and may not be consistent with future GHG reduction targets. (AR:4:2291-2296, 2:844, 7:3970-3980, 4079-4098.)

Appellant argues the FEIR "revealed that the Project's climate impacts were different and more severe than previously acknowledged." (AOB, p. 64.) This argument fails. Although the FEIR revised the GHG emissions estimate, the estimate went down, not up, and the EIR explained why. (AR:7:3971, 3975-3977, 2:845.) The County also broadened recommended mitigation (MM 16-2) to apply throughout the Project's life, not just after 2020. (AR:7:3978-3979.) The GHG conclusion did not change; "emissions would exceed the PCAPCD Tier I mass

emissions threshold ... and compliance with future targets is unknown" (AR:7:4088)-the same conclusion reached in the DEIR. (AR:4:2295.) Nor did the FEIR "abandon" the DEIR's significance threshold. (AR:7:4084.) Rather, [*66] the FEIR updated the GHG analysis based on *Newhall Ranch* and the revised emissions estimates. (AR:2:844-845, 7:3970-3980, 4082-4088.)

Appellant's cases are inapposite. In *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, the significance conclusions were "effectively meaningless" because the agency "provided no analysis or explanation to show how it reached" them. (*Id.* at p. 252.) In *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1075-1081, a shopping center expansion would increase traffic in ways the previous negative declaration had not considered. In *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 108, a project's inconsistency with general plan air quality measures revealed new impacts. Here, the DEIR and FEIR both estimated GHG emissions; the Final EIR simply updated the analytic path based on *Newhall Ranch* and reached the same conclusions. (AR:2:844-845, 4:2278-2296, 7:3970-3980, 4082-4088.)

Appellant dismisses the evidence relied upon by the County as "excuses." (AOB, pp. 66-67.) Appellant ignores its "burden of proving a double negative, that the County's decision not to revise and recirculate the [FEIR] is [*67] not supported by substantial evidence." (*South County, supra*, 221 Cal.App.4th at p. 330.) The FEIR specifically noted that the DEIR's thresholds and conclusion were unchanged. (AR:7:4088; see AR:1:235-237 [findings].) Appellant fails to carry its burden. (See *WPCARE, supra*, 144 Cal.App.4th at p. 905.)

2. The County adopted feasible, enforceable climate mitigation.

Appellant argues the County had to reevaluate its GHG mitigation. (AOB, pp. 67-68.) The substantial evidence test applies. (*Laurel Heights I, supra*, 47 Cal.3d at p. 393.) Even if analyzed as a question of law, however, the result is the same: The County did not abuse its discretion in adopting MM 16-2 to mitigate climate impacts.

Appellant mischaracterizes this measure. (AOB, p. 68.) MM 16-2 included a comprehensive suite of GHG reduction tools, including acquiring offsets. (AR:7:3979-3980, 12:6730-6739.) The measure provided the County with "discretion to modify or substitute the adopted mitigation with equally or more effective measures in the future." (*Friant Ranch, supra*, 6 Cal.5th at p. 524.) Compliance was tied to subdivision map submittal. (AR:2:1063-1064; see *Friant Ranch*, at pp. 525-526 [upholding mitigation enforced through future "permit conditions"].)

The flexibility in MM 16-2 [*68] is appropriate. "Mitigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels." (*Friant Ranch, supra*, 6 Cal.5th at p. 523; see *Neighbors for Smart Rail, supra*, 57 Cal.4th at pp. 465-466 [parking mitigation].) The County found MM 16-2 feasible, and to "lessen, though not to a less than potentially significant level, the [Project's] significant environmental effects." (AR:1:264.)

The County recognized that more stringent GHG reduction targets would likely be adopted during the projected 25-year build out (AR:2:848, 8:4780-4781), and crafted MM 16-2 accordingly, without speculating about what those

future targets might be. (AR:4:2294-2296, 7:3977-3980.) Nevertheless, the County committed to do everything feasible to mitigate GHG impacts. (AR:1:263-264, 2:1063-1064; see *City of Hayward, supra*, 242 Cal.App.4th at p. 854.) MM 16-2 will be enforced by the County and PCAPCD-not SVRE-through the MMRP. (AR:2:1063-1064; Pub. Resources Code, § 21082.1, subd. (b); *Treasure Island, supra*, 227 Cal.App.4th at p. 1059.)

The County did not [*69] rely on MM 16-2 to conclude that GHG impacts would be insignificant. (AR:1:263-264, 4:2296, 7:3980.) "The inclusion of a mitigation measure that reduces an environmental impact is permitted even if the measure will not reduce the impact to a level below the threshold of significance." (*Friant Ranch, supra*, 6 Cal.5th at p. 525; see *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.)

Appellant argues the County did not consider proposed mitigation. (AOB, pp. 69-70.) The record does not support this argument:

. A passage in Appellant's 130-page comment letter (AR:8:4668-4671) received detailed responses, noting that the Project already incorporated the suggested measures. (AR:8:4780-4781, 7:4087-4088, 4096-4098; see AR:12:6730-6771 [FEIR appendix listing GHG reduction measures available under MM 16-2].) This response sufficed. (*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1054-1059 (*SCOPE*) [city not required to respond in detail to every GHG reduction proposal]; *SOMCAN, supra*, 33 Cal.App.5th at p. 345 [agency not required to respond to alternative proposed by project opponent].) Appellant ignores this response.

. Late letters from the AG (AR:38:22218-22221) [*70] and Appellant (AR:38:22275-22277) criticized the EIR but did not propose GHG mitigation. The County was not required to respond (*RASP 380, supra*, 9 Cal.App.5th at p. 972) but did anyway (AR:2:636-644, 848). Appellant ignores these responses, as well as SVRE's additional commitments to address the AG's concerns. (AR:41:23671.)

Other excerpts cited by Appellant were prepared by County consultants and *support* the feasibility of MM 16-2. (AR:2:1063-1064, 12:6732-6733.) In these respects, this case bears no resemblance to *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95, in which the city erred by citing unspecified mitigation to conclude that a refinery's GHG emissions would not be significant. (See also *Cleveland II, supra*, 17 Cal.App.5th at p. 433 [mitigation did not require any agency action to reduce GHG emissions].)

E. The County's analysis of, and mitigation for, traffic and transit impacts complied with CEQA.

Appellant argues that the County did not address the Project's traffic and transit impacts. (AOB, pp. 70-76.) The trial court disagreed. ((JA:2:462-465.) Its ruling was correct.

Appellant asserts that its argument presents a question of law. (AOB, p. 23.) [*71] The case Appellant cites- *City of Marina, supra*, 39 Cal.4th 341-confirms that the "substantial evidence" standard applies. (39 Cal.4th at pp. 355-356 ["de novo" standard of review applies where mitigation is rejected as "legally" infeasible; otherwise, "much deference" is warranted].)

Appellant also contradicts its position at trial, where Appellant conceded that the "substantial evidence" test applied. (JA:2:215.) Appellant was right then and is wrong now. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 407-408 [substantial evidence test applies to mitigation]; *Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 466 [same].)

1. The County responded to proposed traffic mitigation.

Appellant's account of the County's analysis of traffic impacts and mitigation (AOB, pp. 70-71) is woefully incomplete (*South County, supra*, 221 Cal.App.4th at p. 330 [failure to describe all evidence is "fatal" to claim]), particularly where, as here, the Court must evaluate mitigation based on the entire record, rather than on isolated snippets. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 407-408.)

The DEIR's transportation analysis was encyclopedic. (AR:4:1979-2042, 6:3130-3347.) As the DEIR [*72] noted, ass proposed the Village already included circulation improvements. (AR:4:2012-2014 [transit center; bicycle and pedestrian paths and facilities; traffic management; preferred carpool parking].) The Village would nevertheless add traffic during peak periods. (AR:4:2014-2026.) The analysis identified those instances in which traffic "level of service" (LOS) would not meet the County's adopted standards. (AR:4:2030-2039, 8:4590-4596.) Overall, "[t]he impact on travel times will be relatively modest." (AR:18:10405; see AR:18:104305-10408, 18:10278-10280 [data shows roads operate at acceptable LOS 99% of the time].)

The DEIR identified measures to lessen these impacts, including:

. Squaw already manages traffic on peak winter days. (AR:4:1985-1986, 2031; see *Center for Biological Diversity v. California Department of Fish & Wildlife* (2015) 234 Cal.App.4th, 214, 246 [prior similar measure supports future compliance].) MM 9-1a required expanding this program to include a Traffic Management Plan (TMP) identifying days when traffic will exceed road capacity, so that cones, signage, and personnel can be deployed, enabling the resort to add a third lane to Squaw Valley Road and redirect traffic. (AR:7:4019, [*73] 8:4600, 11:6056, 4:2031-2033; see AR:36:21171-21173 [TMP strategies for peak days].) The expanded program would improve "both existing and project traffic." (AR:8:4259; see *City of Hayward, supra*, 242 Cal.App.4th at p. 855 [demand management plan for traffic].)

. Real-time information must be disseminated concerning traffic conditions and parking availability.

. A traffic signal must be installed at the intersection of State Route 89 and Alpine Meadows Road. [13]

. If approved by Caltrans, turn lanes at SR 89/Squaw Valley Road must be lengthened.

(AR:4:2030-2039.) Other measures addressing air quality would also reduce private vehicle trips and alleviate congestion. (AR:4:2060-2061 [discounted transit service, preferential parking, shuttle service, bicycle amenities and incentives, employee transit], 8:4764 [noting link between traffic measures and improved air quality].) Although

---

[13] The traffic signal was subsequently installed. (AR:7:3951; see http://cwwp2.dot.ca.gov/vm/iframemap.htm?long=-121.4944&lat=38.5816&zoom=24 [Caltrans webcam].)

these measures would address most impacts, congestion along certain segments north on SR 89 and east on SR 28 would remain significant because Caltrans [*74] had no plans to widen them. (AR:4:2030-2039, 98:57760.)

Appellant argues the County ignored proposals to further reduce traffic. (AOB, pp. 71-72.) The record shows otherwise.

A traffic consultant hired by Appellant fly-specked the EIR. (AR:8:4576-4589.) The FEIR responded. (AR:8:4590-4601.) Appellant cites neither these comments nor the responses.

Instead, Appellant cites comments tucked in its lawyer's 130-page, single-spaced letter. (AR:8:4602-4731.) The comments included a list of measures. (AR:8:4654-4656.) The County could have ignored this unelaborated laundry list. (Guidelines, § 15204, subd. (c) [reviewers must provide data or other evidence supporting comments]; *SCOPE, supra*, 197 Cal.App.4th at pp. 1054-1059 [agency need not respond to every proposal].) But the County responded, noting that the Village already included many of the commenter's suggestions, and that the efficacy of Appellant's proposals was speculative. (AR:2:843-844, 847, 988-989, 8:4600-4601, 4764-4765.)

Appellant cites its "regional shuttle," carpool and bike amenity proposals (AOB, p. 72), but ignores the FEIR's responses. (AR:7:4018-4019 [due to low ridership, 2012-2013 regional shuttle program [*75] was ineffective at reducing traffic].) Moreover, SVRE must contribute to regional transit (AR:7:4018-4019), operate a shuttle connecting with Alpine Meadows (AR:8:4259, 4385, 4735, 4799), and provide employee shuttles within the valley and beyond. (AR:8:4345 [employee shuttle connecting with Reno], 2:1155-1156 [employee transit, shuttles and charter buses], 2:988-989 [response to late comment on charter buses].) The Project already included bike trails and bike parking, a transportation coordinator for employees, a transit center, bulletin boards for employees, subsidized transit fares, and preferential parking. (AR:8:4799 [existing bike trail extended to Village], 2:1155 [same], 3:1751, 1760, 1758-1761, 4:2012-2013 [bike trails and facilities, employee shuttle and transportation coordinator], 3:1753 [location of transit center], 2:1126, 3:1761, 2040 [description of transit center], 8:4380, 4735, 2:1154 [subsidized transit fares for employees; ongoing transit funding], 1:131 [$ 75,000/year paid to Tahoe Truckee Area Reginal Transit (TART) for employees' fare-free service], 2:1044 [employee bulletin boards].) The FEIR explained why further measures would have little benefit. (AR:8:4764-4765.) These responses sufficed. [*76] (*Gilroy Citizens, supra*, 140 Cal.App.4th at p. 935; see *Bay Area Citizens v. Association of Bay Area Gov.* (2016) 248 Cal.App.4th 966, 1020-1021 (*Bay Area Citizens*) [good-faith responses upheld]; *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 550 (*City of Irvine*) [same].)

