MARY C. WICKHAM, COUNTY COUNSEL
STARR COLEMAN, Acting Assistant County Counsel
LISA C. JACOBS, Deputy County Counsel
(SBN# 150040)
648 Kenneth Hahn Hall of Administration
500 West Temple Street, Room 648
Los Angeles, CA 90012
Telephone: 213-974-1817
Facsimile: 213-613-4751
Email: ljacobs@counsel.lacounty.gov

Attorneys for Respondents,
COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; PLANNING COMMISSION OF THE COUNTY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF REGIONAL PLANNING

ARMBRUSTER GOLDSMITH & DELVAC LLP
DAMON P. MAMALAKIS, SBN# 184489
12100 Wilshire Blvd., Suite 1600
Los Angeles, CA 90025
Telephone: 310-209-8800
Facsimile: 310-209-8801
Email: damon@agd-landuse.com

Attorneys for Real Parties in Interest,
NORTHLAKE ASSOCIATES, LLC; NLDP ASSOCIATES, LLC; CASTAIC DEVELOPMENT PARTNERS, LLC; WOODRIDGE CAPITAL PARTNERS, LLC; MICHAEL ROSENFELD

FEE EXEMPT – GOV. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CENTER FOR BIOLOGICAL DIVERSITY and ENDANGERED HABITATS LEAGUE,

Petitioners,

v.

COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; PLANNING COMMISSION OF THE COUNTY OF LOS ANGELES; LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING; and DOES 1 through 20, inclusive,

Respondents.

CASE NO.: 19STCP01610

RESPONDENTS' AND REAL PARTIES IN INTEREST'S JOINT OPPOSITION TRIAL BRIEF

Dept.: 15

Judge: Hon. Richard L. Fruin

Action Filed: May 1, 2019

Trial: July 10, 2020
Time: 1:30 PM

NORTHLAKE ASSOCIATES, LLC; NLDP ASSOCIATES, LLC; CASTAIC DEVELOPMENT PARTNERS, LLC; WOODRIDGE CAPITAL PARTNERS, LLC; MICHAEL ROSENFELD, an individual; and DOES 21 through 40, inclusive,

Real Parties in Interest.

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I. INTRODUCTION

Petitioners challenge the County of Los Angeles' (County) approval of a revised long-term specific plan that will provide it and its residents with many benefits. The NorthLake Specific Plan Project (Project) will provide a mix of new uses (provision of 3,150 dwelling units, including 315 affordable units, retail and commercial development, and parks, trails and open space), use "green" building techniques to conserve energy and water, including solar panels, and set aside approximately 300 acres of open space. The County engaged in a new extensive, multi-year review of the Project under CEQA, after an extensive original project approval process ending in 1992, resulting in an extensive supplemental environmental impact report (SEIR).

The County's decision to approve this much-needed predominately housing Project and certify the SEIR is entitled to great deference. Petitioners make many invalid assertions. Petitioners ignore this Court's appropriate role in reviewing the County's decision. Here, the Court can only upset the County's decision if there is no substantial evidence that supports the County's decision. If there is evidence both ways, or a "battle of the experts," or even if the Court thinks the opponents may have better evidence, the County prevails. Petitioners gloss over this very deferential standard of review for an obvious reason – **it is impossible to examine the County's extensive administrative record here and conclude that there is no substantial evidence anywhere in it to support the County's decision**.

Specifically, Petitioners argue that the County erred by: (1) incorrectly assessing and mitigating the Project's potential impacts on biology, air quality, aesthetic, and hazards (wildfires); (2) improperly rejecting the Creek Avoidance screening-level alternative; and (3) failing to recirculate the SEIR. Petitioners are wrong on all counts.

First, there is no merit to Petitioners' argument that the SEIR improperly assessed certain impacts or adopted inappropriate mitigation measures. As to biological impacts, the record reveals (1) the County fully assessed potential impacts to wildlife crossings, including the Sierra Madre-Castaic Connection (SMC Connection); (2) mountain lions are not using Project site crossings as confirmed by expert studies, including a wildlife camera study; (3) no mitigation was required regarding either impacts to wildlife crossings or mountain lions, as the County determined impacts

would be less than significant, and those determinations were supported by substantial evidence; (4) the County properly evaluated impacts to the Western Spadefoot Toad (WST) and adopted appropriate and feasible mitigation; and (5) the County adopted appropriate and feasible mitigation for rare plant impacts.

As to air quality impacts, Petitioners wrongly accuse the County of failing to adequately analyze health impacts to residences located within 500 feet of a freeway. At the time of the publication of the Draft SEIR (DSEIR), there were no residences within 500 feet of the Interstate 5 freeway (I-5); therefore, such analysis was not necessary. However, after release of the Final SEIR (FSEIR), some residences were relocated to a portion of the Project Site within 500 feet of the I-5 to accommodate affordable housing. Accordingly, the County conducted a detailed health risk assessment (HRA), which demonstrated that impacts would be less than significant.

As to aesthetics, the record reveals aesthetic impacts were properly assessed and that impacts to scenic vistas and trails would be less than significant. Petitioners ignore substantial evidence, including a View Simulation Analysis that supports the County's determinations.

As to wildfires, the record reveals the County appropriately addressed wildfire impacts and adopted adequate and feasible mitigation. Petitioners failed to exhaust their allegation regarding human-ignition impacts and there is no applicable threshold.

Second, the County appropriately rejected the Creek Avoidance screening alternative, as it failed to meet basic Project objectives, would not reduce the Project's significant and unavoidable impacts, could cause additional significant impacts, and was rejected by the Army Corps.

Third, the County correctly determined that recirculation of the SEIR was not required regarding minor Project changes to allow for the relocation and removal of certain Project uses based on a detailed Errata. Petitioners' claims regarding the County Wildfire Motion similarly do not give rise to recirculation under CEQA Guidelines (Guidelines) Section 15088.5. Petitioners ignore Guidelines Section 15088.5 and the County's no recirculation findings.

Petitioners' repeated baseless attacks on the sufficiency of the SEIR and the conclusions reached in it ignore the rule that "an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal."

(*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) **Petitioners cannot prevail simply by citing evidence that purportedly supports their position and ignoring all of the County's substantial evidence.** Failing to fairly confront the issues they wish to litigate and failing to show any abuse of discretion by the County, **Petitioners are entitled to no relief**.

II. STATEMENT OF FACTS

A. The Project

Original 1992 Project Approval. In 1992, the County adopted the NorthLake Specific Plan (NLSP), which includes the NorthLake Design Guidelines. (Original Project; AR 545.) The NLSP established land uses and development standards for an approximate 1,330-acre area of undeveloped land east of I-5, west of Castaic Lake, and north of the community of Castaic in unincorporated Los Angeles County (Project Site). (*Ibid*.) As adopted, the NLSP proposed the development of 3,623 dwelling units, as well as 13.2 acres of commercial uses, 50.1 acres of industrial uses, and supporting infrastructure and public services uses, including schools, parks, a potential library site, a potential fire station site, and an 18-hole golf course. (*Ibid*.) In conjunction with the approval of the NLSP, the County prepared and certified the NLSP EIR. (*Ibid*.)

Revised Northlake Project. The project analyzed in the SEIR (Project) would implement the previously adopted NLSP, but with a reduction of the area and intensity of physical development and an increase in open space as compared to the NLSP. (AR 546.) Specifically, the Project involves the phased development of up to 3,150 residential units, 9.2 acres of commercial uses, 13.9 acres of industrial uses, 799.5 acres of parks and open space, a 22.9-acre school site and a 1.4-acre pad for a future fire station. (*Ibid*.) As compared to the approved NLSP, the Project represents reductions of 473 residential units, 4 acres of commercial uses, 36.4 acres of industrial uses, elimination of the golf course, and increases of open space, trails, and parks. (*Ibid*.)

Subsequent to the publication of the FSEIR, the Regional Planning Commission (RPC) requested that the applicant (Real Parties) include an affordable housing component in the Project. (AR 551.) Based on this request, the Applicant made minor revisions to the Project to include an affordable component. (*Ibid*.) Specifically, the Applicant eliminated 108,283 square feet (SF) of industrial use and 13,197 SF of commercial uses and reallocated 323 units from the Phase 2 area

of the Project to the Phase 1 area. (*Ibid*.) In addition, a total of 315 units will be deed restricted as affordable; 95 of those will be designated as senior-living affordable units. (*Ibid*.)

B. The Certified SEIR

The County conducted an Initial Study and determined that an SEIR would be the appropriate environmental document to analyze the Project's potential impacts. (AR 548.) A Notice of Preparation (NOP) and the Initial Study were released for 30-day review on March 24, 2015. (*Ibid*.) The County held a scoping meeting on April 8, 2015. (*Ibid*.)

The County released the DSEIR on May 2, 2017, for 45 days for public comment. (AR 549.) The County received 22 comment letters. (AR 550.) The County released the FSEIR on January 2018 (AR 7362), and subsequently released three Errata. (AR 551-2.) The SEIR, Errata, technical studies and all late responses to comments were extensively reviewed by the County and reflect its independent judgment. (AR 550-1; 757; 10835.)

The SEIR determined that Project impacts will be less than significant except for potential unavoidable significant impacts to air quality, noise, and traffic. (AR 706; 722; 736; 753.)

C. Summary of the Administrative Process

On April 18, 2018, RPC adopted entitlement and CEQA findings, certified the SEIR, and granted the requested approvals. (AR 552.) Three appeals were filed. (*Ibid*.) On September 25, 2018, the County Board of Supervisors (Board) held a public hearing on the Project and the appeals and voted to reject the appeals, uphold the RPC approvals, and certify the SEIR. (AR 553.) On April 2, 2019, the Board adopted the entitlement and CEQA findings (Findings) and Project conditions (Project Conditions). (AR 448-760; 859-956.) A Notice of Determination (NOD) was filed and posted on April 4, 2019. (AR 1-5.)

III. STANDARD OF REVIEW

The County's decision is "presumed correct," and Petitioners' burden is to establish an abuse of discretion. (*San Franciscans Upholding the Downtown Plan v. City & Cnty. of San Francisco* (2002) 102 Cal.App.4th 656, 674.) An abuse of discretion is only "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." (Public Resources Code (Pub. Res. Code) § 21168.5; *Ebbetts Pass Forest*

Watch v. Cal. Dept. of Forestry & Fire Prot. (2008) 43 Cal.4th 936, 944.)

The California Supreme Court recently described the standard of review to challenge to the adequacy of an EIR. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502, 511.) First, it stated *de novo* review applies when determining if an agency followed correct procedures under CEQA. (*Id*. at 512.) It then stated that greater deference is accorded to factual findings under the substantial evidence standard of review. (*Ibid*.) The Court further stated that courts '"may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument."' (*Ibid*.)

The Court cautioned that whether issues are procedural or factual "is not always so clear" (*Sierra Club,* 6 Cal.5th at 513). When the question before the court is whether an EIR's discussion of a potentially significant impact is adequate under CEQA, "[t]he ultimate inquiry . . . is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and consider meaningfully the issues raised by the proposed project.'" (*Id*. at 516.) That "ultimate inquiry" is generally a mixed question of law and fact subject to *de novo* review, "but to the extent factual questions (such as the agency's decision which methodologies to employ for analyzing an environmental effect) predominate, a substantial evidence standard of review will apply." (*South of Market Cmty. Action Network v. City and Cnty. of San Francisco* (2019) 33 Cal.App.5th 321, 331 (*SoMa*).)

