

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

**LANDWATCH MONTEREY
COUNTY, et al.,**

*Petitioners, Respondents, and
Cross-Appellants,*

v.

**COUNTY OF MONTEREY et
al.,**
*Respondent, Appellant, and Cross-
Respondent;*

**HARPER CANYON REALTY,
LLC et al.,**
*Real Parties In Interest, Appellant,
and Cross-Respondent.*

Case No. H046932

Appeal from Monterey County
Superior Court
Cases No. M131913 and
M131893, consolidated for trial
only

Hon. Thomas Wills, Judge of
the Superior Court

**JOINT OPPOSITION AND OPENING BRIEF OF RESPONDENTS AND
CROSS-APPELLANTS LANDWATCH MONTEREY COUNTY AND
MEYER COMMUNITY GROUP**

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APP-008

COURT OF APPEAL Sixth APPELLATE DISTRICT, DIVISION		COURT OF APPEAL CASE NUMBER: H046932
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 209221		SUPERIOR COURT CASE NUMBER: M13193 consolidated with M131893
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APP-008

COURT OF APPEAL		SIXTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: H046932
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APPELLANT/ MEYER COMMUNITY GROUP PETITIONER: RESPONDENT/ MONTEREY COUNTY, et al. REAL PARTY IN INTEREST:			
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TABLE OF ACRONYMS

AFY	acre-feet per year
AR	Administrative Record
BSLT	Big Sur Land Trust
CDT	Corral de Tierra [Subbasin of SVGB]
CEQA	California Environmental Quality Act
DEIR	Draft Environmental Impact Report
EIR	Environmental Impact Report
ETGB	El Toro Groundwater Basin
ETPA	El Toro Planning Area
FEIR	Final Environmental Impact Report
FSOD	Final Statement of Decision [trial Court]
GSA	Geosyntec Study Area
GSA/ETPA	Geosyntec Study Area/El Toro Planning Area
JA	Joint Appendix
MCWRA	Monterey County Water Resources Agency
MPWMD	Monterey Peninsula Water Management District
ROB	Respondents' Opening Brief
SGD	Stahl Gardner & Dunne [report]
SVGB	Salinas Valley Groundwater Basin
SVWP	Salinas Valley Water Project

Petitioners, Respondents, and Cross-Appellants LANDWATCH MONTEREY COUNTY (“LandWatch”) and MEYER COMMUNITY GROUP (“Meyer,” collectively “Petitioners”) oppose the appeal of, and cross-appeal, the final judgments of the Monterey County Superior Court granting in part and denying in part Petitioners’ separate petitions for writs of mandate, which sought to overturn the April 7, 2015 action by the COUNTY OF MONTEREY (“County”) certifying an environmental impact report (“EIR”) under the California Environmental Quality Act (“CEQA”) and approving entitlements for the Harper Canyon subdivision project (“Project”) proposed by Real Party in Interest HARPER CANYON REALTY, LLC (“Harper”).

The Judgment for LandWatch, entered March 8, 2019 and noticed on May 14, 2019, and the separate Judgment for Meyer, entered April 15, 2019 and noticed on May 13, 2019, finally disposed of all issues among the parties, other than attorneys’ fees and costs, and are therefore appealable. The County and Harper (collectively, “Respondents”) filed timely Notices of Appeal May 2, 2019 and May 17, 2019. LandWatch filed timely Notice of Cross-Appeal May 15, 2019 and Meyer filed timely Notice of Cross-Appeal on June 4, 2019.

I. STATEMENT OF CASE

GROUNDWATER: Since 1960, groundwater levels in the Toro Area of Monterey County have been falling, and the aquifer has been depleted at the rate of 500-1,000 acre-feet/year. This condition, due to increasing cumulative pumping to serve new development, was documented in Geosyntec’s 2007 El Toro Groundwater Study, which compiled 47 years of data from 45 wells. Geosyntec found a long-term overdraft condition in the Toro Area, in which pumping exceeds recharge.

Geosyntec's 2007 report was released fifteen months before the 2008 draft Environmental Impact Report ("DEIR") for the Project. Despite this, the DEIR concludes there is a surplus of recharge over pumping and that existing groundwater projects have "sustained groundwater levels." Geosyntec's empirical study contradicts both claims, specifically rejecting the 1996 Fugro Report's recharge estimates cited by the DEIR for its "surplus" claim. Respondents' claim that the DEIR "reflected the best information available at the time it was prepared" is simply wrong. (Respondents' Opening Brief ("ROB") at 15.)

