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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **COUNTY OF LOS ANGELES**

23 CENTER FOR BIOLOGICAL DIVERSITY  
24 and ENDANGERED HABITATS LEAGUE,

25 Petitioners,

26 v.

27 COUNTY OF LOS ANGELES; BOARD OF  
28 SUPERVISORS OF THE COUNTY OF LOS  
ANGELES; PLANNING COMMISSION OF  
THE COUNTY OF LOS ANGELES; and  
LOS ANGELES COUNTY DEPARTMENT  
OF REGIONAL PLANNING,

Respondents.

NORTHLAKE ASSOCIATES, LLC; NLDP  
ASSOCIATES, LLC; CASTAIC  
DEVELOPMENT PARTNERS, LLC;  
WOODRIDGE CAPITAL PARTNERS, LLC;  
and MICHAEL ROSENFELD, an individual,

Real Parties in Interest.

Case No. 19STCP01610

**PETITIONERS' OPENING BRIEF**

Action Filed: May 1, 2019

Assigned for all purposes to the Honorable  
Richard L. Fruin

Department: 15

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## I. INTRODUCTION

This action arises from the decision of the County of Los Angeles (“County”) to certify an Environmental Impact Report (“EIR”) for the Northlake Specific Plan (“Project”) in violation of the California Environmental Quality Act (“CEQA”). The Project would destroy rare resources of regional significance. For instance, it would degrade a habitat linkage between the Los Padres and Angeles national forests that is necessary for the survival of the Central Coast South mountain lions, which are already struggling due to isolation and lack of genetic diversity. The Project would displace and likely destroy one of the last remaining Southern California populations of the rare western spadefoot toad. In addition, the Project would put people in harm’s way by locating 9,700 residents in a very high fire hazard severity zone that the EIR concedes is “especially prone to wildfires . . . .” (AR002009.)

While CEQA does not prohibit approval of a development similar to the Project, it does require that the decision be informed, and that all feasible mitigation measures and alternatives are explored and adopted to reduce significant impacts. Here, state and local agencies, including the Santa Monica Mountains Conservancy (“SMMC”), California Department of Fish and Wildlife (“CDFW”), California State Parks, Ventura County, alongside nongovernmental organizations such as Petitioners Center for Biological Diversity (“Center”) and Endangered Habitats League (“EHL”) [collectively “Petitioners”] provided the County with information, analysis and alternatives to ensure that the County’s review of Real Parties’ proposal complied with CEQA. Yet, this information was largely dismissed by the County and Real Parties. Indeed, even the County’s *own biologist* determined that analysis in the EIR prepared by Northlake’s consultant failed to apply basic principles of conservation biology, but these flaws remained in the Final EIR. (AR025874; 25822.)

During a hearing on the Project, Paul Edelman—the deputy director of SMMC—stated that in his 28 years working to shape good outcomes for projects, “this [project] is the worst fit I have ever seen in those 28 years . . . .” (AR012275.) Likewise, in voting against the Project, Planning Commissioner Laura Shell remarked: “The Center for Biological Diversity letter says it for me. They write, ‘[t]he solution to our region’s housing shortage is not to pave over blueline streams, evict rare native wildlife, and destroy other irreplaceable natural resources.’ I couldn’t agree more.” (AR012295-96.)

1 **II. STATEMENT OF FACTS**

2 **A. The Project and Project Area**

3 The Project would include 3,150 residential units and limited mixed use “neighborhood  
4 commercial” over 1,330 acres of land in unincorporated Los Angeles County east of Interstate 5 (“I-5”),  
5 west of Castaic Lake State Recreation Area (“Castaic Lake SRA”), and north of the community of  
6 Castaic. (AR010174; 1818) The Project site is surrounded by public lands in the Angeles National  
7 Forest, Los Padres National Forest, and Castaic Lake SRA. (AR007489.) The Project area also is a  
8 regionally significant viewshed, and the adjacent section of the I-5 is a State of California Eligible State  
9 Scenic Highway. (AR002426.)

10 **B. The Project Area’s Natural Fire Regime**

11 The Project site is within a “very high” fire hazard severity zone due to hilly terrain and dry  
12 weather conditions, and large wildfires occur approximately every ten years in the broader area.  
13 (AR002005; 2008.) The Project area is largely composed of native vegetation (e.g., sage scrub) that rely  
14 on *infrequent* fires to reproduce and cycle nutrients. (AR002008-09; 1726; 28985.) When fires occur  
15 more frequently than the natural rate, native vegetation is replaced by non-native plant species that burn  
16 more easily and more frequently. (AR038079-102; 28985, citing 30039-48 [Keeley 2005]; 30301-30310  
17 [Keeley 2006]; 31531-42 [Syphard 2009]; 35745-35810; [Safford 2014]; 37862-85 [Syphard 2018].)  
18 The Project would disrupt this natural system, as studies confirm that sprawl development in Southern  
19 California’s chaparral and sage scrub habitats has led to more frequent human-caused ignitions from  
20 debris burning, campfires, improperly disposed cigarette butts, arson, fireworks or sparks from cars or  
21 heavy equipment. (AR028985, citing 29269-84 [Keeley 1999]; 29605-49 [Keeley & Fotheringham  
22 2003]; 30918-32 [Syphard 2007]; 33915-27 [Syphard 2012]; 34640-51 [Bistinas 2013]; 37577-82  
23 [Balch 2017]; 38046-51 [Radeloff 2018].) A 2013 study found that 95 percent of all fires in Southern  
24 California were caused by humans. (AR028985, citing 34614-25 [Syphard 2013]; see also 38041-43.)  
25 Human-caused fires lead to an environmentally destructive “feedback loop” where increased  
26 development starts more fires, which in turn converts the native biodiversity into fuel for the next fire.  
27 (AR028985.) The Project would increase the population of this fairly remote area by over 50 percent—  
28

1 from approximately 19,000 people (AR002175) to 28,700 residents (AR002198).

2 **C. The Central Coast South Mountain Lions and Sierra Madre-Castaic Linkage**

3 The Central Coast South mountain lions live in the mountainous open space surrounding the  
4 Project site, including the Santa Monica Mountains, Sierra Pelona Mountains, and Angeles and Los  
5 Padres national forests. These mountain lions suffer from dangerously low levels of genetic diversity  
6 and may become extinct due to lack of connectivity with other populations. (See AR028963, citing  
7 37857 [study noting that a subset of the Central Coast South population in the Santa Monica Mountains  
8 has “extremely low genetic diversity” while diversity of broader Central Coast South population is only  
9 “slightly higher”]; see also 38065-78; 35908-19.) Genetic connectivity between the Central Coast South  
10 mountain lions and other populations is essential to the population’s long-term survival and recovery.  
11 (AR037858.)<sup>1</sup>

12 The Sierra Madre-Castaic Connection is a “habitat linkage” which connects large contiguous  
13 areas of open space on the western side of I-5 in the Los Padres National Forest to similar areas on the  
14 eastern side of I-5 in the Angeles National Forest. (AR010001; 24192; 30091-30254.) The Sierra Madre-  
15 Castaic Connection was also included in the South Coast Missing Linkages Project, a collaborative  
16 process between state, local, and federal agencies and NGOs. (AR031154-31220) This linkage is  
17 necessary for wide-ranging species including the mountain lion. (AR010002; 30108; 30112; 30124;  
18 30137-40; 31172; 24192.) County documents refer to the Sierra Madre-Castaic Connection as one of  
19 three areas “essential for maintaining the wildlife diversity within the County Planning Area.”  
20 (AR019198; 10000-10004.)

21 The greatest barrier to wildlife movement in the Sierra Madre-Castaic Connection is the I-5,  
22 which intersects the linkage for approximately 27 miles and currently lacks adequate crossing structures.  
23 (AR031172; 30190.) However, there are existing underpasses that allow for some wildlife movement.  
24 (AR010003; 24192.) Studies have confirmed that the lack of adequate connectivity between each side of  
25 the I-5 in the Project area is causing mountain lions on either side of the I-5 to become genetically

26 <sup>1</sup> On June 25, 2019, the Center and Mountain Lion Foundation submitted a petition pursuant to 14 Cal.  
27 Code Regs. § 670.1 to the California Fish and Game Commission requesting the Commission list the  
28 Central Coast South mountain lion population and other populations as “threatened” under the  
California Endangered Species Act. The petition is currently pending.

1 isolated, furthering threatening the Central Coast South population’s long-term survival. (See  
2 AR0036483-92; 28963; see also 37854 [noting limited gene flow between Sierra Nevada and Central  
3 Coast populations]; AR037856 [diagram depicting same]; 30188.)

4 **D. The County’s Circulation of the Notice of Preparation**

5 On March 24, 2015, the County issued a Notice of Preparation for the Project. (AR008740-44.)  
6 On April 24, 2015, SMMC – a state agency – sent a letter to the County noting that the project site was  
7 within the Sierra Madre-Castaic Connection, and that the Project would extend development miles up  
8 the I-5 “into some of the most ecologically valuable core habitat in southern California.” (AR013402-5.)

9 **E. The County’s Circulation of the Draft EIR**

10 On May 2, 2017, the County circulated the Draft “supplemental”<sup>2</sup> EIR for the Project.  
11 (AR014020; 1703.) State and local agencies, environmental organizations, and independent scientists  
12 strongly criticized the Draft EIR’s incomplete and inaccurate analysis of the Project’s impacts on the  
13 Sierra Madre-Castaic Connection, the rare western spadefoot toad, rare plant species, and public health.  
14 SMMC questioned how the County could even consider approving a project that would:  
15 eliminate a watershed, ruin an Interstate viewshed, degrade a State Recreation Area, [] emit  
16 greenhouse gases from tens of millions of cubic yards of grading, and eliminate wildlife access  
to one of only two wildlife crossings under southbound I5 for a distance of 10 miles.

17 (AR007490-91.) On June 15, 2017, the Center submitted comments on the Draft EIR, which identified  
18 numerous deficiencies with the document. (See AR024219-24240 [letter]; 24218 [transmittal].)

