

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LANDWATCH MONTEREY COUNTY,

Plaintiff and Appellant,

v.

COUNTY OF MONTEREY,

Defendant and Appellant;

HARPER CANYON REALTY, LLC,

Real Party in Interest and  
Appellant.

---

MEYER COMMUNITY GROUP,

Plaintiff and Appellant,

v.

COUNTY OF MONTEREY et al.,

Defendants and Appellants;

HARPER CANYON REALTY, LLC,

Real Party in Interest and  
Appellant.

---

H046932

(Monterey County

Super. Ct. No. M131893)

H046932

(Monterey County

Super. Ct. No. M131913)

The County of Monterey and its board of supervisors (collectively, the County) approved a residential subdivision project proposed by real party in interest Harper Canyon Realty, LLC (Harper or applicant). Two groups—LandWatch Monterey County (Landwatch) and Meyer Community Group (Meyer) (collectively, petitioners)<sup>1</sup>—separately filed petitions for writ of mandate under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)<sup>2</sup> seeking to decertify the environmental impact report (EIR) prepared for the project and to overturn the County’s approval of the project.

The trial court ruled partly in favor of petitioners and granted their petitions for writ of mandate. The trial court directed the County to vacate certification of the Final EIR and to prepare and circulate a legally adequate EIR with respect to specified groundwater and wildlife corridor issues. Related to the EIR’s discussion of the project’s effect on groundwater, the trial court decided that the County erred under CEQA and section 15088.5, subdivision (a)(4), of the CEQA Guidelines by failing to recirculate the Final EIR before approving the project.

The County and applicant have appealed the trial court’s judgments and argue that substantial evidence supports the County’s determinations regarding the project’s groundwater resources and wildlife corridor impacts. The County and applicant also contend the trial court erred in determining that CEQA requires recirculation of the Final EIR. Petitioners for their part have filed cross-appeals asserting that the trial court erred in rejecting or failing to decide their claims that the Final EIR was legally inadequate in its discussion of the project’s setting and its cumulative effect on groundwater resources.

---

<sup>1</sup> Landwatch is a California non-profit public benefit corporation that is organized primarily to “promote sound land use planning and legislation at the city, county, and regional levels, to combat urban sprawl, and to promote livability in the region’s cities and towns, through public policy development, advocacy, and education.” Meyer is an unincorporated association of property owners who live and own property in the Highway 68 corridor of Monterey County.

<sup>2</sup> Unspecified statutory references are to the Public Resources Code.

For the reasons explained below, we conclude that the Final EIR did not comply with CEQA in its treatment of wildlife corridors and affirm the trial court's ruling in that regard. Related to groundwater resources, we decide that the Final EIR was adequate and therefore reject the claims made by petitioners in their cross-appeal. We also decide that, contrary to the trial court's ruling, CEQA did not mandate recirculation of the Final EIR on the topic of ground water resources prior to approval of the project. We will therefore reverse the judgments and direct that the trial court issue new writs of mandate in accordance with the views expressed herein.

## **I. FACTS AND PROCEDURAL BACKGROUND**

### *A. Factual Background*

#### 1. The Project and General Background

The proposed development is known as the Harper Canyon (Encina Hills) Subdivision Project (project). The project involves a combined development permit for the subdivision of 344 acres into 17 residential lots for single-family homes. The project site is located in Monterey County, along Highway 68 and approximately five miles west of the City of Salinas. The project site consists of rolling and undeveloped terrain, bordered on the east by Toro County Park, on the west by an existing housing subdivision, and to the north by Fort Ord Public Lands.

Harper submitted its application for the project in 2001; its application was deemed complete in 2002. In 2005, the County's planning commission directed staff for the County of Monterey Resource Management Agency- Planning Department (County department) to prepare an environmental impact report (EIR) for the project. The County department served as the lead agency responsible for preparing the EIR, which it did with the assistance of an outside consultant. The project has been the subject of lengthy environmental and administrative review; we set out here only those aspects of the administrative record relevant to the questions before us.

Groundwater resources, on which Monterey County relies almost entirely to meet its water demands, constitute a central resource at issue in these appeals. Water for the homes in the proposed project will come from two existing wells, one that was drilled for an existing housing subdivision and another that was drilled on applicant's land. The source and availability of the groundwater that will supply the water for these wells has been directly analyzed or indirectly examined in a number of scientific studies.

2. 2002-2003: Project-Specific Study (Todd Report)

Prior to deeming the application complete in 2002, the County health department required a project-specific report for the proposed subdivision that assessed the site's hydrogeology and the project's potential impacts on groundwater. In 2002 and 2003, an engineering consultant prepared a report, referred to by the parties as the Todd Report.

The Todd Report addressed the hydrogeologic conditions in the project's vicinity. After reviewing available data and reports and conducting further study, the Todd Report concluded that the project will have a negligible effect on groundwater quantity and quality and that "an adequate water supply exists."

3. 2007 El Toro Groundwater Study (Geosyntec Study) and the Salinas Valley Water Project

In 2007, Geosyntec Consultants (Geosyntec) conducted a regional groundwater study for another County entity, the Monterey County Water Resources Agency. The study did not address the project specifically; rather, it studied the "El Toro Planning Area" which it defined as a "watershed-based planning area in Monterey County south of Salinas along the western margin of the Salinas Basin." The project site falls within some of the area covered by the Geosyntec study. Significantly, the two wells that will access groundwater for the project lie within the Geosyntec study area.

The primary objective of the 2007 Geosyntec study "was to evaluate groundwater resource capacity of the El Toro Planning Area and recommend maintaining or revising the B-8 zoning overlay." In Monterey County, "B-8 zoning" refers to a limitation on

land use that bars subdivisions due to scarce groundwater resources. The project site and two wells servicing the project are not located in a B-8 zoning district. Rather, as found by the Board, the wells and project site are located “within Monterey County Water Resources Agency’s benefit assessment Zone 2C, and receive benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project.” We discuss the Salinas Valley Water Project further below.

Among other objectives, the Geosyntec study also evaluated “hydrogeologic connectivity between existing subareas.” The study analyzed and compiled approximately 47 years of groundwater level data (from 1960 to 2007) for 45 wells in the El Toro Planning Area and vicinity. The Geosyntec study included a discussion of overdraft conditions.

“Overdraft” occurs where extractions from an aquifer exceed the amount of water replenishing it and which over time leads to depletion of the water supply. (See *Antelope Valley Groundwater Cases* (2020) 59 Cal.App.5th 241, 251, fn. 1.) The 2007 Geosyntec study found groundwater overdraft conditions in the northern portion of the El Toro Planning Area near Highway 68. It also found that the “primary aquifer system in the El Toro Planning Area is in overdraft,” but that current and increased levels of pumping could be “sustained for decades” in parts of the El Toro Primary Aquifer System because of the large volume of stored groundwater. The study delineated four classifications for groundwater production potential: “good, poor, possible, and negligible.” The Geosyntec study also described and projected downward trends in groundwater levels.

In 2008, while drafting the EIR for the project, County department staff and the EIR consultant discussed the Geosyntec study. In response, County staff directed the project’s consultant to get input from the Monterey County Water Resources Agency, which had commissioned the Geosyntec report.

A representative from the Monterey County Water Resources Agency wrote County staff and confirmed that the project site and the two wells supplying its water formed part of the area covered by the Salinas Valley Water Project, and that the pertinent assessments were being paid. The Monterey County Water Resources Agency took the position that “a sustainable long term water supply exists for the project.” In a subsequent e-mail, the Monterey County Water Resources Agency representative noted that he had reviewed the geologic and hydrogeologic data from the Geosyntec study, and he reconfirmed that the project site and wells would receive future benefits from the Salinas Valley Water Project.

The Salinas Valley Water Project, which became operational around 2010, was developed by the Monterey County Water Resources Agency to halt seawater intrusion into the Salinas Valley Groundwater Basin and to help “hydrologically balance the basin.” The Salinas Valley Water Project involves various infrastructure improvements, such as reconfiguring the Nacimiento and San Antonio reservoirs to store a higher volume of water in the wet season and diverting water from the Salinas River during the irrigation season. The Salinas Valley Water Project forms a central component of the cumulative impact analysis in the Final EIR, which was released in 2013 (Final EIR).

#### 4. 2008: Draft EIR

In October 2008, the County department released the draft environmental impact report (Draft EIR) for the project for public review and comment. The Draft EIR evaluated potential environmental impacts of the project, including those related to land use, noise, air quality, traffic, biological resources, and water. The Draft EIR contained a section addressing groundwater resources and hydrogeology.

The description of the source of the groundwater for the project’s proposed wells is a significant disputed issue in these appeals. The Draft EIR stated that the groundwater

would come from the “El Toro Groundwater Basin,”<sup>3</sup> in which a majority of the project is located, as well as the Salinas Valley Groundwater Basin, in which a “small portion” of the project site is located. In terms of subareas of those larger basins, the Draft EIR stated the project site “lies in the El Toro Creek and San Benancio Gulch subareas of the El Toro Groundwater Basin and the Pressure subarea of the Salinas Valley Groundwater Basin.” The Final EIR, which we discuss further below, describes the source of the groundwater for the project as a subbasin of the Salinas Valley Groundwater Basin called the Corral de Tierra Subbasin. The Draft EIR did not refer to the Corral de Tierra Subbasin.