After public comments objecting that the DEIR fails to report Geosyntec's conclusions, the Final EIR ("FEIR") admits that Geosyntec's 2007 report "superseded" the Fugro Report, and completely rewrites the DEIR's 39-page Groundwater Resources and Hydrogeology section. As the trial Court held, the FEIR's numerous changes demonstrate that the discussion in the DEIR was "so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless" and that recirculation was required. (Joint Appendix ["JA"] at JA1414, quoting 14 CCR ["Guidelines"], § 15088.5(a)(4).)

For example, the FEIR changes the setting description by admitting overdraft and striking the DEIR's "sustained groundwater levels" claim. The FEIR changes the geographic scope of cumulative analysis, focusing not on falling groundwater levels and depletion of the groundwater basin in the Toro Area, but on seawater intrusion and groundwater levels in other subbasins of the Salinas Valley Groundwater Basin. The FEIR fundamentally changes the reasoning about cumulative impacts, making three new technical claims. It claims that groundwater can be mined for decades to support the Project, despite the overdraft. It claims that the Salinas Valley Water Project, intended to raise groundwater

levels in the Salinas Valley, could somehow sustain groundwater levels in the Toro Area, which is are hundreds of feet above the Valley groundwater levels. And it claims that the Project's wells are not hydrogeologically connected to, and will therefore not impair, the "stressed" portions of the Toro Area aquifer, despite claims to the contrary in Geosyntec, Fugro, the DEIR, and the FEIR itself. The trial Court was correct that "[g]iven the breadth and scope of the revision, the court concludes that the Board's decision not to recirculate the DEIR was not supported by substantial evidence." (JA1429.)

WILDLIFE CORRIDORS: Bobcats, black-tailed deer, American badgers, mountain lions and coyotes use a wildlife corridor to move between Fort Ord and the Sierra de Salinas or Santa Lucia mountain ranges. The wildlife corridor traverses land within the boundaries of the Project. Despite the importance of protection of species habitat to the environmental review process, neither the DEIR nor FEIR gave the public any inkling that larger animals could be affected by the Project, because the EIR did not describe the existing wildlife corridor.

As the trial Court found, the FEIR "contained no analysis of the Project's potential effect upon that corridor." (JA1510.) The DEIR did not discuss the large animal corridor, but referred instead to "movement corridors, consisting only of ephemeral stream-courses, for amphibians and certain other animals." (JA1509.) As for the larger animals, "the DEIR did not acknowledge that such wildlife traverse the relevant area, much less that a wildlife corridor other than the drainage channels exists." (JA1509.)

According to the trial Court, the FEIR did not describe the actual wildlife corridor, but instead:

implied that the relevant “wildlife corridor” is the El Toro Creek undercrossing. But the FEIR ignored that a “corridor,” as defined in the EIR, must have both a starting point and a terminus. . . . [T]he FEIR assumed—without evidentiary support—that the corridor was restricted to the limited portion of land at which wildlife crosses SR 68 at a specific undercrossing.

(JA1509.)

Respondents devote only a small portion of their opening brief to the wildlife corridor. They repeat their substantial evidence arguments presented to and rejected by the trial Court. (ROB at 61-65.) As they did below, Respondents erroneously equate the preservation of habitat in the ephemeral stream-courses with the wildlife corridor about which the EIR is silent. Respondents also reiterate their reliance on Biological Resources Assessments by Zander and Associates (“Zander Studies”), but those studies did not investigate movement by larger animals on Project land. Those studies inventoried potential home sites. Zander’s mitigation measure does not address animal movement, but only the protection of animal habitat in and near drainage channels. The wildlife corridor is never described, never analyzed.

Petitioners contend the EIR is informationally deficient, and there is no substantial evidence to support the EIR’s conclusions and the Board’s finding of no significant impact upon wildlife corridors.

CROSS-APPEALS: In their cross-appeals, Petitioners appeal three aspects of the trial Court’s decision about the FEIR’s adequacy.

First, Petitioners reiterate their claim that the groundwater setting description in the FEIR is informationally inadequate, which the trial Court did not reach. It is contradictory, claiming a surplus while admitting overdraft, and claiming Project wells are hydrogeologically connected and not connected to “stressed” areas. And

it is incomplete, failing to disclose the declining groundwater levels and aquifer depletion in the Toro Area that the EIR defines as a significant impact.

Second, Petitioners reiterate their claim that the FEIR's cumulative analysis is informationally inadequate. Instead of analyzing and, where necessary, proposing mitigation for significant environmental effects, the FEIR simply claims that impact fees for a "regional mitigation strategy" negate any possibility of significant environmental effects. The trial Court held that CEQA does not require the identification and analysis of environmental effects, erroneously conflating cumulative and noncumulative analysis and ignoring caselaw requiring an EIR to assess impact significance with and without mitigation.