IV. ARGUMENT – THE COUNTY FULLY COMPLIED WITH CEQA

A. Petitioners' Claims Of Inadequacies in Biological Impact Analyses are Meritless

Petitioners contend that the EIR inadequately assessed biology impacts. Yet, Petitioners ignore the County's substantial evidence and analysis and merely disagree with the County's reasoned determinations. Disagreement does not overcome substantial evidence. The SEIR uses correct significance thresholds, its discussion of biological impacts is adequate on its face, the adopted mitigation measures are proper, and the Findings are supported by substantial evidence.

1. Petitioners' Allegations Regarding Impacts to Wildlife Undercrossings and Mountain Lions Fail

Petitioners challenge the County's less than significant determination regarding Threshold 5.2-4: "Would the project interfere substantially with the movement of any . . . wildlife species . . . ?" (AR 1969-70), claiming the analysis is misleading, incomplete and inadequate, the determination should have been significant, and mitigation should have been adopted.[1] Not so.

Petitioners' wrongly assert the standard of review is *de novo*. (OB at 12.) The Supreme Court in *Sierra Club* clearly stated that *de novo* review applies when determining whether an agency followed correct procedures under CEQA. (6 Cal.5th at 512.) Since Petitioners challenge the County's determination and its factual findings, the substantial evidence standard of review applies. (*Ibid*.) And when the question before the court is whether an EIR's discussion of a potentially significant impact is adequate under CEQA is based upon factual questions, as is the case here, the substantial evidence standard still applies. (*SoMa,* 33 Cal.App.5th at 331.)

a. The SEIR Wildlife Movement Analysis Is Adequate and Supported By Substantial Evidence.

The SEIR contains a detailed analysis supported by technical appendices that demonstrates there will be a less than significant impact to wildlife movement. The DSEIR discusses the existing state of wildlife movement on the Project Site and the Project area concluding that "Under existing conditions, the Project site itself does not represent an important component of the regional movement of the area." (AR 1918-20[2].) This conclusion is supported by the Biological Technical Assessment Report (BTA), an appendix to the DSEIR. (AR 3641-43.) The potential impacts of the Project on baseline conditions were assessed under the Significance Threshold 5.2-4 ("Would the project interfere substantially with the movement of any . . . wildlife species . . .?"), and the County concluded "Project implementation would result in adverse but less than significant impacts on regional wildlife movement." (AR 1969-70.) In response to various comments, an additional wildlife undercrossing field assessment was conducted that further supported the SDEIR determination and FSEIR responses. (AR 7847-59 [Assessment]; 7409-11[response to comment

[1] Petitioners focus on one of the mandatory findings of significance under Guidelines Section 15065(a)(1) (OB at 11); yet that is a threshold that, if met, requires the preparation of an EIR – an EIR was prepared here. Threshold 5.2-4 is consistent with the threshold in Guidelines Appendix G, Biology Resources IV.d.

[2] SDEIR Page 5.2-14 was revised to incorporate additional BTA facts. (AR 7704-5.)

(RTC) 2.3]; 7641-2 [RTC 20.15]; 7703-5 [SDEIR updates].) As additional comments were received regarding wildlife movement, all were addressed and responded to. (AR 10839 [RTC SMMC9]; 10115-8 [RTC PH1.16]; 10212-5 [RTC 20.15].) Additionally, the Peer Review Expert Biologist, Tony Bomkamp, reviewed the information, analysis and wildlife movement determination and concurred with it all after conducting an additional movement analysis.[3] (AR 16001-10, 16043.) Based on all of the analysis and substantial record evidence, the Board adopted Findings and Project Conditions as to wildlife movement. (AR 586-8 [Findings]; 876-7 [Condition 45 & 51].) The County's impact analysis and findings are owed deference. (*Save Panoche Valley v. San Benito Cnty.* (2013) 217 Cal.App.4th 503, 527 (*Save Panoche*) [upholding biological impact analysis]; *Gray v. Cnty. of Madera* (2008) 167 Cal.App.4th 1099, 1124-5 [same]; *Save Round Valley Alliance v. Cnty. of Inyo* (2007) 157 Cal.App.4th 1437, 1468 [same]; *Environmental Council of Sac'to v. City of Sac'to* (2006) 142 Cal.App.4th 1018, 1041 [same]; *Ass'n. of Irritated Residents v. Cnty. of Madera* (2003) 107 Cal.App.4th 1383, 1398 [same].)[4]

Petitioners allege the County violated CEQA by failing to disclose or describe the Project's potential impacts on the SMC Connection and, therefore, to the Central Coast South mountain lions (mountain lions). Yet, the DSEIR specifically addressed the SMC Connection, as did the BTA. (AR 1918-20; 3641-43.) The DSEIR provides: "As discussed in the Biological Technical Report, results of regional linkage studies identify the importance of this east-west connection." (AR 1919.) However, given barriers on the Project Site, like Castaic Lake, and the presence of crossings north of the Site, the DSEIR concludes: "the Project site itself does not represent an important component of the regional movement of the area." (AR 1919-20.) The BTA discusses the SMC Connection by name as part of the linkage studies: "Regional movement along the east-west aligned Transverse Range, specifically the Sierra-Madre Castaic connection north of the site, has also been restricted

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[3] Expert Bomkamp was retained to conduct "an independent peer review of the biological resources section for the . . . FSEIR to determine whether the FSEIR accurately identifies significant impacts . . . and where impacts are determined to be significant, whether the proposed mitigation is sufficient to reduce significant impacts to less than significant." (AR 15999; 572.)

[4] Petitioners claim the SEIR crossing analysis is inadequate because the County failed to properly study the issue as directed by CDFW, citing *San Joaquin Raptor Rescue Center v. Cnty. of Merced* (2007) 149 Cal.App.4th 645. (OB at 16.) Yet, as demonstrated above, the issue was comprehensively studied, and Petitioners fail to identify any missing analysis while ignoring much of the County's evidence.

through the study area as a result of the construction of I-5. Regional landscape linkage studies identify the importance of this Sierra Madre-Castaic connection in linking together a mosaic of wildlands rich in biodiversity throughout southern California . . .” (AR 3643.) It also concludes “the Project site itself does not represent an important component of the regional movement of the area.” (*Ibid*.) In response to public comment, the DSEIR wildlife movement analysis was updated with additional information from the BTA, noting that the Project represents an “extremely small percentage” of the approximately 17-mile width of the Linkage Design for the SMC Connection within the area. (AR 7703-5.) The lack of impact on the SMC Connection was detailed in the various responses to comments. (AR 7381 [RTC 1.9]; 7409-11 [RTC 2.3]; 7641-42 [RTC 20.15]; 10839 [RTC SMMC8].)

The Peer Review Expert Biologist specifically reviewed the information regarding the SMC Connection, including the SEIR and associated comments and responses and agreed with the SEIR’s assessment and conclusion:

> [T]he assertions … that the project would have significant impacts on the [SMC] Connection is without any warrant and is completely lacking any support based on the various Figures in the *South Coast Missing Linkages Project: A Linkage Design for the Sierra Madre-Castaic Connection* report. (AR 16005.)

Petitioners allege that “[w]ildlife movement would be further degraded because the Project would destroy several perennial sources of water that have historically been available to wildlife.” (OB at 12.) This is incorrect. As stated in the FSEIR, “Perennial water sources impacted by the Project are extremely limited and consists of seeps which are typically unable to pool water for much of the year because the low flow and the constructed cattle pond. Although historically available to wildlife, these features would not be expected to be a significant source of water for regional wildlife populations.” (AR 7410 [RTC 2.3].) The Peer Review Expert Biologist agreed with this conclusion. (AR 16005.)

Finally, Petitioners allege there are “other serious omissions in the EIR’s analysis of the Project’s impacts on the [SMC] Connection. . . .” (OB at 15.) First, Petitioners claim the SEIR did not account for how light, noise, and human activities could interfere with wildlife movement. The SEIR specifically addressed these issues as part of the biology impact analysis, as did the Findings,

and mitigation measures were adopted to address these exact issues. (AR 1947-8 [DSEIR]; 3692-3 [BTA]; 581-2 [Findings]; 523-4 [MM 5.2-16 (noise); MM 5.2-17 (light); MM 5.2.18 (human activity)]; *see also* 7592; 10832; 10836.) Second, Petitioners claim the "EIR ignores the importance of corridor redundancy." (OB at 15.) Yet, the SEIR evaluated all of the off-site crossings, most significantly Undercrossings 1-3, and determined that impacts would be less than significant. (AR 7847-59 [Wildlife Crossing Memo].) Petitioners fail to cite to any substantial evidence to the contrary or a specific significant threshold regarding crossing redundancy. (*Laurel Heights Improvement Ass'n. v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 415 (*Laurel Heights I*) ["That further study…might be helpful does not make it necessary."].)

b. Mountain Lions Will Not Be Impacted By The Project.

Petitioners claim the SEIR contains no analysis of how the Project will impact mountain lions. (OB at 15). Petitioners focus on the South Coast Missing Linkages Project, a Linkage Design for the SMC Connection (Linkages Project), claiming it demonstrates the Project will impact the SMC Connection and mountain lions. The Linkages Project belies Petitioners' allegations.

The Linkages Project was a study that documented and evaluated the movement of specific wildlife species "that are sensitive to habitat loss and fragmentation" in the South Coast Ecoregion of Southern California. (AR 30100) The Linkages Project "identif[ied] potential routes between existing protected areas" for which "landscape permeability analyses" were conducted to model the relative cost for a species to move between protected core habitat or population areas referred to as the "least-cost corridor" (LCP). (*Ibid*.) The Project area was identified as potentially suitable for wildlife movement for six of the 12 focal species, including mountain lions. (AR 16003.) Linkages Project Figure 10 depicts the LCP for mountain lions. (AR 30125.) As evaluated by the Peer Review Expert Biologist, Figure 10 shows the nearest low permeability area approximately two miles north of the Project Site "and does not overlap with the project site. Areas of 'high permeability' for the LCP for the mountain lion are . . . approximately 12 miles to the north of the project site." (AR 16004.) The expert concluded "[b]ased on Figures 8, 9, and 12, the project would not have significant impacts on mountain lion movement." (*Ibid*.) Thus, the Project exhibits no potential for

affecting the SMC Connection as to mountain lions.[5]

In addition to the lack of impact to the SMC Connection as to mountain lions (or any other focal species), there is no evidence that mountain lions are using the off-site undercrossings adjacent to or crossing the Project Site. A three-month wildlife movement camera study was conducted by the Peer Review Expert Biologist. Twelve camera stations were selected around the various undercrossing locations, as well as around Grasshopper Creek. (AR 16006-7.) "Mountain lions were not recorded at any of the Wildlife Camera Stations and were not otherwise detected (*e.g.*, by sign)." (AR 16007.) As a result, the Peer Review Expert Biologist concluded:

> The results of the camera study, which did not detect mountain lions in Grasshopper Creek provide additional evidence that Grasshopper Creek is not an important north-south movement corridor for mountain lions as already reported by BonTerra in the SDEIR and in FSEIR Appendix D. (*Ibid*.)

This is exactly the evidence that Petitioners claim is missing when citing to comments about the need to conduct a wildlife tracking study. (OB at 12.) The County had more than ample substantial evidence to conclude that the development of the Project Site would not impact mountain lion movement.

c. The Project Does Not Significantly Impact Off-Site Undercrossings.