The Draft EIR concluded that the project would have a less than significant long-term impact on regional groundwater resources because the project’s water demand was approximately 12.75 acre-feet per year (AFY), and this demand “would be met by the 29.9 AFY water surplus within the San Benancio subarea.” For its conclusion that the impact on regional groundwater resources would be less than significant and that no mitigation measures were necessary, the Draft EIR relied largely on the Todd Report. The Draft EIR also mentioned the then-newly-released 2007 Geosyntec study and noted a finding from it that “water bearing formations in this area dip in a northeasterly direction into the Salinas Valley.”

The Draft EIR discussed the Salinas Valley Water Project, which at that point had not yet become operational. The Draft EIR stated that, according to the Monterey County Water Resources Agency, the project site, which it described as part of the El Toro planning area, enjoys the “benefits of sustained groundwater levels attributed to the

---

<sup>3</sup> “A groundwater basin is ‘[a]n alluvial aquifer or a stacked series of alluvial aquifers with reasonably well-defined boundaries in a lateral direction and having a definable bottom.’ (Dept. of Water Resources, California’s Groundwater, Bulletin 118 (2003) p. 216.) An aquifer is ‘[a] body of rock or sediment that is sufficiently porous and permeable to store, transmit, and yield significant or economic quantities of groundwater to wells and springs.’ ” (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1198, fn. 1.)

operation of both the Nacimiento and San Antonio Reservoirs” and will benefit from the Salinas Valley Water Project upon its completion. In its discussion of long-term impact to groundwater resources, the Draft EIR stated that “given [the] project’s groundwater recharge capability and the fact that water would be procured through wells located within the Salinas Valley Water Project Assessment Zone 2C, this increase in demand would be considered a less than significant impact.” (Bolding omitted.)

During the public review period for the Draft EIR, several individuals and organizations submitted comments, some of which related specifically to the report’s discussion of groundwater resources and hydrogeology. For example, one letter from an individual commented on the Draft EIR’s analysis of long-term groundwater resources and alleged the Draft EIR “ignores” the Geosyntec study’s conclusion that “the El Toro Basin, including the San Benancio Gulch and the Paso Robles aquifer are in overdraft.” Landwatch submitted comments that discussed the 2007 Geosyntec study and asked the County to explain why the project would not exacerbate overdraft conditions in the El Toro Basin. A public entity called the Monterey Peninsula Water Management District raised concerns that the report’s discussion of the project’s hydrogeologic setting was inaccurate, specifically referenced the 2007 Geosyntec study, and noted that the EIR should contain an “up-to-date understanding” of hydrogeologic conditions.

In 2010, Geosyntec consultants prepared for the Monterey County Water Resources Agency a supplement to its 2007 study. Like the 2007 study, the 2010 supplement did not reference the project at issue in this appeal. The 2010 Geosyntec supplement included a geologic map and geologic cross-sections of the land from the El Toro Planning area to the Salinas Valley. A document accompanying the geologic map and cross-sections stated that the supplement relied on information from a map from the U.S. Geological Survey and “the continuous presence of the Paso Robles Formation beneath the El Toro Creek, the [Highway] 68 corridor, and Fort Ord military reserve to



the northwest provides hydraulic connection between the El Toro Planning Area and the Salinas Valley.”

The County department did not recirculate an updated Draft EIR for the project on issues related to groundwater or hydrogeology. It did prepare and recirculate a revised section of the Draft EIR limited to transportation issues (2010 Revised Draft EIR) that responded to comments received in the public review period about traffic. The public review period for the 2010 Revised Draft EIR ended in February 2010. However, the County made no decisions related to approval of the project for several years.<sup>4</sup>

5. 2013: Final Environmental Impact Report (Final EIR)

In December 2013, the County department released the Final EIR for the project. The Final EIR runs to over 1600 pages and is composed of the 2008 Draft EIR, the 2010 Revised Draft EIR, comments received during the public review of those documents, the County department’s responses to those comments, and “resulting text changes, clarifications or amplifications necessary to address those comments in the course of the County’s review of the proposal.”

The Final EIR includes a “master response” to public comments relating to the topic of water. The Final EIR notes that the County had received a number of comments referencing the 2007 Geosyntec study and its 2010 supplement. The master response in the Final EIR discusses the Geosyntec study in further detail and states it was “relevant as it provides continuing information and research about local groundwater dynamics.” The Final EIR also states that the Geosyntec study area “overlaps with a portion of the project site and demonstrates hydraulic connectivity between the larger Salinas Valley

---

<sup>4</sup> In June 2010, the County prepared a final environmental impact report for the project, but that version was never certified. The project was put on hold for an extended time period due largely to a pending matter before the California Public Utilities Commission that is not relevant to these appeals. The County did not use the 2010 version of the Final EIR but instead chose to revise it in 2013.

Groundwater Basin and the Corral de Tierra Area Subbasin.”<sup>5</sup> The Final EIR includes maps and information from the 2010 Geosyntec supplement and explains the location of the project in relation to the map and cross-sectional data.

Regarding text changes and amendments to the 2008 Draft EIR, the Final EIR contains strikeouts and underlining that reflect the changes between the Final EIR’s section on groundwater resources and hydrogeology (i.e. section 3.6 of the Final EIR) and the Draft EIR’s section on groundwater resources and hydrogeology that had been circulated five years earlier. The Final EIR explains these revisions were done in order “to update responses to comments and setting information related to groundwater and hydrogeology.”

As discussed further below, the information about the basins from which the project draws its groundwater changed between the Draft EIR and the Final EIR. Relying on 2010 information from the California Department of Water Resources, the Final EIR states that the project site and its two wells are located in the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin. The Final EIR adds a figure (Figure 3.6-1) not included in the Draft EIR. The figure indicates a source date of 2010, sets out the boundaries of the basin and subbasins, and shows the position of the project site in relation to those boundaries.

The Final EIR states that overdraft, which leads to seawater intrusion and a corresponding rise in the salt concentration of groundwater, has occurred in the Salinas Valley Groundwater Basin.<sup>6</sup> However, the Final EIR asserts that the issue of seawater intrusion does not currently affect the Corral de Tierra Subbasin, the groundwater

---

<sup>5</sup> The county board of supervisors later made a finding that the Geosyntec study, including the 2010 supplement, demonstrated “the hydraulic connectivity between the larger Salinas Valley Groundwater Basin and the Corral de Tierra Area Subbasin.”

<sup>6</sup> In Monterey County, when there is an overdraft condition, the water level declines, and seawater intrudes into aquifers. When seawater intrusion occurs, aquifers must either be deepened or abandoned or their water must be treated to dilute the salt concentration.

subbasin in which the project is located. The Final EIR also describes another subbasin called the “180/400-Foot Aquifer” and states “[r]ecent reports prepared for [the Monterey County Water Resources Agency] by Geosyntec Consultants have identified connectivity between the northeastern portion of the Corral de Tierra Subbasin and the 180/400-Foot Aquifer Subbasins (Geosyntec 2010).” The Final EIR includes a discussion of both of these subbasins.

The Final EIR, consistent with the Draft EIR, states that the proposed project will procure groundwater from two existing wells located in a special assessment zone called Zone 2C, which forms part of the area covered by the Salinas Valley Water Project. The Final EIR describes the Salinas Valley Water Project, which went into operation around 2010. The Final EIR states that based on information from the Monterey County Water Resources Agency “the project site” and the two wells sites “indirectly receive benefits of sustained groundwater levels within the Basin attributed to the Salinas Valley Water Project.”

Regarding the project’s cumulative effect on groundwater supply, the Final EIR concludes that any cumulative impact from the project’s long-term pumping of groundwater resources would be mitigated by the Salinas Valley Water Project. In particular, the Final EIR states, “[i]mplementation of the proposed project, when combined with other development in the vicinity, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin,” but “the potable water for the project would be procured within Monterey County Water Resources Agency’s Zone 2C, which funds the Salinas Valley Water Project” and “[t]herefore, this would be considered a less than significant cumulative impact.” (Bolding omitted.)

With respect to recirculation of the report, the Final EIR asserts that the nature of the revisions in the hydrogeology and groundwater resources section when compared to

the analogous sections of the Draft EIR “serve to clarify, amplify or otherwise result in insignificant modifications to the [Draft EIR].”

The Final EIR also includes two new paragraphs (not present in the Draft EIR) that address the environmental issue of wildlife corridors. We examine the report’s discussion of wildlife corridors further below.

6. 2015: Board’s Resolution, Including Certification of Final EIR

After the Final EIR’s release in December 2013, two hearings on the project occurred in January and February 2014 before the Monterey County Planning Commission (Planning Commission). The Planning Commission denied approval of the project, concluding that the applicants had not provided sufficient evidence of a long-term water supply for the project. In particular, the Planning Commission appears to have credited evidence that the subbasin where the project’s wells are located does not receive hydrological benefits from the Salinas Valley Water Project.