19 **F. The Final EIR and the Planning Commission’s Hearings on The Project**

20 On January 20, 2018, the County released the Final EIR (AR009579-80), which did not remedy  
21 the various flaws in the Draft EIR. On April 17, 2018, SMMC again wrote to the County (AR010051-  
22 10059):

23 The FSEIR was intentionally crafted to exclude any Alternative projects for your consideration  
24 that provide even a slightly better public outcome on everything from traffic to degradation of  
public lands to regional wildlife habitat connectivity. That is an insult and slight to the  
Commission and the people of Los Angeles County.

25 (AR010051-52.) On February 18, 2018, EHL sent an email to the Commission noting that the Project  
26 area “is remote, deficient in urban infrastructure and services, worsens jobs-housing balance, consumes

27 \_\_\_\_\_  
28 <sup>2</sup> The EIR was called a “supplemental” EIR because it was related to a 1992 EIR for an earlier version of  
the Project for which the development approvals had expired in April 2013. (AR001818; 1826.)



1 intact and sensitive habitat, and puts ever more people in danger of life-threatening wildfire.”

2 (AR026736.) EHL urged the commission to “turn[] down this outmoded and harmful project.” (*Id.*)

3         On February 21, 2018, the Planning Commission conducted a public hearing on the Project.  
4 (AR012149-57.) During the hearing, SMMC’s deputy director, Mr. Edelman, questioned why County  
5 staff had “glossed over [] very serious issues” with the Project raised by CDFW, the Center, and  
6 California State Parks. (AR012228-30.) Mr. Edelman pointed out the irony that officials were spending  
7 \$50 million to build a wildlife bridge for mountain lions and other wildlife across the 101 freeway while  
8 this project “squanders the opportunity to [] use existing corridors to get underneath the freeway.”  
9 (AR012229.) Mr. Edelman also questioned why there wasn’t a single alternative analyzed in the EIR  
10 that did not involve 18 million cubic yards of grading. (AR012230.)

11         The Planning Commission asked County staff and Northlake to meet with the Mountains  
12 Recreation & Conservation Authority (which is affiliated with SMMC) to discuss the wildlife  
13 connectivity issue, and then continued the hearing until April 18, 2018. (AR012156.) The Center  
14 submitted comments authored by Dr. Tiffany Yap<sup>3</sup> on the Final EIR urging the County to address the  
15 EIR’s deficiencies and revise the Project footprint. (AR027974-28017.)

16         On April 5, 2018, the County released a 307-page “Supplemental Memo” that disclosed for the  
17 first time that the Project had been modified to remove all of the industrial uses and most of the  
18 commercial uses, replacing them with more dwelling units. (AR010163; 10174-76.)

19         During the Planning Commission meeting of April 18, 2018, John Arvin, a Northlake  
20 representative, indicated Northlake had met with SMMC staff, but acknowledged that Northlake had not  
21 addressed the issues raised by SMMC regarding wildlife connectivity. (AR012265.)

22         At the April 18th hearing, Mr. Edelman questioned why the County was considering the  
23 development – which would leave *less than 20 percent* of the Project as open space – when the County  
24 generally rejects development proposals unless they contain *50 percent as open space*. (AR012275.) He  
25 warned that the runoff from the development would flow into Castaic Lagoon—a prime public  
26 swimming area. (AR012276.) He explained there was no need to approve more sprawl development in  
27

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28 <sup>3</sup> Dr. Yap holds a Ph.D. in Environmental Science & Engineering. (See AR028014-17.)

1 the area given there were already thousands of unbuilt units in Santa Clarita Valley. (AR012277.) Dr.  
2 Yap also urged the County to adopt reasonable mitigation measures to alleviate the Projects impacts.  
3 (AR012272-74.) Nonetheless, the Commission voted 3-1 on April 18, 2018 to approve the Project.

4 **G. The Board of Supervisors Denies the Appeals Brought by the Center and SMMC**  
5 **and Approves the Project.**

6 The Center submitted a timely administrative appeal of the Planning Commission’s decision on  
7 April 30, 2018. (AR010637-38.) SMMC as well as the Golden State Environmental Justice Alliance also  
8 submitted administrative appeals. (AR010630-32; 10554-55.)

9 On September 25, 2018, the Board of Supervisors (“Board”) conducted a public hearing on the  
10 appeals. (AR012322-23.) Despite being advised before the hearing that each group of appellants would  
11 have four minutes to address the Board (AR028731-32), County staff only allowed the three appellants a  
12 combined total of four minutes to speak (barely a minute per an appellant). (AR012457-60.) After  
13 hearing from the appellants, Supervisor Sheila Kuehl stated that she did not support the Project:

14 The environmental concerns [] are much more serious to me. We have a number of issues, as you  
15 know, with mountain lions and the crossings on the 101. A utility tunnel doesn’t do it. There is  
16 something that allow wildlife to know they can cross, and sometimes even the existence of a  
17 tunnel, it’s still a barrier, because it doesn’t look like a really wonderful place to get from one  
18 place to another. The creek was a major concern, as well. As you know, my planning  
19 commissioner did not support this, and I agree with her assessment.

20 (AR012475-76.) Supervisor Solis also expressed concern about the environmental impacts of the  
21 Project, but mused that “this has been on the books since 1992.” (AR012475.) After Supervisor Barger  
22 assured Supervisor Solis that the Project was a “modern interpretation of 1992,” Supervisor Solis  
23 responded that she had “no objection” to moving forward. (AR012475.) The Board thereafter voted 4-1  
24 to deny the appeals (AR012322-23), with Supervisors Hahn and Ridley-Thomas voting with no  
25 comment (AR012476-77).

26 On the evening March 28, 2019, the County released hundreds of pages of additional documents  
27 relating to the Project prior to Board meeting on April 2, 2019 in which the Project was on the agenda  
28 for a vote on approval. (AR028961.) The Center submitted another letter on April 1, 2019 noting that the  
public was unable to review these new documents in the two business days between March 28 and April  
2 and urged the County to recirculate the EIR in light of new information. (AR028961-29010.) On April  
2, 2019, the Board voted 4-1 to approve the Project via consent calendar. (AR012570.)

1 **III. STANDARD OF REVIEW**

2 CEQA was enacted to “take all action necessary to protect . . . [and] enhance the environmental  
3 quality of the state” and should be “interpreted . . . to afford the fullest possible protection to the  
4 environment within the reasonable scope of the statutory language. . . .” (Pub. Res. Code § 21001; Cal.  
5 Code Regs., tit. 14, § 15003 *et seq.* [“Guidelines”].) In reviewing CEQA documents, the Court inquires  
6 whether there was a prejudicial abuse of discretion, which occurs (1) when the agency fails to proceed in  
7 a manner required by law (e.g., by not following CEQA’s procedures) or (2) by reaching factual  
8 conclusions unsupported by substantial evidence. (Pub. Res. Code § 21168.5.) The Supreme Court has  
9 clarified that non-deferential de novo review is appropriate for mixed questions law and fact relating to  
10 whether CEQA’s statutory criteria are satisfied (e.g., the adequacy of the EIR’s discussion of an impact)  
11 while a more deferential standard of review is warranted when factual questions predominate. (See *Sierra*  
12 *Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-516 [“*Sierra Club*”].) The key question is whether  
13 the EIR includes sufficient detail to “enable those who did not participate in its preparation to understand  
14 and to consider meaningfully the issues raised by the proposed project.” (*Id.* at 516.)

15 **IV. ARGUMENT**

16 **A. The EIR’s Discussion of the Project’s Impacts on the Sierra Madre-Castaic**  
17 **Connection and the Central Coast South Mountain Lions is Misleading, Incomplete,**  
**and Inadequate.**

18 The County violated CEQA by failing to disclose or describe the Project’s potential impacts on  
19 the Sierra Madre-Castaic Connection and the Central Coast South mountain lions. CEQA requires a  
20 “mandatory finding of significance” if there is substantial evidence in the record that the Project *may*  
21 cause a “wildlife *population* to drop below self-sustaining levels; threaten to eliminate a plant or animal  
22 community; substantially reduce the number or restrict the range of an endangered, rare or threatened  
23 species . . . .” (Guidelines § 15065a)(1).) This means that “a project is deemed to have a significant  
24 impact on the environment as a matter of law if it reduces the habitat of a species, or reduces the number  
25 or range of an endangered, rare, or threatened species. . . .” (*Endangered Habitats League, Inc. v.*  
26 *County of Orange* (2005) 131 Cal.App.4th 777, 792 fn. 12 [citing *Defend the Bay v. City of Irvine*  
27 (2004) 119 Cal.App.4th 1261, 1273–1274].) Likewise, the EIR’s adopted threshold of significance  
28

1 considers an impact significant if the Project may “[i]nterfere substantially with the movement of any  
2 native resident [] wildlife species or with established native resident or migratory wildlife corridors . . .  
3 .” (AR001941.) Whether the EIR contains an adequate discussion of the potential impacts of the Project  
4 on the Sierra Madre-Castaic Connection and Central Coast South mountain lions is reviewed under the  
5 non-deferential de novo standard. (See *Sierra Club*, 6 Cal.5th at 515 [“adequacy of discussion claims are  
6 not typically amenable to substantial evidence review”].)