Petitioners contend that off-site Undercrossings 1-3 will be impacted by the Project, and the SEIR's determination to the contrary is not supported by substantial evidence.

As demonstrated above, wildlife movement, including via the off-site undercrossings, was subject to significant evaluation, including in the SEIR and BTA. (AR 1918-20; 3641-3; 7381; 7409-11; 7641-2; 7703-5; 7847-59; 10115-6; AR]. Further, the Peer Review Expert Biologist personally observed the undercrossings and confirmed the SDEIR's less than significant determination. (AR 16001-2.) The County adopted detailed Findings (AR 586-7.) All of this constitutes substantial evidence supporting the County's less than significant impact determination. (Guidelines § 15384(b).) Petitioners cite no contrary evidence. Indeed, rather than address the County's more than substantial evidence or present substantial evidence of their own, Petitioners invoke comments from the County biologist on draft responses to comments. (OB at 14.) All of the

[5] There would be no significant impacts to the remaining five focal species. (AR 16004-6.)

comments from the County biologist were addressed in the FSEIR, the Wildlife Crossing Memo and expert studies, including a wildlife camera study. (AR 7409-11; 7847-59; 16001-10).

d. No Mitigation Measures Were Necessary Or Required to Address Impacts To The SMC Connection Or Mountain Lions.

Petitioners put the proverbial cart before the horse in arguing that the County failed to adopt mitigation that would lessen significant impacts to the SMC Connection and mountain lions. Yet, as demonstrated above, there will be no significant impacts to either.

Fundamental to CEQA is the principle that only significant impacts are required to be mitigated; "Mitigation measures are not required for effects which are not found to be significant." (Guidelines § 15126.4(a)(3).) Here, the County determined, based on substantial evidence, that there was no significant impact to the SMC Connection, wildlife movement or mountain lions. As such, mitigation was not required.

That said, given all of the public comment on the connectivity issue, Real Parties volunteered to implement a Wildlife Connectivity Plan and even agreed to have it imposed as a Project Condition. (AR 10164-65 [Staff Report]; 10170; 10439 [draft condition 48]; 10469 [Plan]; 877 [Condition 51].) Petitioners reference an email from a County staffer regarding the Wildlife Connectivity Plan and not adding it to the SEIR. (OB at 18.) That is correct; to do so would have been inappropriate, as the Wildlife Connectivity Plan was a volunteered condition, not a mitigation measure, as there was no significant impact to be mitigated.[6] The fact remains that the Project is conditioned to "ensure that additional and/or enhanced wildlife crossings and connections are provided within/through the Project and Northlake development, as depicted on the Exhibit marked "wildlife connectivity plan."" (AR 877.)

2. Western Spadefoot Toad (WST) Impacts Were Properly Assessed And Feasible Mitigation Adopted

Petitioners allege the EIR failed to appropriately describe WST baseline conditions, and WST

[6] Petitioners complain that the Wildlife Connectivity Plan was not attached to the approved Conditions of Approval. (OB at 18.) Condition 51 makes clear reference to the plan and the plan was submitted to the RPC on April 5, 2018; that exhibit is incorporated by reference in Condition 51. (AR 10164 [Staff report]; 10469 [Exhibit K – Wildlife Connectivity Plan].)

mitigation is inadequate. Neither allegation has merit. Tellingly, Petitioners do not contest the determination that, with mitigation, the impact is reduced to less than significant. (AR 575.)

a. The SEIR Accurately Described WST Baseline Conditions.

Petitioners state the SEIR violated CEQA "because it failed to describe or even disclose [WST] habitat onsite." (OB at 18.) Yet, Petitioners admit that the EIR includes the results of 2014/2015 WST surveys, but claim the EIR omits the results of the 2004-05 surveys. (OB at 19.)

All WST survey/observation results were included in the DSEIR. DSEIR Table 5.2-4 (Special Status Wildlife Species Known To Occur In The Project Region) states that WST were "observed during the 2014 focused surveys and incidentally during other surveys in 2005 and 2015; suitable habitat."[7] (AR 1930 [Original Table]; 7706 [Updated Table].) The DSEIR also states "three special status amphibians were identified with potential to occur on the Project site: arroyo toad, California red-legged frog, and western spadefoot." (AR 1933.) Attachment D to the BTA is specific to the arroyo toad and WST. (AR 3884-911.) The BTA discloses that surveys show the presence of WST: "[WST] was observed incidentally during previous amphibian surveys, and in the focused surveys conducted for the species in 2014 (BonTerra 2000b, 2014c). The cattle pond, ephemeral pond, and other areas within the study area that pond water provide suitable breeding habitat for the [WST]." (AR 3689; see also 3639; 3655; 3665.) Attachment D presents the 2014 Results of the Focused Surveys for the WST and the Arroyo Toad. (AR 3893-911.) The 2014 survey indicates that WST were observed in Ponds 1 and 2. (AR 3893, 3897-8; 3903-4; 7861.) Attachment C to the BTA are the Fairy Shrimp (FS) Reports from 2006 (for years 2004 and 2005) and 2014. Appendix A to the 2006 FS Report provides a detailed summary of the field data – pond by pond, visit by visit. (AR 3833-5.) WST were incidentally observed in Vernal Pool (VP) 1 and VP 2 and Stock Pond (SP) 1. (AR 3833; 3835; *see also* 3828 [Exhibit 3 – pond locations].) The 2014 FS Report notes incidental observations of WST in Ponds 7 and 8.[8] (AR 3852-5; 3868-71.) Thus, counter to Petitioners'

[7] Petitioners allege that the WST baseline was "underreported" because the 2014 surveys took place during an intense drought. (OB at 19.) Yet, the baseline also took into account the 2004-2005 surveys which were conducted during an extremely wet year; there was no underreporting of the baseline. (AR 3820 ["The precipitation from the winter … was well above average."].)

[8] Pond 7 is SP 1 and Pond 8 is VP 1. (Compare AR 3828 [2006 FS pond locations] with AR 3848 & 7861 [2014 FS pond locations].) 2014 WST Survey Pond 1 is SP 1 (2006 FS) and Pond 7 (2014

allegation that the SEIR "improperly excluded previously observed [WST] from its impact assessment" (OB at 19), the DSEIR includes all WST survey results. Based on all of this data, the DSEIR concludes:

> Since this Grasshopper Canyon population is one of the few known populations in the region and Project impacts would result in the loss of these populations . . . impacts on this species would be considered significant . . . Implementation of MM 5.2-9 which requires a [WST] relocation program, would reduce this impact to a less than significant level through translocation of individuals to suitable habitat. This measure would result in substantial avoidance of direct impacts to the [WST] and as a result the [WST] is expected to persist in the region following project implementation. (AR 1943.)

Finally, Petitioners claim the "CDFW criticized the EIR's inconsistent description and representation of [WST] survey results, using different numbering systems" among other complaints. (OB at 19.) The FSEIR contains a detailed response to the CDFW comment that, among other things, clarified the alleged inconsistencies and included a comprehensive Biological Resources exhibit. (AR 7411-13; 7861.) Specifically, as to numbering systems, there are three survey events at issue that were conducted over 10 years (2004, 2005 and 2014) for different species (FS and WST); any inconsistency was unintentional, and CEQA does not require perfection. (AR 7411-3; Guidelines § 15151; see *Rio Vista Farm Bureau v. Cnty. of Solano* (1992) 5 Cal.App.4th 351, 368 ["Technical perfection is not required."].) Moreover, Footnote # 8 above shows that while different numbering systems were used, the ponds were the same. (*See also* AR 16010 [confirming consistency of WST observations].) And pond numbering is irrelevant as the WST mitigation measure (MM 5.2-9) and the WST Relocation Program "calls for the creation of pools that are no smaller in size and of equal or better quality than the existing pond habitat that will be lost to development" for successful translocation. (AR 7834.)

b. The WST Mitigation Measure 5.2-9 Is Adequate Under CEQA.

Petitioners claim the WST Mitigation Measure is inadequate largely due their meritless claims regarding an inaccurate baseline, which were addressed immediately above.

The County adopted a robust WST Mitigation Measure designed by its expert biologist that

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FS) and 2014 WST Survey Pond 2 is VP 1 (2006 FS) and Pond 8 (2014 FS). (Compare AR 3903-4 [2014 WST] with AR 3828 [2006 FS] and AR 3848 & 7861 [2014 FS].)

begins with a preconstruction focused survey "within the prior appropriate season," and includes development of a detailed WST relocation program and the capture and relocation of WST to a site of "similar (or better) quality as the habitat within the project impact area," whether it exists or needs to be created. (AR 520.) The FSEIR contains an extensive Draft WST Relocation Program also designed by the EIR's expert biologist. (AR 7831-46.) Both the mitigation measure and the draft relocation program were reviewed by the Peer Review Expert Biologist, who concluded: "there is a high potential for success for the establishment of mitigation pools necessary to reduce impacts to this species to less than significant as determined by the FSEIR. As such, mitigation is appropriate and feasible." (AR 16011; see also AR 8385-8417 [Feasibility Analysis]; 10831.) The County was entitled to adopt the recommendations of its experts. (*Ass'n. of Irritated Residents*, 107 Cal.App.4th at 1397 [agency has discretion to give more weight to one expert over another]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 412; Guidelines § 15151.)

Petitioners alleged that the draft WST Relocation Plan is inadequate "because there is no evidence in the record showing such a plan will be effective." (OB at 20.) Yet, the Plan was "developed under and is consistent with the operational guidelines for improving the ecological success of artificially created wetlands intended as mitigation for wetland losses . . . and conforms to applicable principles of ethical use of plant and animal salvage in ecological restoration projects," citing to numerous studies throughout. (AR 7833, 7844-46.) Moreover, the Peer Review Expert Biologist, who approved of the Plan, stated "It is important to note that as a biologist at GLA, I have been involved in the highly successful establishment of seasonal pools for [WST] . . . which remain occupied 13 years after establishment." (AR 16011.)[9] Thus, the record contains

[9] Petitioners' citations to the record do not undermine the County's substantial evidence demonstrating the feasibility of the WST mitigation and could not in any event, as Petitioners bear the burden of proving that no substantial evidence in the Administrative Record supports the County's actions. (*South Cnty. Citizens for Smart Growth v. Cnty. of Nevada* (2013) 221 Cal.App.4th 316, 320 (*South County*).) Specifically, AR 27981 is to Petitioners' April 16, 2018 comment letter on the FSEIR which was responded to (see AR 10829-35 [RTC CBD10 at 10831]); AR 9303 is to Smallwood's February 20, 2018 critique of the WST Relocation Plan, which comments were fully addressed (AR 10200-23 [RTC 20.27 (10218-9)]); AR 10015 is the same April 16, 2018 letter from Petitioners as 27981; and AR 29264-8 is to a 1999 article concerning a San Diego Bay study site about wetland restoration included as a reference in Petitioners' April 16, 2018 letter and provided to the County on a flashdrive; the general issues raised are addressed in the SEIR. (AR 10006-44; 7842 [evidence for the selection of a five-year monitoring period].)

substantial evidence that the WST Mitigation Measure is feasible. (*Save Panoche*, 217 Cal.App.4th at 527 [sufficient evidence supported determination that mitigation measures would reduce impacts to biological resources to less than significant]; *accord Defend the Bay*, 119 Cal.App.4th at 1274-78 [upholding WST mitigation]; *Environmental Council of Sac'to,* 142 Cal.App.4th at 1041.)