Finally, Petitioners reiterate their claim that the Court should not reach the issue whether substantial evidence supported the County's groundwater findings. Because the County failed to recirculate the FEIR's new analysis, it failed to respond to comments that the new analysis was inadequate, including an expert hydrogeologist's objection that the identified mitigation, existing Salinas Valley groundwater projects, cannot mitigate falling groundwater levels in the Toro Area, hundreds of feet above the Valley. The Court should not speculate how the missing responses would have affected the findings.

II. STATEMENT OF FACTS – GROUNDWATER

A. Location of Project site and its wells.

The location of the Project wells in groundwater basins and subbasins, subareas, a study area, a zoning overlay, and a water management area, are relevant because, as discussed in Sections II.F and VI.A.2 below, the FEIR, after

acknowledging that Geosyntec 2007 superseded the DEIR's technical reports, provides significant new information about these areas, their characteristics, and their interconnections.

The Project is in the Toro Area Planning Area ("Toro Area") of Monterey County. (Administrative Record ["AR"] at 691; *see* AR21899, 21944 [plan area maps].) It is in the Corral de Tierra Subbasin ("CDT Subbasin"), one of the eight subbasins of Salinas Valley Groundwater Basin ("SVGB"), which is bounded by the Seaside Area Groundwater Basin to the northwest and the 180/400-Foot Aquifer Subbasin of the SVGB to the northeast.¹ (AR352-353, 358, 356 [Figure 3.6-1, Groundwater Basin Map].) The Project's two off-site wells are in the CDT Subbasin, west of the Project site (AR132 [Figure MR-1], 360 [Figure 3.6-2], 362, 387, 333.)

The Project site and wells are also within the "Geosyntec Study Area" ("GSA"), the area evaluated in the 2007 El Toro Groundwater Study ("Geosyntec Report"). (AR128-129, 358, 360 [Figure 3.6-2].) The GSA is coextensive with the County's El Toro Planning Area ("ETPA"), which is "a watershed based area . . . near the western margin of the Salinas Basin."² (AR20071, 20075 [Figure 1-1], 20076 [Figure 1-2].) The GSA and ETPA ("GSA/ETPA") are contained within the

¹ Elsewhere the FEIR inconsistently states that the "project site lies within *two* subbasins: the Corral de Tierra Area subbasin and 180/400-Foot Aquifer (Pressure) subbasin." (AR129.)

² The FEIR explains that the GSA/ETPA boundaries are based on a "topographic/watershed-based methodology" rather than the DWR-recognized groundwater basins and subbasin boundaries. (AR128, 354.) Although the GSA/ETPA is therefore "not contiguous" with the CDT Subbasin (AR129), the FEIR does not further clarify this, e.g., by overlaying the areas. The FEIR does, however, state that the El Toro Creek and San Benancio Gulch subareas of the GSA/ETPA are "located within the CDT Subbasin." (AR358.)

CDT Subbasin. (AR358; *compare* AR132 [Figure MR-1] to AR356 [Figure 3.6-1].)

The GSA/ETPA consists of “five designated planning subareas based on local topographic drainage divides,” including Calera Creek, Watson Creek, Corral de Tierra, San Benancio Gulch, and El Toro Creek.”³ (AR20071, 20075 [Geosyntec Figure 1-2], 138 [FEIR Figure MR1-4].) The Project’s wells are in the San Benancio Gulch subarea. (AR358, 360 [Figure 3.6-2], 362; *see* AR132, 138 [Figures MR1-1, MR1-4].)

The FEIR locates the Project wells at the extreme western edge of “Zone 2C,” just a few feet outside (east of) the adjacent “B-8” zoning overlay. (AR363, 364 [FEIR Figure 3.6-3]; *see* AR20077 [Geosyntec, Figure 1-3].) The B-8 zoning overlay was established in 1992 to ban further subdivision in light of falling groundwater levels in the El Toro Planning Area. (AR20058 [Geosyntec], 362-363 [FEIR].)

Zone 2C is Monterey County Water Resources Agency’s (“MCWRA”) assessment district that funds the Salinas Valley Water Project (“SVWP”), intended to halt coastal seawater intrusion in the SVGB. (AR363, 368 [FEIR].) Seawater intrusion is caused by overdraft conditions that lower groundwater elevations below sea level, inducing inland flow of seawater. (AR22539-22540 [Geoscience 2013], 6048, 6054 [Brown and Caldwell 2015], 8784-8786 [SVWP DEIR].) The aquifers in the CDT Subbasin, in which Project wells are located, are 250 to 350 feet above sea level and, therefore, not at risk for seawater intrusion. (AR20125 [Geosyntec], 13147, 13153 [Parker]; AR134 [Figure MR-1], 367 [FEIR].)