7 **1. SMMC, CDFW, Ventura County, and California State Parks All Agreed that**  
8 **the EIR Failed to Accurately Describe How the Project Would Harm the**  
9 **Sierra Madre-Castaic Connection.**

10 The record is clear that the Project would degrade the Sierra Madre-Castaic Connection and  
11 harm the Central Coast South mountain lions. There are two underpasses adjacent to the Project that  
12 currently provide for wildlife movement—one such underpass is parallel to the northern boundary of  
13 “phase one” of the Project and the other is northward in the mid-point of “phase two” of the Project.  
14 (AR013403.) SMMC concluded these underpasses likely “represent the southernmost, large animal  
15 routes under I-5 until Castaic Creek crosses under by Highway 126.” (*Id.*) Building a large housing  
16 development directly across from these tunnels “would severely block habitat connectivity to both  
17 tunnels and severely degrade[] conditions for animals to reach the tunnels . . . .” (AR007493; see also  
18 9408-13 [SMMC letter of May 22, 2017 showing diagram of connectivity paths]; 13402-05 [SMMC  
19 letter on initial study].) In comments on the Draft EIR (AR007390-7405; 24188-24203), CDFW agreed  
20 that the Project would impact “the ability of wildlife to use the I-5 under-crossings and may substantially  
21 [a]ffect the larger under-crossing at Templin” (AR024192). Wildlife movement would be further  
22 degraded because the Project would destroy several perennial sources water that have historically been  
23 available to wildlife. (AR024192.) To provide an accurate picture of the Project’s impacts on wildlife  
24 connectivity, CDFW recommended (1) the County conduct studies that track wildlife dispersal,  
25 including for large mammals (e.g., mountain lions) across the Project site and the three adjacent under-  
26 crossings, and discuss how the Project would impact use and dispersal patterns; and (2) analyze how the  
27 Project would impact local and regional wildlife movement. (*Id.*)

28 Other agencies and NGOs offered similar comments: California State Parks—which rarely

1 comments on housing developments—determined the Draft EIR was deficient because (1) it wrongly  
2 claims that the proposed project would not impact wildlife connectivity in the Sierra Madre-Castaic  
3 Connection; (2) it contradicts the technical expertise provided in the multiagency South Coast Missing  
4 Linkages report, and; (3) it “minimizes the value of the habitat that connects the two Interstate 5 tunnels  
5 directly west of the project.” (AR007375.) Ventura County likewise concluded that “potential impacts to  
6 wildlife movement and migration associated with the proposed project have the potential to indirectly  
7 impact the contiguity and persistence of wildlife movement and migration to and from neighboring  
8 jurisdictions, such as Ventura County.” (AR019197-99.) South Coast Wildlands determined that the  
9 Project “would substantially interfere with the movement of native resident and migratory wildlife  
10 species, and with established native resident or migratory wildlife corridors.” (AR010004.)<sup>4</sup>

11           Nonetheless, the Draft EIR barely acknowledged the existence of the Sierra Madre-Castaic  
12 Connection and concluded the Project would not significantly impact wildlife connectivity (AR001969-  
13 70; 1918-20; 7394; 10001.) The Draft EIR also claimed that while the project area may have *in the past*  
14 acted an important linkage between the Angeles National Forest and Santa Clara River, the linkage  
15 already had been “essentially eliminated” by Castaic Dam and Castaic Lake SRA, and therefore only  
16 urban species such as coyotes can navigate the area. (AR001969-70.)<sup>5</sup> But—as independent scientists  
17 noted—this idea that the Project site was only passable by coyotes is undermined by the rest of the EIR,  
18 which acknowledges a wealth of species on the project site, including wide-ranging non-urban species  
19 like the mountain lion and bobcat. (AR007622; 7642; 7635 [EIR acknowledging mountain lions and  
20 bobcats may occur onsite].)

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23 \_\_\_\_\_  
24 <sup>4</sup> The South Coast Missing Linkages Project identified the 1992 Northlake development as a potential  
threat to the linkage that could create irreversible barriers to wildlife movement. (AR030205-206.)

25 <sup>5</sup> Notably, the biological report for the 1992 project acknowledged the existence of the wildlife corridor  
26 even with the existing Castaic Lake SRA. (See AR001253 [“An important part of the biotic resource of  
the development site is the ability of wildlife to move from Castaic Afterbay up the Grasshopper Canyon  
27 drainage to higher elevations where steep escarpments provide nesting and denning resources”]; 1242  
[“a wildlife corridor exists up the major drainage of Grasshopper Canyon connecting the Castaic  
28 Afterbay with the chaparral of the higher elevations in the San Gabriel Mountains”].)

1                                   **2.     The County’s Own Biologist Agreed that the EIR Failed to Accurately**  
2                                   **Disclose Impacts to the Sierra Madre-Castaic Connection.**

3                                   Record emails show that even the County’s own biologist, Joseph Decruyenaere, determined that  
4 the EIR prepared by Northlake’s consultant (BonTerra Psomas)<sup>6</sup> failed to address these information  
5 gaps. Mr. Decruyenaere concluded that BonTerra Psomas’s Final EIR responses to comments  
6 improperly minimized the value of the existing I-5 undercrossings – a rare connectivity resource – and  
7 therefore failed to apply basic principles of conservation biology. Mr. Decruyenaere wrote:

8                                   This analysis unduly minimizes the value of compromised movement opportunities. *Nowhere*  
9                                   *else in biological conservation would you want to argue that because a resource is rare it’s*  
10                                   *less than valuable.* The fact that the use of a highly constrained opportunity for movement  
11                                   between natural areas might be made more difficult should always be considered a potentially  
12                                   significant impact unless there simply aren’t any wildlife around to use the crossing. If a  
13                                   movement opportunity lacks a vegetated approach or some other feature that would seem to  
14                                   make it work better, that doesn’t mean it doesn’t pose an opportunity for movement. It just  
15                                   suggests that an animal might be less inclined to use it in the imaginary scenario that they have a  
16                                   better alternative.

17 (AR025874, emphasis added.) Mr. Decruyenaere reiterated that the existing I-5 undercrossings – which  
18 he characterized as “compromised movement opportunities” – are potentially the last available areas for  
19 wildlife movement given that the existing landscapes is already highly fragmented. (*Id.*) In an email, Mr.  
20 Decruyenaere again explained that BonTerra Psomas’s responses to comments “rel[y] chiefly on the  
21 idea that existing crossing features are not ideal but [they] neglect[] to provide conclusions as to how  
22 overall wildlife movement on the site and through the crossing features may actually change with  
23 buildout of the project.” (AR025822.) Mr. Decruyenaere concluded that BonTerra Psomas’s responses  
24 failed to “sufficiently address wildlife movement concerns of CDFW.” (AR025822.) He directed  
25 BonTerra Psomas to “[r]evis[e] the discussion to acknowledge the value of the crossings and instead of  
26 devaluing them, talk about how the project might change the potential for their use.” (AR025874.) Jodie  
27 Sackett, a senior County planner, reiterated Mr. Decruyenaere’s direction. (AR025825-26.) Nonetheless,  
28 this portion of the Final EIR was not revised. (Compare AR025874-75 [BonTerra Psomas draft with Mr.  
Decruyenaere’s comments] with AR007409-10 [Final EIR with same text]; 8329-31 [first errata to EIR  
noting minor revisions to EIR at on page 2-21 [7409], but not page 2-20 [7410].)<sup>7</sup>

<sup>6</sup> Northlake requested, and the County agreed, to have Northlake retain BonTerra Psomas to prepare the EIR. (See AR017953-17965.)

<sup>7</sup> Mr. Decruyenaere’s comments caused a “crisis” with the developer (AR026094), which prompted (footnote continued on next page)

1 As such, the Final EIR and its errata minimized the importance of the existing undercrossings,  
2 claiming incorrectly that (1) usage with or without the Project would be “infrequent” and (2) there was  
3 no “indication that the crossing or the site would or could represent an essential pathway(s) for regional  
4 wildlife movement.” (AR007409-11; see also 15153.) And despite CDFW’s direction to conduct  
5 wildlife dispersal studies (AR024192), the Final EIR claimed that “*additional* tracking studies are not  
6 warranted,” despite the fact *no* tracking studies were completed.<sup>8</sup>

7 There were other serious omissions in the EIR’s analysis of the Project’s impacts on the Sierra  
8 Madre-Castaic Connection: First, the EIR failed to account for how noise, light, and human activities  
9 will interfere with wildlife movement adjacent and throughout to the development. (See AR028962-63;  
10 28999 [citing studies at 31142-53; 36848-52; 34535-45; 36039-44; 37547-67; 36093-110]; 24192  
11 [CDFW agreeing that the Project would degrade wildlife movement by generating traffic, lighting,  
12 noise, dust, and human activity]; see also 10053).<sup>9</sup> Second, the EIR ignores the importance of corridor  
13 redundancy—the conservation biology principle that adequate connectivity requires not one (or even  
14 two)—but *many* corridors across fragmented landscapes in order to ensure movement of wide-ranging  
15 species like mountain lions. (See AR028962; 28998 [referencing studies at 34180-91; 31495-508;  
16 34371-91; 31475-88].) Instead, contrary to this principle, the EIR places all its proverbial “eggs in one  
17 basket” by claiming a single crossing north of the Project will ensure regional connectivity. (AR007410;  
18 7705.)

19 **3. The EIR Contains No Analysis of How the Project’s Degradation of the**  
20 **Sierra Madre-Castaic Connection May Harm the Central Coast South**  
21 **Mountain Lions.**

22 As noted above, the Sierra Madre-Castaic Connection is a crucial habitat linkage for the Central

23 meetings between Mr. Decruyenaere and the developer’s biologist and CEQA attorney (AR026093).  
24 County planning staff also remarked that “Northlake attorneys are concerned that two of the 12  
25 comments may be fatal flaws,” including one regarding the wildlife corridor. (AR 026097.)

26 <sup>8</sup> The Final EIR refers to a “Wildlife Crossing Assessment Technical Memo” prepared by BonTerra  
27 Psomas staff for Northlake. (AR007411.) However, the memo only indicates that staff visited the  
28 existing undercrossings, took photos, looked for animal tracks, and described the surroundings.  
(AR007847-59.) The memo contains no analysis as to the potential for use by certain species. (See

AR028734 [noting same].) And the EIR elsewhere concedes that “[n]o focused field surveys (i.e.,  
camera traps) were conducted to document wildlife movement on the Project.” (AR007641.)