In *SCOPE, supra*, the EIR concluded that a hospital expansion plan would cause significant GHG emissions. An opponent's letter attached 50+ suggestions to reduce emissions. The FEIR responded that the project already incorporated some of these suggestions. The opponent's "position that its request required the city to explore in writing further mitigation measures-although which specific measures were never articulated-regardless of their feasibility, is simply not supportable under the law." (197 Cal.App.4th at pp. 1055-1056.) Indeed, it would be "unreasonable to impose on the city an obligation to explore each and every one" of the proposals. (*Id.* at p. 1055.)

The same is true here. Appellant's generic list could apply to any proposal. (AR:8:4654-4656.) The County responded that many items duplicated measures already incorporated into the Project, while others were ineffective or speculative. (AR:8:4764-4765.)

*The Flanders Foundation v. City of Carmel-by-the-Sea [*77]* (2012) 202 Cal.App.4th 603, cited by Appellant (AOB, p. 73), is distinguishable. There, the city received a comment proposing to reduce the size of the parcel to be sold. The city's own analysis showed that this reduction was feasible and would lessen the loss of parkland. Yet, the FEIR "provided no response whatsoever" to this proposal. (202 Cal.App.4th at p. 616; see also *LAUSD, supra*, 58 Cal.App.4th at pp. 1028-1030 [FEIR ignored proposal to provide air conditioning and filtration systems to schools affected by project air pollutants].)

The distinctions here are four-fold. First, Appellant's proposed mitigation consisted of a laundry list of ideas, many of them already part of the Project. Second, the list was buried in a voluminous letter penned by a non-expert lawyer hired by an opponent. (*City of Irvine, supra*, 238 Cal.App.4th at p. 549 [opponents can abuse CEQA's comment-andresponse requirement].) Third, the County provided good-faith responses explaining why some suggestions were incorporated and others were not. Fourth, Appellant provided no evidence that its proposals would substantially reduce impacts. The responses sufficed. (*Bay Area Citizens, supra*, 248 Cal.App.4th at p. 1020; *City of [*78] Irvine, supra*, 238 Cal.App.4th at p. 550.)

2. Transit mitigation complied with CEQA.

Appellant states the project would "greatly intensify demand on the already strained [TART] system." (AOB, p. 74.) Here, as elsewhere, Appellant's hyperbolic adverbs and adjectives distort the record. The EIR described existing transit, including summer and winter survey transit data for visitors and employees. (AR:4:1994-2002, 2:844, 7:4018.) The only potentially significant contribution to transit demand would be from Village employees in the winter, mostly from Tahoe's north shore. (*Ibid.*; see AR:4:2014-2015, 2040-2041 [30 additional TART riders during peak winter conditions], 7:4018-4019.) MM 9-7a required SVRE to provide funding for expanded transit service, with TART determining how best to use this money. (AR:7:4018 [adding buses during peak periods], 2:1041-1042.)

Appellant argues this approach violates CEQA. (AOB, pp. 74-76.) Not so. The only open issue is the final funding amount. (AR:2:1041-1042, 7:3951-3952, 8:4385-4386; see AR:7:3917-3918 [MM 9-7a revised per request from Truckee North Tahoe Transportation Management Association (TNT/TMA)], 4129-4130 [TRPA letter endorsing mitigation], [*79] 9:4928-4930 [letter from TNT/TMA, plus response].) Appellant feigns confusion about the "Engineer's Report." As the EIR explained, however, the report-which the County must approve-will determine the precise amount of SVRE's fair-share contribution. (AR:7:4133, 8:4259.)

Appellant argues that MM 9-7a is too uncertain. False. The development agreement committed SVRE to pay $ 97,500 per year to support TART. (AR:1:131.) The County did not pluck this figure out of thin air. It was calculated by the same consultant who prepared TART's master plan. (AR:2:1010-1012, 36:21152-21153; see AR:58:34017-34103 [adopted TART Systems Plan Update (2016)].) Once an assessment district is formed, that assessment will apply. SVRE also agreed to contribute $ 85,000 for TART capital costs. These commitments are in *addition* to MM

9-7. Together, they will provide TART with the resources needed to expand service to meet demand. (AR:1:131, 4:2041 [longer hours and/or additional routes], 7:4018 [added buses during peak periods], 8:4385 [TART standards], 18:10407 [additional buses]; see *City of Hayward, supra*, 242 Cal.App.4th at p. 854 [upholding traffic mitigation plan].) Paying fees to support TART's [*80] plan is appropriate mitigation. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 818; *Save Our Peninsula, supra*, 87 Cal.App.4th at pp. 136-141.)

Preserve Santee, supra, 210 Cal.App.4th 260-the sole case cited by Appellant-is distinguishable. There, the city relied on "an unformulated plan's eventual directives" to protect a listed butterfly, and on the preserve manager's "discretion to implement the plan." (*CBD v. CDFW, supra*, 234 Cal.App.4th at p. 247.) Neither occurred here: TART's plan was adopted, and SVRE must help foot the bill. (AR:2:1041-1042, 7:4018, 8:4385.)

CONCLUSION

The Court should affirm the trial court's denial of Appellant's petition and should award costs to the County and SVRE.

Dated: September 23, 2019

Respectfully submitted,

REMY MOOSE MANLEY, LLP

By: /s/ [Signature]
Whitman F. Manley
Attorneys for Real Party in Interest an
Respondent Squaw Valley Real Estate
LLC

CERTIFICATE OF WORD COUNT

[Cal. Rules of Court, Rule 8.204(c)]

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this **REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF** contains 13,974 words (including headings and footnotes; [*81] not including the caption, index, table or certificate of word count), according to the word counting function of the word processing software used to prepare this brief.

Executed on September 23, 2019, at Sacramento, California.

/s/ [Signature]
Whitman F. Manley

PROOF OF SERVICE

I, Michele Nickell, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is mnickell@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

On September 23, 2019, I served the following:

REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF

BY ELECTRONIC TRANSMISSION (TrueFiling) by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below. I did not receive any electronic message or other indication that the transmission was unsuccessful.

Amy J. Bricker
Laura D. Beaton
Rachel B. Hooper
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street I San Francisco, CA 94102
T: (415) 552-7272 IF: (415) 552-5816
Email: bricker@smwlaw.com;
beaton@smwlaw.com;
hooper@smwlaw.com

[*82] Daniel P. Selmi
919 S. Albany Street
Los Angeles, CA 90015
T: (213) 736-1098
F: (949) 675-9861
Email: dselmi@aol.com

Attorneys for Petitioner/Appellant *Sierra Watch*

Clayton T. Cook
PLACER COUNTY COUNSEL'S OFFICE
175 Fulweiler Avenue I Auburn, CA 95603
T: (530) 889-4044 IF: (530) 889-4069
Email: Ccook@placer.ca.gov

Attorney for Respondents *Placer County et al.*

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of September 2019, at Sacramento, California.

/s/ [Signature]
Michele Nickell

AMENDED PROOF OF SERVICE

I, Kathryn A. Ramirez, have personal knowledge of the following: Michele Nickell, employed in the City and County of Sacramento, business address of 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address ofmnickell@rmmenvirolaw.com is over the age of 18 years and is not a party to the above-entitled action and on September 23, 2019 served the following:

REAL PARTY IN INTEREST/RESPONDENT'S OPPOSITION BRIEF

VIA ELECTRONIC TRANSMISSION (TrueFiling) by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email [*83] address(es) listed below. She did not receive any electronic message or other indication that the transmission was unsuccessful.

Amy J. Bricker
Laura D. Beaton
Rachel B. Hooper
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street I San Francisdo, CA 94102
T: (415) 552-7272 [F: (415) 552-5816
Email: bricker@smwlaw.com;
beaton@smwlaw.com; hooper@smwlaw.com

Attorneys for Petitioner/Appellant *Sierra Watch*

Clayton T. Cook
PLACER COUNTY COUNSEL'S OFFICE
175 Fulweiler Avenue I Auburn, CA 95603
T: (530) 889-4044 j F: (530) 889-4069
Email: Ccook@placer.ca.gov

Attorney for Respondents *Placer County et al.*

Daniel P. Selmi

919 S. Albany Street

Los Angeles, CA 90015

T: (213) 736-1098

F: (949) 675-9861

Email: dselmi@aol.com

I, Kathryn A. Ramirez, am employed in the City and County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and my email address is kramirez@rmmenvirolaw.com. I am over the age of 18 years and I am not a party to the above-entitled action.

On September 24, 2019, I served the following:

REAL PARTY IN INTEREST/RESPONDENT'S OPPOSITION BRIEF

[] VIA FIRST CLASS [*84] MAIL by causing a true copy thereof to be placed in a sealed envelope, with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below, and placed for collection and mailing following ordinary business practices:

Clerk of Court

PLACER COUNTY

SUPERIOR COURT

10820 Justice Center Drive

Roseville, CA 95678

(916) 408-6000

VIA USPS

OFFICE OF THE

ATTORNEY GENERAL

1300 I Street

Sacramento, CA 95814

Telephone: (916) 445-9555

VIA USPS

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of September 2018, at Sacramento, California.

/s/ [Signature]

Kathryn A. Ramirez

End of Document

REMY | MOOSE | MANLEY LLP

Sabrina V. Teller
steller@rmmenvirolaw.com

January 13, 2022

Via email: phellman@co.shasta.ca.us

Planning Commission of Shasta County
Commissioner James Chapin, District 1
Commissioner Tim MacLean, District 2
Commissioner Steven Kerns, District 3
Commissioner Donn Walgamuth, District 4
Commissioner Patrick Wallner, District 5

Paul Hellman, Director
Department of Resource Management
Planning Division
1855 Placer Street, Suite 103
Redding, California 96001

Re: PATROL's comments on the Final Environmental Impact Report for the proposed Tierra Robles Planned Development Project (Zone Amendment 10-002, Tract Map 1996)

Dear Commissioners and Director Hellman:

On behalf of Protect Against Tierra Robles Overdeveloped Lands (PATROL), we have reviewed the Final EIR, including the responses to our comments on the partial recirculated draft and draft EIR. Unfortunately, the Final EIR does not resolve the serious deficiencies in the County's analysis that we and others brought to the County's attention. We urge you *not* to recommend to the Board of Supervisors that the EIR be certified and the project approved.

The EIR still does not adequately disclose, evaluate, and mitigate for several potentially significant environmental impacts. We reiterate and incorporate herein by reference each of our previous comments, including those we submitted on behalf of PATROL. Of greatest concern to PATROL, the EIR's analysis of wildfire hazards, emergency evacuation and water supply remain inadequate under CEQA. On these issues and others, the EIR is "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded." (CEQA Guidelines, § 15088.5, subd. (a)(4); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447–449.) The County

Board of Supervisors therefore cannot certify or approve the project entitlements based on the EIR.

I. The EIR fails to acknowledge and consider the increased risk of wildfire ignition from the additional people who will reside in the Project area.

CEQA requires "an adequate description of adverse environmental effects," which is "necessary to inform the critical discussion of mitigation measures and alternatives at the core of the EIR." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.) The EIR lacks necessary analysis and entirely omits the magnitude of impacts relating to wildfire.

Of most dire concern, the EIR does not properly acknowledge the increased risk of wildfire ignition from the additional people who will reside in the area as a result of the project. The project is located within a Very High Fire Hazard Severity Zone. (Partial Recirculated Draft EIR [PRDEIR], pp. 5.19-1–2; Final EIR, p. 15-17.) The applicant proposes to subdivide properties to add *166 residential lots*, to be developed with custom homes where none currently exist. (Draft EIR, pp. 3-3, 3-11, 3-16.) Each home would include an average of 3.5 bedrooms and approximately 15 of the lots would also have secondary units. (Draft EIR, p. 3-16.) As a result of these changes and assuming an average of 2.5 people per household and 2 additional residents per secondary unit, the EIR anticipates that the project could add *445 new residents* to the area. (Draft EIR, p. 3-32.)

It is undeniable that an additional 445 people in the project vicinity will significantly increase the likelihood that someone will ignite a wildfire. In fact, the EIR acknowledges that, in Shasta County specifically, humans cause *ninety percent* of wildland fires. (PRDEIR, p. 5.19-3.) This many new people, along with their homes, cars, motorcycles, lawnmowers, etc., will clearly increase the risk of ignition in the project area.[1]

The wildfire analysis in the EIR acknowledges that factors such as topography and weather play a significant role in how wildfires behave regardless of the ignition cause. But it fails to recognize additional fire behaviors such as fire spotting (embers traveling in the air from wind) and ember cast that can start new fires miles away from the main fire boundaries. As noted below, Northern California is experiencing larger and faster-moving

[1] The 2004 Bear Fire in this area was ignited by someone mowing his lawn. https://www.redding.com/story/news/local/2019/08/23/mountain-fire-jones-valley-wildfires-history-maps/2097253001/

fires in recent years, in which fire-induced winds combine with ambient winds driving the fire, and it is common to have winds 50 to 70 mph on the fire front during a fire storm. These winds drive embers into every crack and crevice on a structure. The Carr and Camp Fires exhibited this behavior. The 1999 Jones Valley Fire burned parts of the subject property and surrounding homes in Palo Cedro and Bella Vista and was driven by shifting twenty-nine mile per hour winds that spread the fire in a pattern three miles wide and twenty-six miles long. (See Attachment 1: CalFire map of Jones Fire.) That fire destroyed 149 homes.