Petitioners misapprehend the Relocation Plan, contending that "the Relocation Plan cast further doubt on its effectiveness by stating it will be implemented over just one season, instead of several seasons . . ." (OB at 20.) The Plan provides for implementation for multiple seasons:

> The two existing ephemeral ponds will be impacted during Phase I of the project, following ongoing sampling. Therefore, it is likely that only a single breeding season will be available to attempt the successful relocation of the western spadefoot that breed there. The existing cattle pond will be impacted during Phase II of the project, which is planned for development during Phase II. Capture and relocation of western spadefoot individuals that breed in the cattle pond, and the ephemeral ponds if not yet impacted, <u>will continue each breeding season until they are developed</u> to supplement the initial relocation effort and aid in the establishment of a self-sustaining population. (AR 7839 [Emphasis added].)

Petitioners further allege that the "EIR also fails to adequately demonstrate the feasibility of constructing off-site mitigation ponds that successfully sustain relocated [WST] populations" and question two identified on-site locations. (OB at 21.) The Relocation Plan provides very precise measurements for each of the features that need to be created, as well as details for the design and construction of mitigation pools with references to studies that document successful relocation of amphibian populations and creation of seasonal pools. (AR 7834 [Table 1 – Dimensions]; 7836-9.) All of the on-site and off-site potential mitigation locations were subject to an extensive feasibility analysis, which confirmed that there was more than adequate suitable mitigation land. (AR 8385-416; see also 7818-30 [Conceptual Habitat Mitigation Plan].) And again, the Peer Review Expert Biologist, who has personal long-term success experience in WST relocation and seasonal pool establishment, confirmed "high potential for success for establishment of mitigation pools necessary to reduce impacts to [WST] to less than significant." (AR 16011.) The County was entitled to rely upon its experts, and substantial evidence supports the feasibility of WST mitigation. (*Defend the Bay*, 119 Cal.App.4th at 1274-78 [upholding WST mitigation]; *see also Save Panoche*, 217 Cal.App.4th at 527; *Environmental Council of Sac'to*, 142 Cal.App.4th at 1041; *Ass'n. of Irritated Residents*, 107 Cal.App.4th at 1398.)

Lastly, Petitioners argue the WST Relocation Plan represents impermissibly deferred mitigation because the Plan lacks specific performance criteria. (OB at 21-22.) Not so. First, Petitioner's allegations regarding inadequate biological mitigation measures generally do not withstand scrutiny. All necessary species surveys have been conducted and the results reported within the DSEIR and FSEIR; mitigation measures call for the preparation and approval of habitat, restoration and relocation plans; and draft conceptual habitat, restoration and relocation plans are provided in the FSEIR. (See AR 580-1; 1905-71; 3611-4149; 7751-861.) This proposed approach of future approval of detailed plans is utilized in CEQA, in particular, for biological mitigation. (*See Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 946 [no improper deferral of mitigation where EIR required consultation and preparation of a plan to avoid, relocate or minimize impacts on protected species]: *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 240 [no improper deferral of mitigation in relying upon the future development of biodiversity management plans and hatchery genetic management plans to mitigate impacts].)

As to the issue of success of relocation, the Plan provides definitive criteria in "Section 9.0 Success Criteria." (AR 7843-44.) As to establishment of wetland vegetation and habitat values, evaluation "will be qualitative and based on photo-documentation." (*Id*. at 7843-4.) As to relocation, "Evaluation of the success of the relocation program for the western spadefoot will be quantitative and based on comparisons among the number of larvae and adults relocated and the relative abundance of larvae and adults in subsequent years." (*Ibid.*) This is in addition to specific performance criteria regarding the creation of mitigation pools, pool design, inoculation of created mitigation pools, relocation prescriptions, adaptive management and long-term monitoring criteria. (AR 7834-43.) In fact, the Plan contains the "finite" standard to determine whether the impacts are fully mitigated: "The final three years of monitoring therefore will likely provide the best estimate of population size for comparisons with the baseline number moved, and therefore evaluate relocation program success." (AR 7844.) Thus, the Plan is not improperly deferred mitigation. (*Defend the Bay*, 119 Cal.App.4th ["Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and

possibly incorporated in the mitigation plan. [Citation.]; approving WST mitigation"]; *see Save Panoche*, 217 Cal.App.4th at 524-25 [deferral of surveys and certain mitigation measures until after project approval was permissible; mitigation measures were not "loose or open-ended"]; *Endangered Habitats League, Inc. v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 794 [deferral of mitigation measures was permissible, given firm commitment and standards for mitigation specified in EIR].) County Findings confirm no improper deferred mitigation:

> All necessary species surveys have been conducted and results reported within the Draft and Final SEIR. . . .The plans and the various mitigation measures include objective performance criteria as well [as] general protocols. . . .survey updates in the future are appropriate to confirm site conditions and species status on the Project Site have not changed and to provide the most current information to allow for implementation of mitigation measures. . . . Therefore, the mitigation measures are not inappropriately deferred mitigation. (AR 580-1.)

3. The Rare Plant Mitigation Measures Are Feasible And Adequate

Petitioners allege that the SEIR fails to adequately mitigate impacts on rare plants based on four purported defects in the adopted mitigation. Petitioners are wrong on each issue.

Impacts to rare plants are addressed by Mitigation Measures 5.2-4 (Lilies) and 5.2-5 (Other Rare Plants). (AR 511-13.) Lilies are subject to both translocation and seed collection and planting, each requiring long-term monitoring to achieve success, all of which is set forth in detail in Measure 5.2-4, as well as the Special Status Plant Species Restoration Plan (Restoration Plan). (AR 511-12; 7772-96.) The other rare plants are subject to seed collection, planting, and long-term monitoring as set forth in the Restoration Plan, (AR 513 [Measure 5.2-5]; 7772-96).) Both forms of mitigation – translocation and seed planting and plant development – were appropriately designed and contain specific performance standards which meet the CEQA requirement for a feasible mitigation measure. (AR 511-13 [Measure 5.2-4 & 5.2-5; 7792-94 [Restoration Plan Performance Standards]). These mitigation measures were subject to expert review, assessment, and concurrence both as to the design and feasibility of the measures, and the less than significant impact determination. (AR 16015-18; *see also* 572.)

As to Petitioners' claimed inadequacies, Petitioners wrongly allege that "the EIR fails to provide any evidence that translocation will effectively mitigate the Project's impacts to rare plants." (OB at 23.) Translocation only applies to lilies. (AR 511-3.) As to translocation of lilies,

in addition to the design and recommendation of the EIR's Expert Biologist regarding translocation as a recommended and feasible mitigation measure, the Peer Review Expert Biologist confirmed that the measure can be carried out successfully as he "cross-checked the soils" on the identified parcels where the translocation could occur. (AR 16015-18.) The County was entitled to rely upon the recommendations of its experts. (*Ass'n. of Irritated Residents,* 107 Cal.App.4th at 1397 [an agency may give more weight to one expert than to another]; *Greenebaum*, 153 Cal.App.3d at 412; Guidelines § 15151.)

Moreover, Petitioners submitted no evidence that the translocation plan is infeasible, which is their burden. (*See Laurel Heights I*, 47 Cal.3d 376 at 419-21 [petitioners failed to show that project would not comply with regulatory requirements]; *see also California Oak Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 284-85 [petitioners failed to prove that EIR lacked evidentiary support for the finding that mitigation measures would reduce impacts to a less than significant level].) Indeed, Petitioners needed to discuss the County's evidence and demonstrate why it was lacking, which they failed to do. (*Save Panoche*, 217 Cal.App.4th at 527 [petitioners failed to show how agency's evidence did not support the agency's findings.]; *Defend the Bay,*119 Cal.App.4th at 1266 [failure to discuss supportive substantial evidence is "fatal."]; *see also Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620.)

Second, Petitioners question the 1:1 mitigation ratio (OB at 23), demanding more, but fail to acknowledge that a 1:1 ratio, when it comes to translocation, fully mitigates the impact; CEQA only requires mitigation to less than significant. Petitioners argue that a 1:1 ratio does not account for translocation failures, but fail to acknowledge that the Restoration Plan has two contingency plans that address translocation failures which ensure overall mitigation success. (AR 7789 [Section 3.3.8]; 7794 [Section 3.7.3].) Thus, potential failure is considered and addressed through a two-layered contingency plan within the Restoration Plan that follows industry standards. (*See Save Panoche*, 217 Cal.App.4th at 528 [upholding adequacy of mitigation ratio, noting "mitigation need not account for every square foot of impacted habitat to be adequate. What matters is that the unmitigated impact is no longer significant. [Citation]"]; *Environmental Council of Sac'to,* 142

Cal.App.4th at 1038-41 [0.5:1 mitigation ratio in habitat conservation plan was adequate to satisfy CEQA, despite demand for larger ratio].)

Third, the Restoration Plan is not vague and inconsistent, and the rare plant mitigation measure (MM-5.2-4) and the Restoration Plan are not inconsistent. (OB at 24.) Petitioners fault the Restoration Plan for not "accurately disclosing the number of plants, bulbs, or seeds to be removed" at the same time acknowledging that (a) the Plan and mitigation measure provide for pre-construction surveys to determine exactly those issues, which is entirely appropriate, and (b) the Restoration Plan is designed to ensure a 1:1 replacement (along with the contingency measures noted above) is achieved whatever the then current survey results disclose. (AR 7793; *Save Panoche*, 217 Cal.App.4th at 524 [upholding biological mitigation measure calling for pre-construction surveys despite agency's request that surveys be conducted at the time of the draft EIR]; *Rialto Citizens for Responsible Growth*, 208 Cal.App.4th at 946-47 [no improper deferral of mitigation where developer had to conduct preconstruction surveys and develop appropriate additional mitigation if necessary.)

As to the allegation that the Restoration Plan is vague, the details are right there. The Restoration Plan refers to the number of plants detected in the 2014-15 survey event, provides various performance standards including the 1:1 mitigation ratio specific performance criteria, as well as requiring pre-construction surveys that will establish the final number of lilies to be translocated or other rare plants for which seeding will need to occur. (AR 511-13; 7772-96.)[10]

Fourth, Petitioners allege that "the EIR fails to commit to any mitigation for these species" due to the pre-construction surveys. (OB at 24.) Yet, that is precisely the purpose of the pre-construction surveys and the specific performance criteria of 1:1. Whatever the number of species detected, those species need to be translocated (or seeds planted to establish target species) at a ratio of 1:1. (AR 511-3.) If there are no species detected in the development area, no impacts will occur and no translocation or seeding needs to be accomplished. The County's biological impact analysis,

[10] *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665 does not alter the outcome. There, at issue was the evaluation of rare plant mitigation in support of an MND. Under the fair argument standard of review, the court found substantial evidence of infeasibility of the mitigation. Here, under the abuse of discretion standard of review, the feasibility of the rare plant mitigation is supported by uncontested substantial evidence.

determinations, and mitigation measures are more than adequate under CEQA and are owed deference. (*See Save Panoche*, 217 Cal.App.4th at 527 [upholding biological impact analysis]; *accord Gray,* 167 Cal.App.4th 1099, 1124; *Save Round Valley Alliance,* 157 Cal.App.4th 1437; *Environmental Council of Sac'to*, 142 Cal.App.4th at 1041; *Ass'n. of Irritated Residents,* 107 Cal.App.4th at 1398.)