<sup>9</sup> The EIR generally acknowledged that human activities can disturb wildlife (see, e.g., AR007496 &  
1947), but failed to analyze how such human activities would inhibit wildlife movement.

1 Coast South mountain lion population. (AR010001; 24192.) The linkage already is impacted by existing  
2 development and lack of adequate crossing infrastructure, which has constrained movement  
3 opportunities between the Los Padres and Angeles national forests. (AR031172; 30188.) This in turn has  
4 led to isolation of the Central Coast South mountain lions, which threatens their long-term survival. (See  
5 AR028963, citing see also 38065-78; 35908-19; 30188.) The EIR acknowledges that the Project site  
6 contains suitable habitat for mountain lions and that mountain lions may occur onsite (AR007642; 7635;  
7 see also 3641 [mountain lions “are expected to move between the Angeles National Forest through the  
8 study area to Castaic Lake in search of water in the summer, and may forage at lower elevations during  
9 the winter months when there is a heavy snowpack in the mountains”]. Nonetheless, the EIR fails to  
10 offer any analysis of how this Project could further impair connectivity and reduce genetic diversity for  
11 the already struggling Central Coast South mountain lions.

12 In sum, the EIR’s misleading, incomplete, and conclusory analysis of the Project’s impacts on  
13 the Sierra Madre-Castaic Connection – and associated impacts on the Central Coast South mountain  
14 lions – violated CEQA’s informational disclosure provisions. (See *Citizens to Pres. the Ojai v. County of*  
15 *Ventura* (1985) 176 Cal.App.3d 421, 430-432 [EIR may not understate information concerning severity  
16 of impacts and skew decision-makers perspective to downplay seriousness of impact]; *Mountain Lion*  
17 *Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1050-1051 [EIR may not avoid well-  
18 known important environmental considerations and sweep “serious criticisms [] under the rug”]; *Madera*  
19 *Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 104 [overruled on other  
20 grounds] [EIR fails as an informational document by omitting or ignoring contrary information]; *Protect*  
21 *the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111-12 [EIR  
22 violated CEQA by omitting a statement of reasons why the project’s impacts on stream flows were less  
23 than significant and instead containing bare conclusions]; *Kings County Farm Bureau v. City of Hanford*  
24 (1990) 221 Cal.App.3d 692, 724 [agency must produce relevant environmental data and may not avoid  
25 attack on adequacy of EIR by excluding such information].)

26 Likewise, courts have held an EIR is inadequate where the lead agency failed to properly study  
27 an issue after it was raised by CDFW. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of*  
28



1 *Stanislaus* (1994) 27 Cal.App.4th 713, 728-729.) Here, the issue of potential impacts to the Sierra  
2 Madre-Castaic Connection was raised not just by CDFW, but also by other expert agencies (SMMC,  
3 Ventura County, California State Parks) as well as independent scientists and environmental  
4 organizations.

5 **B. The EIR Improperly Fails to Consider Mitigation Measures to Reduce the Project's**  
6 **Impacts on the Sierra Madre-Castaic Connection and Central Coast South**  
7 **Mountain Lions.**

8 Under CEQA, agencies may not approve a project as proposed if there are feasible mitigation  
9 measures that would avoid or substantially lessen the project's significant environmental effects. (Pub.  
10 Res. Code § 21002.) An EIR is inadequate if it does not discuss such mitigation measures. (See  
11 *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413,  
12 433; *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th  
13 86, 108 [EIR invalid because it lacked substantial evidence that rejected mitigation measures were  
14 infeasible].)

15 Because the EIR failed to acknowledge any potentially significant connectivity impacts of the  
16 Project (see, e.g., AR001969), the EIR likewise failed to consider or adopt any mitigation measures to  
17 address impacts to the Sierra Madre-Castaic Connection or the Central Coast South mountain lions. (See  
18 AR001969-70; 7411.) For instance, CDFW urged the County to consider an enhanced crossing structure  
19 over the I-5 such as a land bridge to mitigate the significant impacts of such a large development within  
20 the linkage and ensure safe passage of wildlife between the Castaic and Sierra Madre mountain ranges.  
21 (AR024192-93.) The EIR summarily dismissed this proposal (see AR007411) because it had already  
22 determined wildlife movement was "infrequent" (AR007409) and that there would be "no significant  
23 impacts." (See AR007394; 7411; 7409.)

24 In a half-hearted attempt to address this serious omission in the EIR, Northlake created an exhibit  
25 called "Wildlife Connectivity Plan" that generally depicts where wildlife might cross the development  
26 site. (AR027255; 27256.) The County's "Conditions of Approval" also states the "subdivider shall  
27 ensure that additional and/or enhanced wildlife crossings and connections are provided within/through  
28 the Project and Northlake development, *as depicted on the Exhibit* marked 'wildlife connectivity plan.'"

1 (AR000468, emphasis added.) However, no such exhibit is attached to the Conditions of Approval.  
2 More importantly, internal emails indicate that County staff did not add this “condition” or “Wildlife  
3 Connectivity Plan” to the Errata to the EIR or Mitigation, Monitoring, and Reporting Program because  
4 “the developer is offering this as an ‘extra’ [and] I don’t think they’ll want to add it to the SEIR or  
5 MMRP.” (AR027894.)<sup>10</sup> In any event, SMMC notified the County both in writing and in testimony that  
6 this “attempt [by] “the applicant” was simply inadequate. (AR010053.) The Center also urged the  
7 County to consider creating or enhancing wildlife crossings in the Project area. (AR028962-63.)

8 The EIR therefore violated CEQA because it failed to adopt or even consider reasonable  
9 mitigation measures to alleviate potentially significant impacts. (See *Sierra Club v. County of San Diego*  
10 (2014) 231 Cal.App.4th 1152, 1168-1176 [“*San Diego*”] [agency violated CEQA by failing to adopt  
11 mitigation measures proposed by Sierra Club when record demonstrated EIR’s measures were likely  
12 ineffective]; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th  
13 1019, 1029.)

14 **C. The EIR’s Failure to Describe Baseline Conditions for the Western Spadefoot Toad**  
15 **Preluded Adequate Analysis of the Project’s Impacts.**

16 The EIR violates CEQA because it failed to describe or even disclose western spadefoot toad  
17 (“spadefoot”) habitat onsite and as a result, did not properly consider the Project’s impacts to this  
18 special-status species. As described in section (IV)(A), CEQA provides that an impact on a special-  
19 status species is significant if it substantially reduces the number or restricts the range of the species.  
20 (Guidelines § 15065; see also Guidelines Appx. G § XVII) The spadefoot is a rare species that has  
21 experienced a precipitous drop in its population from the destruction of 80 percent of its historical  
22 habitat in Southern California (AR003895; 3643.) The Project site is home to one of the few remaining  
23 Southern California populations (AR001930; 1933; 1943; 3665; 24193.) As such, the County had a duty  
24 to accurately disclose the baseline conditions for the spadefoot so that it could adequately analyze the  
25 Project’s potential impacts to the species. Whether the EIR contains an adequate description of baseline

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27 <sup>10</sup> Mr. Sackett’s observation is consistent with Northlake’s position at the Planning Commission  
28 hearing—on the one hand a Northlake representative claimed Northlake was committed to working with  
SMMC on a connectivity plan “after the approval of the project” even while Northlake’s attorneys  
disparaged SMMC’s most recent comments in the same hearing. (See AR012265; 12270.)

1 conditions is reviewed under the non-deferential de novo standard. (See *Sierra Club* 6 Cal.5th at 515.)

2 The EIR relied on spadefoot surveys conducted in March 2014 during an intense drought,  
3 leading to underreporting of spadefoot habitat on the Project site. (AR026258, 3738, 7395.) The EIR’s  
4 reliance on a narrow survey period meant the EIR impermissibly cherrypicked a favorable set of  
5 environmental conditions, contrary to CEQA. (See *Save Our Peninsula Committee v. Monterey County*  
6 *Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125 [“Environmental conditions may vary from year to  
7 year and in some cases it is necessary to consider conditions over a range of time periods”].)

8 The EIR also improperly excluded previously observed spadefoot habitat from its impact  
9 assessment. The 2004-05 survey, a wet season with above-average rainfall, noted eight seasonal pools  
10 on the Project site and found spadefoot present in three distinct locations. (AR003818; 3833; 3835.)  
11 These pools are essential to spadefoot survival, as spadefoot rely on seasonal ponds, vernal pools and  
12 streams to breed, and utilize connected upland habitat for dispersal and refuge during the dry season.  
13 (AR003665.) However, the County ultimately excluded all but two of these pools from consideration on  
14 the basis that the ponds had all dried up before the March 2014 survey, which was conducted at the  
15 height of the recent drought in California. (AR003840.) CDFW criticized the EIR’s inconsistent  
16 description and representation of spadefoot survey results, such as using different numbering systems  
17 across different surveys, and declared the 2014 survey inadequate because not all pools were filled due  
18 to the drought. (AR007395.) Similarly, Mr. Decruyenaere, in his comments on BonTerra Psomas’s  
19 response to CDFW, stated that spadefoot toads observed before 2014 should be assumed still present,  
20 despite not being observed in more recent surveys, a standard assumption when surveying special status  
21 species that are periodically dormant. (AR025876.) The EIR’s exclusion of previously observed suitable  
22 habitat and inconsistent reporting of spadefoot observations undermines the adequacy and accuracy of  
23 the EIR’s impact analysis, rendering it inadequate as an informational document. (*Napa Citizens for*  
24 *Honest Government v. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342, 355.)

25 **D. The EIR’s Mitigation of Impacts to Western Spadefoot Toad is Inadequate.**

26 The EIR’s inaccurate depiction of suitable spadefoot habitat impacted by the Project means that  
27 mitigation measures based thereon are also insufficient. As such, the EIR’s conclusion that potentially  
28

1 significant impacts to spadefoot will be less than significant after mitigation is invalid. (AR001943; see  
2 *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 487 [court found the EIR’s failure  
3 to accurately quantify the impact (frequency and duration of particulate matter pollution) precluded the  
4 public and decision makers from fairly considering alternatives or mitigation measures].) Even if the  
5 EIR’s flawed impact assessment was deemed permissible, the EIR’s spadefoot mitigation remains  
6 inadequate because (1) it relies on a relocation plan that is untried and is not supported by any evidence  
7 of actual success; and (2) the draft relocation plan lacks adequate performance criteria and monitoring.