Adding many new structures and flammable or ignitable materials (landscaping, decks, propane tanks) in a development in a very high fire hazard area invites more destruction and damage and exacerbates the risk that fire will spread quickly from the Tierra Robles project area to the existing communities nearby.

The courts, along with the California Attorney General's office, are recognizing the heightened ignition risk of bringing new development to very high fire hazard areas as a potential impact that must be analyzed in an EIR.[2] Yet, the EIR does not acknowledge or analyze this significant impact (or the relevant history of multiple fires in this specific area of the County)[3] from adding more than 166 new residences (plus 15 secondary units) and at least 445 additional people to the project area.

II. Adding 1,774 daily vehicle trips to the project area will exacerbate already-existing, potentially life-threatening delays in evacuation times.

CEQA requires that an EIR must "analyze any significant environmental effects [a] project might … risk exacerbating by bringing development and people into the area affected." (CEQA Guidelines, § 15126.2, subd. (a).) This includes evaluation of "any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas." (*Ibid.*; see also *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 (*CBIA v. BAAQMD*).) "[W]hen a proposed project risks exacerbating those environmental hazards or conditions that

[2] See Attachment 2: San Diego County Superior Court Minute Order, 10/7/2021, in *Endangered Habitats League, et al. v. County of San Diego* (Case No. 37-2019-00038820-CU-TT-CTL), p. 8.)

[3] See Attachment 3: CalFire map of 2004 Bear Fire in the Jones Valley area.

already exist, an agency must analyze the potential impact of such hazards on future residents or users." (*CBIA* at pp. 377–378.) In other words, an EIR must evaluate "how future residents or users could be affected by exacerbated conditions." (*Ibid.*)

The EIR here does not include this mandatory analysis. For example, the EIR concludes that under existing conditions, evacuation of the project area would take approximately three to three-and-a-half hours, and project traffic would add another 15 minutes to the evacuation time. (Final Partial Recirculated EIR, p. 15-16; PRDEIR, pp. 5.19-21–22.) When every minute matters for safe evacuations, as the recent catastrophic wildfires in the region have made the County's residents repeatedly aware, future (and existing) residents would be significantly, adversely affected by an additional 15 minutes of delay in evacuating. The additional residents and resulting increase in traffic on evacuation routes will exacerbate an already unacceptable evacuation time for this area. The EIR, including the responses to comments, dismisses this additional delay as a potential impact entirely, in violation of CEQA and *CBIA v. BAAQMD*. No threshold for determining how much additional delay is significant is provided or explained. The PRDEIR simply concludes that an additional 15 minutes is not significant. The EIR thereby fails to provide substantial evidence to support a conclusion that the impact is in fact less than significant.

Additionally, the EIR does not disclose or explain whether and how fire speed was taken into account in the evacuation study. Satellite data has shown that wildfires in Northern California have historically traveled at speeds of up to 40 miles per hour,[4] whereas the EIR discloses that during evacuation from the Tierra Robles area, traffic may crawl along at just three to four miles per hour. The predicted traffic jams during emergency wildfire evacuation scenarios described in the EIR pose serious dangers to those seeking to escape. As the evacuation study notes, some of the 84 deaths during the Camp Fire were of people trapped in their cars, while other evacuees could not move fast enough on foot to get away from the fast-moving flames and smoke.

[4] "Glass Fire Burned 1 Acre every 5 seconds in California. How Fast Can Wildfire Grow? https://www.sacbee.com/news/california/fires/article246092930.html#storylink=cpy Wildfire experts in California are reporting that extreme dry conditions in the West are fueling some of the fastest-moving wildfires ever recorded, with some so powerful they spawn their own weather systems. For example, the Glass Fire in 2020 burned for 23 days and devastated over 67,484 acres. Satellite images showed that the fire spread at the unprecedented rate of 1 acre every 5 seconds and, fueled by 70 mph winds, traveled as fast as 40 miles per hour.

The evacuation study, by its omissions, demonstrates the inadequacy of the existing roads to handle the additional traffic from the Tierra Robles project. The study fails to highlight the fact that the proposed project will pour traffic onto Boyle Road from a single lane carrying traffic from 154 homes on a daily basis. In a fire scenario with fire approaching from the north—which is the most common scenario in the fire history of this area—Tierra Robles traffic will be forced southward via its only useable exit on Boyle Road. Yet the study does not mention the congestion problem at the Boyle Road exit from Tierra Robles, which was identified as problematic during the July 23, 2019, Planning Commission hearing. If the 181 units of the proposed development each have two automobiles (not including RVs, boats, trailers etc.) as suggested in the study, and if each automobile occupies 25 feet of liner space on a roadway as suggested in the study (Evacuation Study, p.10), then automobiles exiting Tierra Robles by themselves create a string of traffic more than 1.7 miles long. When that string of traffic tries to merge onto an already congested Boyle Road from a single lane of traffic, significant and dangerous backups are guaranteed to develop. The EIR does not propose mitigation measures to deal with this problem at the intersection of Boyle Road and Tierra Robles Parkway.

The evacuation study is further flawed because of its unsupported assumption that Shasta College would be completely empty as a "safe refuge" at the time of a wildfire and therefore contributing no additional cars to the evacuation traffic. The study does not account for the more likely scenario that the College is at least 50 percent occupied when a wildfire ignites.[5]

As with the increased ignition risk, the courts and the California Attorney General are directing lead agencies that EIRs for large new development projects in very high fire risk areas must analyze projects' effects on community evacuation routes.[6] The EIR's

---

[5] Currently on the Shasta County website (last updated Oct. 2021) (https://www.shastacollege.edu/covid-19/campus-faqs/) it reads: "The district's current plan is to have a minimum of 50% of the classes for Spring 2022 be in-person and the rest of the classes will be offered in either hybrid or online format." The website further states that it serves 8,342 students (42% of students are full-time) and in 2010 had a total enrollment of more than 10,000 students. Assuming zero traffic will come from Shasta College during an evacuation paints an unrealistic and dangerously distorted scenario for the evacuation study.

[6] See Attachment 4: Lake County Superior Court Ruling and Order on Petitions for Writ of Mandate, 1/4/2022, *Center for Biological Diversity, et al v. County of Lake* (Case No. CV421152), pp. 5-8.

discussion of the project's impact on community evacuation in a wildfire is inadequate for failing to address and include these points.

III. The EIR compresses the analysis of potential impacts and mitigation measures, in violation of *Lotus v. Department of Transportation* .

The EIR fails to address the significant effects of the project as to wildfire and then separately discuss mitigation measures to address those impacts. For example, the discussion of Impacts 5.19-4 and 5.19-5 assumes the proposed mitigation measures will be implemented and considers potential impacts *with* implementation of those measures. (See PRDEIR, pp. 5.19-30–33.) But "compressing the analysis of impacts and mitigation measures into a single issue … disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656.) The EIR, again, is deficient in this regard.

IV. The County must consider additional mitigation to address significant wildfire ignition and community evacuation impacts.

If the County does not require the EIR to be revised and recirculated (as it should be) to address the deficiencies we have identified, at a minimum, it should consider adopting the following additional mitigation measures to address the impacts relating to the heightened risk of wildfire ignition and delays to community evacuation routes.

Enhanced Wildfire Prevention and Protection Mitigation Measures:

1) In compliance with Shasta County Fire regulations the Developer and TRCSD (or HOA) will ensure that all building envelopes will be adjusted to guarantee a minimum of 100 feet of defensible space on all sides of every building within the Project.

2) The Developer will provide perimeter roadways around the subdivision to provide access to Fire personnel and equipment, as well as ensure fire breaks and defensible space between all building structures and adjacent wildlands.

3) The Developer will provide at least five easements to interconnect with adjacent future development to ensure additional access for wildfire evacuation to Project residents and surrounding residents.

4) TRCSD/HOA will develop a Fire Protection Plan (FPP) for reducing fire risk on and around the Project Site. The FPP will become a required element of the TRCSD/HOA by laws, operating procedures and CC&Rs for all potential buyers and residents. The FPP will be in addition to the Tierra Robles Wildland Fuel/Vegetation Management Plan.

5) The TRCSD/HOA will be required to enforce the FPP with all buyers and residents. The TRCSD/HOA Board will conduct a yearly review of the FPP and will make revisions as necessary to ensure continuing enhanced wildfire mitigation and enforcement. The TRCSD/HOA has the responsibility to enforce the FPP with all buyers and residents.

6) TRCSD/HOA shall ensure, pursuant to the FPP, that it will hire a qualified third-party compliance inspector approved by the Shasta County Fire Department to conduct a fuel management zone inspection and submit a Fuel Management Report to the TRCSD/HOA and Shasta County Fire before June 1 of each year certifying that vegetation management activities throughout the Project site have been timely and properly performed. The TRCSD/HOA Board will review the Fuel Management Report and will vote whether to verify ongoing compliance of the defensible space, vegetation management, and fuel modification requirements and with any other continuing obligations imposed under the FPP.

7) The TRCSD/HOA Board will ensure that all buyers and residents follow the FPP and take the necessary steps to enforce compliance.

8) The Developer/TRCSD/HOA will post a bond in an amount sufficient to remedy any deficiencies in all mitigation, maintenance, inspection, and reporting requirements related to the FPP and the Tierra Robles Wildland Fuel/Vegetation Management Plan.

9) Every 2 years after the first Dwelling Units are occupied, TRCSD/HOA Board will meet with the purpose of reviewing evacuation policies and TRCSD/HOA will demonstrate that they are clearly understood and communicated with residents. TRCSD/HOA will also work with the Shasta County Fire Safe Council to promote the creation of a Palo Cedro Fire Safe Council within the Project and the surrounding community.

10) TRCSD/HOA shall establish a Good Neighbor Fire Safe Fund, which will provide grants to needs-based applicants to be awarded by the TRCSD/HOA to aid the Palo Cedro community within 10 miles of the project to reduce offsite fire risks, increase fire prevention, protection, and response measures, and avoid adverse impacts of fire, for the Project's residents and neighboring communities.

11) The Good Neighbor Fire Safe Fund may issue grants for the following purposes, but not limited to:

a) Developing and adopting a comprehensive retrofit strategy for at risk structures or other buildings.

b) Funding fire-hardening retrofits of residential units and other buildings.

c) Performing infrastructure planning, including for access roads, water supplies providing fire protection, or other public facilities necessary to support wildfire risk reduction standards.

d) Partnering with other local entities to implement wildfire risk reduction.

e) Updating local planning processes to otherwise support wildfire risk reduction to residents during times of power shutdowns or other emergencies; and

f) Other fire-related risk-reduction activities that may be approved by the TRCSD/HOA Board.

V. The EIR fails to identify and analyze all inconsistencies with the General Plan elements and policies relating to fire safety and fire hazards.

The County's General Plan includes a Fire Safety and Sheriff Protection Element that contains policies regarding development in high-risk fire hazard areas. One of these, Section 5.4, Objective FS-1 directs the County to:

> *Objective FS-I.* Protect development from wildland and non-wildland fires by requiring new development projects to incorporate effective site and building design measures commensurate with level of potential risk presented by such a hazard *and by discouraging and/or preventing development from locating in high-risk fire hazard areas.* (italics added.)

The PRDEIR touts the modern fire-resistant features of the proposed project that are required by the current Building Code but fails to ever address the project's inconsistency with the rest of the objective, **which expressly discourages this kind of development in a high-risk fire hazard area** . The EIR fails to address the project's inconsistency with this important objective, which is clearly aimed at avoiding the significant environmental and public safety risks of bringing new residents to highly hazardous areas and at avoiding the exacerbation of risks that existing County residents face if the County's decisions result in bringing more people and potential ignition sources to a high-risk fire hazard area.

It should be noted that updated Building Codes in the past have not been a panacea to ensure survivability in today's wind-driven, ember-laden wildfires. The following fires with updated wildfire-resistant construction standards suffered destruction

as follows: 2018 Camp Fire, about half of the homes built after 2008 did not survive; the 2017 Tubbs Fire destroyed 86 percent of the homes built after 2008; the 2017 Thomas Fire destroyed 90 percent.[7]

VI. The EIR identifies only speculative future water supplies and does not consider alternatives to use of anticipated water, in violation of *Vineyard*.