³ The Corral de Tierra *subarea* of the GSA/ETPA is not the same area as the larger Corral de Tierra *Subbasin* of the Salinas Valley Groundwater Basin.

B. Hydrogeological interconnections of subbasins and subareas.

Hydrogeological interconnections of subbasins and subareas, as documented by technical reports, are relevant because, as described in Sections II.F and VI.A.2 below, the FEIR provides significant new information about the interconnections, including a critical new claim about subarea interconnection contradicted by these technical reports. (See Section II.F.2 below.)

1. The DEIR, FEIR, and three technical reports conclude that four of the GSA/ETPA subareas are hydrogeologically interconnected.

The Todd Engineers' 2003 Project Specific Hydrologic Report ("Todd Report"), EIR Appendix F, states that the "[g]roundwater in the El Toro Subareas north of the Chupines Fault is believed to be interconnected." (AR1451.) Todd illustrates that the four subareas north of the Chupines Fault include the San Benancio Gulch subarea, in which the Project wells are located, and the El Toro Creek, Watson Creek, and Corral de Tierra subareas, citing the 1991 Stahl Gardner & Dunne report ("SGD Report") and the 1996 Fugro West report ("Fugro Report"). (AR1448 [Figure 1], 1451; see AR21807 [SGD], AR22911 [Fugro].) Both the DEIR and FEIR repeatedly state that these four subareas within the GSA/ETPA and CDT Subbasin are hydrogeologically interconnected. (AR331, 374, 385 [FEIR], 837, 842 [DEIR].) The SGD Report explains that "the contiguous portions of these areas are the water-bearing units within the Paso Robles and Santa Margarita Formations." (AR21807.) As Respondents acknowledge (ROB at 14), the Project wells "procure water from the Paso Robles Aquifer." (AR372 [FEIR]; *see* AR360, 362 [well locations].)

Geosyntec, which was charged to determine “hydrogeologic connectivity” between existing subareas (AR20059), concludes that “major portions of the El Toro Planning Area subareas are hydrogeologically contiguous.” (AR20058.) Geosyntec explains that uniform water chemistry and groundwater levels demonstrate “substantial hydraulic interconnectivity between lithologic units.” (AR20136.)

2. The GSA/ETPA is hydrogeologically connected to adjacent SVGB subbasins.

Geosyntec also documents hydrogeological connections between the GSA/ETPA within the CDT Subbasin and the adjacent SVGB subbasins. (AR20153-20154 [Geosyntec 2007].) A 2010 Geosyntec update confirms groundwater flows toward the 180/400-Foot Aquifer Subbasin. (AR19395.)

The DEIR states there are no barriers restricting groundwater flow to the Salinas Valley. (AR830.) The FEIR states that the GSA/ETPA and the Salinas Valley Groundwater Basin are hydrogeologically connected (AR363), reproducing Geosyntec’s figure showing groundwater flows toward the SVGB. (AR129, 134 [FEIR, Figure MR1-2]; *see also* AR20125 [Geosyntec, Figure 4-6].)

Groundwater levels at the Project wells are 250-300 feet above sea level; and levels in the four interconnected subareas of the GSA/ETPA are from 200 to 900 feet above sea level. (AR134 [FEIR]; AR1454 [Todd], AR20125 [Geosyntec]; AR13147, 13153 [Parker].) By contrast, groundwater levels in the seawater-intruded adjacent 180/400-Foot Aquifer Subbasin are at or below sea level. (AR22550-22553 [Geoscience, 2013]; AR17750, 17752, 17755, 17759 [MCWRA 2012]; AR6050 [Brown & Caldwell, 2015].) GSA/ETPA outflows are caused by this steep gradient. (AR13147, 13150-13151, 13153 [Parker].)

C. Overdraft, Groundwater Levels, Aquifer Depletion, and Seawater Intrusion

Overdraft, groundwater levels, aquifer depletion, and seawater intrusion are relevant because, as described in Sections II.F and VI.A.2 below, the FEIR provides significant new information by acknowledging overdraft conditions, citing Geosyntec 2007, and by expanding the scope of cumulative analysis to include Project impacts on seawater intrusion. As described in Section VII.A below, the FEIR fails to disclose the material substance of the Geosyntec Report: falling groundwater levels and aquifer depletion in the CDT Subbasin from cumulative pumping.