8 **1. The EIR Fails to Demonstrate the Western Spadefoot Toad Relocation Plan**  
9 **Will be Effective in Mitigating Project Impacts to the Species.**

10 The Draft Western Spadefoot Toad Relocation Plan (“Relocation Plan”) is inadequate because  
11 there is no evidence in the record showing that such a plan will be effective. (See *Cleveland Nat’l Forest*  
12 *Found. v San Diego Ass’n of Gov’ts* (2017) 17 Cal.App.5th 413, 433 [mitigation that is unrealistic and  
13 unlikely to be implemented skews analysis and should be excluded from an EIR].) The Relocation Plan,  
14 implemented under Mitigation Measure 5.2-9, is the only measure upon which the EIR relies to reduce  
15 the Project’s significant impacts on spadefoot to a less than significant level. (AR001756; 1943; 1959.)  
16 Amphibian relocation has limited success, in part because recreating sensitive wetland habitat is  
17 particularly challenging (AR027981; 9303; 010015; 29264-68). Yet, the EIR provides no scientific basis  
18 for concluding its Plan will effectively avoid spadefoot impacts. (AR027981.) Amphibian relocation  
19 efforts induce harmful stress on individuals, and such efforts have diminished success with smaller (less  
20 than 1000 individuals) relocation populations. (AR031544-52.) Given the difficulty of relocation if  
21 executed well (AR034515-28 [study highlights deficiencies in current policies and practices driving  
22 compensatory mitigation of aquatic resources]), the Relocation Plan casts further doubt on its  
23 effectiveness by stating it will be implemented over just one season, instead of several seasons which the  
24 Relocation Plan acknowledges would be ideal. (See AR007840; 29207-13 [study finding forested  
25 wetland creation and restoration projects likely require more than 15-20 years to judge success or  
26 failure].)<sup>11</sup>

27 \_\_\_\_\_  
28 <sup>11</sup> The GLA Associates memo references a successful relocation effort in Orange County, but provides  
no details or scientific support for the contention. (AR016010.)

1 The EIR also fails to adequately demonstrate the feasibility of constructing off-site mitigation  
2 ponds that successfully sustain relocated spadefoot populations. The Relocation Plan calculates that  
3 22,859 square feet of mitigation ponds must be created, based on measurements of three habitat  
4 features<sup>12</sup> taken during a 2004 site survey. (AR007834.) There is no discussion of why the mitigation  
5 total relies on a site survey that predates any of the surveys used to determine the presence of spadefoot  
6 and its suitable habitat. Creating further confusion, the Relocation Plan identifies two potential locations  
7 in the northern part of the Project site for mitigation pools to be created. (AR007834.) These sites are not  
8 feasible because they are in areas dominated by California sagebrush-California buckwheat scrub, which  
9 is not suitable upland habitat for spadefoot. (AR010014; 1909.) Furthermore, the County states that  
10 created ponds are usually constructed in disturbed or non-native habitats, which would disqualify the  
11 northern portion of the Project site. (AR010219.)

12 Courts routinely invalidate EIRs where the lead agency fails to demonstrate that the mitigation  
13 will actually be effective in remedying the proposed harm. (See *Gray v. County of Madera* (2008) 167  
14 Cal.App.4th 1099, 1116-17 [substantial evidence did not support the feasibility or effectiveness of the  
15 mitigation measures for project's impacts to water supply]; see also *San Diego*, 231 Cal.App.4th at 1170  
16 [“Whether a measure is effective requires not just quantification, but also an assessment of the  
17 likelihood of implementation”].)

18 To the extent the EIR attempts to rely on the use of off-site locations for mitigation, (AR007834;  
19 7412), this is contradicted by the Feasibility Analysis that states “no offsite property required”  
20 (AR008389). Additionally, neither the Feasibility Analysis nor the Relocation Plan identifies  
21 appropriate sites for mitigation pond creation, neither discussed the appropriate amount of upland habitat  
22 needed for each pond, and neither addressed whether supposedly available land is accessible to the  
23 heavy equipment needed to excavate the ponds, among other operations.<sup>13</sup>

## 24 2. The Relocation Plan Represents Impermissibly Deferred Mitigation

25 The Relocation Plan lacks finite, specific performance standards against which the program's  
26

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27 <sup>12</sup> The relocation plan ignores multiple comments from CDFW and Mr. Decruyenaere imploring the  
inclusion of all observed spadefoot habitat in the mitigation plan. (AR003818; 25876.)

28 <sup>13</sup> In drought years, water trucks may be needed to provide water to mitigation pools. (AR007841.)

1 effectiveness can be objectively measured and demonstrated. (See *Preserve Wild Santee v. City of*  
2 *Santee* (2012) 210 Cal.App.4th 260, 280-82 [draft habitat management plan constituted impermissible  
3 deferral of mitigation because it lacked performance standards]; see also *San Joaquin Raptor Rescue*  
4 *Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [agency violates CEQA when it leaves  
5 “public in the dark” about what specific performance standards will be met].) The Relocation Plan  
6 would measure progress by monitoring “adult relative abundance” compared to the number of larvae  
7 and adults initially relocated (in addition to year over year totals) and defines success as a stable or  
8 increasing levels of “adult relative abundance.” (AR007844.) However, the Relocation Plan does not  
9 provide any quantification of what a stable relative abundance would be, whether that it is relative to the  
10 last two or three years of the plan<sup>14</sup>, or based on pre-Project population estimates. Additionally, without  
11 specific criteria that demonstrate the success of the *initial relocation*, any relative abundance analysis  
12 that follows will be arbitrary, precluding the public from ever knowing if the Project’s spadefoot impacts  
13 were truly mitigated to a less than significant level. (See *POET, LLC v. State Air Resources Bd.* (2013)  
14 218 Cal.App.4th 681, 739 [finding a mitigation measure that called for a future rule to ensure ““no  
15 increase in NOx’ is not a specific performance criterion”].)

16 **E. The EIR Fails to Adequately Mitigate Impacts on Rare Plants.**

17 The EIR violates CEQA by failing to adopt adequate mitigation measures to reduce the Project’s  
18 impacts to rare plant species. As described in section (IV)(A), CEQA provides that an impact on a  
19 special-status species is significant if it substantially reduces the number or restricts the range of the  
20 species. (Guidelines § 15065; see also Guidelines Appx. G § XVII) A lead agency must adopt feasible  
21 mitigation measures to reduce or avoid significant impacts when adopting a project. (Pub. Res. Code §  
22 21002.)

23 There are six special status plant species on the Project site: the round-leaved filaree (“filaree”),  
24 the club-haired mariposa lily and slender mariposa lily (collectively “lilies”)<sup>15</sup>, paniculate tarplant  
25 (“tarplant”), and southwestern spiny rush (“spiny rush”). (AR001926-27.) The Project would remove

26 <sup>14</sup> The relocation plan states that adult relative abundance will be lower in the first two years, as  
27 relocated adults may die or leave the mitigation pool. (AR007844.)

28 <sup>15</sup> The EIR treats the two subspecies of lily as a single entity due to the likelihood that individuals  
observed on-site are hybrids. (AR001942.)

1 some of the last remaining populations of these rare plants from the area, including one of three tarplant  
2 populations in Los Angeles County. (AR003793.) Instead of conserving these rare resources onsite, the  
3 EIR proposes to “translocate” them on to yet-to-be-determined off-site lands, an approach that violates  
4 CEQA for four reasons. (AR007398.)

5 First, the EIR fails to provide any evidence that “translocation” will effectively mitigate the  
6 Project’s impacts to rare plants. CDFW cautioned that it “is not aware of any Mariposa lily seeding or  
7 translocation projects that have been successful at demonstrating a long-term self-sustaining  
8 population.” (AR007398.)<sup>16</sup> Additionally, CDFW warned that “[t]he biological implication of mixing  
9 genes and specific alleles into new areas ... may cause loss of both the transplanted species as well as  
10 the population they are being moved to/near.” (*Id.*) This exact scenario occurred during another  
11 Mariposa lily translocation project by the County, leading to a loss of both existing and translocated  
12 lilies. (*Id.*) The EIR ignores these concerns and past failures, instead deferring to the Special Status Plant  
13 Species Restoration Program (“Restoration Program”), which provides no discussion of the plan’s  
14 likelihood of success, nor the success or failure of similar programs. (AR007773-95.)

15 Second, there is no support for a 1:1 mitigation ratio being sufficient to achieve the Restoration  
16 Plan’s performance standards. The EIR provides only a 1:1 mitigation ratio for each of the rare plants  
17 described above, despite CDFW’s direction to utilize ratios of 3:1 due to the species’ regional scarcity.  
18 (AR007398-99.) The Restoration Plan will be deemed successful if, after five years, 100 percent  
19 germination and flowering is observed in the same amount of relocated plants (for filaree, tarplant, spiny  
20 rush) that were detected in pre-construction surveys prior to relocation. (AR007783.) A 1:1 ratio will  
21 most likely not cover translocation failures, making it unlikely that the relocation target will be  
22 achieved. (AR009302.) Given the delicate nature of the species and the lack of evidence that  
23 translocation will be effective, described above, it defies common sense to expect a 1:1 mitigation ratio  
24 to adequately minimize the Project’s rare plant impacts. (See *Gray*, 167 Cal.App.4th at 1117-18 [the  
25 court declined to defer to the agency’s finding that mitigation would be effective where those findings  
26 defy common sense]; see also *San Diego*, 231 Cal.App.4th at 1168 [measures to reduce greenhouse gas

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27  
28 <sup>16</sup> Mr. Decruyenaere similarly stated that “population creation” should not be a part of rare plant  
mitigation. (AR025823.)