The final EIR does not resolve the glaring gaps in the water supply analysis in violation of the California Supreme Court's opinion in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*), as raised in comments from RMM, the Bella Vista Water District (BVWD), and others. To support the analysis, the EIR relies heavily on Mitigation Measure 5.17-4b, which requires the project applicant to submit proof of water service prior to commencement of project construction. First, this measure impermissibly defers mitigation, both because it is infeasible and because it punts mitigation to some future time after project approval. (See, e.g., *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.) Second, the measure violates the California Supreme Court's holding in *Vineyard*.

As explained in RMM's comment letter, the Supreme Court identified four key principles for an adequate water supply analysis under CEQA:

1. Decisionmakers must "be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need."
2. "[A]n adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years."
3. "[F]uture water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision making under CEQA."
4. Where "it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies."

(*Vineyard*, *supra*, at pp. 431–432.) The water supply analysis for the project violates the third and fourth principles, which in turn violates the first principle, because the project has no likely path toward procuring an adequate water supply. The theoretical future water supplier, BVWD, has submitted numerous comments on the project. In part,

[7] See http://www.growthesandiegoway.org/How-San-Diego-is-waiving-fire-code/

BVWD stated that it receives "nearly all of its water supply from the Central Valley Project (CVP)," and it "has experienced and anticipates severely reduced CVP allocations that will not meet current average year demands[.]" (Final Partial Recirculated EIR, p. 15-27.) Particularly in "below normal" years, BVWD explained, the Water District is unlikely to receive full water supply allocations. (*Ibid.*) This "will exacerbate single and consecutive year shortages." (*Ibid.*)

Responding to these critical concerns, the EIR states that "[t]he County recognizes that future supplies are subject to restrictions for environmental factors including actual flows, drought and the [CVP] municipal and industrial [] Shortage Policy…. The commenter also is referred to Mitigation Measure (MM) 5.17-4b…." (*Id.* at p. 15-32.) That measure requires the applicant to "secure[] an Agreement with BVWD to provide BVWD with adequate water supplies on an annual basis during identified shortage conditions," and to "demonstrate that any water supply provided by BVWD under the Agreement satisfies all CEQA and NEPA compliance requirements[.]" (*Id.* at p. 15-13.) The EIR acknowledges that "certain environmental constraints may make it more difficult to obtain water to supplement BVWD." (*Id.* at p. 15-33.) The EIR also provides that in the event of a shortage of water supplies from BVWD, the project could obtain up to 100 AF of supplemental water from the Clear Creek Community Services District (CCCSD) "through a groundwater substitution transfer without significant environmental effects." (Final Partial Recirculated EIR, p. 15-13.)

The discussion in the EIR and Mitigation Measure 5.17-4b are not sufficient to meet the requirements of *Vineyard*. *Vineyard* requires a "confident prediction" of adequate water supply. (*Vineyard*, *supra*, at p. 432.) "When the verification [of water supply] rests on supplies not yet available to the water provider, it is to be based on firm indications the water will be available in the future…." (*Id.* at p. 433.) Here, the water provider anticipates that it will not be able to meet the demands of its existing customers, let alone those of the project, and the estimates in the EIR rely on a significantly underestimated and erroneous Project water demand. Under CA Water Code section 10608.20 BVWD is given the determination of which methodology to use for estimating water usage based on its Urban Water Management Plan. BVWD has chosen to use the methodology that shows the Project will use at least 352 AFY instead of the County's 80 AFY, resulting in a shortfall of 272 AFY. This is not merely a "disagreement amongst experts" regarding the appropriate methodology for calculating water demand. *BVWD is the primary water supplier for the Project and the surrounding area.*

The FEIR's Master Response-1: Water Supply Analysis states that:

> Evidence of the feasibility of the water transfer between Clear Creek Community Services District (CCCSD) and BVWD is discussed on pages 5.17-19 through

> 5.17-30 of the RDEIR. The applicant initiated discussions with both agencies regarding the feasibility of CCCSD providing supplemental water to BVWD. Both agencies provided letters documenting the feasibility of such a transfer.

But *feasibility has not been determined*. The only thing that has occurred is an exchange of letters. No feasibility study has been initiated as required in the stated letter from the BVWD Board. There is no agreement in place between Clear Creek CSD and the BVWD for a water transfer. The BVWD and Clear Creek CCSD and their respective Boards still have to perform their due diligence before any kind of agreement. No Will Serve Letter has been agreed to by the BVWD Board, as there is no supplemental water agreement in place.

This failure to identify and provide an adequate water supply for the project conflicts with General Plan Section 6.6 – Water Resources, Policy W-c, which provides:

> All proposed land divisions and developments in Shasta County shall have an adequate water supply of a quantity and a quality for the planned uses. Sufficient evidence of an adequate water supply of a quantity and a quality for planned uses has been identified.

Clear Creek CSD is a potential, not likely, source of supplemental water. There is no agreement in place with Clear Creek CSD, and the water that Clear Creek supposedly will supply is not sufficient to meet demand from the project. A likely water source has not been identified to satisfy the condition of the Shasta County General Plan.

Future water supply for the project is therefore speculative and unrealistic. The EIR must include a full discussion of *potentially feasible* water supply alternatives and their environmental impacts, not only to satisfy CEQA compliance but also the County's own General Plan policy. Without this information, the decisionmakers cannot evaluate the pros and cons of supplying water to the project, because it is impossible to evaluate what does not exist.

VII. The EIR does not provide the necessary assurances and evidence to support the conclusion that the TRCSD or HOA will be able to afford or practically manage all of its mitigation obligations.

The EIR proposes to place a substantial amount of the responsibilities for mitigation and enforcement of obligations such as annual fuel-reduction and other maintenance on the shoulders of the as-yet-undecided Tierra Robles Community Services District or neighborhood HOA. PATROL and its members have previously communicated their concerns about the lack of details and commitments regarding the CSD or HOA's funding, operations, oversight and enforcement roles. The FEIR Master

Responses dismiss these concerns as unrelated to environmental topics considered under CEQA or they point to case law holding that HOAs cannot evade responsibilities claiming lack of funding, but these concerns are, in fact, inextricably intertwined with the County's CEQA obligations and the substantive mandate to reduce or avoid environmental impacts where feasible. Here, the EIR assumes most impacts are less than significant or can be mitigated by the operations, monitoring and enforcement of the future CSD or HOA. As with all other determinations under CEQA conclusions regarding impact significance and the effectiveness of mitigation must be supported by substantial evidence and adequate explanation. But no details are given in the EIR regarding the CSD/HOA's funding adequacy, management and reporting structure, and experience required to fulfill its mitigation responsibilities adequately. It's easy to assert that the law forbids the HOA from disclaiming responsibilities due to lack of funding, but the EIR fails to explain *how* the County will ensure the HOA is adequately funded to start with and what will happen if it is not. Do the HOA's responsibilities become the County taxpayers' obligations if the HOA is insolvent or has insufficient funding to implement its several significant mitigation and maintenance responsibilities? The County's dismissive responses to the several valid concerns on this topic do not satisfy the required evidentiary standard and duties under CEQA.

VIII. Conclusion

For the reasons set forth above, the County cannot certify the EIR or approve the project. The County must revise the analysis in the EIR in order to provide the public with an opportunity to comment on a complete, accurate, and legally compliant environmental analysis of the project and its impacts.

Very truly yours,

Sabrina Teller

Sabrina V. Teller

Attachments

cc: Nicole Rinke, Deputy Attorney General, California Dept. of Justice

Attachment 1

Jones Fire Perimeter

In October 1999, the Jones Fire burned over 26,800 acres in Jones Valley.

ACRES

26818

FIRE_NAME

JONES

YEAR

1999

STARTMONTH

10

STARTDAY

16

Attachment 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 10/07/2021 TIME: 02:29:00 PM DEPT: C-68

JUDICIAL OFFICER PRESIDING: Richard S. Whitney
CLERK: Richard Cersosimo
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2019-00038820-CU-TT-CTL** CASE INIT.DATE: 07/25/2019
CASE TITLE: **Petition of Sierra Club [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

STATEMENT OF DECISION:

The Court, having taken the above-entitled matter under submission on 9/21/2021, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

"A superior court sitting as a court of review in a CEQA proceeding is not required to issue a "statement of decision" as that term is used in Code of Civil Procedure sections 632 and 634. (See 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2011) § 23.116, p. 1262.) Conversely, a superior court that chooses to issue a written document explaining its decision to grant or deny a writ of mandate in a CEQA proceeding is not prohibited from labeling the document "statement of decision." Regardless of the label used, the rights, obligations and procedures set forth in Code of Civil Procedure sections 632 and 634 and California Rules of Court, rule 3.1590 do not apply to any such document issued by the court in a CEQA writ proceeding." (Consolidated Irrigation Dist. v. City of Selma (2012) 204 Cal.App.4th 187, 196 fn. 5, as modified on denial of reh'g (Mar. 9, 2012).)

(1) PETITIONERS' PETITION FOR WRIT OF MANDATE and PEOPLE'S PETITION FOR WRIT OF MANDATE IN INTERVENTION is GRANTED.

Petitioners ENDANGERED HABITATS LEAGUE, CALIFORNIA NATIVE PLANT SOCIETY, CENTER FOR BIOLOGICAL DIVERSITY, PRESERVE WILD SANTEE, CALIFORNIA CHAPARRAL INSTITUTE, and SIERRA CLUB's (collectively "Petitioners") Requests for Judicial Notice are granted (Exhibits A, B and C). Intervenor People of the State of California ex rel. Rob Bonta, Attorney General's ("AG") Requests for Judicial Notice are granted. Real Parties in Interest, Jackson Pendo Development Company, et al.'s ("GDCI") Requests for Judicial Notice are granted. The "JOINT OBJECTION BY THE PEOPLE AND PETITIONERS TO REAL PARTIES IN INTEREST'S NOTICE OF "OTHER RELEVANT EVIDENCE" PURSUANT TO GOVERNMENT CODE SECTION 12612 AND SUPPORTING

DECLARATION OF ELIZABETH JACKSON" is granted. The AG did not intervene via Government Code section 12612, but 12606. Further, the evidence is extra-record evidence that post-dates Respondents and Defendants COUNTY OF SAN DIEGO and BOARD OF SUPERVISORS OF COUNTY OF SAN DIEGO's ("County") decision to approve the Project, defined below, which renders it irrelevant for purposes of this California Environmental Quality Act ("CEQA") action. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559.)

Background

GDCI's Project is located within the Proctor Valley, approximately one-quarter mile east of Chula Vista and immediately south of the unincorporated community of Jamul. (Administrative Record ["AR"] 1.) "The project is a planned community consisting of 1,119 dwelling units; 10,000 square feet of neighborhood commercial; 2.3 acre joint use Fire Station/Sheriff storefront; 9.7 acre elementary school site; 24 acres of public/private parks; 776 acres of open space and a preserve on 1,284 acres" (the "Project"). (AR 1.) The County's approval of the Project includes a General Plan Amendment ("GPA") of the County's General Plan. (AR 1.) The County approved the Final Environmental Impact Report ("EIR") as to the Project. (AR 1.) Petitioners and the AG challenge the EIR under CEQA as being unsupported by substantial evidence and the approvals as being an abuse of discretion based on a failure to proceed in the manner required by law. Petitioners and the AG also allege the Project is inconsistent with the General Plan.

Standard of Review Under CEQA and Relevant Law

The issue before this Court is whether the County abused its discretion. "Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945 [Citation omitted].)

Under CEQA, courts review quasi-legislative agency decisions for an abuse of discretion. (§ 21168.5.) At both the trial and appellate level, the court examines the administrative record anew. (*Vineyard, supra,* 40 Cal.4th at p. 427, 53 Cal.Rptr.3d 821, 150 P.3d 709.)

An "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." (*Vineyard, supra,* 40 Cal.4th at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709, citing § 21168.5.) "Judicial review of these two types of error differs significantly" however. (*Vineyard,* at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709.) For that reason, "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Ibid.*)

1. Procedural Claims

Courts must "scrupulously enforce all legislatively mandated CEQA requirements." (*Goleta II, supra,* 52 Cal.3d at p. 564, 276 Cal.Rptr. 410, 801 P.2d 1161.) To do so, "we determine de novo whether the agency has employed the correct procedures" in taking the challenged action. (*Vineyard, supra,* 40 Cal.4th at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709.)

2. Substantive Claims

Compared with review for procedural error, "we accord greater deference to the agency's substantive factual conclusions." (*Vineyard, supra,* 40 Cal.4th at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709.) We apply "the highly deferential substantial evidence standard of review in Public Resources Code section 21168.5" to such determinations. (*Western States, supra,* 9 Cal.4th at p. 572, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) "The agency is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision." (*Save Our Peninsula, supra,* 87 Cal.App.4th at p. 117, 104 Cal.Rptr.2d 326.) That deferential review standard flows from the fact that "the agency has the discretion to resolve factual issues and to make policy decisions." (*Id.* at p. 120, 104 Cal.Rptr.2d 326.)