B. The County Properly Rejected The Creek Avoidance Alternative

Petitioners allege that the County improperly rejected the Creek Avoidance Alternative. Not so; the County appropriately determined that this screening alternative was infeasible.

CEQA provides that an alternatives analysis need not be exhaustive, and alternatives should be selected to eliminate or substantially lessen significant and unavoidable impacts. (Guidelines § 15126.6 (a).) "The adequacy of an EIR's alternatives analysis is . . . governed by a rule of reason." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 546 (*City of Orange*).) Though an EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the project (Guidelines § 15126.6(d)), the discussion need not be extensive or perfect. (*City of Orange*, 163 Cal.App.4th at 548.) The lead agency only needs to make an objective, good faith effort to compare the project with the alternatives. (*Save Our Residential Env't v. City of W. Hollywood* (1992) 9 Cal.App.4th 1745, 1752.)

Here, the Project has significant and unavoidable air quality, noise and traffic impacts. (AR 1730.) Each of the four alternatives, Alternative 1 (No Project/No Development), Alternative 2 (No Project/Development Pursuant to the Specific Plan), Alternative 3 (No Industrial Development), and Alternative 4 (Phase 1 Development Alternative) was analyzed regarding each of these significant impacts. (*Id.* at 2402-03.) These four alternatives were subject to detailed analysis and reasoned rejection. (AR 2404-24 [Alternatives Analysis].) These four alternatives represented a reasonable range under Guidelines Section 15126.6(a), and substantial evidence supported the County's rejection of each alternative. (AR 743-51 [Findings].)

The County also initially considered two additional alternatives, the Creek Avoidance Alternative and Alternative Site, but determined these screening-level alternatives neither to be feasible nor consistent with Guidelines Section 15126.6(c) and, therefore, did not carry them

forward for detailed analysis. (AR 2403-04.) Petitioners' challenges focus on the screening-level Creek Avoidance Alternative.

CEQA does not require extended consideration of project alternatives that are not feasible. (*Citizens of Goleta Valley v. Bd. of Supv's* (1990) 52 Cal.3d 553, 566 (*Goleta II*).) Rather, the local agency makes an "initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Id.* at 569.) The determination of whether to include an alternative during the scoping process is based on whether the alternative is potentially feasible. (*South County,* 221 Cal.App.4th at 327.) "[T] he EIR need set forth an in-depth analysis only of those alternatives that are at least potentially feasible." (*Sierra Club v. Cnty. of Napa* (2004) 121 Cal.App.4th 1490, 1504 n.5 (*County of Napa*); *South County*, 221 Cal.App.4th at 327.)

"Differing factors come into play at each stage" of the feasibility analysis: (1) the screening-level assessment of which alternatives to analyze in the EIR, and (2) the agency's ultimate consideration of whether to approve the project or one of the selected alternatives. (*Mount Shasta Bioregional Ecology Ctr. v. Cnty. of Siskiyou* (2012) 210 Cal.App.4th 184, 198.) The screening-level analysis to determine which alternatives are "potentially feasible" is less "in-depth" than the robust feasibility analysis required for alternatives selected for further analysis in the EIR. (*South County*, 221 Cal.App.4th at 327.)

The screening-level Creek Avoidance Alternative was considered initially as an option to avoid impacts to creek habitat and jurisdictional waters, at the request of the Army Corps; however, neither was determined to be significant and unavoidable and the Army Corps. withdrew its request. (AR 2403; 1948-64 [impacts less than significant with mitigation]; 925 [Approved MMRP]; 4141-46) [Jurisdictional Delineation].) As discussed in the DSEIR:

> As the current applicant was re-initiating the Specific Plan a land plan was laid out that avoided the creek bottom that runs through the middle of the project. This land plan placed development on one side of the creek with development terraced up the slope to minimize grading. This plan was attempted to avoid impacting the creek habitat, avoid jurisdictional wetlands (waters under the authority of the U.S. Army Corps of Engineers. . .) . . .
>
> This issue was discussed with Army Corps and they have eliminated the need to process this as a viable alternative to the project as it is clearly not a feasible project. (AR 2403.)

Thus, the Creek Avoidance Alternative was not carried forward in the SEIR for full analysis.

The Administrative Record provides detailed analysis as to why this screening-level alternative was rejected. (See e.g., AR 744-5; 7500-2; 7532-3; 7570-71; 7415.) As the Findings explain, this alternative would not meet basic Project Objectives "to enhance local economic well-being with commercial uses that would create jobs, provide a mix of uses to reduce offsite vehicle trips and VMT, and provide a significant amount of housing onsite with a wide range of home sizes and prices" due to the reduced developable area. (AR 745; 10838 [housing need].) In addition, this alternative would potentially create additional or increased significant impacts:

> A Project design that avoids the creek would require all utility pipelines to be attached to bridges as they cross over the creek. Attaching active utility pipelines to bridges would introduce risks of accidental spills into the creek that do not exist in other Alternatives. Furthermore, a Project design that avoids the creek would require the addition of several sewage pumping stations to lift sewage up and over the creek. These additional sewage pumping stations would add spill and contamination risks, decrease reliability of the sewage disposal system, and generate GHG and noise impacts due to the pump stations' reliance on fuel-consuming mechanical equipment. (*Ibid*.)

The Peer Review Expert Biologist stated: "It is also important to note that modification of the project to avoid Grasshopper Creek, while allowing adjacent development on adjacent slopes east of the creek, would still result in the loss of the hydrology that supports the seeps that occur within the creek." (AR 16015; *see also* 745.)

There is no evidence that this screening level alternative would eliminate or substantially lessen the Project's significant and unavoidable impacts; impacts to biology, habitat and jurisdictional waters are all less than significant, contrary to Petitioners' unsupported assertions. (AR 571-615 [Biology & Habitat Findings]; 653-82 [Hydrology & Water Quality Findings].) In the end, the County only needed one basis to reject the screening-level Creek Avoidance Alternative, but had many. "At [the] final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the [EIR].'" (*Cal. Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000 (*City of Santa Cruz*) [quoting Pub. Res. Code § 21081(a)(3)].) The County rejected the Creek Avoidance Alternative for (1) failure to meet Project Objectives[11]; (2) failure to

[11] "[A]n alternative 'may be found infeasible on the ground it is inconsistent with project objectives as long as the finding is supported by substantial evidence in the record.'" (*City of Santa Cruz,* 177

address significant and unavoidable impacts[12]; (3) rejection by the Army Corps[13]; and (4) environmental risks associated with the development.[14] All of these bases are set forth in the Findings the Board adopted. (AR 744-5.) The County's rejection of the Creek Avoidance Alternative was reasoned, supported by substantial evidence, and should be given deference. (*See Save Panoche*, 217 Cal.App.4th at 523 [upholding rejection of alternative as one finding of infeasibility was supported by substantial evidence; court did not review the other infeasibility findings as only one supported finding was needed].)

Despite the foregoing, Petitioners' claim the Creek Avoidance Alternative was wrongly rejected. Petitioners allege that the range of alternatives was deficient because "the EIR failed to consider an alternative that avoided . . . Grasshopper Creek."[15] (OB at 25.) As explained in the FSEIR, the Creek Avoidance Alternative is the alternative Petitioners demanded, and it was rejected at the screening level and therefore not analyzed further. (AR 7570-71; see also 7415 [RTC 2.6]; 7500-2 [RTC 12.12]; 7532-3 [RTC 15.42]; *see also* 744-5 [Findings].)

Petitioners complain about the County's determination that the Creek Avoidance Alternative is not feasible, yet cite to no substantial evidence and fail to apply the CEQA feasibility definition. The term "feasible" is defined under CEQA to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (Pub. Res. Code § 21061.1). The Guidelines expanded this concept, explaining that a decisionmaker may find that "[s]pecific economic, legal, social,

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Cal.App.4th at 1001 [citation omitted]; *County of Napa,* 121 Cal.App.4th at 1507-8; *Saltonstall v. City of Sac'to* (2015) 234 Cal.App.4th 549, 576-8 [EIR not required to study alternative that failed to meet most project objectives].)

[12] Guidelines § 15126.6(f); *see also In re Bay–Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143 (appellate court should not have considered alternative concerning delta environmental problems as the alternative did not address adverse environmental impacts of the proposed project) *Citizens for E. Shore Parks v. State Lands Comm'n* (2011) 202 Cal.App.4th 549, 564 [alternative did not reduce project significant impacts]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 [EIR not required to include a reduced-size alternative, where it would not substantially mitigate significant impacts].

[13] "[A]n alternative that 'is impractical or undesirable from a policy standpoint' may be rejected as infeasible." (*City of Santa Cruz,*,177 Cal.App.4th at 1001 [citation omitted]; *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417.)

[14] *See City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 419 (rejected alternative would have greater impacts to pedestrian safety and hazards than proposed project).

[15] Petitioners invoke CDFW's comments on the DSEIR. (OB at 25.) All of CDFW's comments were addressed. (AR 7406-20; *see also* 571-615 [Findings]; 10839 [clustering].)

technological, or other considerations . . . make infeasible the mitigation measures or project alternatives identified in the final EIR." (Guidelines § 15091(a)(3).) Here, the determination that the Creek Avoidance Alternative was infeasible was based on Project objectives, environmental impacts, Army Corps' direction, and environmental risk factors.

Petitioners take issue with the fact that the Creek Avoidance Alternative would require the export of 10 million cubic yards of soil. (AR 744; OB at 25.) Petitioners claim that when a commenter asked the County to "substantiate the claim . . . the County declined to stand by this figure." (OB at 25-6.) Not so. In response to SMMC's comment, the EIR consultant stated: "Due to its smaller development footprint, this alternative would reduce the amount of grading by 23 million cubic yards as compared to the Project. However, a significant amount of grading would still be required under this alternative to create level building pads, construct roadways, and install utilities." (AR 10840; 697 [Finding: Project grading of 33 million cubic yards; 33-23=10].) Also of import is the fact that the 10 million cubic yards of soil would need to be exported (i.e., haul truck trips), which would produce increased air quality, GHG and traffic impacts as compared to the Project grading where no export will occur (it is a balanced site). (AR 697 [Air Quality Findings]; 744.) Thus, the County stood by the export estimate and substantiated it.

Petitioners state that "the final Project already eliminated industrial uses and most of the commercial uses and replaced them with more residential uses." (OB at 26.) Yet, at the time of consideration of the Creek Avoidance Alternative, that was not the case. Rather, at the request of the RPC, Real Parties included a significant affordable housing component which replaced the industrial and some of the commercial uses after the release of the DSEIR and FSEIR. (AR 10163; 10174.) Petitioners lose sight of the significant reduction in housing posed by this alternative, as well as the other factors contributing the County's rejection.

Petitioners allege "the EIR assumes that destroying the entire creek is somehow less impactful than the speculative possibility of 'accidental spills' into the creek." (OB at 26.) Petitioners fail to cite to any evidence regarding impacts from "destroying" the creek, or that the accidental spill potential is speculative. Rather, the County stated that "a Project design that avoids the creek would require all utility pipelines to be attached to bridges as they cross over the creek. Attaching active

utility pipelines to bridges would introduce risks of accidental spills . . . [and] additional sewage pumping stations would add spill and contamination risks [to pump sewage over the creek.]" (AR 7500; 7561-2; see also 745 [Findings].)