1 (GHG) emissions were found invalid for lack of evidence they would be effective mitigation measures].)

2 Third, the Restoration Plan is impermissibly vague and inconsistent with the EIR. The Plan fails  
3 to accurately disclose the number of plants, bulbs, or seeds that will be removed from the Project site for  
4 relocation, nor does the Plan identify the amount of land that will be set aside for off-site replanting.  
5 CDFW recommended a 3:1 ratio for “*both the acreage of habitat and number of individual plants.*”  
6 (AR007399-7400, emphasis added.) The need to mitigate for acreage, in addition to individual plants, is  
7 completely overlooked in the EIR and unaddressed in the Restoration Plan. (See *Communities for a*  
8 *Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93 [“*CEB*”] [The court faulted the  
9 agency for failing to calculate the impact reduction of vaguely described GHG mitigation measures].)  
10 Inconsistency between the Restoration Plan and Feasibility Analysis also add to the confusion. For  
11 example, the Restoration Plan and Feasibility Analysis appear to rely on different survey criteria, with  
12 the Plan requiring rainfall within 80 percent of normal to carry out pre-construction plant surveys and  
13 the Feasibility Analysis relying on 2014 survey when the Project site received only 32 percent of normal  
14 rain levels. (AR003738.) Similarly, the Feasibility Analysis appears to commit to relocating a certain  
15 number of plants (AR008389) even though the Restoration Plan will determine mitigation requirements  
16 (if any) based solely upon pre-construction surveys (AR007793). These inconsistencies and lack of  
17 clarity fail to meet CEQA’s mitigation requirements.

18 Fourth, and fatally, the EIR fails to commit to *any* mitigation for these species; instead, as noted  
19 above, it relies entirely on future “pre-construction surveys” for filaree, tarplant, lilies, and southwestern  
20 spiny rush plant to determine how much (if any) mitigation is needed. (AR007793.) The EIR  
21 impermissibly allows the Project developer to determine how much (if any) mitigation will take place  
22 long after project approval. (See *Napa Citizens for Honest Government*, 91 Cal.App.4th at 355 [“Its  
23 (EIR) purpose is to inform the public and its responsible officials of the environmental consequences of  
24 their decisions *before* they are made”].)

25 **F. The EIR’s Alternatives Analysis is Misleading, Flawed, and Illogical.**

26 As noted above, CEQA bars an agency from approving a project as proposed if there are feasible  
27 alternatives which will avoid or substantially lessen the project’s significant environmental effects. (Pub.  
28



1 Res. Code § 21002.) One of the EIR’s major functions is to “ensure that *all reasonable alternatives* to  
2 proposed projects are thoroughly assessed” by the decision-makers. (*Laurel Heights Improvement Assn.*  
3 *v. Regents of University of California* (1988) 47 Cal.3d 376, 400 [“*Laurel Heights I*”], emphasis added,  
4 citation and internal quotations omitted.) Here, the EIR failed to consider an alternative that avoided the  
5 destruction of a 3.5-mile blue-line stream known as Grasshopper Creek. SMMC strongly criticized the  
6 EIR for refusing to consider a Creek Avoidance Alternative:

7       The range of project alternatives is deficient because it lacks a project that does not require  
8       less than 15 million cubic yards of grading. ***Any project requiring 15 million cubic yards of***  
9       ***grading and the loss of ten acres of wetlands in the wildlands of California next to State***  
10       ***Park land and BLM land and located within one of the fifteen most imperiled habitat***  
11       ***linkages in southern California defined in the 2000 South Coast Wildlands Missing***  
12       ***Linkages Study cannot avoid regionally significant biological impacts.***

13 (AR007492, emphasis added.) Petitioners raised similar concerns, noting that the Draft EIR provided no  
14 reasoned explanation why the Creek Avoidance Alternative was not feasible. (AR007537.) CDFW also  
15 wrote to the County noting that the EIR failed to “include an alternative that reduce[s] impacts to the  
16 sensitive biological resources on the Project [site] in a biologically meaningful way.” (AR024189.)<sup>17</sup>

17       Despite these comments, the Final EIR doubled down on the idea that destruction of  
18 Grasshopper Creek was necessary for four reasons: preserving it would (1) require the “export of over  
19 10 million cubic yards of soil [] and buttressing along the creek”; (2) reduce commercial and industrial  
20 uses, thereby failing to lead to “economic well-being” and meet project objectives; (3) require utility  
21 pipelines over the creek, introducing “risks of accidental spills” into the creek; and (4) “substantially  
22 reduce” the developable land. (AR007561; 7500; 7562; 7570.)

23       Each of the Final EIR’s responses are unavailing. Regarding (1), *all* the considered alternatives  
24 require the grading of at least ***15 million*** cubic yards of soil (AR007492; 7499-7500), which is 50  
25 percent ***more*** than the grading that the Final EIR states is needed for the Creek Avoidance Alternative.  
26 More importantly, when SMMC asked the County to substantiate the claim that the Creek Avoidance  
27

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28 <sup>17</sup> Instead, as noted by CDFW, the meagre open space remaining onsite was “scattered around the  
development in relatively small patches within and between the development uses.” (AR007392.) The  
ecological value of these acres would be limited due to the “edge effect,” whereby they would be subject  
to introduction of non-native species, heat island effect, fuel modification, human disturbances, and  
inability for animals to establish territories. (*Id.*) CDFW therefore recommended clustering the  
development and reducing the Project footprint. (AR007392.)

1 Alternative would require the export of 10 million cubic yards of soil (AR010054), the County declined  
2 to stand by this figure and instead acknowledged that the Creek Avoidance Alternative “**would reduce**  
3 **the amount of grading by about 23 million cubic yards as compared to the Project.**” (See AR015154  
4 [responding to SMMC letter at 15194, emphasis added.) Regarding (2), the final Project **already**  
5 **eliminated** industrial uses and most of the commercial uses and replaced them with more residential  
6 uses (AR010176; 10174). Thus, the fact that the Creek Avoidance alternative would reduce commercial  
7 and industrial uses is not a reasoned basis to reject the Creek Avoidance Alternative. Regarding (3), the  
8 EIR assumes that **destroying the entire creek** is somehow less impactful than the speculative possibility  
9 of “accidental spills” into the creek (AR027976). Destroying 3.5 miles of a pristine stream because  
10 saving it would introduce the risk of “accidental spills” is akin to euthanizing a healthy pet cat simply  
11 because of the risk it will someday “accidentally” become ill. (See Pub. Res. Code § 21082.2(c)  
12 [substantial evidence is not “[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence  
13 which is clearly inaccurate or erroneous.”].)

14 Finally, regarding (4), the EIR’s complaint about a “reduction” in developable land is irrelevant  
15 under CEQA.<sup>18</sup> Case law is clear that CEQA requires that a lead agency to **provide analysis that a**  
16 **reduced size project is infeasible**, and support that analysis with detailed accounting showing the  
17 severity of the anticipated loss in profitability. (See *Uphold Our Heritage v. Town of Woodside* (2007)  
18 147 Cal.App.4th 587, 599 [rejecting agency’s dismissal of reduced project size and noting that project is  
19 only infeasible if “additional costs or lost profitability are sufficiently severe as to render it impractical  
20 to proceed with the project”]; *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d  
21 1167, 1181 [“scant figures” in record were insufficient to show that further reductions in project size  
22 would render project infeasible]; *Preservation Action Council v. City of San Jose* (2006) 141  
23 Cal.App.4th 1336, 1352-57 [city violated CEQA because rejection of reduced size alternative was not  
24 supported by substantial evidence]; *Center for Biological Diversity v. County of San Bernardino* (2010)  
25 185 Cal.App.4th 866, 884-85 [EIR’s discussion of infeasibility was insufficient to allow for informed  
26

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27 <sup>18</sup> The EIR’s feigned concern for the local economy also lacks credibility because the EIR fails to  
28 consider how the permanent aesthetic degradation of Castaic Lake SRA caused by the Project will result  
in economic losses in the film and tourism industry. (AR027977; see section (IV)(G) below.)

1 decision-making]; Guidelines § 15126.6(c).) Here, no such analysis or accounting exists and the EIR’s  
2 rejection of a creek avoidance alternative was improper leaving the alternatives analysis impermissibly  
3 incomplete.

4 **G. The EIR’s Aesthetics Analysis is Incomplete and Inaccurate.**

5 CEQA’s statutory criteria require that an EIR contain an in-depth discussion of all potentially  
6 significant impacts. (See *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91  
7 Cal.App.4th 1344, 1371 [labeling project’s effects as “significant” without accompanying analysis  
8 describing significant impacts violates CEQA].) Courts apply non-deferential de novo review for  
9 adequacy of discussion claims. (See *Sierra Club*, 6 Cal.5th at 511-516.) Impacts to scenic vistas –  
10 particularly scenic vistas adjacent to a state scenic highway – are proper areas of study for an EIR. (See  
11 *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401,  
12 citing Guidelines, Appx. G § I.) Indeed, CEQA sets forth a state policy of taking all actions necessary  
13 for the people’s enjoyment of “aesthetic, natural [and] scenic” resources. (Pub. Res. Code § 21001(b).)  
14 Here, the Project contains a regionally significant day and night viewshed from I-5, with public lands in  
15 the Los Padres and Angeles national forests surrounding the Project site. (AR007489.) The section of  
16 the I-5 parallel to the Project site is a State of California Eligible State Scenic Highway. (AR002426.) In  
17 addition, the viewshed and aesthetic value of Castaic Lake SRA – the County’s largest regional park – is  
18 a local resource that generates filming fees, jobs, and economic growth for the County. (AR010009-  
19 AR010010.) Castaic Lake SRA has been the backdrop for many popular television shows such as C.S.I.  
20 and Fear Factor. (*Id.*)

21 The EIR omits analysis of how this Project may damage these scenic and aesthetic resources.  
22 Instead, the Draft EIR’s 1.5 page section on aesthetic resources assumes that “compliance with the  
23 design guidelines set forth in the *NorthLake Specific Plan*” will ensure that there are no significant  
24 impacts on scenic vistas or from hiking trails within the Castaic Lake SRA. (AR002425-26.) Yet, the  
25 referenced “design guidelines” (which are not discussed) refer to *the 1992 Specific Plan*. (See  
26 AR001716 [defining “Northlake Specific Plan” as Appendix B, which is the 1992 plan]; see 2674-82.)  
27 In other words, the EIR assumes there will be no impacts simply because the Project will comply with  
28

1 “guidelines” in a 1992 version of the project. (See AR010009-10.) Compliance with undescribed  
2 guidelines that are nearly 30 years old is insufficient to demonstrate that the Project would have no  
3 potential to cause significant impacts on aesthetic resources. (See *Quail Botanical Gardens Foundation,*  
4 *Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605-1607 [holding city erred in failing to prepare  
5 an EIR when proposed mitigation measures would not clearly reduce adverse view impacts below a  
6 level of significance]; *Californians for Alternatives to Toxics v. Department of Food & Agriculture*  
7 (2005) 136 Cal.App.4th 1, 17 [“*Californians*”] [“[c]ompliance with the law is not enough to support a  
8 finding of no significant impact”].)