Applicant appealed the Planning Commission’s denial of approval for the project to the Monterey County Board of Supervisors (Board). In 2014 and 2015, the Board held several public hearings related to the appeal.

Prior to the Board’s final hearing, the parties submitted additional materials for the Board’s consideration. For example, on December 1, 2014, Landwatch’s counsel provided a letter to the Board that asserted various claims about the Final EIR’s inadequacy and attached a letter from a geologist and hydrologist engaged by Landwatch who had reviewed the Final EIR and concluded it was flawed in various respects. The letter from counsel argued that the Draft EIR and Final EIR “provide entirely different and inconsistent descriptions of the relevant groundwater basins.”

On April 7, 2015, the Board adopted Resolution No. 15-084 (resolution) certifying the Final EIR and approving the project. Among other findings, the Board stated that the Final EIR did not require recirculation under CEQA because the Final EIR “merely clarified and amplified the analysis in the [Draft EIR] and [Revised Draft EIR] and did

not contain significant new information.” Specifically, the Board found that “several modifications were made to the environmental setting to clarify the hydrogeologic setting and relationship with the Geosyntec Report” and that “the cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro Groundwater Basin” and concluded “[t]he findings remained less than significant.” The Board further found that the Final EIR “acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial.”

The Board conditioned its approval of the project in a number of areas, including imposing a condition related to a “Wildlife Corridor Plan,” which we discuss further below.

#### *B. Procedural History*

In May 2015, petitioners each filed verified petitions for a writ of mandate and complaints alleging the County failed to comply with the requirements of CEQA.<sup>7</sup> Among other relief, petitioners requested that the trial court direct the County to set aside its certification of the Final EIR and approval of the project.

The Monterey County Superior Court assigned Landwatch’s petition for writ of mandate case No. M131893 and Meyer’s petition for writ of mandate case No. M131913. Based on a stipulation by the parties, the trial court consolidated the two cases for trial. The trial court conducted a bench trial of the consolidated matters on May 3, 2018.

On December 3, 2018, the trial court issued its final written ruling that granted and denied the petitions in part. The trial court’s order ran to over 140 pages and concluded that the Final EIR should be decertified as to the groundwater and wildlife corridor

---

<sup>7</sup> Petitioners also raised in the trial court non-CEQA challenges and CEQA challenges related to other environmental issues, such as traffic and aesthetics, that they have abandoned on appeal.

analyses only. The ruling denied all other claims asserted by Landwatch and Meyer and upheld the County's certification of the remaining portions of the Final EIR.

On March 8, 2019, the trial court entered a judgment in favor of Landwatch on its petition. The trial court filed a preemptory writ of mandate that included directions to the County to set aside portions of Resolution No. 15-084 as to the groundwater and wildlife corridor analyses and to, before the County approved revisions to the combined development permit or issued a new permit for the project, comply with CEQA by remedying the deficient portions of the EIR and by recirculating the revised portions of the EIR for public comment and response.

On April 15, 2019, the trial court entered a separate judgment in favor of Meyer on its petition and filed a preemptory writ of mandate with similar directions to the County.

From these two judgments, the parties have filed six appeals or cross-appeals related to the trial court's judgments in these two cases.

This court assigned case No. H046932 to all the notices of appeal, and we consider them together here.

## **II. DISCUSSION**

These appeals center on the legality under CEQA of the County's certification of the Final EIR with respect to the project's effects on groundwater resources and on a corridor to facilitate the movement of wildlife. We first address the sufficiency of the Final EIR's discussion of groundwater resources and consider whether, even if legally adequate, the Final EIR should have been recirculated prior to its certification. We then turn to its treatment of wildlife corridors.

### *A. CEQA Overview*

As the California Supreme Court has stated, "CEQA was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through

alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project. [Citation.] CEQA embodies a central state policy requiring ‘state and local governmental entities to perform their duties “so that major consideration is given to preventing environmental damage.” ’ [Citation.] Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project.” (*Protecting Our Water and Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 488 (*Protecting Our Water*).

“The environmental impact report is ‘ “the heart of CEQA” ’ and the ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ [Citation.] It is intended, further, ‘ “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” ’ ” (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229.) “The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.] For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450 (*Vineyard*).

“ “ “ “[A]n EIR is presumed adequate (Pub. Resources Code, § 21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise.” ’ ” ’ ” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 329 (*South of Market*)). “The ultimate inquiry, as case law and the CEQA

guidelines<sup>8]</sup> make clear, is whether the EIR includes enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’ ” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (*Sierra Club*).)

### B. *Standard of Review*

Pursuant to CEQA, the standard of review for reviewing an agency’s action is “ ‘whether there was a prejudicial abuse of discretion.’ ” (§ 21168.5; see *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) ‘Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.’ (§ 21168.5.)” (*Protecting Our Water, supra*, 10 Cal.5th at p. 495.)

As an appellate court, our review “ ‘is the same as the trial court’s: [It] reviews the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is de novo.’ [Citation.] The reviewing court independently determines whether the record ‘demonstrates any legal error’ by the agency and deferentially considers whether the record ‘contains substantial evidence to support [the agency’s] factual determinations.’ ” (*Protecting Our Water, supra*, 10 Cal.5th at p. 495.)

“ ‘While we determine de novo whether the agency has employed the correct procedures, “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more

---

<sup>8</sup> “CEQA is ‘implemented by an extensive series of administrative regulations promulgated by the Secretary of the Natural Resources Agency.’ [Citation.] These regulations can be found at title 14, division 6, chapter 3 of the California Code of Regulations.” (*Protecting Our Water, supra*, 10 Cal.5th at p. 488, fn. 3.) We refer to these regulations, as does our high court, as the “ ‘CEQA Guidelines.’ ” (*Ibid.*)



reasonable,” for, on factual questions, our task is “not to weigh conflicting evidence and determine who has the better argument.” ’ ’ ” (*Sierra Club, supra*, 6 Cal.5th at p. 512.)

Our review of the adequacy of an EIR “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted.” (*Sierra Club, supra*, 6 Cal.5th at p. 516.)

“[I]n reviewing an EIR’s discussion, we do not require technical perfection or scientific certainty: ‘ ‘ ‘[T]he courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure.’ ’ ’ ” (*Sierra Club, supra*, 6 Cal.5th at p. 515.) “ ‘ ‘ “A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” ’ ’ ” (*South of Market, supra*, 33 Cal.App.5th at p. 331.) When an agency certifies an EIR that does not meet the informational requirements of CEQA, the agency has failed to proceed in a manner required by law and has therefore abused its discretion. (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 327 (*Cherry Valley*); *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 (*Save Our Peninsula*).)

With these general principles in mind, we turn first to whether the Final EIR adequately addressed and analyzed the project’s potential impact on groundwater resources.

### *C. Groundwater Resources*

In their appeals, the County and applicant argue the trial court erred in concluding that CEQA requires that the County have recirculated the Final EIR before certifying it. In their cross-appeals, petitioners contend that the Final EIR is informationally inadequate, primarily because the environmental setting related to groundwater resources is internally contradictory and omits critical information about the extent of the overdraft condition and because its description of the cumulative impact analysis improperly conflates or misapplies the relevant legal standards for how an agency must address and analyze a project's cumulative impacts.

If we agree with petitioners' claims in their cross-appeals that the Final EIR must be revised to provide critical missing information, that determination may moot the issue of whether the trial court erred in its conclusion the County should have recirculated the report. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 101). Therefore, we begin our discussion with petitioners' contentions that the Final EIR is informationally inadequate.

#### 1. Environmental Setting

Petitioners contend that the Final EIR's description of the hydrogeologic setting of the groundwater that will supply the project is deficient. Specifically, petitioners claim that the Final EIR includes the contradictory assertions that the groundwater is both in overdraft and in surplus, and the project's wells are hydrogeologically connected and not connected to areas where groundwater resources are stressed. Petitioners also assert the setting description is incomplete because it fails to disclose the declining groundwater levels and aquifer depletion described in the 2007 Geosyntec study.

##### a. Legal Principles

An accurate description of the project's environmental setting is essential to "set the stage" for a discussion of impacts, including a discussion of cumulative impacts. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859,

875 (*Friends of the Eel River*.) An agency’s selection of the geographic area impacted by a proposed development falls within the lead agency’s discretion, based on its expertise. (CEQA Guidelines, § 15130, subd. (b)(3); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 907.) Absent a showing of arbitrary action, a reviewing court must assume the agency has exercised its discretion appropriately. (*City of Long Beach*, at p. 908.)

“Whether an EIR has omitted essential information is a procedural question subject to de novo review.” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (*Banning Ranch*); see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 848 (*King & Gardiner Farms*) [assuming informational adequacy of EIR is a question of law].) “CEQA requires every EIR to identify ‘[a]ll significant effects on the environment of the proposed project.’ ” (*Banning Ranch*, at pp. 935–936.) In *Banning Ranch* for example, the California Supreme Court found an EIR informationally insufficient because it did not acknowledge that the project at issue was in a coastal zone that might qualify as an environmentally sensitive habitat area under the California Coastal Act and consequently omitted material information about feasible alternatives or mitigation measures. (*Id.* at pp. 924, 936–937.)