Petitioners state that the "EIR's complaint about a 'reduction' in developable land is irrelevant under CEQA" arguing that "CEQA requires that a lead agency [] provide analysis that a reduced size project is infeasible." (OB at 26.) Petitioners ignore Alternative 4 (Phase 1 Development Alternative), which is the analysis of a significantly reduced development alternative that complies with CEQA's mandate. (AR 2417-23.) The amount of developable land has a direct bearing on the amount of commercial uses and housing that can be developed on the Project site. Thus, the County found that both the Creek Avoidance Alternative and Alternative 4 would not meet basic Project Objectives to provide significant housing opportunities. (AR 744-5; 749-51.)

Petitioners are incorrect that a detailed financial accounting was needed to reject the Creek Avoidance Alternative. Guidelines Section 15091(a)(3) allows a decisionmaker to reject an alternative as infeasible for a number or reasons – any one of which is enough on its own to support the infeasibility determination. Here, the County rejected the Creek Avoidance Alternative for four independent reasons as shown above – none of which are based solely on economic infeasibility. Moreover, as to economic infeasibility, Petitioners' citation to *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 58, *Citizens of Goleta Valley v. Bd. of Supv's* (1988) 197 Cal.App.3d 1167, 1181 (*Goleta I*); and *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336 are inapposite. The level of analysis required in *Goleta I, Uphold Our Heritage*, and *Preservation Action Council* only applies to alternatives actually analyzed in an EIR, not to rejected screening-level alternatives.

Finally, this case is distinguishable from *Center for Biological Diversity v. Cnty. of San Bernardino* (2010) 185 Cal.App.4th 866. In that case, the court found that substantial evidence did not support the infeasibility finding because, while the screening level alternative addressed the proposed project's significant and unavoidable air quality impact, the economic infeasibility determination to screen out the proposed alternative included data gaps and relied on "conclusory statements" about the inability to finance an enclosed facility. (185 Cal.App.4th at 884-5) By

contrast, the Creek Avoidance Alterative does not specifically address a significant and unavoidable impact, does not include any unexplained data gaps, and does not rely upon conclusory statements as to infeasibility. The County provided a more than sufficient basis to reject, from further consideration, the Creek Avoidance Alternative.

C. Aesthetics Analysis Was Thorough, Complete, And Adequate Under CEQA

Petitioners allege the SEIR "omits analysis of how this Project may damage … scenic resources and aesthetic resources" claiming that the SDEIR's "1.5 page section . . . merely assumes" compliance with the NLSP will eliminate impacts. (OB at 27.) Yet, the SDEIR contains a summary of the detailed three and a half page analysis contained in the Initial Study that analyzed each of the Appendix G aesthetic significance thresholds and concluded less than significant or no impact; the Initial Study is expressly referenced in the SDEIR summary and attached as Appendix H to the SDEIR. (AR 2425-26 [SDEIR]; 2467-70 [Appendix A].)

As to impacts on scenic vistas, the analysis Petitioners allege is absent is provided in the Initial Study under Aesthetic a) significance threshold – Would the project "Have a substantial adverse effect on a scenic vista":

> Overall, the project site would change from an undeveloped span of rolling terrain to a developed, urban condition. This change was acknowledged in the approval of the 1992 Specific Plan. However, due to the location of the project, which is primarily within the canyon, intervening topography would prevent views from scenic vantage points from being significantly affected. The changes resulting from the project site would largely be visible only from areas from the project site itself. This finding is consistent with the analysis provided in the NorthLake 1992 EIR . . . Although limited, any project areas visible from I-5 would be developed aesthetically to blend with the surrounding visual elements, as determined through the approved design guidelines . . .

(AR 2467.) That analysis is further supported by the View Simulation Analysis included in the FSEIR at Appendix H, which demonstrates that very little of the Project Site is visible overall and only from three of the six view simulation locations. (AR 8256-62.)

As to impacts on views from hiking trails, again the analysis which Petitioners allege is absent, the Initial Study provides under Aesthetic b) significance threshold – Would the project "Be visible from or obstruct views from a regional riding or hiking trail":

> Due to the location of the Castaic Lake SRA trail system, the project will be visible from the trail; however, compliance with the design guidelines set forth in the *NorthLake Specific Plan*

> would ensure development of the project would not result in a significant impact on a scenic vista. Additionally, because the project would be located in a canyon, it would not obstruct distant views from the trails. Therefore, impacts related to visibility from or obstruction of views from a regional or hiking trails would be less than significant.

(AR 2468.) This analysis is further supported by the View Simulation Analysis. (AR 8256-62.)

The Initial Study and SDEIR analysis was updated to reflect the minor Project revisions which incorporated affordable housing in the location of industrial uses:

> Although the areas that were previously proposed for industrial and commercial would now be developed with residential uses; no new impacts related to aesthetics would occur. The redistribution of housing in the southern portion of the Project Site would continue the visual appearance of the existing residential community located immediately south of the Project Site. . . . Further, because the Revised Project would limit development to the previously analyzed 1,330-acre development footprint, it would not affect scenic resources along a State scenic highway. (AR 10176.)

Petitioners allege that "The Final EIR claims without evidentiary support that '[n]o impacts are projected to occur within the State Recreational Area as a result of Project development'" citing AR page 7497.[16] (OB at 28.) Page 7497 is the FSEIR response to comment 12-7. Response specifically cites to the evidentiary support for that statement – the View Simulation Analysis – shows that the Project Site is not visible from the State Recreational Area. (AR 8260-61 [View Simulations 4 & 5].)

Petitioners claim the County cannot rely upon the NLSP Design Guidelines to support the less than significant impact determination for scenic view impacts as they are "old" and "undescribed." (OB at 28.) As explained to Petitioners, "The NorthLake Specific Plan is an approved Project of record within the County of Los Angeles and is beyond legal challenge. . . . The current Project, as evaluated in the Draft SEIR, would implement the previously adopted Specific Plan and involves the same area and intensity of physical development that is less than what was previously considered in the 1992 SP EIR. . ." (AR 7594 [RTC 16.69].) As to the "undescribed" Design

[16] Petitioners attempt to discredit the County's determination by claiming the View Simulation Analysis "shows the Project footprint extending out of the canyon up to the ridgeline . . ." (OB at 28, fn. 19.) First, Petitioners fail to differentiate the Project's development footprint, which is the building areas, from the Project Site boundary, which is what is shown in the View Simulation; there are no buildings being constructed at the ridgelines. Second, what is demonstrated by the View Simulation Analysis is that the Project Site is not visible from the recreational area; hence the no impact determination. (AR 8256-62.)

Guidelines, the NLSP, which includes the Design Guidelines, is included as Appendix B to the DSEIR. (AR 2674-872.) Design Guidelines A.3 (Area Affected By Special Grading) provides: "The grading design considerations deal with scale, slope angles, forms and contours. The primary intent is to have some of the more visual manufactured slopes appear to be natural as they blend with existing natural slopes." (AR 2822[17].) Section B goes on to provide the specific grading guidelines. (*Id*. at 2822-4[18].) Thus, the Design Guidelines set forth the grading prescriptions that support the less than significant aesthetic impact determination regarding views. Indeed, conformance with the Design Guidelines is a Project Condition. (AR 873 [Condition 29.)

Petitioners' citation to *Quail Botanical Gardens Found. Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597 (*Quail*) does not change that conclusion.[19] In *Quail*, at issue was the aesthetic impact determination in a mitigated negative declaration (MND), which is subject to a much lower standard of review – the fair argument test. There, "extensive testimony and photographs" established a fair argument that "the proposed subdivision may "significantly" impact or diminish such view and beauty." (*Id*. at 1606.) An MND is not at issue here, nor is the fair argument test applicable to an EIR. Rather the County conducted an SEIR which is subject to the abuse of discretion/substantial evidence standard of review. And, Petitioners failed to submit any evidence of a significant view impact.

Petitioners repeatedly state the SEIR contains no aesthetic impact analysis or substantial evidence for the "no impact" aesthetic impact determination. However, the Record contains fulsome aesthetic impact analysis addressing all of the aesthetic impact significance thresholds that is supported by substantial evidence including the View Simulation Analysis, which Petitioners were directly pointed to (AR 10830), as well as the NLSP Design Guidelines. Moreover, not all

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[17] The 1992 NLSP contains an extensive Scenic Quality analysis, the aesthetics impact analysis at that time, that contains a detailed line of sight analysis which is the impetus of the 1992 NorthLake Specific Plan Design Guidelines for grading. (AR 1033-40 [Original EIR].)

[18] The DSEIR Appendix appears to be incomplete as the pages IV-4 through IV-6 and IV-8-IV-9 are missing. However, those pages are located at AR 1557-64.

[19] Petitioners' citation to *Californians for Alts. to Toxics v. Dep't of Food & Agric.* (2005) 136 Cal.App.4th 1 is of no moment. There, rather than analyze the environmental consequences of pesticide use, the agency merely discussed various pesticide use regulatory schemes to conclude that if those schemes were followed there would be no significant impact. (136 Cal.App.4th at 17.) Here, following fulsome analysis, the County concluded that the application of the NLSP Design Guidelines would reduce certain aesthetic impacts to less than significant. (AR 555-7.)

aesthetic impacts were determined to be no impact; rather impacts to Aesthetic Impact Significance Thresholds b), d) and e) were determined to be less than significant. (AR 2468-69; 2425-26.) The Board adopted detailed findings based on the Administrative Record analysis and evidence. (AR 555-57.) Petitioners in contrast ignore all of the County's evidence, most significantly the View Simulation Analysis, which is fatal to their argument. (*San Franciscans Upholding the Downtown Plan,* 102 Cal.App.4th at 674 [Petitioners bear the burden of establishing an abuse of discretion]; *Defend the Bay,*119 Cal.App.4th at 1266 [failure to discuss supportive substantial evidence is "fatal."]; *Citizens for Positive Growth & Preservation v. City of Sac'to* (2019) 43 Cal.App.5th 609, 632 (*Positive Growth*) [same].)

Petitioners lastly allege that the "EIR's analysis here violated CEQA's informational disclosure provisions." (OB at 28.) Yet, all of the required analysis is contained in the SEIR, as well as the substantial evidence supporting that analysis. The County's analysis and determinations are owed deference. (*North Coast Rivers Alliance v. Marin Mun. Water Dist. Bd. of Dirs.* (2013) 216 Cal.App.4th 614, 627-8 [upholding agency's analysis of aesthetic impacts]; *accord Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243-4; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 375-6.)

D. The County Conducted A Health Risk Assessment For Residences Within 500 Feet of the Freeway Which Demonstrated A Less Than Significant Impact

Petitioners allege "the EIR fails to analyze the potential health impacts of siting families . . . within 500 feet of a major highway." (OB at 29.) Petitioners are wrong; potential toxic air contaminant (TAC) impacts from freeway adjacency were fully analyzed, including when some residences were moved closer to the freeway. All analyses, including an HRA that Petitioners ignore, confirm less than significant impacts.

The DSEIR air quality impact analysis section analyzes all appropriate potential air quality exposure issues. (AR 1857-1904.) The DSEIR is supported by detailed technical appendices. (AR 2873-3610.) Regarding the TAC exposure analysis, the pollutant of concern is diesel particulate matter (DPM) from diesel engines (primarily heavy-duty trucks). (AR 1859.) At issue is exposure of future residences to DPM emissions from the I-5. The South Coast Air Quality Management

District (SCAQMD), with jurisdiction over the air basin which includes the Project Site, recommends preparation of an HRA when residences will be located within 500 feet of a freeway. (AR 1898.) At the time of the DSEIR, "there are no residences or other sensitive land uses proposed within 500 feet of I-5." (*Ibid*.) Because no other source of TACs was identified near the Project Site, "an HRA for TAC impacts . . . is not required." (*Ibid*.)