9         The Final EIR’s treatment of this potentially significant impact is similarly inadequate. The Final  
10 EIR claims without evidentiary support that “[n]o impacts are projected to occur within the State  
11 Recreation Area as a result Project development.” (AR007497.)<sup>19</sup> The EIR thus rests on the untenable  
12 position that building 3,150 homes on 1,307 acres immediately between a State Recreation Area and a  
13 State of California Eligible State Scenic Highway will have “no impact” on aesthetics. (*Id.*) Such  
14 conclusory and unsupported statements “do not fit the CEQA bill.” (*Californians*, 136 Cal.App.4th at  
15 10; see also *Spring Valley Lake Ass’n. v. City of Victorville* (2016) 248 Cal.App.4th 91, 103 [EIR impact  
16 findings legally inadequate when unsupported by evidence in the record].).

17         As with the EIR’s analysis of the Sierra Madre-Castaic Connection, the EIR’s analysis here  
18 violated CEQA’s information disclosure provisions. (See *Citizens to Pres. the Ojai*, 176 Cal.App.3d  
19 421, 430-432; *Mountain Lion Coalition*, 214 Cal.App.3d at 1050-51; *Madera Oversight Coalition, Inc.*,  
20 199 Cal.App.4th at 104; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1111-12; *Kings*  
21 *County Farm Bureau*, 221 Cal.App.3d at 724.) This omission undermined informed discussion  
22 regarding the Project’s potential consequences on regionally significant aesthetic resources. (See *Sierra*  
23 *Club*, 6 Cal.5th at 515; *CEB*, 184 Cal.App.4th at 82-83.)

24  
25 \_\_\_\_\_  
26 <sup>19</sup> Despite the Final EIR assuring readers that “no impacts” would occur because “the project would be  
27 located in a canyon” (AR007497), Appendix H to the Final EIR (AR008256-62) shows the Project  
28 footprint extending out of the canyon up to the ridgeline on both the Castaic Lake SRA and I-5 sides of  
the Project (AR008257) and down to the edge of the I-5 (AR008258). Additionally, the Project  
boundary is within 50 feet of the I-5. (AR008474.)

1           **H.     The EIR Failed to Adequately Analyze or Disclose the Air Quality and Public**  
2           **Health Impacts of the Project.**

3           A lead agency must use its “best efforts to find out and disclose all that it reasonably can” and  
4 gather this information “at the earliest possible time in the environmental review process. . . .”  
5 (Guidelines § 15144; Pub. Res. Code § 21003.1(a).) The EIR fails to comply with this mandate by not  
6 offering an adequate discussion of the public health impacts of air pollution on Project residents and in  
7 the Project area. Non-deferential de novo review is appropriate for adequacy of discussion claims. (See  
8 *Sierra Club*, 6 Cal.5th at 511-16.)

9           By way of background, L.A. County residents suffer from some of the highest levels of air  
10 pollution in the country. (AR010021, citing studies at 36326-36385[.]) Air pollution is linked to  
11 increased incidence and risk of cancer, birth defects, cardiac disease, and premature death. (*Id.*, see also  
12 36493-36500.) As such, the EIR was required to provide a detailed discussion of how the Project has the  
13 potential to cause air quality and public health impacts on residents and the adjacent community.

14           The EIR does not meet this standard. In particular, the EIR fails to analyze the potential health  
15 impacts of siting families (including children, which are considered “sensitive receptors”) within 500  
16 feet of a major freeway. (AR010023-25; 7510-11.)<sup>20</sup> Studies show that the “exposure zone” for freeway-  
17 generated air pollution is between 300 to 500 meters from the freeway (984 feet to 1640 feet).  
18 (AR032883; see also AR010024-25, citing studies & sources at 29378-86, 32527-56, 31489-93, 37330-  
19 38; 37568-76; 37767-76; 35832-49; 36052-65; 30415-21; 30290-300; 35893-900; 35901-907; 36561-  
20 64; 34546-63; 36045-51; 34479-93; 29660-69.) Living in the exposure zone increases the risk of asthma  
21 attacks in children, the onset of childhood asthma, impaired lung function, premature death and death  
22 from cardiovascular diseases, and cardiovascular morbidity. (*Id.*) Here, the Project described in the Draft  
23 EIR would place multi-family homes within 900 to 1500 feet of the I-5’s southbound lanes (AR001898),  
24 which is well within the exposure zone.

25           Nonetheless, the Draft EIR dismisses studies and guidance from the County’s own Department  
26 of Public Health (“DPH”), which recommends addressing health risks for sensitive land uses (which

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27 <sup>20</sup> The Project would also add to the existing air pollution burden by creating approximately 25,184 daily  
28 vehicle trips, thereby exceeding SCAQMD significance thresholds for nitrogen dioxide (NOx), carbon  
monoxide (CO), sulfur oxide (SOx), and particulate matter (PM10 and PM2.5). (AR001890-91.)

1 includes residences, schools, and playgrounds [AR001865]) up to a distance of 1,500 feet from the I-5.  
2 (AR001898.) The Draft EIR falsely states the DPH’s recommendations are “conservative” because they  
3 are from the “early 2000s,” but that diesel particulate matter pollution “has declined” since then, such  
4 that the EIR is “more conservative.” (AR001898.) This assertion is incorrect because: (1) as other  
5 County documents reveal, *more recent* science has shown *even greater risks* of living within 1,500 feet  
6 of a freeway (AR015325);<sup>21</sup> (2) the EIR fixates on a “red herring” of heavy trucks, despite the fact that  
7 traffic on the I-5 has increased—and ***will continue to increase*** with the Project (AR002294-95;  
8 AR001890). The EIR acknowledges that 71,000 vehicles per day drive past the Project on the I-5 under  
9 existing conditions. (AR002285.) By 2028, that number will increase by 25,000 trips to 96,000 vehicle  
10 trips per day adjacent to the Project on the I-5. (AR002319; 2336; 2304; 2319.) All of these automobiles  
11 (except EVs) will produce localized air pollution (AR027992).

12 The Project as revised in an April 5, 2018 memo would be even more harmful to public health—  
13 it would replace the industrial and commercial uses initially planned for immediately next to the freeway  
14 with more residential uses, which includes children and other “sensitive receptors.” (AR010176; 8332-  
15 44; see also maps at 8479-80; 1819.) While the Draft EIR assured readers that “there are no residences  
16 or other sensitive land uses proposed within 500 feet of I-5” (AR001898), a document released in  
17 August 2018 *after* the Planning Commission voted to certify the EIR in April 2018 revealed that  
18 “Project related residential land uses are located ***approximately 470 feet from the I-5.***” (AR008474;  
19 8480; see also 15147.) The newly released maps depicted “affordable” residential units next to the  
20 freeway instead of industrial/commercial uses. (AR008480.)

21 The County’s failure to provide an informed and accurate discussion of the Project’s potential  
22 health impacts on future residents and other community members violated CEQA. In *City of Long Beach*  
23 *v. City of Los Angeles* (2018) 19 Cal.App.5th 465, the court held the agency violated CEQA because the  
24 EIR did not include information on the air pollution impacts of the project on specific areas near the

25 \_\_\_\_\_  
26 <sup>21</sup> Even a BonTerra Psomas document prepared for Northlake *after* the Planning Commission certified  
27 the Final EIR noted that a 2017 California Air Resources Board advisory discusses “the possibility that  
28 near-roadway pollution exposure ***had been previously underestimated*** and that people living as much as  
1,000 feet from freeways were being adversely impacted by poor air quality at night and in the early  
morning.” (AR015325.)

1 project vicinity, including how frequently and for what length of time the level of particulate air  
2 pollution in the area would exceed standards of significance. (*Id.* at 487-88; see also *California Building*  
3 *Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377-78 [when a project  
4 risks exacerbating environmental hazards that already exist, an agency must analyze the potential impact  
5 of such hazards on future residents or users].) Here, the County has not included such analysis.

6 Likewise, in *Sierra Club*, the Supreme Court held that an EIR failed as an informational  
7 document when it contained only general descriptions of the health impacts of pollutants including  
8 particulate matter (PM), carbon monoxide (CO), and nitrogen dioxide (NOx). (6 Cal.5th at 519.) The  
9 Supreme Court noted that “a sufficient discussion of significant impacts requires not merely a  
10 determination of whether an impact is significant, but some effort to explain the nature and magnitude of  
11 the impact.” (*Id.*) The Supreme Court also expressly rejected the developer’s claim that the EIR  
12 addressed this issue by explaining that health risk assessment would “typically [be] prepared later in the  
13 CEQA process.” (*Id.* at 521.) The Supreme Court concluded:

14 CEQA requires that the EIR have made a reasonable effort to discuss relevant specifics regarding  
15 the connection between two segments of information already contained in the EIR, the general  
16 health effects associated with a particular pollutant and the estimated amount of that pollutant the  
project will likely produce. This discussion will allow the public to make an informed decision,  
as CEQA requires.