1. The 1996 Fugro Report estimates a shared surplus of recharge over pumping in four interconnected subareas of the GSA/ETPA.

The 1991 SGD Report projected significant water supply deficits in three of the five subareas based on estimated recharge and pumping at buildout. (AR21800, 21816.) In light of this, the County imposed the “B-8” zoning overlay in 1992 in parts of the ETPA to prevent further subdivision. (AR20058 [Geosyntec], 353, 362-364 [FEIR].)

The 1996 Fugro Report later projected there would be a surplus of recharge over pumping in the four interconnected subareas, assuming its mid-range estimate of recharge is correct. (AR22910.) However, Fugro cautioned that “the accuracy of any of the estimates of recharge cannot be confirmed (calibrated) without better water level data for the area” and that the “current data set is inadequate to confirm the conclusions of any water balance study.” (AR22911.)

2. In 2007, Geosyntec documented overdraft, aquifer depletion and long-term decline in groundwater levels in the GSA/ETPA.

The County commissioned the 2007 Geosyntec Report to assess historic water level data and to recommend whether changes should be made to the B-8 zoning overlay. (AR20058-20059, 20072 [Geosyntec], 353 [FEIR].) Geosyntec compiled 47 years of well level data, from 1960 to 2007, for 45 wells in the GSA/ETPA. (AR20058, 20095-20096, 20113-20115, 20120 [Table 4-4].) Based on this empirical data, Geosyntec identifies long-term overdraft conditions:

Downward trends for the majority of long-term hydrographs indicate that *the rate of groundwater pumping from the El Toro Primary Aquifer System exceeds the rate of groundwater replenishment*. Compilation of trend analyses for long-term hydrographs clearly shows groundwater overdraft conditions in the northern portion of the El Toro Planning area near Hwy 68, where the majority of pumping occurs (Figure ES-5).

(AR20062, emphasis added.) Groundwater declines averaged 0.6 ft./yr from 1960 to 1999, worsening to 1.8 ft/yr since 1999. (AR20062, 20113-20115, 20131-20132 [Figures 4-11, 4-12].) These declines indicate depletion of the El Toro Primary Aquifer System by 500 acre-feet/year (“AFY”) from 1960, worsening to 1,000 AFY since 1999. (AR20156, 20062.) Worsening conditions are caused by increased groundwater pumping for new development, which “exceeds the rate of groundwater replenishment.” (AR20156; *see* AR20103-20105 [pumping increases], 20158 [cumulative building permits].)

Geosyntec concludes that continuing overdraft will “lower[] the water table below the screened intervals of existing wells completed in shallower portions of the aquifer system, which has already occurred in portions of the Corral de Tierra.” (AR20062.) That is, wells have failed and will continue to fail if overdraft continues. Geosyntec also concludes that “with continued overdraft conditions, groundwater production potential would likely decrease relatively quickly in

hydrogeologically contiguous areas of less saturated thickness.” (AR20163.) That is, wells in less favored positions will produce less water if overdraft continues.

Geosyntec recommends *expansion* of the B-8 zoning overlay to cover the entire extent of the El Toro Primary Aquifer System if County policy does not countenance these consequences of overdraft. (AR20163.) Geosyntec states that B-8 zoning in areas of large saturated thickness could be lifted, *but only if* “long term declines in groundwater levels and reliance on groundwater storage are acceptable to the County.” (*Id.*)

3. In 2007, Geosyntec rejected the 1996 Fugro estimates of a surplus in the four interconnected subareas of the GSA/ETPA.

Geosyntec reviewed previous estimates of groundwater recharge in the GSA/ETPA in the 1981, 1991, and 1996 studies, which ranged widely, from 5,996 AFY to 2,072 AFY. (AR20154.) Geosyntec directly challenges the accuracy of the 1996 Fugro recharge estimates, concluding that the “hydrogeologic analysis conducted for this study . . . casts doubt on the existence of a surplus groundwater supply in the Watson Creek subarea,” which represents the vast majority of the estimated surplus in the four interconnected subareas. (AR20155-20156.)

Geosyntec concludes that a revised recharge model “would likely result in a range of recharge significantly lower than the estimated build-out demand,” identifying a 500-1,000 AFY *deficit*, not a surplus. (AR20156.)

Geosyntec also invalidates Fugro’s surplus claim by demonstrating that recharge is less than pumping, based on 47 years of *measured* declines in groundwater levels. (AR20113-20115, 20120 [Table 4-4], 20156.) As noted, Fugro admits that its “sensitive” *estimates* were not calibrated with water level data. (AR22911.)