Separately, the County Department of Public Health (DPH) "recommends addressing health risks for sensitive land uses and parks up to a distance of 1,500 feet from I-5." (AR 1898.) Although some residences will be located within 1,500 feet of the southbound (closest) lanes of the I-5, "[t]here is a topographical barrier of hills between the southbound lanes and all of the residential land uses." (*Ibid*.) It was also noted that SCAQMD and DPH siting guidelines are conservative as they are based on early 2000s data and "[s]ince then, [DPM] emissions from heavy trucks have substantially declined and therefore, the siting guidelines are even more conservative." (*Ibid*.) Thus, the County concluded: "Based on the distance and topographical location of proposed residential areas relative to I-5, it is considered that the health risks to these receptors would be less than significant and no mitigation required."[20] (*Ibid*.)

When the Project was revised to eliminate 108,283 SF of industrial use and 13,197 SF of commercial use and relocate 323 residential units to those locations in order to include affordable housing, some units were located within 500 feet of the I-5. (AR 8332; 8474.) In recognition of the increased proximity to the I-5 and public comment, the County conducted an HRA. (AR 8349.) As summarized in the Errata:

> As detailed in the HRA, the Project site would be exposed to substantially less health risk than the average for the South Coast Air Basin and toxic air contaminant concentrations would be below [SCAQMD's] significance thresholds. Therefore, no mitigation is required. The HRA analysis provides further support for, and is consistent with, the Draft SEIR analysis . . . that impacts . . . would be less than significant.

(AR 8349-50; see also 8470-738 [HRA].) The Findings reiterate the analysis and determination and make specific reference to the HRA. (AR 702-4.)

[20] The analysis also addressed future park locations and concluded a less than significant impact with the adopted of Mitigation Measure 5.1-15. (*Ibid*.)

Petitioners' Opening Brief makes no mention of the County's HRA. The failure to discuss substantial evidence in the County's favor is a fatal flaw. (*Positive Growth*, 43 Cal.App.5th at 632.) Moreover, at no point did Petitioners submit their own substantial evidence demonstrating a potential significant impact. Rather, Petitioners accuse the County of failing to provide "an informed and accurate discussion of the Project's potential health impacts to future residents . . ." (OB at 30-31.) As the County conducted a HRA regarding potential exposure to DPM emissions, included it as an Errata to the SEIR, determined less than significant TAC impacts, and adopted specific Findings discussing and incorporating the HRA, as well as the additional air quality TAC analysis, the County more than fulfilled its disclosure obligations. (*See Beverly Hills Unified Sch. Dist. v. Los Angeles Cnty. Metro. Transp. Auth.* (2015) 241 Cal.App.4th 627, 668 [EIR that included air quality technical report identifying potential adverse health effects of exposure to pollutants satisfied disclosure obligations; perfect analysis was not required]; *Mission Bay Alliance v. Office of Cmty. Inv. & Infrastructure* (2016) 6 Cal.App.5th 160 at 206 [substantial evidence supported significance threshold for TACs].) Moreover, even if Petitioners had acknowledged the County's HRA, deference is owed to the County; the County is entitled to rely upon its expert's opinion. (Guidelines § 15151.)

Finally, Petitioners claim the EIR "fails to explain how bare numbers in the EIR translate into potential adverse health impacts on future residents or the community" citing *Sierra Club*. (OB at 31.) In *Sierra Club* there was a disconnect between the determination of adverse air quality emissions and the raw numbers indicating the project's emissions of pollutants resulting in adverse impacts. (6 Cal.5th at 519.) Here, there is no determination of an adverse TAC emissions impact; rather, the HRA confirms a less than significant impact. (AR 702-4; 8349-50; 3541-72.) And, the HRA presents more than just the raw numbers regarding TAC emissions. (AR 3541-72.) Thus, the presentation of the HRA modeling results, as well as the less than significant impact determination for cancer and non-cancer risks, meets CEQA's disclosure requirements and does not run afoul of *Sierra Club*. (*Ibid*.) The County's thorough analysis is owed deference. (*Mission Bay Alliance*, 6 Cal.App.5th at 203-206 [air quality analysis upheld]; *accord City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 900-1; *Gray*, 167 Cal.App.4th at 1125-6.)

E. The County's Fire Analysis Was Adequate Under CEQA

1. Petitioners Failed to Exhaust Administrative Remedies as to "Human-Caused Ignitions"; The County Was Not Required to Analyze This Purported Impact

Petitioners fault the County for failing to analyze the "Project's potential to result in more human-caused ignitions." (OB at 31.) Neither Petitioners, nor any other person or entity who commented on the SEIR raised the issue of "human-caused ignitions"; rather all fire comments focused on wildfires. (*e.g.*, AR 7514 [Comment 15.33 and 15.34]; 7685 [Response 23.15]; 10845 [CBD 1].) As such, Petitioners failed to exhaust their administrative remedies as to this issue. "Where a petitioner has not exhausted its administrative remedies a trial court has no jurisdiction to decide the dispute." (*Browning-Ferris Indus. v. City Council of the City of San Jose* (1986) 181 Cal.App.3d 852, 859.) Petitioners bear the burden of demonstrating the issues raised in the litigation were adequately exhausted, and here failed to do so. (*Tracy First*, 177 Cal.App.4th at 926.) Thus, CEQA prohibits Petitioners from alleging noncompliance unless the specific alleged grounds for noncompliance were presented to the agency during the public comment period or during the hearing on project approval. (Pub. Res. Code § 21177(a).)

The purpose of the exhaustion doctrine is to ensure that agencies are provided the opportunity to respond to objections and correct any errors at the administrative level – before the court intervenes. (*Planning & Cons. League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 250.) To advance that purpose, "the ***exact issue***, not merely generalized statements, must be raised." (*Monterey Coastkeeper v. State Water Res. Control Bd.* (2018) 28 Cal.App.5th 342, 359 [emphasis added].)[21]

Tellingly, Petitioners fail to identify any significance threshold that requires the analysis of human-caused ignitions. There are none; rather the significance thresholds associated with fires

[21] In *Monterey Coastkeeper,* the court found that "administrative remedies were not exhausted as to the specific objection of noncompliance with the antidegradation policy" even though commenters "urged the Board to act to prevent further [water quality] degradation" as the policy was not specifically mentioned. (*Id.* at 350, 360-1.) Similarly, in *SoMa* while plaintiffs raised general issues about the amount of wind and the potential for "wind tunnel" effects and requests for mitigation measures those comments failed to exhaust administrative remedies as to the plaintiffs' arguments regarding inappropriate wind effects comparisons, that the project did not comply with a local ordinance regarding wind effects, and that the EIR inappropriately relied on "wind baffling measures." (33 Cal.App.5th at 436-7.)

focus on the Project's location in a Very High Fire Hazard Severity Zone (VHFHSZ). (AR 2021-2 [Threshold 5.5-4 and 5.5-5].) To the extent Petitioners now quibble with the County's selection of significance thresholds, discretion lies with the County, and it is too late to raise that issue in any event. (Pub. Res. Code § 21177(a); *Laurel Heights I*, 47 Cal.3d at 415 ["That further study. . . might be helpful does not make it necessary."]; see also *Save Cayuma Valley v. Cnty. of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068 ["CEQA grants agencies discretion to develop their own thresholds of significance"].)

2. The Wildfire Analysis Was Thorough, Complete, And CEQA Adequate

Petitioners wrongly allege that the County's conclusion that the "Project's wildfire impacts on residents and the community would be less than significant lacks substantial evidence and is contrary to the County's own analysis." (OB at 32.)

The DSEIR contains a detailed fire analysis under two significance thresholds – Thresholds 5.5-4 and 5.5-5. (AR 2021-2.) The SEIR acknowledges the wildfire risk in Southern California, especially the wildland urban interface, recounts the recent wildfires in the Santa Clarita area, details that the Project Site is within a Hillside Management Area and a VHFHSZ, and details the wildfire response resources and the County Fire Code requirements. (AR 2008-17.) The DSEIR also provides the details on the Project's Fuel Modification Program (FMP), which is a County Fire Code requirement that is to be approved by County of Los Angeles Fire Department, Fire Prevention Division (County Fire) (AR 2018-19, see also 1849.) With all of that background and detail, the DSEIR provided detailed analysis for Thresholds 5.5-4 and 5.5-5 determining a less than significant impact for both thresholds, same as for the 1992 Project. (AR 2021-3.) Accordingly, the Board adopted appropriate findings and conditions. (AR 633-7; 901-5.)

Significantly, County Fire reviewed the Project many times over two years[22] and it was only after their concerns were addressed that County Fire recommended approval of the Project, subject to twenty-seven conditions, including development and approval of a FMP. (AR 9174-78

[22] See AR 8921-25 (June 6, 2015 comments); 8961-65 (September 15, 2015 comments); 13572-74 (February 1, 2016 Comments); 13590-92 (May 16, 2016 Comments); 13822-24 (August 29, 2016 Comments); 9035-39 (June 15, 2016 comments"); 9099-9103 (September 28, 2016 comments); 7463-65 (County Fire comments).

[September 13, 2017 "Recommends approval" conditions].) County Fire's final recommended conditions of approval were adopted as Project Conditions. (AR 488-91 [VTTM Conditions]; see also 872 [CUP Condition 19]; 901-905 [County Fire Conditions].)

Petitioners claim the County violated CEQA in concluding that compliance with regulatory requirements, including approval of a FMP by County Fire, would reduce impacts to less than significant, citing *Californians for Alts. to Toxics,* 136 Cal.App.4th 1. First, as set forth in the DSEIR, Fire Code compliance goes beyond just preparing and getting approval of a FMP. (AR 2021-2 [DSEIR]; 488-91 [Conditions].) As explained to Petitioners:

> The Project will implement a fire management plan and [FMP], contains low density development, and includes a fire station site on the Project site . . . All buildings will be fully sprinklered. The potential fire risk has been considered and addressed in the SEIR and determined to be less than significant. CBD has submitted no credible evidence to the contrary. (AR 10829.)

Second, as noted above, in *Californians for Alts. to Toxics*, rather than analyze environmental consequences of pesticide use, the agency merely discussed the various regulatory schemes that applied to pesticide use and concluded that if those schemes were followed there would be no significant impact. (136 Cal.App.4th at 17.) Here, the County conducted a fulsome wildfire analysis and then, with the adoption of the FMP, and other project design features and additional regulatory requirements, concluded that wildfire impacts would be less than significant. With proper analysis, courts uphold impact determinations based on regulatory compliance. (*See, e.g., Mission Bay Alliance,* 6 Cal.App.5th 160, 202; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 903; *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 106.)

Petitioners state that the "County has essentially acknowledged that the existing regulations are inadequate to address wildfire risks . . ." citing to a County motion titled "Analysis of the Woolsey Fire" (the Wildfire Motion). (OB at 32.) Telling is Petitioners' use of the term "essentially," as the County unquestionably did not state that its existing Fire Code was inadequate. Rather, in the Wildfire Motion, the County merely calls for analysis of the Woolsey fire and to convene a working group to address wildfire response and recovery efforts and resources. (AR 28976-7.) And even if it had called into question the adequacy of the County Fire Code, the fact remains that the Code has not been repealed or modified, and Petitioners have provided no evidence to the contrary.