17 (*Id.* at 521.) *Sierra Club* further explained that the EIR was inadequate because it failed to translate the  
18 “bare numbers” regarding pollutants in the EIR into adverse health impacts. (*Id.*) Here, contrary to  
19 *Sierra Club* and *City of Long Beach*, the EIR fails to explain how bare numbers in the EIR translate into  
20 potential adverse health impacts on future residents or the community.

21 **I. The EIR’s Analysis of Wildfire is Misleading and Incomplete.**

22 As noted above, CEQA requires an EIR contain an in-depth discussion of all potentially  
23 significant impacts. (See *Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1371.) Whether the  
24 EIR contains an adequate discussion of potentially significant impacts is reviewed under the non-  
25 deferential de novo standard. (See *Sierra Club*, 6 Cal.5th at 515.) Here, the EIR’s discussion of wildfire  
26 impacts is misleading and incomplete for two reasons.

27 First, the EIR omitted analysis of the Project’s potential to result in more frequent human-caused  
28 ignitions, which would degrade ecosystems in the Project area. Petitioners submitted numerous studies

1 (see full AR citations in section (II)(B)), showing that the Project had the potential to alter the natural  
2 fire regime by causing frequent human-caused ignitions, resulting in a “feedback loop” of more  
3 environmentally destructive fires and the conversion of native biodiversity into fuel for the next fire.  
4 Nonetheless, the EIR failed to provide an adequate discussion of this reasonably foreseeable indirect  
5 impact of the Project. (See Guidelines, § 15064(d) [EIR must consider “reasonably foreseeable indirect  
6 physical changes in the environment which may be caused by the project”]; *California Building Assn.*,  
7 62 Cal.4th at 392 [CEQA requires “analysis of how a project might exacerbate existing environmental  
8 hazards”].)

9         Second, the EIR’s conclusion that Project’s wildfire impacts on residents and the community  
10 would be less than significant lacks substantial evidence and is contrary to the County’s own analysis.  
11 (See Pub. Res. Code § 21168.5; see also *Sierra Club*, 6 Cal.5th at 512.) As the EIR acknowledges, the  
12 Project site is within a “very high” fire hazard severity zone due to hilly terrain and dry weather  
13 conditions, and large wildfires occur approximately every ten years in the broader area. (AR002005;  
14 2008.) It also includes designated “hillside management areas,” which the EIR admits are “especially  
15 prone to wildfires due to topography . . . .” (AR002009.) The EIR lists dozens of wildfires that have  
16 occurred in the Santa Clarita area since 2004, including a fire in 2013 that burned “much of the southern  
17 portion of the Project site”. (AR001726; 2009-10; see also 19658-62 [photos of fire at site].) Despite  
18 these known risks, the EIR concludes that impacts would not be significant solely because the developer  
19 would comply with existing regulations. (AR002021-22.)

20         The EIR’s conclusion violates CEQA because CEQA is clear that mere compliance with existing  
21 regulations is insufficient to support a finding of no significance. (*Californians*, 136 Cal.App.4th at 17.)  
22 That is particularly true where *the County has essentially acknowledged* that existing regulations are  
23 inadequate to address wildfire risks. More specifically, the Board of Supervisors adopted a motion  
24 entitled “Analysis of the Woolsey Fire” (the “Wildfire Motion”). (AR028976-81.) The Wildfire Motion  
25 stated the Board “increasingly *see[s] residential housing growth at the urban wild land interface*  
26 *which poses greater danger to firefighters and to the residents who live in these extremely high fire*  
27 *severity zones.*” (AR028977, emphasis added.) The Wildfire Motion stated that the County needed to  
28



1 prepare for the “new normal” where devastating wildfires become increasingly common. (AR028977;  
2 see also 28985; 28962; 28986-87.) The Wildfire Motion questioned whether existing regulations were  
3 adequate by calling for a review of “existing prevention regulations and emergency notification  
4 systems” in order to “look to lessons learned and what we can do better moving forward.” (AR028977.)  
5 The Wildfire Motion’s concerns were echoed by retired CalFire Chief Ken Pimlott, who urged local  
6 officials to consider prohibiting development in fire-prone areas so that homeowners and firefighters  
7 “don’t have to keep going through what we’re going through.” (AR028969; see also 37894-901 &  
8 31410-18;38041-38043.)

9         Despite the Board acknowledging that existing regulations were failing to keep communities safe  
10 (and that housing development in high fire severity zones is contributing to the problem), the EIR  
11 wrongly concludes that the Project will result in “no impacts.” (AR008540; 561; 8612; 11447.)  
12 Incredibly, the EIR claims the Project would *decrease* the possibility of wildfire “because it would  
13 provide greater fire service access to open space areas surrounding the site. . . .” (AR008612.) The EIR’s  
14 lacks evidence—substantial or otherwise—for its conclusions, which are inconsistent with the County’s  
15 own analysis in the Wildfire Motion. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City*  
16 *of Rancho Cordova* (2007) 40 Cal.4th 412, 439 [factual inconsistencies in the EIR are not substantial  
17 evidence for decision-maker].) The EIR therefore fails as an informational document. (See *Laurel*  
18 *Heights I*, 47 Cal.3d at 400.)

19             **J.         The County Violated CEQA by Failing to Recirculate the EIR.**

20         CEQA requires that if “significant new information” is added to an EIR after a draft EIR is  
21 prepared, but before certification of the final EIR, an amended EIR must be recirculated for public  
22 review and comment. (Pub. Res. Code § 21092.1.) Here, the 307-page “Supplemental Memo” released  
23 on April 5, 2018, qualifies as significant new information. This document revealed for the first time that  
24 the Project had been changed to replace the industrial and commercial uses next to the freeway with  
25 residential uses. (AR010163; 10174-76; 28001.) It also contains as “Attachment B” an “Errata” to the  
26 EIR containing a “Revised Project Description” detailing these significant changes. (AR010174-86.) As  
27 described in section (IV)(H) above, the revised project would house families far closer to the I-5, thus  
28

1 increasing the potential for significant impacts on Project residents and the community. (See  
2 AR028001.) In addition, the Wildfire Motion – which acknowledges the “new normal” of destructive  
3 wildfires in Southern California and suggests that current regulations are inadequate – qualifies as  
4 significant new information. (See AR028962, referencing 28976-81.)

5 Courts have consistently held that such significant new information requires recirculation of the  
6 EIR. In *Save Our Peninsula Com.*, the lead agency published an errata document to the EIR with new  
7 information about the Project’s mitigation measures less than two weeks before it approved the EIR. (87  
8 Cal.App.4th at 113-16 & 130-132.) The court held that such documentation late in the process “does not  
9 make up for the lack of analysis in the EIR” because it was never subjected to the test of public scrutiny,  
10 and thus required recirculation. (*Id.* at 130-34.) (See also *Spring Valley Lake Ass’n.*, 248 Cal.App.4th at  
11 108 [information on project’s consistency with applicable plan that was omitted from Draft EIR  
12 constitutes significant new information warranting recirculation].)

13 The Center and SMMC both urged the County to recirculate the EIR following the release of the  
14 Supplemental Memo and Attachment B but the County refused. (AR010051-52; 12274-75; 28001.) This  
15 left the public with only eight business days between April 5, 2018 and the Planning Commission’s  
16 certification of the EIR on April 18, 2018 to review the new information and raise any potential  
17 concerns or issues with the Commission. The County’s actions undermined CEQA’s goal of promoting  
18 meaningful public participation in the process. (See *Laurel Heights Improvement Assn. v. Regents of*  
19 *University of California* (1993) 6 Cal.4th 1112, 1132 [the legislature intended to promote *meaningful*  
20 *public participation* in the CEQA process through recirculation].)

## 21 V. CONCLUSION

22 The County’s certification of the EIR constituted prejudicial error as it undermined informed  
23 decision-making and public participation and prohibited intelligent weighing of the Project’s  
24 environmental consequences. (See *Sierra Club*, 6 Cal.5th at 515; *CEB*, 184 Cal.App.4th at 82-83. ) For  
25 the reasons set forth above, Petitioners respectfully request that the Court grant the Petition for Writ of  
26 Mandate, vacate the County’s approvals for the Project, and grant other relief as appropriate.

1 DATED: February 7, 2020

CENTER FOR BIOLOGICAL DIVERSITY

2  
3 By: 

4 \_\_\_\_\_  
5 John Rose  
6 Aruna Prabhala  
7 John Buse

8 Attorneys for Petitioners CENTER FOR  
9 BIOLOGICAL DIVERSITY and ENDANGERED  
10 HABITATS LEAGUE

1 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

2 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing action.

3 My business address is Center for Biological Diversity, 1212 Broadway, Suite 800, Oakland, California

4 94612. My email address is trettinghouse@biologicaldiversity.org.

5 On February 7, 2020, I served a true and correct copy of the following document(s):

6 **PETITIONERS' OPENING BRIEF**

7 [X] BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Center  
8 for Biological Diversity's electronic mail system to the email address(s) shown below.

9 [X] BY MAIL: By placing a true and correct copy thereof in sealed envelope(s). Such envelope(s)  
10 were addressed as shown below. Such envelope(s) were deposited for collection and mailing following  
11 ordinary business practices with which I am readily familiar.

12 Lisa Jacobs  
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14 Kenneth Hahn Hall of Administration  
15 500 West Temple Street, #648  
16 Los Angeles, California 90012-2713  
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Attorney for Respondents

Attorney for Real Parties In Interest

17 [x] STATE: I declare under penalty of perjury under the law of California that the foregoing is true  
18 and correct.

19 Executed on February 7, 2020 at Oakland, California.

20 

21 Theresa Rettinghouse