4. Seawater intrusion affects the SVGB outside the Toro Area.

Overdraft conditions in the Salinas Valley Groundwater Basin since the 1930's have caused seawater intrusion in the SVGB's 180/400-Foot Aquifer Subbasin because its aquifers are open to Monterey Bay. (AR353, 6048, 22539 [Geoscience 2013].) To prevent seawater intrusion, coastal groundwater levels must be above sea level; however, overdraft has reduced levels below these "protective elevations." (AR22541 [Geoscience 2013].) Seawater intrusion now reaches eight miles inland. (AR6069.)

To control seawater intrusion, County agencies implemented projects to store surface water, increase recharge, and reduce coastal pumping. (AR13189-13205 [MCWRA's Johnson], 13249-13254 [Johnson], 367-368 [FEIR].) Projects included the 1957 and 1965 San Antonio and Nacimiento Dams, the 1998 the Castroville Seawater Intrusion Program, and the Salinas Valley Water Project. (AR6069-6070 [Brown & Caldwell]. Despite this, overdraft conditions continue, the Basin is "currently out of hydrologic balance by approximately 17,000 to 24,000 afy," and seawater intrusion continues. (AR6057-6061.)

The 2010 SVWP was expected to halt seawater intrusion based on 1995 demand, but not necessarily under 2030 conditions. (AR8836 [SVWP DEIR], 7849 [SVWP FEIR], 13228 [Johnson], 13126-13127 [LandWatch].) Its analysis assumed substantial *declines* in water demand (AR8789), and its EIR cautioned that increased demand would "exacerbate seawater intrusion." (AR9274). However, post-1995 demand *increased* substantially, and MCWRA now agrees that SVWP modeling understated demand. (AR13227 [Johnson]; *see* AR13126-13131 [pumping data].) MCWRA now claims only that groundwater management projects have "slowed seawater intrusion." (AR13204 [Johnson]; *see* AR22539.) MCWRA acknowledges that additional projects supplying another 60,000 AFY of

groundwater recharge are needed to control seawater intrusion. (AR13129, 13223-13224, 13229-13230 [Johnson].) Modeling confirms this would require 48,000 AFY of additional recharge water, *over and above that supplied by the 2010 SVWP*. (AR22546 [Geoscience 2013], 13224 [Johnson].)

In its 2011 reporting, MCWRA observed that while groundwater levels for the Pressure 180-Foot and 400-Foot Aquifers had improved over the two-year period from 2009-2011, they remained well below sea level and that the “mechanism for seawater intrusion persists.” (AR17750, 17752, 17760 [MCWRA].) MCWRA’s 2014 report indicates that groundwater levels in the Pressure 180-Foot and 400-Foot Aquifers were below sea level, below the reference 1985 level, *and had fallen from 2011 levels*. (Compare AR6031 [2014 vs. 1985] to 5978 [2011 vs. 1985].) MCWRA’s senior hydrogeologist observed in 2015 that groundwater levels were at “historic lows” and that seawater intrusion data would show it “has restarted its march down the valley.” (AR5850.)

D. The 2008 DEIR

The DEIR’s descriptions of groundwater conditions and its determinations of impact significance are relevant because, as described in Sections II.F and VI.A.2 below, the FEIR provides significant new information about these conditions and fundamentally revises the significance determinations.

1. The 2008 DEIR’s groundwater impact analysis relies on the purported surplus in the four interconnected subareas estimated by the 1996 Fugro Report.

The 2008 DEIR’s Section 3.6, Groundwater Resources and Hydrogeology, discusses the environmental setting, thresholds of significance, project specific

impacts, and cumulative impacts. (AR825-844.) The discussion is based on the 2003 Todd Report in Appendix F, which relies on the 1991 GSD Report and the 1996 Fugro Report. (AR825, 1444-1487 [Todd].)

The DEIR locates Project wells in what it terms the “El Toro Groundwater Basin” (“ETGB”), which it identifies as a *distinct* groundwater basin. (AR825-826.) The DEIR does not disclose that the ETGB is actually a *subbasin* of the SVGB (accurately termed the Corral de Tierra Subbasin), which was later disclosed by the FEIR. (AR826; *see* AR353.)

The DEIR states that the ETGB contains five subareas, four of which are “are hydraulically contiguous.” (AR826; *see* 1451 [Todd], 21807 [SGD].) The DEIR states that the “El Toro Creek subarea, San Benancio Gulch subarea, Corral de Tierra subarea, and the northern portion of Watson Creek subarea of the El Toro Groundwater Basin are located north of the Chupines fault and are considered to be interconnected.” (AR837.) The DEIR locates the Project wells in the San Benancio Gulch subarea. (AR826, 829, 1197-98 [Figures 3.6.1, 3.6-2]; AR1447-1449 [Todd].)