The CEQA Guidelines define substantial evidence as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).)

(*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 984-85.)

"[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence." (*Sierra Club v. County of Fresno* ("*Friant Ranch*") (2018) 6 Cal.5th 502, 514.) "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Id*. at 516 [Citation omitted].)

"[T]he petitioner bears the burden of demonstrating that the record does not contain sufficient evidence justifying a contested project approval." (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.) "To do so, an appellant must set forth in its brief all the material evidence on the point, not merely its own evidence. [Citation.] A failure to do so is deemed a concession that the evidence supports the findings." (*Id*. [Citation omitted].)

GDCI asserts Petitioners failed to raise a number of issues, such that the exhaustion of administrative remedies doctrine precludes the claims.

"Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action. ... The petitioner is required to have 'objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.' ([Pub. Resources Code,] § 21177, subd. (b).) The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative proceedings." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199, 22 Cal.Rptr.3d 203.)

" 'The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were

first raised at the administrative level.

...

"It is, however, "not necessary to identify the precise statute at issue, so long as the agency is apprised of the relevant facts and issues." (*McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1264, 93 Cal.Rptr.2d 725.)

(*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 889–890.)

Mitigation Measures as to Green House Gases ("GHG")

The EIR recognizes the Project will emit at least 484,770 metric tons of climate pollution over 30 years. (AR 31823.) The EIR acknowledges this is a significant impact that should be mitigated. The EIR contends the impacts will be mitigated to less than significant by implementing, *inter alia*, M-GHG-1 through M-GHG-4. (AR 31819.) Both the AG and Petitioners challenge M-GHG-1 and M-GHG-2 as being inadequate. Both M-GHG-1 and M-GHG-2 attempt to address GHGs that will be created from construction and operation of the Project over 30-years. (AR 318-324.)

First, the EIR relies on an estimated 30-year life for the Project to estimate the amount of GHG that must be mitigated. (AR 42057.) The 30-year life span is taken from the South Coast Air Quality Management District's set of GHG thresholds of significance for industrial projects. (AR 121687-88.) However, the District stated that as to "Residential/Commercial Sector Projects" "Not Recommended at this Time" to use the 30-year life span for offsets, as is used by the EIR in this case. (AR 121688.) GDCI asserts the District was not asked to make a recommendation as to Residential/Commercial Sector Projects. This does not support that the evidence the EIR relies upon to use a 30-year life span is substantial. GDCI does not point to any evidence in the record that the EIR relied on specific standards for Residential/Commercial Sector Projects, which is at issue in this action. A 30-year life span for a residential project goes against common sense. As GDCI asserts, the homes will be more advanced, such that they could last longer than other homes which last longer than 30 years. However, comments in the EIR state "30-year project life also is widely used in CEQA documents by expert consultants and lead agencies," "Executive Order (EO) S-3-05 established 2050 as the target year for an 80 percent reduction in statewide GHG emissions below 1990 levels," and that the incremental implementation of the development will result in a later start time for the Project and the "modeling analysis likely overestimates the Proposed Project's GHG emissions because the modeling does not take into account reasonably foreseeable regulatory, programs and other governmental strategies and technological factors that likely would result in further reductions in GHG emissions levels throughout California that are needed to achieve the 2030 and 2050 targets." (AR 33525-26.)

Even if the 30-year life span were accepted as being supported by substantial evidence, the mitigation measures M-GHG-1 and M-GHG-2 are insufficient under *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467. "An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy." (California Code of Regulations ("CEQA Guidelines") section § 15126.4(a)(1).) "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design." (CEQA Guidelines

section § 15126.4(a)(2).) "Under section 38562, subdivision (d)(1) and (2), cap-and-trade offset credits may be issued only if the emission reduction achieved is "real, permanent, quantifiable, verifiable, enforceable, and additional to any GHG emission reduction otherwise required by law or regulation, and any other GHG emission reduction that otherwise would occur." (*Golden Door, supra,* 50 Cal.App.5th at 506.)

" 'Real' means ... that GHG reductions ... result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage." (Cal. Code Regs., tit. 17, § 95802.) " 'Permanent' means ... that GHG reductions ... are not reversible, or when GHG reductions ... may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions ... to ensure that all credited reductions endure for at least 100 years." (*Ibid.*) " 'Quantifiable' means ... the ability to accurately measure and calculate GHG reductions ... relative to a project baseline in a reliable and replicable manner for all GHG emission sources ...." (*Ibid.*) " 'Verifiable' means that an Offset Project Data Report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body." (*Ibid.*) " 'Additional' means ... greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-usual scenario." (Cal. Code Regs., tit. 17, § 95802.)

(*Id.* at 506-507.)

Similar to the County's Climate Action Plan (CAP) found to be inadequate under CEQA in *Golden Door*, M-GHG-1 and M-GHG-2 are for the purchase and retirement of carbon offsets that may be issued by "(i) the Climate Action Reserve, the American Carbon Registry, and Verra (previously, Verified Carbon Standard); or (ii) any registry approved by the California Air Resources Board (CARB) to act as a registry under the state's cap-and-trade program." In *Golden Door* the similarly labelled M-GHG-1 provided "the Director may approve offsets issued by any 'reputable registry or entity that issues carbon offsets consistent with ... section 38562[, subdivision] (d)(1).'" (*Golden Door, supra,* 50 Cal.App.5th at 514.) In both *Golden Door* and here, "M-GHG-1 says nothing about the protocols that the identified registries must implement." (*Id*. at 511.) "Unlike M-GHG-1, under cap-and-trade, it is not enough that the registry be CARB-approved. Equally important, the protocol itself must be CARB-approved." (*Id*.) "The CARB Protocols are the heart of cap-and-trade offsets-but the word "protocol" is not even mentioned in M-GHG-1.... M-GHG-1 is not equivalent to cap-and-trade offset programs because M-GHG-1 does not require the protocol itself to be consistent with CARB requirements under title 17, section 95972, subdivision (a)(1)-(9) of the California Code of Regulations." (*Id*. at 512.) The same is true in this case – the word "protocol" is not even mentioned in M-GHG-1 nor does the EIR require the protocol of the registry be consistent with CARB requirements. (AR 318-320.) The EIR parrots the words of California Health & Safety Code section 38562, subdivision (d)(l), stating "the purchased carbon offsets used to reduce GHG emissions from construction and vegetation removal shall achieve real, permanent, quantifiable, verifiable, and enforceable reductions." (AR 319.) More than mere lip service is required – there must be "objective criteria for making such findings." (*Id*. at 521–522.)

GDCI points to the fact the EIR cites to the program manuals for registries in the appendices. However, one of the registries, American Carbon Registry, provides "projects must commit to maintain, monitor,

and verify Project Activity for a Minimum Project Term of 40 years...because no length of time, short of perpetual, is truly permanent...," but Permanent, as to GHG reductions, is defined as reductions that "endure for at least 100 years." (AR 75786; Cal. Code Regs., tit. 17, § 95802; see also *Golden Door, supra,* 50 Cal.App.5th at 522 [for example, CARB's forestry protocol requires sequestering carbon "for at least 100 years"].) As discussed above, GDCI's citation to extra-record evidence of actual purchases of offsets is not relevant. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559.) Even if it were considered, the evidence indicates GDCI purchased offsets from American Carbon Registry, which would not meet the permanence requirement under *Golden Door*.

Further, in both the EIR and the County CAP considered in *Golden Door*, M-GHG-1 is silent as to the additionality requirement in Health & Safety Code section 38562, subdivision (d)(2), which provides "the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur." (Health & Saf. Code, § 38562(d)(2); *Golden Door, supra,* 50 Cal.App.5th at 514.) M-GHG-1 and M-GHG-2 ignore the requirement that the reductions would not have otherwise occurred – that it would not result from a business-as-usual scenario. (*Golden Door, supra,* 50 Cal.App.5th at 521.) The EIR's requirement that the offsets achieve reductions that are "not otherwise required," consistent with Guidelines section 15126.4(c)(3) does not equate to requiring compliance with the additionality requirement in Health & Safety Code section 38562, subdivision (d)(2). Also, responses to comments in the EIR as to the acknowledgement of the additionality definition does not equate to a requirement within M-GHG-1 and M-GHG-2 that the offsets purchased meet the additionality requirement in Health & Safety Code section 38562, subdivision (d)(2). Finally, reliance on registry protocols is of no avail. As an example, one of the registries relies on the "project proponent" to sign an "Attestation of Legal Additionality form that confirms the mitigation project activity was not required by any law, statute, rule, regulation or other legally binding mandate by any national, regional, state, local or other governmental or regulatory agency having jurisdiction over the project." (AR 75925.) This is essentially the fox guarding the hen house, plus it does not address whether or not the reduction resulted from a business-as-usual scenario.

Petitioners also criticize the EIR's reliance upon forecasted reductions in relation to the purchase of carbon offsets. GDCI cites to the Newhall Ranch project, discussed with approval in *Golden Door*, which utilized estimated reductions and carbon offsets for past reductions. GDCI does not explain how this Project has safeguards to ensure the reduction would occur equivalent to those in the Newhall Ranch EIR. GDCI also relies upon the Climate Forward program, but the Climate Forward Program Manual recognizes it "does not guarantee the use of FMUs [Forecasted Mitigation Units] or CRTs will be accepted as a means to meet CEQA GHG mitigation obligations where required by an approving agency(ies)." (AR 75898.) The Court agrees the Climate Forward Program's reliance on a one-time verification of the mitigation project is troublesome. (AR 75916.) The lack of ongoing verification illustrates the protocols do not ensure that the forecasted reductions are real, additional, permanent, confirmable, and enforceable. "'[O]nce the project reaches the point where activity will have a significant adverse effect on the environment, the mitigation measures must be in place.'" (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 860 [Citation omitted].) While GDCI must provide proof of purchase of carbon offsets prior to permit issuance, a proper mitigation measure must be in place at that time. (AR 31819, 31822.) Without rigorous protocols to ensure the forecasted reductions are real, additional, permanent, confirmable, and enforceable, it cannot be concluded the mitigation measures were permissibly implemented at proper times.

Finally, the EIR suffers from enforcement issues as to M-GHG-1 and M-GHG-2. In *Golden Door*, the court stated:

The only M-GHG-1 limit on mitigating with international offsets is the Director's unilateral decision that offsets are not feasibly available within (1) the unincorporated county; (2) the County; (3) California; and (4) the United States. The fundamental problem, unaddressed by M-GHG-1, is that the County has no enforcement authority in another state, much less in a foreign country. M-GHG-1 does not require a finding that an out-of-state offset site has laws at least as strict as California's with respect to ensuring the validity of offsets.

At oral argument, the County asserted that the "registries" would be the County's enforcement mechanism to ensure the validity of offsets originating in foreign countries. This argument fails, however, because it is premised on the assumption that the registry's protocol is Assem. Bill No. 32 compliant-and as explained *ante*, M-GHG-1 does not require use of an Assem. Bill No. 32 compliant protocol.

(*Golden Door, supra,* 50 Cal.App.5th at 512–513.) Similarly, here, the EIR relies upon the registries for enforcement, which is problematic because of their protocols. M-GHG-1 provides "the Director of the PDS shall require the Project applicant or its designee to provide an attestation or similar documentation from the selected registry(ies) that a sufficient quantity of carbon offsets meeting the standards set forth in this measure have been purchased and retired, thereby demonstrating that the necessary emission reductions are realized." (AR 319.) This enforcement mechanism pales in comparison to CARB, which discourages noncompliance "by deterring and punishing fraudulent activities." (AR 75598.) CARB has the enforcement authority to hold a party liable and to take appropriate action, including imposing penalties, if any of the regulations for CARB offset credits are violated. (17 C.C.R. §§ 95802(a), 96013, 96014.) GDCI does not cite to any evidence in the record that the registries have the same enforcement authority under their protocols.

One of the registries states it "will rely first and foremost on legal requirements within the jurisdiction(s) where the project is implemented." (AR 75909.) As *Golden Door* recognized, such reliance can be a problem in another state or foreign country where the County does not have any enforcement authority. There is nothing in M-GHG-1 or M-GHG-2 that requires the Director of the PDS to follow specific protocols when "offsets are unavailable and/or fail to meet the feasibility factors defined in CEQA Guidelines Section 15364 in a higher priority geographic category before allowing the Project applicant or its designee to use offsets from the next lower priority category" to ensure the offsets are ultimately enforced properly. Rather, the Director of the PDS merely needs to issue a written determination that considers information such as "availability of in-State emission reduction opportunities," "geographic attributes of carbon offsets," "temporal attributes of carbon offsets," "pricing attributes of carbon offsets," and "[a]ny other information deemed relevant to the evaluation...." (AR 320, 323-24.) This could allow for the Director to permit purchase of offsets almost entirely from international offsets. As a registry recognizes, "[d]epending on the location of the mitigation project, there may be insufficient compliance and/or enforcement of national, regional, state, local, or other regulations." (AR 75906.) As in *Golden Door*, "M-GHG-1 does not require a finding that an out-of-state offset site has laws at least as strict as California's with respect to ensuring the validity of offsets." (*Golden Door, supra,* 50 Cal.App.5th at 513.)