#### b. Surplus and Overdraft Discussion in the Final EIR

Petitioners contend that the Final EIR internally contradicts itself by claiming there is both a surplus and an overdraft in the pertinent water subbasin, i.e. the Corral de Tierra Subbasin of the Salinas Valley groundwater basin. The County and applicant respond that the Final EIR’s discussion was not factually inconsistent on this point, and that the cumulative impact analysis was not based on surplus water supplies.

We disagree with petitioners’ contention that the Final EIR admits both a surplus and an overdraft in the Corral de Tierra Subbasin. The Final EIR acknowledges there is an overdraft condition. It does not simultaneously claim there is also a “surplus.” Rather, the Final EIR uses the phrase “water surplus” in the context of discussing the

Todd Report, but it does not actually claim there is a surplus or rely on such a surplus in its conclusion that the project would not have a cumulative impact on groundwater resources.

For example, when discussing the Todd Report, the Final EIR states, “According to the [Todd Report] some areas within the referenced Corral de Tierra subarea would not meet the estimated water demand upon buildout and development should be extremely rationed in the area. It was determined that although the loss of return flow associated with the proposed project may have an adverse impact on some of the individual subareas, the four subareas are interconnected and will maintain an overall water surplus of approximately 314.82 AFY.” Following this language, the Final EIR then discusses the Geosyntec study (including the 2010 supplement) which notes that the “primary aquifer is in overdraft but current and increased groundwater pumping could be sustained for decades in areas where large saturated thicknesses of the primary aquifer stored large volumes of groundwater. The project site overlies a portion of the primary aquifer that has a large saturated thickness and groundwater production is considered good.”

The Final EIR does not claim that the project will benefit from a surplus of water or that there is a surplus in the basin or subbasins. Rather, the report relies on the property owner’s contributions to the Salinas Valley Water Project and the opinions of county agencies in reaching its conclusion that the project has a long-term sustainable groundwater supply and would have a less than significant impact on groundwater resources.

Similarly, regarding the cumulative effect of groundwater pumping, the Final EIR does not rely on a surplus in the basin or subbasins but rather states, “Groundwater pumping has the potential to cumulatively influence groundwater supplies within [] the adjacent subbasins and the basin as a whole. However, the potable water for the project would be procured within Monterey County Water Resources Agency’s Zone C, which

funds the Salinas Valley Water Project. Therefore, this would be considered a less than significant cumulative impact.” (Bolding omitted.)

Based on the language discussed above and on our independent review of the administrative record, we conclude the Final EIR does not present fundamentally conflicting pictures of both surplus and overdraft conditions in the Corral de Tierra Subbasin. Nor do petitioners argue there is any conflict in the setting related to the larger Salinas Valley Groundwater Basin, which the County determined was relevant. We disagree with petitioners’ contention that the setting description at issue here is similar to the conflicting description held invalid in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 (*San Joaquin Raptor*).

In *San Joaquin Raptor*, petitioners challenged under CEQA the adequacy of an EIR’s analysis of the impacts of a proposed expansion of an aggregate mining operation. (*San Joaquin Raptor, supra*, 149 Cal.App.4th at pp. 649, 656.) The conflicting description related to the mining operation project description, not to its environmental setting. The mining project description stated both that there would be “no increases in mine production” and also that there would be “substantial increases in mine production.” (*Id.* at p. 655.) The court held that “[b]y giving such conflicting signals to decisionmakers and the public about the nature and scope of the activity being proposed, the Project description was fundamentally inadequate and misleading.” (*Id.* at pp. 655–656.) We see no such contradictory description in the Final EIR here.

*Friends of the Eel River, supra*, 108 Cal.App.4th 859, upon which petitioners also rely, is similarly factually inapposite. In that case, the Court of Appeal found a project’s setting description in an EIR insufficient because it did not include a portion of the river system that was the subject of proposals before a federal agency that would affect the water available for the project. (*Id.* at p. 875.) The record here contains no evidence of a significant relevant regulatory proceeding omitted by the agency’s articulation of the project setting description.

Petitioners also argue that the Final EIR fails as an informational document because it omitted the “fact and the magnitude of the aquifer depletion and falling groundwater levels revealed by the Geosyntec Report.”

We are not persuaded that the County ignored or omitted critical information about the project’s setting to render the Final EIR informationally insufficient. The Final EIR references both overdraft in the Salinas Valley Groundwater Basin and discusses the 2007 Geosyntec report (as well as the 2010 Geosyntec supplement). The EIR for this project is therefore not like the one the California Supreme Court found objectionable in *Banning Ranch*, which failed to include any discussion of environmentally sensitive habitat areas. (See *Banning Ranch, supra*, 2 Cal.5th at pp. 937–938.) While the information in the Final EIR may not have been as extensive as petitioners would have liked, the County did not violate CEQA as a matter of law by failing to include in the Final EIR further details of the 2007 Geosyntec report.

The Final EIR reasonably acknowledges the overdraft problem, and petitioners have not demonstrated that the omitted information would have revealed a significant environmental impact. (See *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 226 (*Mount Shasta*); see also *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 525.) The ultimate question for the Final EIR was not the extent of the basin or subbasin’s overdraft, but whether and to what extent the project would affect the overdraft beyond existing conditions. (See *Cherry Valley, supra*, 190 Cal.App.4th at pp. 346–347.) We decide that the Final EIR sufficiently identifies the issue of overdraft, and therefore we reject the petitioners’ argument that the Final EIR is informationally deficient in its treatment of overdraft in the setting description.

c. Hydrogeological Connection Discussion in Final EIR

Petitioners also assert that the Final EIR’s setting description is informationally inadequate because it makes contradictory claims about the hydrogeologic connection of

the project's wells to stressed areas to the south and west of the project site area in its discussion of the cumulative adverse effect of the project on the groundwater basin. Specifically, petitioners point to two paragraphs in the Final EIR that discuss the Todd Report and the Geosyntec study that petitioners claim are irreconcilable.

As a threshold matter, the County contends petitioners failed to exhaust their remedies as to this claim. (§ 21177, subd. (a); *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527.) Petitioners assert that they satisfied the exhaustion requirement and as one example point to a geologist's letter submitted by Landwatch during the administrative proceeding that challenges the Final EIR's overall conclusions including about the direction of groundwater flow. On these facts, we accept petitioners' assertion of exhaustion. (See *Environmental Council of Sacramento v. County of Sacramento* (2020) 45 Cal.App.5th 1020, 1034.)

However, we decide that petitioners have not met their burden to show the Final EIR is informationally inadequate as a matter of law. The Final EIR observes, relying on the 2010 Geosyntec supplement, that the groundwater in the vicinity of the project is connected to the eastern aquifers in the Salinas Valley rather than to the stressed portions within the Geosyntec Study area (which studied the El Toro Planning Area that is generally south and west of the project site). In particular, the Final EIR states that "the Geosyntec Study update (2010) determined that the aquifer in the immediate vicinity of the project site is hydrogeologically contiguous with the aquifers to the east in the Salinas Valley, rather than the less productive and stressed areas within the Geosyntec Study area." Having reviewed the administrative record and the Final EIR in its entirety, we are not persuaded that the Final EIR is inadequate as a matter of law.

## 2. Cumulative Impacts Analysis

Petitioners also challenge the Final EIR's cumulative impact analysis. They renew their claim, rejected by the trial court, that the Final EIR fails to make the two required

determinations for a cumulative impacts analysis, which they describe as “(1) whether the impact of the project in combination [with] other projects exceeds the significance threshold, and (2) if so, whether the project’s effect is a considerable contribution.” (Italics omitted.) Because the County failed to make these determinations, petitioners argue, the public was left “uncertain whether the County (1) denies there is a significant cumulative impact in the [Corral de Tierra] Subbasin from cumulative pumping or (2) denies that the Project makes a considerable contribution.”

a. Additional Factual Background

The Final EIR acknowledges that the project, when combined with other development in the area, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin, but it concludes the project will have a “less than significant cumulative impact.” (Bolding omitted.) The Final EIR bases its finding of an insignificant cumulative impact on the amount of groundwater in storage in the vicinity of the project site and on the “regional mitigation strategy” provided by the Salinas Valley Water Project.

After noting that the project site and wells are located in the northeastern portion of the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin, the Final EIR states, “[s]ince the [Salinas Valley Water Project] went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins. ¶¶ Although the [Salinas Valley Water Project] will not deliver potable water to the project site, it was developed to meet projected water demands based on development and population forecasts. The proposed project has been deemed consistent with [the Association of Monterey Bay Area Government’s] 2008 population forecasts, which was used for forecasting demands for the [Salinas Valley Water Project]. For all of these reasons, the cumulative effect of the project on water demand is considered less than significant.” (Underlining and bolding omitted.) Among its findings, the Board found that the Final



EIR “acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial.”

b. CEQA Requirements and Standard of Review

“A cumulative impact is one ‘created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts’. (Guidelines, § 15130, subd. (a)(1).) ‘The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.’ (*Id.*, § 15355, subd. (b).)” (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527.)