Moreover, Petitioners failed their burden to demonstrate that a FMP compliant with the County Fire Code and approved by County Fire will not reduce wildfire risk to less than significant especially in conjunction with other regulatory measures and project design features. (*Positive Growth*, 43 Cal.App.5th at 632 (citations omitted).)

Lastly, Petitioners claim the Board wrongly determined the Project "will result in 'no impacts' [as to wildfires] and that "Incredibly, the EIR claims the Project would decrease the possibility of wildfire . . ." (OB at 33.) As to the alleged no impact determination – that is not what the County determined; rather, as with the 1992 Approved Project, the County determined wildfire impacts (Thresholds 5.5-4 and 5.5-5) were less than significant because of the numerous project design features and regulatory compliance. (AR 2021-3.) Second, the Findings provide a reasoned basis for concluding that the Project would decrease wildfire impacts:

> The proposed Project's residential, commercial, parklands, and open space areas do not constitute an unusually high or potentially dangerous fire hazard. Rather, development in the Project vicinity would decrease the possibility of wildfires on and near the site because it would provide greater fire service access to open space areas surrounding the site; provide five new water tanks and utilize one existing tank to serve the Project Site, thereby providing greater water access and increased water pressure in the Project area; and convey a 1.4-acre parcel for the future construction of a fire station on the Project Site to ensure adequate fire protection for the proposed Project and surrounding areas. (AR 635[23].)

In addition, the Project is installing 166 public fire hydrants, which unquestionably aid improving firefighting potential. (AR 904 [Condition No. 12]; see also 10127; 10223.)

The County's wildfire hazards analysis is based on thorough analysis and substantial evidence and, therefore is owed deference. (*See Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161,193-5 [upholding wildfire risk analysis]; *Rodeo Citizens Assn. v. Cnty. of Contra Costa* (2018) 22 Cal.App.5th 214, 229-34 [upholding hazard analysis].) As noted during the hearing process, "CBD has submitted no credible evidence to the contrary." (AR 10829.)

F. The County Correctly Determined Recirculation Was Not Required

Petitioners allege recirculation of the SEIR was required due to a Staff Memo that included minor Project revisions and the County's Wildfire Motion. Not so.

[23] In addition, three electric transmission lines will be relocated away from residential areas, removing a potential ignition source. (AR 1822.)

The critical issue in determining whether recirculation is required is if the information added to the EIR is "significant." (Pub. Res. Code § 21092.1). Petitioners merely assert that the information is significant.[24] The Court in *Laurel Heights Improvement Ass'n. v. Regents of the Univ. of California* (1993) 6 Cal.4th 1112, 1129-30 (*Laurel Heights II*), interpreted Public Resources Code section 21092.1 to include a four-part recirculation test, now set forth in Guidelines Section 15088.5, while cautioning that recirculation is intended to be the exception, not the rule. Specifically, new information is significant and requires recirculation if it discloses (1) a new significant impact; (2) a substantial increase in the severity of an environmental impact; (3) "[a] feasible project alternative or mitigation measure considerably different from others previously analyzed [that] would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it"; or (4) "[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(a)(1)-(4).)

None of the Section 15088.5 recirculation criteria are met regarding either the Staff Memo or the Wildfire Motion, and Petitioners failed to present any argument regarding Section 15088.5. Indeed, it is Petitioners' "burden to demonstrate that there is no substantial evidence to support a negative finding on any of these factors in order to establish that the County abused its discretion in failing to recirculate the EIR." (*South County,* 221 Cal.App.4th at 330.)

Regarding the Project revisions shown in the Staff Memo,[25] "[N]o provision in CEQA or the Guidelines. . . requires all changes made to a project after the final EIR is released but prior to certification to be included in the EIR." (*Western Placer Citizens for an Agric. & Rural Env't v. Cnty. of Placer* (2006) 144 Cal.App.4th 890, 899 (*Western Placer*).) Instead, to prevail on a claim

[24] Petitioners make much ado about the length of the Staff Memo and when it was released. Neither issue is a recirculation criterion. As to length of the memo, Petitioners claim the memo is 307 pages long (OB at 33); yet, the memo is only 4 pages (AR 10163-6) and the Errata is 55 pages including attachments (AR 10174-223); the rest of the "memo" contains maps and exhibits, a mitigation and monitoring plan, and lengthy draft findings (AR 10224-469). Regarding timing of release of the memo, it was released in before the hearing as usual; Petitioners do not allege a rule violation.

[25] As stated in Staff's Memo and the attached Errata, the minor Project changes were at the direction of the RPC to include an affordable housing component. (AR 10163; 10174.) As determined in the Errata, the revisions needed to accommodate the affordable housing component, "[did] not change any of the SEIR's determinations or impact conclusions." (*Id*.)

that revisions to a project after release of an EIR or SEIR violate CEQA, the petitioner must establish that the project changes constitute "*significant* new information trigger[ing] the need for recirculation under section 21092.1. . ." (*Id*. at 901 (original emphasis); *see also South County*, 221 Cal.App.4th at 332.) "In this context, a procedural violation cannot exist 'unless the [agency's] decision regarding the significance of the new information fails to pass muster under the [substantial evidence] standard of review.'" (*Western Placer*, 144 Cal.App.4th at 901 (citations omitted).) The Errata (attached to the Staff Memo) contains detailed analysis demonstrating recirculation was not required, and the County adopted express findings regarding no recirculation. (AR 10185-6 [Errata]; 445-6 [Findings]; *see also* 10367-8.) This meets the County's obligation to provide substantial evidence not to recirculate as called for under Section 15088.5(e). (*Laurel Heights II*, 6 Cal.4th at 1135 [the court "must resolve reasonable doubts in favor of the administrative finding and decision."].) Thus, pursuant to Section 15088.5, the County's ultimate approval of the Project did not require recirculation of the SEIR. (*California Oak Found.*, 188 Cal.App.4th at 266-8 [holding new information did not trigger duty to recirculate absent evidence of new impacts]; see also *Laurel Heights II*, 6 Cal.4th at 1142.)

Regarding the Wildfire Motion, Petitioners baldly assert that it "qualifies as significant new information." (OB at 34.) Yet, the Wildfire Motion does not meet any of the recirculation criteria under Section 15088.5. Moreover, the Wildfire Motion is not specific to this Project, and, as noted above, merely calls for more analysis of the Woolsey fire and to convene a working group to address wildfire response and recovery. (AR 28976-77.)

Petitioners' citation to *Save Our Peninsula Com. v. Monterey Cnty. Bd. Of Supervisors* (2001) 87 Cal.App.4th 99 and *Spring Valley Lake Ass'n. v. City of Victorville* (2016) 248 Cal.App.4th 91 (*Spring Valley*) does not lead to a contrary conclusion. In *Save Our Peninsula Com*., the court did not make a recirculation determination regarding a late introduced errata, but rather determined that the later introduced information – a potential off-site water source – was not properly analyzed to determine if it would lead to mitigation or offset of the water demand and not cause secondary impacts. The court determined that the entirety of the water demand analysis was inadequate under CEQA and that a revised EIR was required to address, among other things, pumping from the offsite

water source. (87 Cal.App.4th at 132.) Here, there is fulsome analysis of the minor project revisions in the Errata that demonstrates no new or increase in severity of significant impacts, thus no recirculation criteria are met and the SEIR adequately analyzed wildfire impacts as set forth above. In *Spring Valley*, while recirculation was not required regarding additional traffic and biological resource information, it was required for air quality impacts because the new information revealed a new substantial adverse impact and for water quality impacts as "the City replaced 26 pages of the EIR's text with 350 pages of technical reports and bald assurance the new design is an environmentally superior alternative." (248 Cal.App.4th at 108.) Here, there is no evidence of new or increased severity of significant impacts from the Project revisions and the Errata did not merely replace SDEIR analysis with "bald assurances," but rather analyzed the Project revisions across all SDEIR impact areas, concluding that the addition of the minor Project revisions did "not change any of the SEIR's determinations or impact conclusions." (AR 11074.) As to wildfires, the SEIR analysis was more than adequate, and this issue is more akin to the sufficiency of the biology analysis in *Spring Valley*.

Thus, Petitioners failed their burden to establish that recirculation was required. The County's "No Recirculation" finding is supported by substantial evidence and should be upheld.

V. CONCLUSION

As demonstrated above, it is clear from the extensive administrative record that the County's decision to approve the Project and certify the SEIR finds ample evidentiary support, which is all that is needed to uphold the County's determinations. Respondents and Real Parties respectfully request that this Court deny the Petition and uphold the County's decision.

Dated: May 11, 2020

MARY C. WICKHAM
County Counsel

By: _____
Lisa C. Jacobs, Deputy County Counsel
Attorneys for Respondents

ARMBRUSTER GOLDSMITH & DELVAC LLP

By: _____
Damon P. Mamalakis
Attorneys for Real Parties in Interest

PROOF OF SERVICE

I am a resident in the State of California. I am over the age of 18 and not a party to the within action. My business address is 12100 Wilshire Blvd., Suite 1600, Los Angeles, California 90025.

On May 11, 2020, I served the within Document:

RESPONDENTS' AND REAL PARTIES IN INTEREST'S JOINT OPPOSITION TRIAL BRIEF (19STCP01610)

[ ] By transmitting the document(s) listed above via facsimile from sending facsimile machine number 310.209.8801 to the fax number(s) set forth on the attached Service List on this date before 5:00 p.m. and receiving confirmed transmission reports indicating that the document(s) were successfully transmitted.

[X] By transmitting the document(s) listed above via the Court's e-filing service to the email of the person(s) named on the attached Service List at the respective email addresses next to their names, on this date before 5:00 p.m.

[ ] By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth on the attached Service List, to each of the persons named on the attached Service List.

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 11, 2020 at Los Angeles, California.

Laura M. Awad
(Type or print name)

(Signature)

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John Rose, Esq. CENTER FOR BIOLOGICAL DIVERSITY 660 South Figueroa Street, Suite 1000 Los Angeles, CA 90017 jrose@biologicaldiversity.org	RESPONDENT'S AND REAL PARTIES IN INTEREST'S JOINT OPPOSITION TRIAL BRIEF (19STCP01610)
John Buse, Esq. Aruna Prabhala Ross Middlemiss CENTER FOR BIOLOGICAL DIVERSITY 1212 Broadway, Suite 800 Oakland, CA 94612 jbuse@biologicaldiversity.org aprabhala@biologicadiversity.org rmiddelmiss@biologicaldiversity.org	RESPONDENT'S AND REAL PARTIES IN INTEREST'S JOINT OPPOSITION TRIAL BRIEF (19STCP01610)
Mary C. Wickham, County Counsel Starr Coleman, Acting Asst. County Counsel Lisa C. Jacobs, Deputy County Counsel Office of the County Counsel County of Los Angeles 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012 Telephone: 213-974-1811 Facsimile: 213-626-7446 mwickham@counsel.lacounty.gov scoleman@counsel.lacounty.gov ljacobs@counsel.lacounty.gov	RESPONDENT'S AND REAL PARTIES IN INTEREST'S JOINT OPPOSITION TRIAL BRIEF (19STCP01610)