The EIR is inadequate as to M-GHG-1 and M-GHG-2.

Wildfire Ignition Risk

The AG and Petitioners assert the EIR fails to properly acknowledge the increased risk of wildfire ignition from the additional people who will be in the area as a result of the Project. The EIR states "the Project Area, in its current condition, is considered to be vulnerable to wildfire ignition and spread during extreme fire weather." (AR 32172.) The EIR goes on to states that the "introduction of up to 1,119 new homes would not increase the potential likelihood of arson, off-road vehicle-related fires, or shooting-related fires." (AR 32173.) The body of the EIR does not acknowledge an increase in risk of wildfire ignition as a result of more humans being in the area from the Project. However, a County expert acknowledges "southern California's increasing population will make it more likely that ignitions will occur, which could potentially cause large areas of chaparral to type-convert into grasslands." (AR 104506.) Further, it is known humans are the primary cause of wildfires, especially in Southern California. (AR 89718-23.) The EIR does not address this issue, but notes "[p]ost-construction ignition sources would include vehicles, although roadside FMZs would be provided, reducing the potential for a vehicle-related fire escaping into the Otay Ranch RMP/MSCP Preserve fuels." (AR 32173.) This does not acknowledge or analyze the impact of adding more than 1,100 new homes to the area as to humans being an ignition cause of wildfires. This is combined with the fact the EIR does not clearly, in the body of the EIR, acknowledge the area's designation as a Very High Fire Hazard Severity Zone. (AR 32172-77.) The EIR does not includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issue of wildfire ignition raised by the Project.

The above issue is accompanied by an improper compressing of the analysis. Instead of independently acknowledging all the significant impacts of the Project as to wildfire risks and subsequently discussing mitigating measures to address such impacts, the mitigation measures are characterized in the EIR as being part of the project. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656.) "By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." (*Id.*) Here, the EIR considers the impacts of wildfire to be less than significant because the Project's "landscaped and irrigated areas and FMZs, as well as the paved roadways and ignition-resistant structures, would result in reduced fire intensity and spread rates around the Project Area, creating defensible space for firefighters." (AR 32173.) "Additionally, provisions for a fire station in the area would reduce the response time to wildfire ignitions and increase the likelihood of successful initial attacks that limit the spread of wildfires." (AR 32173.) The EIR also states "[u]nauthorized activities such as off-road vehicles and shooting may still occur, but there will be more 'monitors' (i.e., future residents) in the area to discourage and report such activities, resulting in an anticipated decreased occurrence." (AR 32173.) "'CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.'" (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264 [Citation omitted].) The adoption of the Fire Protection Plan (FFP) and compliance with applicable fire codes do not obviate the need for the EIR to analyze significant impacts that would exist prior to the implementation of any mitigation measures. The EIR fails to comply with *Lotus*.

Multiple Species Conservation Program

The Multiple Species Conservation Program ("MSCP") "is a multi-jurisdictional habitat conservation

planning program that involves USFWS, CDFW, the County of San Diego, the City of San Diego, the City of Chula Vista, and other local jurisdictions and special districts...." (AR 31246.) "A total of 85 plant and animal species are 'covered' by the MSCP Plan." (AR 31246.) "Quino checkerspot butterfly *(Euphydryas editha qumo)* is not a covered species under the MSCP." (AR 31191.) "A species that is not an MSCP covered species is not allowed take through the MSCP." (AR 31191.) Normally, "take authorization" can be allowed when incidental to land development and other lawful land uses which are authorized by the County. (AR 31191.) GDCI points to evidence in the record that a previous owner of property that is part of the Project area proposed preserving PV1-3 and other areas of Otay Ranch in exchange for allowing development of other open spaces within Otay Ranch; however, the parties disagree as to whether an agreement was reached. The MSCP and County Subarea Plan designates PV1-3 as "No Take Authorized" areas (AR 115049), or "Otay Ranch Areas Where No 'Take Permits' Will Be Issued," while allowing take in other areas that were previously designated as open space. (AR 82930, 94838-43, 115049, 115051.) The County General Plan calls for implementation of the "MSCP Plans for North and East County in order to further preserve wildlife habitat and corridors, wetlands, watersheds, groundwater recharge areas and other open space that provide carbon sequestration benefits and to restrict the use of water for cleaning outdoor surfaces and vehicles." (AR 129683.) The County's EIR cannot ignore mitigation measures in a General Plan, as such failure violates CEQA. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167.)

"The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, ...habitat conservation plans...." (CEQA Guidelines § 15125(d).) Petitioners raised the issue as to the Project's consistency with the MSCP, citing *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918. (AR 94708.) GDCI points to the Implementing Agreement between the Wildlife Agencies ("IA") where it states "as outlined in the letter attached to the South County Segment from the Baldwin Company Dated November 10, 1995, will be included if the agreements are reached." (AR 115255.) GDCI does not deny that the IA still includes a map showing PV1-3 as "Otay Ranch Areas Where No 'Take Permits' Will Be Issued." (AR 115285.) This appears to be why the California Department of Fish and Wildlife (CDFW) concluded "[t]he Implementing Agreement and Subarea Plan are consistent on this point. The Implementing Agreement includes a map as Exhibit F defining the area encompassed by the Subarea Plan." (AR 33276.)

Petitioners do not assert PV1-3 is undevelopable, but that the Project is inconsistent with the MSCP and the EIR does not address this issue. The Court agrees. The Project conflicts with the face of the MSCP. While GDCI or the County is free to seek an amendment of the MSCP, the face of the MSCP reflects PV1-3 is subject to no take. The United States Fish and Wildlife Service (USFWS) did not disagree, but explicitly stated "because no take has been authorized in PV 1, 2, 3 we are evaluating approaches for authorizing take in those parcels including the options considered in the County's draft Condition of Approval for the Village 14 project." (AR 33270.)

CEQA does not "permit lead agencies to perform truncated and siloed environmental review, leaving it to other responsible agencies to address related concerns seriatim." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 941.) Petitioners assert the EIR fails to meaningfully address the issue. GDCI relies on the purported consistency with the MSCP and on the Biological Mitigation Ordinance (BMO) to support that the County did not violate CEQA. As discussed above, the Project is inconsistent with the MSCP as it currently designates PV1-3 as no take. Even though the Project may be

consistent with the BMO, the EIR does not recognize nor analyze the consistency between the MSCP and the Project. Rather, the County concluded "the Proposed Project, including development of PV1-3, is consistent with the MSCP, Subarea Plan and Implenting [sic] Agreement" after reviewing findings as to the BMO. (AR 75554.) GDCI does not contest that the EIR failed to consider any Project alternative that would comply with the MSCP and preserve PV1-3.

In *Banning Ranch*, an EIR for a project in the coastal zone subject to the California Coastal Act was found inadequate. (*Banning Ranch, supra,* 2 Cal.5th at 941.) The EIR considered comments that the project would disturb environmentally sensitive habitat areas (ESHAs), that could not be developed under the Coastal Act, but it did not study the impact, instead deferring that task to the Coastal Commission. (*Id*. at 930-932.) Here, PV1-3 are currently in an analogous state – they cannot be developed given their designation as no take. As in *Banning Ranch*, the EIR improperly avoids the issue because the analysis assumes the Project is not inconsistent with the MSCP. (AR 40428-541, 32897-900.) Consequently, the EIR fails as an informational document. (*Id*. at 942.)

The Quino Checkerspot Butterfly ("Quino")

The EIR must provide an accurate and complete description of the "baseline" existing environmental conditions against which a project's impacts are evaluated. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447-48; CEQA Guidelines § 15125.) The USFWS lists the Quino as endangered. (62 FR 2313-01.) Petitioners assert that the EIR's conclusion that Quino do not occupy area within the Project is erroneous. The Project is partially located on "Quino Occurrence Complexes" designated as "Unit 8" by the USFWS. (AR 97955, 98619, 98483-85; 74 FR 28776-01.) "The physical and biological features found in Unit 8 may require special management considerations or protection to minimize impacts from loss and fragmentation of habitat and landscape connectivity due to development...." (74 FR 28776-01.) USFWS defines Quino occupancy based on "population-scale occupancy" as "all areas used by adults during the persistence time of a population (years to decades)." (AR 97955.) Thus, "focused distribution studies over multiple years are required [in order] to quantify Quino checkerspot butterfly population distributions." (AR 97955.)

The EIR states Quino were not "detected during protocol surveys and, therefore, the Project Area is not currently considered occupied" by Quino. (AR 31258.) This conclusion was based on survey results in 2015 and 2016, when it was found the "species has been observed within and adjacent to the Project Area." (AR 82940.) "[T]he 2017 spring season, presumably fueled by above-normal rainfall following multiple years of drought, created the most favorable conditions for Quino since 2012. As a result, very high numbers of Quino were observed, particularly in nearby areas. Unfortunately, in 2017, protocol surveys were not performed on Village 14, qualified USFWS biologists were not allowed to survey the property during the peak of the flight season, and an excellent opportunity to obtain better information on the status of Quino on the property was lost." (AR 82940.) Notwithstanding, "in 2017 Service staff documented multiple Quino individuals adjacent to and interspersed within the Project Area," but the EIR "dismisses these sightings as incidental." (AR 82942.) Additionally, "qualified personnel from CDFW observed [Quino] on and around the site in 2018." (AR 76070-71.) Further, the County acknowledged observation during "low rainfall years...may not be considered adequate evidence to conclude a particular site is unoccupied, even if guidelines are followed." (AR 85305.) Nevertheless, the County encouraged "surveys be conducted regardless of rainfall levels because negative adult data can be

useful long‐term to support conclusions of population absence." (AR 85305.) Finally, in spring of 2019, a non-drought year, qualified personnel documented Quino "widely throughout the Proctor Valley area, including locations immediately adjacent to the project site." (AR 76072.)

GDCI acknowledges 2016 was a below-average year for rainfall, but defends the EIR's conclusion because the "CDFW's 'limited' survey effort did not conform to any established protocols for surveys of this species." (AR 32944.) "Occurrence complexes are mapped in the Recovery Plan using a 0.6 mile (1 kilometer) movement radius from each butterfly observation, and may be based on the observation of a single individual (Figures 1 and 2)." (AR 98326.) The above 1 kilometer radius measurement is part of the "*only* accepted procedure for delineating [Quino] 'occupied habitat.'" (76074.) The observations where mapped based on GPS coordinates with accuracy within about 3 meters. (AR 94849-50.) Given there are more years of observation of Quino in the area than years of no observation and one of the years of no observation, 2016, was a below-average year for rainfall, the data supporting that Quino occupy at least some areas within the Project is more supported than the conclusion the Project area is not occupied by Quino. Moreover, multiple Quino experts and the CDFW determined that the area is occupied. (AR 82942, 83480-84, 97952-54.) In the context of the available data, the EIR's conclusion is erroneous. Without an accurate conclusion as to occupancy by Quino, the EIR fails "to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts." (CEQA Guidelines section § 15125(a).) This failure also affected the EIR's consideration of mitigation measures. (See GDCI's reliance on AR 29165.)

Cumulative Impacts

It is undisputed the EIR must disclose cumulative impacts. "'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines section § 15355.) "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines section § 15355(b).) "[I]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. (CEQA, § 21061.)" (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) "The CEQA Guidelines specify that location may be important when the location of other projects determines whether they contribute to an impact. For example, projects located outside a watershed would ordinarily not contribute to cumulative water quality impacts within the watershed." (Kostka, *supra,* § 13:42, p. 651; Guidelines, § 15130, subd. (b)(2).)" (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 907.) However, "the geographic context or scope to be analyzed 'cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting.'" (*Id*. at 907.) Petitioners assert the EIR fails to consider the following pending projects in its analysis: Lilac Hills Ranch, Newland Sierra, Harmony Grove, Warner Ranch, Otay 250, and Valiano.

GDCI defends the EIR's exclusion of the six above projects based on geographic location, the assertion some of the projects have not sufficiently crystalized, and the projects were not closely related to this

Project. Analysis of an entire air basis may be necessary and "[t[he primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 722-23.) The six potential projects include the need for General Plan amendments to account for changes in densities. (AR 85509-11.) GDCI does not specifically explain how the potential projects would not impact air quality and GHG considerations, even considering their geographical distance from the Project. Given the enormous potential increase in homes, nearly 10,000, from the potential projects, the Court cannot conclude all of the six projects were properly excluded from the cumulative impact analysis, especially as to wildfire risk, air quality and GHG, unless the projects were not sufficiently crystallized such that it would have been unreasonable and impractical to evaluate their cumulative impacts. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 397.)