“An EIR must discuss a project’s cumulative impacts ‘when the project’s incremental effect is cumulatively considerable, as defined in section 15065(a)(3).’ (Guidelines, § 15130, subd. (a).) ‘“Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.’ [Citations.] ‘A project’s contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.’ (Guidelines, § 15130, subd. (a)(3).)” (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 276–277.)

“The Guidelines require that an EIR discuss ‘cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.’ (Guidelines, § 15130, subd. (a).) If, on the other hand, the cumulative impact is insignificant or if the project’s incremental contribution to the impact is not cumulatively considerable, the Lead Agency is not required to conduct a full cumulative impacts analysis, but the EIR must include a brief explanation of the basis for the agency’s finding(s).” (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222.) “[A] project’s cumulative

environmental impact cannot be deemed insignificant solely because its individual contribution to an existing environmental problem is relatively small.” (*Id.* at p. 223.)

We review the agency’s decision that a project’s incremental effect is not cumulatively considerable for substantial evidence. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358–1359); *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 622.)

c. Analysis

We conclude substantial evidence supports the agency’s decision that the project’s incremental effect will not be cumulatively considerable. The Final EIR acknowledges the finding in the Geosyntec study that the “primary aquifer” (as that aquifer was defined by Geosyntec in the study) is in overdraft. However, the Final EIR also relies on the Geosyntec study’s conclusion that the project is located “in an area with a large saturated thickness [] of the primary aquifer” and the aquifer is hydrogeologically connected to the Salinas Valley. In addition, the Final EIR concludes that the potential effect of cumulative groundwater pumping on groundwater supply is mitigated by the Salinas Valley Water Project, which provides a regional mitigation strategy for the groundwater basin and its subbasins.

The Final EIR’s discussion of cumulative impacts is therefore sufficient under CEQA. “When an EIR concludes that a project’s potential contribution to a cumulative impact will be fully mitigated, a separate cumulative impact analysis is not required.” (Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2d ed. 2019) *Insignificant Cumulative Impacts Should Be Discussed Briefly*, § 13.40.)

We disagree with petitioners that the Final EIR suffers from the analytical flaws found in *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 (*LAUSD*). The EIR at issue in *LAUSD* reasoned that “the noise level around the schools is already beyond the maximum level permitted under Department of Health guidelines so even though traffic noise from the new development

will make things worse, the impact is insignificant.” (*Ibid.*) The court rejected this reasoning because it “ ‘trivialize[d] the project’s impact’ by focusing on individual inputs, not their collective significance.” (*Ibid.*) The court concluded that the “relevant issue to be addressed in the EIR on the plan is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.” (*Ibid.*)

Here, the Final EIR does not focus solely on the amount of water that would be pumped out of the wells supplying water to the project. To the contrary, the Final EIR states that any adverse cumulative impact caused by pumping of water supply from the groundwater basin will be mitigated by the Salinas Valley Water Project. Moreover, the Final EIR notes that “[s]ince the [Salinas Valley Water Project] went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins.” (Underlining omitted.)

We also reject petitioners’ claim that the Final EIR’s cumulative impacts analysis is informationally inadequate because it does not specify whether the impacts would be significant absent mitigation. Petitioners rely primarily on the decision of *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, but that case did not examine cumulative impacts. (*Id.* at pp. 653–654.) In addition, in *Lotus*, the First Appellate District, Division 3, identified as deficiencies in the EIR that it did not include standards of significance and that it included the mitigation measure in the description of the project itself. (*Id.* at pp. 655–656.) The Final EIR here does not share these features.

In sum, we conclude petitioners have not met their burden in showing the Final EIR’s cumulative impacts analysis as to groundwater resources is inadequate under CEQA.

### 3. Recirculation

The County and applicant contend that, contrary to the trial court’s finding, CEQA does not mandate recirculation of the Final EIR. The County argues that substantial evidence supports the County’s decision not to recirculate the Final EIR and any failure to recirculate was not prejudicial. The County, applicant, and amici curiae contend the trial court misapplied CEQA’s recirculation standards.<sup>9</sup>

As stated in the resolution approving the project, the County found that the Final EIR did not require recirculation “because the Final EIR merely clarified and amplified the analysis in the [Draft EIR] and [Revised Draft EIR] and did not contain significant new information.” The County acknowledged that “several modifications” were made in the Final EIR to the environmental setting but that these modifications served to “clarify the hydrogeologic setting and relationship with the Geosyntec Report” and, as a result, “[t]he cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro Groundwater Basin” and that “[t]he findings remained less than significant.”

The trial court decided that the County erred under CEQA and that recirculation was required pursuant to section 15088.5, subdivision (a)(4), of the CEQA Guidelines (hereafter section 15088.5(a)(4)) because the Draft EIR’s groundwater resources and hydrogeology analysis was so fundamentally inadequate that it precluded meaningful public review and comment. In the trial court’s view, the Draft EIR’s inadequacy was “underscore[d]” by the “significant amendment” done in the Final EIR.

---

<sup>9</sup> We granted two applications for leave to file briefs as amici curiae. One amicus brief was filed in support of the County and real party in interest Harper by the California State Association of Counties and League of California Cities. The other amicus brief was filed in support of the County and real party in interest by the California Building Industry Association, California Business Properties Association, Building Industry Association of the Bay Area, and Building Industry Legal Defense Foundation (collectively, “California Building”). Petitioners filed a joint response to both amicus briefs.

a. Legal Principles

“If the lead agency adds ‘significant new information’ to the EIR subsequent to the close of the public comment period but prior to certification of the final EIR, CEQA requires that the lead agency provide a new public comment period. (§ 21092.1)” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124–1125, (italics omitted) (*Laurel Heights II*); *Mount Shasta, supra*, 210 Cal.App.4th at p. 217.)

Section 21092.1 mandates that “only the addition of significant new information triggers recirculation.” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1134.) In summarizing the intention of the Legislature in enacting section 21092.1 and in particular its adoption of the “significant new information” language, the California Supreme Court stated in *Laurel Heights II*: “[T]he Legislature apparently intended to reaffirm the goal of meaningful public participation in the CEQA review process. [Citation.] It is also clear, however, that by doing so the Legislature did not intend to promote endless rounds of revision and recirculation of EIR’s. Recirculation was intended to be an exception, rather than the general rule. Significantly, at the time section 21092.1 was enacted, the Legislature had been and was continuing to streamline the CEQA review process. Recognizing the legislative trend, we previously have cautioned: ‘[R]ules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.’ ” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1132, fn. omitted.)

Section 15088, subdivision (a), of the CEQA Guidelines states that the term “ ‘information’ ” can include “changes in the project or environmental setting as well as additional data or other information,” and that “[n]ew information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment *upon a substantial adverse environmental effect of the project* or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)

that the project’s proponents have declined to implement.” (CEQA Guidelines, § 15088.5, subd. (a), italics added.) “Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” (*Id.*, subd. (b).)

As articulated by one Court of Appeal, “[t]he test for determining whether the updated data about the drought and its impact on water supply constitutes significant new information is whether the public was deprived of a meaningful opportunity to comment upon the project’s substantial adverse effect on the water supply, including groundwater. (Guidelines, § 15088.5, subd. (a).)” (*King & Gardiner Farms, supra*, 45 Cal.App.5th at p. 850.)

Section 15088.5(a)(4) of the CEQA Guidelines—the section relied upon by the trial court in ordering recirculation—states that a disclosure requires recirculation where it reveals “[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”<sup>10</sup> Section 15088.5(a)(4) cites to *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043 (*Mountain Lion Coalition*). “This test for recirculation is based on the type of wholesale omission of information found in [*Mountain Lion Coalition*], in which the draft EIR omitted any analysis of cumulative impacts, and a detailed analysis was first provided in the final EIR.” (Kostka & Zischke, Practice Under the Cal.

---

<sup>10</sup> Section 15088.5, subdivision (a), provides three other examples of “ ‘[s]ignificant new information’ ” that require recirculation, which are not at issue here. They are: “(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it.”

Environmental Quality Act (Cont.Ed.Bar 2d ed. 2019) Recirculation for Fundamentally Inadequate Draft EIR, § 16.15E.)

b. Standard of Review

We review for substantial evidence a lead agency’s determination “that the new information in the final EIR was not ‘significant’ pursuant to section 21092.1.” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1135; see also CEQA Guidelines, § 15088.5, subd. (e) [“A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.”].)<sup>11</sup> In the CEQA context, substantial evidence “means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines, § 15384, subd. (a).) Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts” (*id.*, subd. (b)), but not “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.” (*Id.*, subd. (a).) “An agency’s determination not to recirculate an EIR is given substantial deference and is presumed to be correct. A party challenging the determination bears the burden of showing that substantial evidence does not support the agency’s decision not to recirculate.” (*Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.)

---

<sup>11</sup> Although petitioners state that the less deferential de novo standard of review “would be justified” here because this case involves a CEQA Guidelines section 15088.5(a)(4) claim, they cite no legal authority for application of this standard. Moreover, they concede that the de novo standard is “not required here.” As it is well established that courts review an agency’s decision not to recirculate an EIR for substantial evidence (see *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1063), we decline petitioners’ invitation to apply a different standard.

c. Analysis

Having considered the record and applying the appropriate presumptions, we decide substantial evidence supports the County's conclusion that the revisions made in the Final EIR to the Draft EIR's discussion of groundwater resources and hydrogeology did not mandate recirculation of the Final EIR.