Identifying the CEQA Guidelines’ thresholds for significant impacts, the DEIR considers an impact to be significant if it would “substantially deplete groundwater supplies . . . such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted.)” (AR833.)

Consistent with its significance threshold, the DEIR considers impacts less than significant if Project pumping would be less than the projected surplus of recharge over pumping. Thus, in its noncumulative impact analysis (Impact 3.6-1), the DEIR concludes that Project pumping of 12.75 AFY would be a less than significant impact because it would be less than the projected 29.9 AFY San

Benancio Gulch subarea surplus, based on the 2003 Todd Report and 1996 Fugro Report. (AR836, 1460.) The noncumulative analysis also claims that the project “will not exacerbate the deficient water conditions *within* the El Toro Groundwater Basin” because its wells are “located within the Salinas Valley Water Project Assessment Zone 2C.” (AR836, emphasis added.) However, the noncumulative analysis does not consider whether Project pumping would have impacts *outside of* the El Toro Groundwater Basin.

The DEIR’s cumulative impact analysis is limited to the “surrounding subareas” of the ETGB. (AR842-843.) The discussion concludes cumulative impacts would be less than significant because Project demand is less than the projected 314.82 AFY surplus in these four interconnected subareas. (AR842-843.) The projected surplus is the sole rationale cited in the cumulative analysis, which does not mention the Salinas Valley Water Project or consider impacts beyond the surrounding four interconnected subareas.

2. The 2008 DEIR does not disclose overdraft conditions in the “El Toro Groundwater Basin” as reported by Geosyntec in 2007.

The 2008 DEIR does not identify overdraft conditions in the El Toro Groundwater Basin or acknowledge the 47 years of falling groundwater levels and aquifer depletion documented by the 2007 Geosyntec Report. The DEIR mentions Geosyntec solely to document that groundwater flows from the El Toro Basin northeast into the Salinas Valley. (AR830.)

Rather than acknowledge the overdraft documented in 2007, the 2008 DEIR repeatedly claims a surplus of recharge over pumping based on the 1996 Fugro Report (*Compare* AR838 [DEIR, Table 3.6-2] to AR22907 [Fugro Table 12]; *see also* AR836, 837, 838, 842-843, 863, 956, 971-972 [DEIR surplus claims]; AR1460 [Todd, using Fugro data].) Furthermore, the DEIR claims that

groundwater levels are *not* declining, stating that the Project site receives “benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and will receive benefits of the Salinas Valley Water Project upon completion.” (AR830.)

E. Comments on the DEIR object to its failure to disclose the Geosyntec 2007 conclusions.

Comments on the DEIR from the Monterey Peninsula Water Management District (“MPWMD”), Petitioners, and others objected that the DEIR fails to reflect the Geosyntec analysis and that Geosyntec’s overdraft finding contradicts the DEIR’s surplus claims. (AR156, 161-162 [LandWatch], 185 [MPWMD], 226, 234, 246.) MPWMD objected that the DEIR does not provide “accurate representation of the hydrogeologic setting,” referring the County to the Geosyntec Report. (AR185.) Comments identified well failures (AR193-194, 234) and challenged the claim that the San Antonio and Nacimiento Reservoirs and the SVWP sustain groundwater levels within the arbitrary boundaries of Zone 2C. (AR161-162 [LandWatch], 234, 246.)

F. The 2013 FEIR fundamentally revises the DEIR’s groundwater discussion.

The FEIR completely revises Section 3.6, Groundwater Resources and Hydrogeology, “due to changes in circumstances as a result of ongoing groundwater studies and implementation of new basin management programs.” The revisions are so substantial that the FEIR presents them in a separate 39-page section titled “Revised: 3.6 Groundwater Resources and Hydrogeology.” (AR350-388.) The revisions are relevant because, as described in Section VI.A.2 below,

the revisions were significant new information requiring recirculation. And, as discussed in Section VII.A below, the FEIR remains informationally inadequate because it inconsistently claims both surplus and overdraft conditions, inconsistently claims four subareas are both connected and not connected, and fails to disclose falling groundwater levels and aquifer depletion in the CDT Subbasin caused by cumulative pumping.