GDCI cites to evidence some of the projects face challenges, such as referendums and rescinding of some approvals. (See GDCI's RJN Exhibits 3-10.) However, GDCI does not point to evidence that the challenges prevented the projects from ultimately going forward at in time in the future and such was known at the time the EIR was being prepared. Further, not all of the projects have faced issues. GDCI merely points to the fact public review did not commence until March, April, and June of 2017 as to some of them. GDCI does not cite evidence that indicates the projects were "merely contemplated or a gleam in a planner's eye." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398.) Given the deferential treatment EIRs often receive, the Court cannot conclude projects that have commenced public review of draft EIRs are too speculative. The Court cannot conclude all of the six projects are not closely related to the Project – they are residential developments which could have similar impacts on wildfire risk, air quality and GHG. (See AR 85509-11.) The failure to consider the cumulative impacts from at least some of the potential projects was potentially significant. (AR 85522-38, 84687-92, 98681, 90648, 84615-17.) This failure violated CEQA.

Standard of Review as to Inconsistencies with the General Plan

"A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) "[J]udicial review of consistency findings is highly deferential to the local agency." (*Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18.) "'Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion.'" (*Covina Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712, 732 [Citation omitted]; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637.) "[T]he essential question is 'whether the project is compatible with, and does not frustrate, the general plan's goals and policies.'" (*Naraghi Lakes, supra,* 1 Cal.App.5th at 18 [Citation omitted].)

Affordable Housing Component Requirement Within the General Plan

The General Plan states at H-1.9: "Affordable Housing through General Plan Amendments. Require developers to provide an affordable housing component when requesting a General Plan amendment

for a large-scale residential project when this is legally permissible." (AR 130098.) GDCI does not seriously dispute that the Project does not include an affordable housing component, but asserts it includes "attainable housing components." However, there is a statutory definition for affordable housing cost, which GDCI does not and cannot contend the Project meets. (Health & Saf. Code, § 50052.5.) Rather, GDCI points to the fact the County has not yet adopted an affordable housing ordinance, focusing on the "when this is legally permissible" portion of H-1.9.

GDCI's argument that the law disfavors ad hoc imposition of affordable housing conditions, citing *San Remo Hotel L.P. v. City And County of San Francisco* (2002) 27 Cal.4th 643, is of no avail because inclusionary housing ordinances do not violate the constitution where "the ordinance does not require a developer to give up a property interest for which the government would have been required to pay just compensation under the takings clause outside of the permit process." (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 461.) GDCI cannot point to any requirement GDCI was required to give up a property interest without just taking under an ordinance, as no ordinance exists. GDCI's reliance on the lack of an adopted affordable housing ordinance is also unavailing. The County may not rely upon its failure to follow through in implementing an ordinance to ensure projects conform with the General Plan to justify its failure to conform with the General Plan. As GDCI points out, the County has delayed adopting an ordinance since at least 2012. (GDCI's RJN Exhibits 14-15; AR 135444.).

GDCI does not point to any authority stating an ordinance must be adopted before an agency is required to conform to the General Plan. "[A]n agency's interpretation of a regulation or statute does not control if an alternative reading is compelled by the plain language of the provision." (*Southern California Edison Co. v. Public Utilities Com'n* (2000) 85 Cal.App.4th 1086, 1088.) H-1.9 unambiguously requires an affordable housing component. Contrary to GDCI's suggestion, the General Plan does not bend to the requirements of ordinances, it is the other way around – ordinances must not be inconsistent with the General Plan. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.) While the Court is sympathetic that the process to develop affordable housing criteria may not be easy, the evidence and law does not indicate the County is precluded from imposing affordable housing criteria nor that the County is permitted to ignore clear policies and goals in the General Plan based on the difficulty in implementing them. Finally, GDCI's suggestion that H-1.9 only applies to amendments that increase density is without support – nothing in H-1.9 nor other policies or goals within the General Plan support that H-1.9 only applies to amendments that increase density. The limitation on applicability of H-1.9 is its application to "large-scale residential project[s]," not density changes. The Project is inconsistent with H-1.9 of the General Plan.

The petition is granted as to the above discussed issues. As to the other issues raised by the AG and Petitioners, the Court finds GDCI's arguments sufficiently persuasive. The County is ordered to vacate its approvals of the Project.

(2) PETITIONERS' *UNOPPOSED* MOTION TO STRIKE DOCUMENTS IN ADMINISTRATIVE RECORD is GRANTED

Failure to file an opposition to the motion indicates the other parties' acquiescence that the motion is

meritorious. (California Rules of Court, Rule 8.54(c).) Public Resources Code section 21167.6(e) sets forth the types of records to be included in a record of proceedings. (Pub. Resources Code, § 21167.6(e).) "[T]he Legislature intended courts to generally consider only the administrative record in determining whether a quasi-legislative administrative decision was supported by substantial evidence." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) "[E]xtra-record evidence is generally not admissible in traditional mandamus actions challenging quasi-legislative administrative decisions on the ground that the agency 'has not proceeded in a manner required by law' within the meaning of Pub. Resources Code, § 21168.5." (*Id.* at 561.) The potential exceptions acknowledged in *Western States* do not apply here. (*Id.* at 575, n. 5.) Petitioners explain how the documents included after the fact were considered by GDCI's consultant, but were not presented to the agency decision-makers and did not become part of the record. GDCI does not dispute this. The documents do not fall into a category under Public Resources Code section 21167.6(e). The motion is granted.

Judge Richard S. Whitney

Attachment 3

Bear Fire Perimeters

In August of 2004, the Bear Fire burned over 10,900 acres in Jones Valley.

ACRES

10966

FIRE_NAME

BEAR

YEAR

2004

STARTMONTH

8

STARTDAY

11

Attachment 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LAKE

CENTER FOR BIOLOGICAL DIVERSITY, Petitioner, PEOPLE OF THE STATE OF CALIFORNIA, EX. REL, ATTORNEY GENERAL ROB BONTA, Petitioner-Intervenor, v. COUNTY OF LAKE, BOARD OF SUPERVISORS OF THE COUNTY OF LAKE; and DOES 1 through 20, Respondents. LOTUSLAND INVESTMENT HOLDINGS, INC.; and DOES 21 through 40, Real Parties in Interest.	Case No. CV421152 **RULING AND ORDER ON PETITIONS FOR WRIT OF MANDATE**

///

Ruling

I. Introduction.

The Court's obligation in this case is to answer the following questions:

1. Was there substantial evidence to support the County's decision?
2. Did the County fail to proceed in the manner required by law?

(Pub. Res. Code §§ 21168, 21168.5.)

In answering the first question, the Court "must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117.) "A court may not set aside an agency's approval of an EIR [Environmental Impact Report] on the ground that an opposite conclusion would have been equally or more reasonable." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393.)

In answering the second question, the Court must determine if the County substantially complied with the procedural requirements of the California Environmental Quality Act (CEQA). (Practice Under the California Environmental Quality Act (2d ed. Cal CEB) § 23.35) While a court may find noncompliance with CEQA requirements to be a prejudicial abuse of discretion, there is no presumption that such an error is prejudicial. (Pub. Res. Code § 21005(b).) In determining whether a failure to comply with CEQA is prejudicial, a court does not determine whether a different outcome would have resulted. (Pub Res. Code § 21005(a).)

///

///

II. Wildfire Risk.

A. Compression of Mitigation Measures Into the Project.

When an EIR incorporates mitigation measures into the project description, then concludes that the project has no significant impact, the failure to separately identify significant impacts and analyze the mitigation measures violates CEQA. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645.) This is because by doing so, an EIR "precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences." (*Id.* at p. 658.)

Lotus v. Department of Transportation, supra, involved a highway construction project through an old growth redwood forest. A portion of the construction was planned to occur within the structural root zone of a number of trees. The EIR described measures that "have been incorporated into the project to avoid and minimize impacts as well as to mitigate expected impacts." (*Id.* at p. 650.) Those measures included restorative planting and replanting, invasive plant removal, and use of an arborist and specialized equipment. In the EIR, the agency concluded that "[n]o significant environmental effects are expected as a result of this project with the implementation of the stated special construction techniques." (*Id.* at p. 651.)

In concluding that the EIR violated CEQA by compressing the analysis of impacts and mitigation measures into a single issue, the Court of Appeal explained:

> The EIR fails to indicate which or even how many protected redwoods will be impacted beyond the tolerances specified in the handbook and, by failing to indicate any significant impacts, fails to make the necessary evaluation and findings concerning the mitigation measures that are proposed. Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation

> measures are required or to evaluate whether other more effective measures than those proposed should be considered. Should Caltrans determine that a specific tree or group of trees will be significantly impacted by proposed roadwork, that finding would trigger the need to consider a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact.

(*Id.* at p. 656.)

In that case, the measures contained within the project were designed to mitigate the impacts to the health of the trees caused by the construction. The measures at issue were "plainly mitigation measures and not part of the project itself." (*Id.* at p. 656, fn. 8.) The failure to classify those measures as mitigation measures prevented those reviewing the EIR from determining the significance of the impact the construction would have on the health of the trees. (*Id.* at pp. 656-658.)

In the instant case, Petitioners[1] argue certain design elements included in the Wildfire Prevention Plan (WPP), including those relating to relating to vegetation management and firebreaks, were misclassified as part of the Project rather than mitigation measures. Although certain actions such as vegetation management and maintenance of the firebreaks will continue well after the Project is built, those components of the WPP are properly classified as part of the Project itself. This is because those measures, unlike the measures in *Lotus v. Department of Transportation, supra*, are not designed to rectify the impacts to the environment caused by the Project. None of the challenged design elements are meant to repair, rehabilitate or restore the impacted environment. Instead, they are part of the design of the Project meant to avoid

[1] Petitioners includes Intervenor/Petitioner unless otherwise stated.

impacts to the environment in the first place. Accordingly, the Court concludes all of the components of the WPP, including vegetation management and maintenance of the firebreaks, are not mitigation measures improperly misclassified as Project components. Instead, they are part of the Project itself.

B. Adequacy of Analysis of Wildfire Risk.

Petitioners find fault with the EIR's analysis of the wildfire risk and the methodology used to analyze that risk. Although the analysis could have been more thorough and better methodologies could have been used, "challenges to the scope of an EIR's analysis, the methodology used, or the reliability or accuracy of the data underlying an analysis, must be rejected unless the agency's reasons for proceeding as it did are clearly inadequate or unsupported." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 851.) The EIR's analysis of the Project's impacts on wildfire risk was extensive and specific to both the Project and its location. Without rehashing the evidence contained in the record, the Court concludes substantial evidence supports the County's findings regarding the Project's impact on wildfire risks, with one exception which will be discussed in the following section.

C. Impacts on Emergency Evacuation Routes.

In its briefing, Real Party differentiated project evacuation routes from community or area-wide evacuation routes. The Court agrees that analysis of the Project's evacuation routes are a "reverse CEQA" issue and need not be addressed in the EIR. The Project's impacts to community evacuation routes, however, must be analyzed in the EIR.

In *California Building Industry Assoc. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, at issue was an agency's thresholds of significance for certain air pollutants which required project proponents to evaluate how existing air pollution would affect individuals within the proposed project. The Supreme Court concluded, "CEQA generally does not require an analysis of how existing environmental conditions will impact a projects future users or residents." (*Id.* at p. 386.) CEQA does, however, require an analysis of a "project's potentially significant *exacerbating* effects on existing environmental hazards -- effects that arise because the project brings 'development and people into the area affected.'" (*Id.* at p. 388; italics in original.) The Supreme Court explained an "EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas)." (*Ibid.*)

Newton Preservation Society v. County of El Dorado (2021) 65 Cal.App.5th 771, involved a bridge construction project where project opponents, many of whom were residents, alleged the project would have a significant impact on evacuation. The Court of Appeal held the evidence presented in that case did not "support a fair argument that the project may have a significant impact on the environment or may exacerbate existing environmental hazards." (*Id.* at p. 792.) The court determined the comments offered in opposition to the project "lacked factual foundation and failed to contradict the conclusions by agencies with expertise in wildfire evacuations with *specific* facts calling into question the underlying assumptions of their opinions as it pertained to the project's potential environmental impacts." (*Id.* at p. 791, italics in original.)