As an initial matter, we observe that public comments, including those made about the findings of the Geosyntec study, prompted the revisions in the Final EIR addressing these topics (in particular revised section 3.6). Courts have found recirculation not required where the new information was encompassed in comments following circulation of the original report.

For example, in *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, the Court of Appeal reviewed the claim that a county should have recirculated an environmental document related to a residential development project based on a then-recent observation of larvae of an endangered toad species in a creek near the project. (*Id.* at p. 288.) The county had circulated a draft EIR stating that the probability of the toad occurring on the site was very low and the nearest population of the toad was 1.5 kilometers away. (*Id.* at p. 290.) During the public review period, commentators on the draft EIR challenged the overall assumption that the endangered toad species did not inhabit the site. (*Ibid.*) Following litigation and the release of a supplemental EIR, a zoologist observed the toad much closer to the project site and project opponents argued that the county erred by deciding not to recirculate the supplemental EIR based on that new information. (*Id.* at pp. 293, 301, 306.) In concluding recirculation was not mandated under section 21092.1, the Court of Appeal noted that there was no contention that either the EIR or supplemental EIR were "fundamentally flawed" and found that the zoologist's finding of the toad larvae much closer to the project site was not information the public needed in order to provide meaningful comment. (*Id.* at p. 304.)



Here, public comments on the Draft EIR included comments about the overdraft condition, the Geosyntec study, and advice from another governmental entity that the EIR should contain an “up-to-date” understanding of hydrogeologic conditions. We determine these comments about matters petitioners contend are substantively absent from the Draft EIR are noteworthy, although not dispositive, given the ultimate question is whether the public was deprived of a meaningful opportunity to comment on these matters. (*Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 950 (*Center for Biological Diversity I*.)

The California Supreme Court has underlined that “the primary reason for soliciting comments from interested parties is to allow the lead agency to identify, at the earliest possible time, the potential significant adverse effects of the project and alternatives and mitigation measures that would substantially reduce these effects.” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1129.) Here, the record reflects both the public did provide meaningful comment on the condition of overdraft and about the relevant and correct groundwater setting and that, in response, the County substantively changed the final environmental document in part to reflect those comments and concerns.

More critically, we conclude that the new information provided in the Final EIR, such as that related to the pertinent groundwater basins (focusing now only on the Salinas Valley Basin and identifying the Corral de Tierra Subbasin as part of that larger basin) and the more fulsome discussion of the Geosyntec study, did not constitute “significant new information” within the meaning of section 21092.1. As stated above, new information is not significant unless that new information involves a *substantial adverse* environmental effect of the project. (CEQA Guidelines, § 15088.5, subd.(a); see also *Vineyard, supra*, 40 Cal.4th at p. 477.) Here, no substantial adverse effect of the project on groundwater resources was identified in either the Draft EIR or Final EIR. Rather, both the Draft EIR and Final EIR found *no* substantial adverse environmental effect of

the project as to groundwater resources and therefore no need to adopt any new mitigation measures related to those resources.

The County and applicant concede that the revisions to the groundwater setting “shifted the focus” to the Salinas Valley Groundwater Basin versus the smaller “Toro Area” of the County. However, despite this shift, we are not persuaded that the rationales in the Draft EIR were therefore wholly inadequate and thwarted public comment on the project. The County explained in the Draft EIR that the project was partly in the Salinas Valley Groundwater Basin and would benefit from the Salinas Valley Water Project. The circumstances here are thus distinct from an EIR that included little or no discussion of the relevant environmental considerations or rationale for the agency’s conclusions. (Cf. *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 252 [“Given the Department refrained from explaining its decision until it responded to public comments, recirculation was required to allow meaningful public comment directed at the rationale for its decision.”]; cf. *Mountain Lion Coalition, supra*, 214 Cal.App.3d at pp. 1050–1051 [“[T]he draft EID circulated to the public only served to avoid important environmental considerations that were well known to appellants by the time this document was drafted. Rather than squarely addressing the subjects that were set out in the court’s order and submitting their environmental conclusions to public scrutiny, appellants chose to circulate a document that simply swept the serious criticisms of this project under the rug.”].) Given the record here, the County could quite reasonably conclude recirculation of the Final EIR was not necessary to permit the public to make informed and meaningful comments on the impact of the project on groundwater resources.

In the trial court’s view, the Draft EIR’s inadequacy was “underscore[d]” by the “significant amendment” done in the Final EIR. For example, the trial court emphasized that the Draft EIR did not mention the Corral de Tierra Subbasin or even acknowledge its existence. The trial court also emphasized the overall numerous revisions to the

groundwater resources section of the Final EIR. Although factually correct, we decide that, on this record, these observations are not legally dispositive under section 21092.1. The test for recirculation under section 21092.1 is not the amount or degree of revisions made in the Final EIR standing alone, or whether or not certain information was omitted in the draft environmental document. Rather, as stated by our high court, “only the addition of *significant* new information triggers recirculation. (§ 21092.1.)” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1134.)

Petitioners rely primarily on three cases for support that recirculation was mandated here. However, none of these cases assist petitioners because all—unlike the record here—involve an explicit or implicit finding of substantial adverse environmental effect. For example, in *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, the court determined revisions to an impacts analysis required recirculation because the “revisions consist of a complete redesign of the project’s stormwater management plan. Unlike with the other revisions, the City did not provide a strike-out version for these revisions showing the specific amendments to the EIR’s text,” and “[e]ssentially, 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 for addressing the project’s hydrology and water quality impacts.” (*Id.* at p. 108.) Thus, “[g]iven their breadth, complexity, and purpose, the revisions to the hydrology and water quality analysis deprived the public of a meaningful opportunity to comment on an ostensibly feasible way to mitigate a *substantial adverse environmental effect*. Accordingly, we conclude the revisions to the hydrology and water analysis constituted significant new information requiring recirculation under section 21092.1.” (*Id.* at pp. 108–109, italics added.)

*Sutter Sensible Planning Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813 is also distinguishable, as it involved essentially a rewrite of the entire EIR about an industrial project that appears to have involved a projected impact on the water table. (*Id.*

at pp. 816–818, 821, 823.) In *Sutter*, the court held that a revised EIR related to the construction of a food processing plant contained significant new information and was improperly approved without recirculating it prior to construction of the project. (*Id.* at pp. 816, 818, 823.) The project in *Sutter* “would use very large quantities of water, an average of 1,000 to 1,200 gallons per minute during the processing season, and up to 1,800 gallons per minute during peak periods, which would be supplied by three deep wells.” (*Id.* at p. 816.) The new information in the revised EIR in *Sutter* included: “additional details regarding the quantities of pesticide residues to be expected in the tomato waste water, a more elaborate discussion of ground water availability and the projected impact of the plant on the water table, updated figures on the amount of motor vehicle traffic in the vicinity of the plant and a discussion of the effect on rail traffic and new figures on the proposed method of disposing of waste water, substituting Department of Water Resources estimates of evapo-transpiration potentials of pasture land in the Sacramento Valley during the tomato processing season for figures used in the previous EIR which were repudiated by their purported author.” (*Id.* at pp. 817–818.) No additional information of such magnitude appears in the Final EIR.

Finally, this court’s decision in *Save Our Peninsula* also does not support the conclusion that recirculation was required here. *Save Our Peninsula* involved the disclosure, that arose late in the environmental review process, of new and significant information regarding the applicants’ asserted riparian right which they claimed entitled them to use water from a subterranean stream without a permit. (*Save Our Peninsula, supra*, 87 Cal.App.4th at pp. 131–132.) This court held that this disclosure raised a number of critical water issue questions, such as how the water use would be regulated and controlled. (*Id.* at pp. 133–134.) Thus, recirculation of an EIR was necessary after disclosure of new information that a new mitigation measure with potentially significant

impacts had not been analyzed. (*Id.* at p. 134.)<sup>12</sup> Again, no such deficiency is present here.

In sum, we agree with the County and applicant that substantial evidence supported the agency's decision not to recirculate the Final EIR.<sup>13</sup> Therefore, the trial court erred in ruling that the Draft EIR's inadequacies required recirculation of the groundwater resources and hydrogeology analyses in the Final EIR.

#### D. *Wildlife Corridors*

The County and applicant challenge the trial court's finding that the Final EIR is deficient in its analysis of the project's potential impact on wildlife corridors. Wildlife corridors, as defined in the Final EIR, are "established migration routes commonly used by resident and migratory species for passage from one geographic location to another" and serve to "link otherwise fragmented acres of undisturbed area." The Final EIR implicitly concludes that the project would not adversely effect, either directly or cumulatively, the sensitive resource of wildlife corridors.

The trial court decided that the Final EIR's explanation for why the project would not significantly impact a wildlife corridor was deficient as not supported by substantial evidence. The County contends that the trial court erred because there *is* substantial

---

<sup>12</sup> Amici California Building filed a request that we take judicial notice of sections of the California Natural Resources Agency rulemaking file. The rulemaking file is not relevant or necessary to decide the appeals at issue here. We therefore deny the request for judicial notice. (See *Surfrider Foundation v. California Regional Water Quality Control Bd.* (2012) 211 Cal.App.4th 557, 569, fn. 7.)

<sup>13</sup> In addition to their challenges to the informational adequacy of the Final EIR and the County's failure to recirculate the Final EIR, petitioners under a separate heading in their opening brief on cross-appeal identify an issue they describe as "The Court should not reach the issue of whether the water supply impact findings were supported by substantial evidence because the EIR is not informationally adequate without comment responses." Although petitioners' argument on this point is not entirely clear, it appears that they are under a separate heading simply reiterating their arguments that the Final EIR is informationally inadequate and should have been recirculated before certification. For the reasons stated above, we have rejected those contentions.

evidence to support the Final EIR's determination that the project would have no significant impact to wildlife corridors and the Final EIR "thoroughly analyzed" this issue.

#### 1. Additional Background

The Draft EIR discussed wildlife corridors in a subsection addressing various biological resources. The Draft EIR stated, in pertinent part, that "[m]aintaining the continuity of established wildlife corridors is important to: a) sustain species with specific foraging requirements; b) preserve a species' distribution potential; and c) retain diversity among many wildlife populations" and "[t]herefore, resource agencies consider wildlife corridors to be a sensitive resource."

The Draft EIR noted that the 344-acre project site consists primarily of "grazing land on rolling terrain" and there were no homes or other building structures currently on site. Toro County Park lies to the east of the project site. Fort Ord Public Lands lie to the north of the project location.

The Draft EIR noted that the project site has drainages, mostly that were tributary to El Toro Creek, and that the channels "can provide movement corridors for amphibians when water is present and for other animals throughout the year." The Draft EIR also identified larger wildlife, such as mountain lions and bobcats, as living in Monterey County. It did not detail or describe the movement corridors for these larger species. The Draft EIR established the following significance threshold pertaining to wildlife corridors: an impact was considered significant if the proposed project would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors."

The Draft EIR found that "the loss or disturbance of habitats that support sensitive plant and wildlife species would be considered a potentially significant impact." (Bolding omitted.) The Draft EIR concluded that the impact would be reduced to a less than significant level through a mitigation measure that requires all proposed home sites,

landscaped areas, and outbuildings to be located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses.

The Draft EIR's analysis of potential impacts to biological resources at the project site relied on assessments done by a consultant called Zander Associates (Zander). Neither the Draft EIR nor the Zander assessments discussed a wildlife corridor related to El Toro Creek, which is not part of the project but runs nearby.

During the review period for the Draft EIR (which ended in December 2008), the public submitted written comments that mountain lions had been observed in the vicinity of the project site and that the Draft EIR appeared to be "incomplete without investigating and outlining the extent to which the development is an active mountain lion habitat or corridor."

Following the review period, the topic of wildlife corridors arose at public hearings for the project. For example, at a Planning Commission hearing about the project in June 2010, a member of the public expressed concern that the project lies within a major wildlife corridor that connects the Fort Ord lands to the areas near the Monterey Peninsula and Santa Lucia and "that is a cumulative impact that also needs to be identified, analyzed, and mitigated." In October 2010, the County received a study related to wildlife connectivity that had been funded by an independent environmental organization called the Big Sur Land Trust (connectivity study). The connectivity study focused on wildlife movement in the "Highway 68 corridor and the area around Marks Ranch, Toro Park, and Fort Ord Natural Reserve." The study, which began in October 2008, found that "El Toro Creek passes under a bridge on Highway 68 providing safe passage and habitat for wildlife moving between the uplands of the Sierra de Salinas and the lowland habitats toward Monterey Bay."

Addressing wildlife corridors, the 2013 Final EIR amends the Draft EIR by adding two paragraphs to the Draft EIR. The new text references a technical report related to a nearby project called the Ferrini Ranch Subdivision that studied wildlife movement in

that project’s area.<sup>14</sup> Specifically, the first paragraph added in the Final EIR states: “According to a Technical Memorandum prepared by WRA, Inc. in December 2008 for the proposed Ferrini Ranch Subdivision, a wide range of terrestrial wildlife species are known to occur on For[t] Ord land including: American Badger, Mountain Lion, Bobcat . . . , Black-tailed Deer . . . , and Coyote . . . . Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia ranges are limited to El Toro Creek, the Portola Drive overpass and possible culvert running beneath State Route 68. The El Toro Creek undercrossing is located 0.75 miles northwest of the project site near the intersection of San Benancio Road and State Route 68.” (Underlining omitted.) The second added paragraph states in full: “The Big Sur Land Trust and the Nature Conservancy have partnered with public agencies in an effort to protect the corridor between Fort Ord and the Santa Lucia Range.” (Underlining omitted.)

The Final EIR does not append the technical memorandum from the Ferrini Ranch project or incorporate it by reference. The Final EIR does not discuss or cite to the connectivity study.

In January 2014, following the release of the Final EIR, a Planning Commission hearing occurred at which staff from the County’s Planning Department discussed wildlife corridors. A representative from the Big Sur Land Trust noted that the development was located in prime habitat for wildlife including mountain lions and expressed concern that the development not cut off the passageway for wildlife to move

---

<sup>14</sup> According to a map in the administrative record, Ferrini Ranch lies next to and roughly west of the project site. This court considered an appeal related to the Ferrini Ranch project that raised various CEQA challenges (including by Landwatch), such as arguments related to groundwater resources, in which this court upheld the EIR for that project. (*Highway 68 Coalition v. County of Monterey* (July 26, 2019, No. H045253) [nonpub. opn.].) We note that the opinion did not discuss any claims related to wildlife or wildlife corridors that were related to that project.



through the El Toro Creek underpass and adjacent lands and to “ensure a functional wildlife corridor remains.”

Later, in May 2014, at a hearing before the Board, the EIR consultant for County staff briefly addressed wildlife corridors stating that that El Toro Creek was a “key wildlife corridor area” but that it was about three-quarters of a mile away from the project. A representative from the Big Sur Land Trust stated at the hearing that the project was “right in the middle of a critically-important wildlife corridor from the Sierra to Salinas mountains.” She noted that the El Toro Creek underpass under Highway 68 was indeed “three-quarters of a mile away” from the project but this underpass was not the corridor itself; rather the “corridor consists of that underpass plus the habitat on either side of the road.” She observed that experts have “identified the standard width for a corridor to be 1.2 miles. So the development actually is within an important corridor.”

Following the Planning Commission’s denial of the project, County staff prepared a report for the Board that recommended approval of the project by the Board. The report generally addressed wildlife corridors and specifically discussed El Toro Creek and the connectivity study, stating that “[t]he study did determine wildlife moves underneath the bridge; however, due to the distance from the project site and limited development proposed, the proposed project would not result in substantial adverse effect on this wildlife corridor.”

In March 2015, County staff addressed wildlife corridors at a Board hearing related to the project and discussed an alternative that would involve eliminating four lots in the center of the project that would apparently allow movement from the “open space, the remainder parcel, Toro Park” and “down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68.”

In its resolution approving the project, the Board conditioned its approval on applicant’s submission of a “Wildlife Corridor Plan” (Condition 21).

Condition 21 states: “In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the Owner/Applicant shall submit a Wildlife Corridor Plan (‘Plan’) for all the lots on the vesting tentative map. The Plan shall be prepared in consultation with a qualified biologist with expertise in wildlife connectivity planning and is subject to approval by RMA-Planning. The Plan shall include the following elements to ensure effective wildlife movement: [¶] [1] Fencing: limit fence height (how tall as well as ground clearance), ensure adequate openings in fencing (e.g. post and rail), identify fence types, and identify areas where no fencing will be allowed (e.g. areas adjacent to natural drainage courses). The plan may allow limited solid fencing in the developed areas within the building envelopes as required by Mitigation Measure MM 3.1-2b. [¶] [2] Lighting: incorporate wildlife-friendly lighting and identify placement of lighting that minimizes impacts to wildlife.”<sup>15</sup>

The County and applicant contend that the County’s determination that the project will not impede wildlife movement is supported by substantial evidence and the trial court erred in ruling to the contrary. The County and applicant state that the “lot layouts, sizes, and configurations plainly provide ample room for wildlife movement” and note

---

<sup>15</sup> We note that the Board’s resolution approving the project contains two other conditions/mitigation monitoring measures that reference Condition 21 and the wildlife corridor plan. Specifically, a condition related to the designation of scenic easements requires that the easement document incorporate the “applicable recommendations in the approved Wildlife Corridor Plan” required in Condition 21. Another condition related to the submission of a “detailed lighting plan” requires that the lighting plan incorporate the “applicable recommendations in the approved Wildlife Corridor Plan” required in Condition 21. Another condition related to biological resources, although it does not refer explicitly to Condition 21, requires applicant to design the proposed development on the project site “so that homesites, landscaped areas and outbuildings are located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses.”

that applicant will dedicate approximately half of the property (154 acres) to the County which will remain undeveloped. The County and applicant also rely on the technical memorandum related to the Ferrini Ranch project and County staff's remarks contained in the administrative record pertaining to wildlife corridors. Moreover, the County and applicant argue that any error was not prejudicial in light of Condition 21.