Real Party is correct that analysis of community evacuation is not required unless the project might exacerbate existing environmental hazards. (Real Party in Interest Lotusland Investment Holding, Inc.'s Supplemental Brief Re: Evacuation filed November 19, 2021, (Real Party's Supplemental Brief), p. 7:7-9.). Here, unlike the case in *Newton, supra*, there is evidence that the Project might exacerbate existing environmental hazards. As pointed out by Petitioners Center for Biological Diversity (CBD) and California Native Plant Society (CNPS), a significant number of wildfire related deaths in California occur during attempts to evacuate. (Petitioners' Opening Brief filed June 15, 2021, pp, 19:26-20:4.) The hazards of a wildfire are certainly exacerbated if community residents are unable to evacuate safely due to congested evacuation routes. It is estimated that the Project will bring 4,070 residents to the area. (AR 6612.) This is a significant population increase when considering the Project is located in Lake County Census Tracts 12 and 13 which had an estimated combined population of 10,163 in 2017. (AR 6608.) If a wildfire occurs, the Project's residents will need to evacuate. These people will likely compete with residents in the surrounding area for safe evacuation routes. The additional people competing for the same limited routes can cause congestion and delay in evacuation, resulting in increased wildfire related deaths. This is undoubtedly a situation where the Project, by bringing a significant number of people into the area, may significantly exacerbate existing environmental hazards; specifically, wildfires and their associated risks. Therefore, this is an issue that is required to be addressed under CEQA.

The County concluded the impacts to existing emergency evacuation plans would be less than significant. (AR 6746.) The evidence supporting this conclusion are

comprised primarily of opinions from traffic engineers and fire and law enforcement personnel. (Real Party's Supplemental Brief, p. 8:2-8; AR 42594-42595; 53739-53740.) Those opinions were not based on any identifiable facts.

There are two problems with this evidence. First, this evidence primarily addresses the issue of whether the Project's residents could safely leave the Project in the event of a wildfire. This evidence does not focus on the issue that is required to be addressed by CEQA; whether evacuation of the residents in the nearby area would be affected by the evacuation of the Project's residents during a wildfire.

Second, this evidence cannot be considered substantial evidence. Substantial evidence includes "expert opinion supported by facts." (14 CCR §15384(b).) Unsubstantiated opinion does not constitute substantial evidence. (14 CCR §15384(a).) The conclusion reached by the County as it relates to emergency evacuation plans is based on unsubstantiated expert opinions. This evidence is legally insufficient to qualify as substantial evidence under CEQA.

Because the County's findings regarding community emergency evacuation routes are not supported by substantial evidence, the EIR does not comply with CEQA.

III. Carbon Credit Program[2].

Petitioners argue the carbon credit program is ineffective as a mitigation measure because it does not include sufficient safeguards to ensure offsets are real, permanent, verifiable and enforceable. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 506-507.)

[2] The carbon credit program was discussed by the parties under the broader topic of climate impacts and GHG mitigation measures. Also discussed was the transportation demand management plan (TDM). The Court concludes

Here, the carbon credit program was added through an errata to the Final EIR after the public comment period had closed. The County explained:

> Also we added a mitigation requiring the purchase of greenhouse gas carbon credits to offset the project's remaining greenhouse gas emissions that are above and beyond the stated threshholds in the EIR. However, the EIR's conclusion of a significant, unavoidable greenhouse gas impact would not change, given the limited supply of carbon offsets and the uncertainty regarding the availability of offset credits throughout the life of the project.

(AR42599.)

Given the timing of the addition of this measure to the EIR and the comments made by the County, unlike the mitigation measure in *Golden Door Properties, LLC, v. County of San Diego, supra*, the carbon credit program here was not a mitigation measure that the County relied upon in making any findings contained in the EIR. In fact, the County described the modifications to the mitigation measures contained in the Errata, which included the addition of the carbon credit program, to be minor and insignificant. (AR 7193.) To the extent this measure did not comply with CEQA, the Court determines it does not constitute prejudicial error because inclusion of the measure did not "deprive[ ] the public and decision makers of substantial relevant information about the Project's likely adverse impacts." (*Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 463.)

IV. Water Supply.

Petitioners CBD and CNPS take issue with on an off-site groundwater well located within the Collayami Valley Groundwater Basin. Groundwater from on-site wells and surface water sources are expected to supply all of the projects water demands.

---

the TDM substantially complies with CEQA. (cf. *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 854-855.)

(AR6554-6556.) The off-site well would provide non-potable water if required. (AR 6689.) The County determined because of the characteristics of the basin, the potential impacts of drawing water from the well could not be determined. (AR 6558.) The County therefore imposed mitigation measure 3.9-3 which requires the applicant to provide to the County an analysis that defines a safe yield as specified in the measure. It also requires the applicant to submit annual monitoring reports and provide quarterly data for the first five years of use. (AR 6575.) It further mandates the development of a groundwater management plan should the reports show an impact to groundwater levels. (*Id.*) The County found any potential impact would be mitigated to less than substantial when considering this measure. The County's findings regarding the well are supported by substantial evidence. This mitigation measure complies with CEQA.

V. Special Status Plants.

Two appendices attached to the EIR[3] provide an in depth analysis and disclosure of special status plants. The County's findings relating to the special status plants are supported by substantial evidence. Which specific plants will be impacted cannot be determined because the exact location of the buildings on the site has not been determined. Mitigation measure MM 3.4-3 is designed to accommodate the uncertainty of the impacts on the plants. It requires pre-construction botanical surveys be conducted by a qualified biologist. If avoidance of a special-status plant is not feasible, compensatory planting or transplanting shall occur. Those plants would be subject to monitoring to ensure success of the plants[4]. (AR 6387-6388.) This mitigation measure complies with

[3] The appendices are labeled as BRA1 (AR2489-2926) and BRA2 (AR2927-3403).

[4] These requirements also apply to initial vegetation clearing along proposed roadways. (AR 6387.)

CEQA. (cf. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Ca .App.4th 899, 943.)

VI. Project Alternatives.

"The wisdom of approving [a] project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law . . . simply requires that those decisions be informed, and therefore balanced." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.) "'[F]easibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors." (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417.)

Petitioners contend the County's finding of infeasibility of Alternative C was not supported by substantial evidence. With respect to Alternative C, the County concluded, "[G]iven that the Reduced Intensity Alternative would result in significantly fewer economic benefits, the County finds that the Reduced Intensity Alternative does not warrant approval in lieu of the Proposed Project." Economic benefits are key goals of the project. The stated project objectives included economic growth, expanding high-end hospitality and construction employment opportunities, and increasing revenues for the County. (AR 6769.) Alternative C would restrict the overall luxury market resort and residential community appeal; reduce revenues and workforce; and reduce marketability to investors, buyers and consumers in the high-end luxury resort market. (AR 53789-

53791.) The evidence supports the conclusion that Alternative C would result in fewer economic benefits to the County.[5]

Intervenor suggests the County should have considered alternative locations closer to a transit stop because GHG emissions would have been reduced in such a location.[6] The Project consists of high-end residential, resort, and recreational facilities. It is speculative to conclude consumers of the project will travel from out of the area by public transit.

"It is [the petitioner]'s burden to demonstrate inadequacy of the EIR. [A petitioner] must therefore show the agency failed to satisfy its burden of identifying and analyzing one or more potentially feasible alternatives. [A petitioner] may not simply claim the agency failed to present an adequate range of alternatives and then sit back and force the agency to prove it wrong." *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199.) Here, Intervenor "make[s] no attempt to show how such an alternative would have met most of the goals of the Project, would have been potentially feasible under the circumstances, or would have reduced overall environmental impacts of the Project." (*Ibid.*)

The County properly considered and rejected potential alternatives.

VII. Recirculation of the EIR.

Recirculation of an EIR is not required when the changes merely clarify, amplify

[5] Intervenor's position is that Alternative C was found infeasible based on the applicant's expectation of reduced revenues. (Intervenor People of the State of California's Opening Brief filed June 15, 2021 (People's Opening Brief), p. 35:4-6.) This interpretation is not supported by the language of the EIR as a whole. It is the economic benefits to the County, not the applicant, that was the driving force behind the County rejecting Alternative C.

[6] People's Opening Brief, pp. 32:22-33:1.

or make insignificant modifications to an EIR. (*Laurel Heights Improvement Association v. Regents of University of California* (*Laurel Heights II*) (1993) 6 Cal.4th 1112, 1130.) The County found the Errata contained minor edits and clarifications which did not constitute significant new information that deprived the public of a meaningful opportunity to comment upon a substantial impact resulting from the Project or a mitigation measure. (AR 7193.) This determination is required to be upheld if supported by substantial evidence. (*Laurel Heights II, supra,* at p. 1135.) Reasonable doubts are to be resolved in favor of the agency's decision. (*Ibid.*)

The EIR's analysis of the Project's impacts on wildfire risk was extensive. The County's finding that the EIR did not include any information that showed a substantial increase in the severity of the wildfire related impacts is supported by substantial evidence.

The Errata did add an additional mitigation measure regarding the purchase of GHG carbon credits. Recirculation is required only if a new mitigation measure is not adopted. (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330.) The mitigation measure in the Errata was adopted.

Based on the County's findings that the Errata contained only clarifications, amplifications and insignificant modifications to the EIR, recirculation of the EIR was not required.

VIII. Other Issues Raised by Petitioners Not Specifically Discussed.

Due to time constraints, the Court has not discussed each and every issue raised by Petitioners. The Court focused on those issues which it considered to be of primary importance in helping the parties to understand the reasons for the Court's ruling. As to

all other issues raised by Petitioners not specifically discussed herein, the Court has determined all findings made by the County were supported by substantial evidence and the County otherwise substantially complied with the requirements of CEQA.

IX. Timeliness of Intervenor's Claims.

A subsequent pleading may relate back to the original pleading for statute of limitation purposes if it (1) rests on the same general facts as the original; (2) involves the same injury; and (3) refers to the same instrumentality. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383. 408.)

The timeliness of Intervenor's petition is moot as to all claims denied by the Court. As discussed above, the Court has concluded the EIR was deficient because the County's findings regarding community emergency evacuation routes are not supported by substantial evidence. This issue was addressed by causes of action in the Petitions filed by CBD and CNPS. Therefore, the claim related to this issue was timely filed pursuant to the relation-back doctrine.

X. Conclusion.

Because the County's findings regarding community emergency evacuation routes are not supported by substantial evidence, the EIR does not comply with CEQA. Had the findings regarding emergency evacuation routes been supported by substantial evidence, the Court would have concluded the EIR complied with CEQA and therefore denied each of the Petitions.

Order

The Court orders as follows:

1. Respondent's and Real Party in Interest's Joint Motion to Augment the

Administrative Record filed August 17, 2021, is granted. Exhibits A and B attached to the Declaration of Charmaine G. Yu in Support of Respondent's and Real Party in Interest's Joint Motion to Augment the Administrative Record are hereby added to the administrative record in this action.[7]

2. The People's Request for Judicial Notice in Support of Opening Brief filed June 15, 2021, is granted. The Court takes judicial notice of Exhibits 1 and 2 attached to the Declaration of Andrew R. Contreiras.

3. The Objection to the Declaration of Van Bustic Regarding E-Mail Communication in the Record filed October 15, 2021, is sustained.

4. A judgment will issue granting a peremptory writ of mandate ordering Respondent County of Lake to set aside its (a) certification of the final EIR, (b) findings relating to impacts to an adopted emergency evacuation plan, and (c) approval of the Project.

5. Intervenor/Petitioner People of the State of California is directed to prepare a form of judgment and peremptory writ of mandate.

6. The issues of costs and attorney fees are reserved.

Date: January 4, 2022

J. David Markham
Judge of the Superior Court

[7] Prior to the trial in this matter, a number of motions were filed by the parties. The Court ruled on those motions prior to commencement of the trial. At the request of counsel, orders relating to those motions are contained herein.

Center for Biological Diversity vs. County of Lake et al CV421152

PROOF OF SERVICE

I am a Deputy Clerk of the Superior Court of California, County of Lake. I am over the age of 18 and not a party to the action to which this document is attached.

January 4, 2022- On this date, I mailed a true copy of the attached document to the person(s) whose name(s) are set forth below by placing said copy in a sealed envelope addressed to each of said person(s), at the address set forth below, which envelope was then sealed and postage fully prepaid, and deposited in the mail at Lakeport, California to be delivered by United States mail.

Peter Broderick-Center for Biological Diviersity
1212 Broadway, Ste 800
Oakland, CA 94612

Nicole Johnson & Anita Grant – by courhouse mailbox

Arthur F Coon – Miller Starr Regalia
1331 N California Blvd, 5th Fl
Walnut Creek, CA 94596

Andrew Contreiras/Attorney General of Calif
PO Box 85266
San Diego, CA 92101

Jonathan R. Bass/COBLENTZ PATCH DUFFY & BASS
One Montgomery St, STE 3000
San Francisco, CA 94104-5500

Rebecca Davis- Lozeau/Drury LLP
1939 Harrison St, Ste 150
Oakland, CA 94612

Krista D. LeVier, Court Clerk

Dated: January 4, 2022

By:_____
Yolanda Blum
Deputy Court Clerk