## 2. Legal Principles

“There is no ‘gold standard’ for determining whether a given impact may be significant. ‘An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.’ (Guidelines, § 15064, subd. (b).)” (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107.) “Under the Guidelines, however, ‘[e]ach public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.’ (Guidelines, § 15064.7, subd. (a).)” (*Ibid.*)

“Section 21100, subdivision (c), requires an EIR to ‘contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.’ (See also CEQA Guidelines, § 15128.)” (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302.) The agency's conclusion that a particular effect of a project will not be significant can be challenged as an abuse of discretion on the ground the conclusion was not supported by substantial evidence in the administrative record. (*Id.* at p. 290.) The

burden is on petitioners to affirmatively show there was no substantial evidence in the record to support the County's finding that the project would not have a significant impact on an existing wildlife corridor. (See *Center for Biological Diversity I, supra*, 232 Cal.App.4th at p. 948.)

### 3. Analysis

The record makes clear that wildlife corridors are a sensitive resource, and the Final EIR states that a substantial interference with such a corridor would constitute a significant impact. It is also undisputed that the project is located on currently undeveloped land that lies less than a mile away from a key wildlife passage that allows wildlife to bypass Highway 68. Nevertheless, the Final EIR does not provide basic information about the wildlife corridor of which this passage is a part, such as its dimensions, or even definitively state whether or not the corridor overlaps a portion of the project site. This baseline determination is the first step in the environmental review process by which an agency can determine whether an impact is significant. (*Save Our Peninsula, supra*, 87 Cal.App.4th at p. 125.)

There is not substantial evidence that no such wildlife corridor passes through the project site. Indeed, Zander reported that the natural drainage in the project site serves as a wildlife corridor. Comments from County staff that the County and applicant rely upon in their appeals further appear to suggest that a corridor *does* pass through the project site. In particular, as noted above, staff stated at a 2015 hearing that: "With regard to biology, there was some question regarding wildlife corridors; although, the EIR addressed that those were less-than-significant impacts, one of the things we pointed out at the previous hearing is that we have the environmentally-superior alternative, which is four less lots, which would eliminate lots here, four lots here in the center of the project, *which would allow that contiguous wildlife corridor from the open space, the remainder parcel, Toro Park, through and on through*; although these—where it says, 'not a park,' these are

subdivided lots in here, but they aren't developed, *down on to the area that is adjacent to Highway 68 and some of the undercrossing there under Highway 68.*" (Italics added.)

While the Final EIR notes that the El Toro Creek passage is not on the project site, it does not explain how the corridor relates to this passage or whether the corridor passes by or through the project site. Rather, the County appears to have concluded without any study or supporting documentation the layout will be sufficient to maintain the corridor and prevent interference with animal movement. In the absence of any such discussion, the Final EIR is informationally deficient under CEQA. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 728–729.)

The County and applicant further argue that the “Ferrini Ranch EIR concluded that the 185-home project at issue there would not adversely impact El Toro Creek if development were setback at least 200 feet from the riparian edge or undercrossing” and that “[b]y comparison, the 17-home Harper Project is located approximately 4,000 feet from the undercrossing and creek.” However, they provide no authority for the proposition that another project EIR, which was not included in the EIR at issue here, is relevant to the legal question of an EIR’s informational adequacy. As noted by petitioners, the EIR for this project fails to describe the basic information necessary for a reader of the EIR for this project to understand the topic of the wildlife corridor, such as where the wildlife corridor “begins and ends, its width, and how far the Project intrudes upon the corridor.” Moreover, the excerpts of the Ferrini Ranch EIR upon which the County and applicant rely confirm the importance of the “El Toro bridge” as a wildlife corridor but do not address the project here or find that the corridor does not pass through it.

Additionally, petitioners do not point to any place in the administrative record that reflects that County staff actually reviewed or relied upon the Ferrini Ranch EIR’s discussion of wildlife corridors in connection with the Final EIR for the project at issue

here. Rather, we note that the Final EIR for this project (dated December 2013) predates the September 2014 Ferrini Ranch EIR relied upon by the County and applicant.

While our review of an EIR's adequacy is deferential, "we must also bear in mind that the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula, supra*, 87 Cal.App.4th at p. 117.) Prejudicial error occurs " "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." ' ' " (*Id.* at p. 118.)

We are also not persuaded that the County department staff's comments constitute substantial evidence that the project would have no significant impact on a wildlife corridor. As noted above, the comments from staff consisted of conclusory and vague remarks based on the configuration of the proposed development and the distance to the El Toro Creek underpass. " "Conclusory comments in support of environmental conclusions are generally inappropriate." ' ' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404.) Staff did not explain how the configuration of the homes was evidence that the impact on any corridor would be insignificant. We further note that one of the citations to the administrative record provided by the County and applicant is not evidence, let alone substantial evidence, but rather consists of an attorney's argument before the Board.

We decide petitioners have met their burden of showing that the County failed to provide substantial evidentiary support for its implicit conclusion that the project would have no significant impact on a wildlife corridor. The decisionmakers and the public lacked the basic information about the wildlife corridor they needed to understand the County's conclusion. "[W]hen the agency chooses to rely completely on a single quantitative method to justify a no-significance finding, CEQA demands the agency research and document the quantitative parameters essential to that method. Otherwise,

decision makers and the public are left with only an unsubstantiated assertion that the impacts—here, the cumulative impact of the project on global warming—will not be significant. (See Guidelines, § 15064, subd. (f)(5) [substantial evidence to support a finding on significance includes ‘facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,’ but not ‘[a]rgument, speculation, [or] unsubstantiated opinion’].)” (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 (*Center for Biological Diversity II*).

We also agree with petitioners that the County’s failure to provide substantial evidentiary support for its no significant impact conclusion was prejudicial, in that it deprived decisionmakers and the public of substantial relevant information about the project’s likely impacts. (*Center for Biological Diversity II, supra*, 62 Cal.4th at p. 228.) The County and applicant argue that any error was not prejudicial given Condition 21 and cite to *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1073–1074. We disagree. *Save Cuyama Valley* held that the EIR at issue there “sets forth all the pertinent data and follows all the procedures” (*id.* at p. 1073) but came to the wrong conclusion that a mine’s impact on water quality would be insignificant; the court held this error was not prejudicial because a condition required the real party in interest to ensure that no groundwater is exposed and this condition, if feasible, “would be *wholly effective* in negating the mine’s adverse impact on water quality.” (*Id.* at p. 1074, italics added.)

*Save Cuyama Valley* is distinguishable for at least two reasons. First, the Final EIR here, as discussed above, does not set forth all the pertinent data. The Final EIR lacks any analysis or information about the wildlife corridor. Second, Condition 21 does not by its plain terms show it would be “wholly effective” in negating any adverse impact on the wildlife corridor. Condition 21, for example, mandates that a wildlife corridor plan include certain fencing elements to “ensure effective wildlife movement,” but there

is no evidence in the record that those fencing elements will ensure that the project will not interfere substantially with any wildlife corridor.

We note that the County appears to have assumed that the low density of the development means that there is no substantial interference with the wildlife corridor; however, there is no evidence to support that assumption given the lack of information about the corridors on site other than drainages, and the record does not contain any expert opinion or data relied upon by the County to support that conclusion. For these reasons, we do not agree with the County and applicant that the failure to define or explain the project's relationship to the wildlife corridor is nonprejudicial.

We therefore affirm the trial court's ruling finding the Final EIR's analysis of direct project impacts to wildlife corridors was deficient.

*E. Summary of Conclusions*

For the reasons explained above, we agree with some but not all of petitioners' claims in their cross-appeal. Specifically, we agree that the Final EIR's treatment of the issue of wildlife corridors is deficient under CEQA. By contrast, based on our independent review of the record before us (*Protecting Our Water, supra*, 10 Cal.5th at p. 495), we conclude that the County did not commit any legal error under CEQA as to the Final EIR's discussion and analysis of groundwater resources. With respect to the appeal filed by the County and applicant, we agree that the trial court erred when it decided that the County was required to recirculate the Final EIR on the topic of groundwater resources, and we conclude that substantial evidence supports the County's determination that CEQA did not require recirculation.

Based on these conclusions, we reverse the judgments and remand with the directions stated below.

**III. DISPOSITION**

The March 8, 2019 judgment in case No. M131893 and the April 15, 2019 judgment in case No. M131913 are reversed. The matter is remanded to the superior



court with directions to vacate its original order partially granting the petitions for writ of mandate, to vacate its prior writs of mandate issued pursuant to its original order, and to issue new writs of mandate ordering the Monterey County Board of Supervisors to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the Environmental Impact Report for the project only as it relates to wildlife corridor issues. The Board shall be ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate Environmental Impact Report with regard to the wildlife corridor issues discussed in this opinion. The parties are to bear their own costs on appeal.

---

Danner, J.

WE CONCUR:

---

Greenwood, P.J.

---

Bamattre-Manoukian, J.

**H046932**

*Landwatch Monterey County et al. v. County of Monterey*