1. The FEIR fundamentally revises the environmental setting description.

Previous technical reports “superseded:” The FEIR admits that the technical reports relied on by the DEIR, including the 1991 SGD Report and the 1996 Fugro Report, were “superseded” by the Geosyntec Report. (AR353; *see also* AR372 [striking references].)

New basin descriptions: The FEIR identifies the basin in which the Project wells are located as the “Corral de Tierra Subbasin,” a *subbasin* of the SVGB, instead of the “El Toro Groundwater Basin,” which the DEIR identifies as a *separate* basin. (AR352-353, 358, 362, 384, 387, 129 [FEIR], 825 [DEIR]; *see also* AR132 [Figure MR-1], 138 (Figure MR1-4), 360 [Figure 3.6-2].) The FEIR locates the Project wells in the San Benancio subarea of the Geosyntec Study Area, within the CDT Subbasin. (AR129, 132 [Figure MR1-1], 356 [Figure 3.6-1], 360 [Figure 3.6-2], 362.)

Overdraft acknowledged, but surplus still claimed: The FEIR admits “an overdraft condition within the Geosyntec Study Area.” (AR363; *see also* AR375, 385.) However, the FEIR does *not* disclose Geosyntec’s conclusions that overdraft conditions have caused 47 years of aquifer depletion and falling groundwater levels or Geosyntec’s repudiation of Fugro’s “surplus” claim. Instead, the FEIR unaccountably *continues to claim there is a surplus* of recharge over pumping in

the four interconnected subareas. (AR372, 374, 385.)

Claim of previously sustained groundwater levels stricken: The FEIR strikes out the DEIR's claim that groundwater levels have been sustained by the Nacimiento and San Antonio Reservoirs, claiming only that the site will "indirectly receive benefits of sustained groundwater levels within the Basin attributed to the Salinas Valley Water Project." (AR363, *compare* AR830 [DEIR].) The FEIR states that the SVWP began operating in 2009-2010, that 2009-2011 monitoring data for unspecified locations shows an increase in groundwater levels "relative to sea level," but that it is "too soon to draw hard conclusions" about the SVWP efficacy, and that the County "could take" unspecified "additional measures" based on a future study. (AR368.) The FEIR does not support its "indirect" benefits claim with any monitoring data *for the CDT Subbasin* or acknowledge that MCWRA's groundwater monitoring reports *do not include* the CDT Subbasin. (AR5853-6031 [MCWRA, 2003-2014].)

2. The FEIR fundamentally revises the groundwater cumulative impact analysis.

The FEIR revises the discussions of noncumulative and cumulative groundwater impacts to provide new rationales for the same findings the DEIR makes, that impacts are less than significant. (AR372-377, 384-387.)

New geographic scope and new kinds of impacts for cumulative analysis: Whereas the DEIR discusses cumulative impacts only to the four interconnected subareas of the ETGB and only in terms of water supply impairment (AR842-843), the FEIR discusses cumulative impacts to the CDT Subbasin, "adjacent subbasins and the basin as a whole," and it considers both water supply impairment and seawater intrusion impacts. (AR384-387.)

New cumulative impact mitigation: Whereas the DEIR proposes no

mitigation of cumulative impacts, given the purported surplus (AR842-843), the FEIR claims that the “project’s impact on the groundwater basin is . . . mitigated by” its payment of Zone2C assessments “because the SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins.” (AR387.)

New, inconsistent claim that Project wells are not “hydrogeologically contiguous” with stressed areas: The FEIR’s cumulative impact analysis claims that, despite overdraft, groundwater pumping could be sustained for decades in areas where the aquifer has a large saturated thickness, arguing that the Project wells overlie such an area. (AR385.)

Geosyntec concludes that such continued overdraft and groundwater mining, while feasible, would cause “long term declines in groundwater levels and reliance on groundwater storage.” (AR20163.) Geosyntec concludes this would impair “groundwater production potential . . . in hydrogeologically contiguous areas of less saturated thickness.” (AR20163.)

However, the FEIR’s cumulative analysis makes the new claim that the Project wells are *not* hydrogeologically connected to these “stressed areas” of “less saturated thickness” in the GSA/ETPA:

According to the Geosyntec Study, the primary aquifer is currently (2007) in overdraft but groundwater production is considered good and pumping could be sustained for decades in the vicinity of the project site (as well as other areas) because it was located in an area with a large saturated thicknesses of the primary aquifer. In addition, 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.

(AR385, emphasis added.) The FEIR claims that the lack of contiguity with “less productive areas within the Geosyntec Study area” means that “groundwater pumping in this area *would not likely affect* the less saturated thickness areas of the

primary aquifer with the Geosyntec Study area.” (AR375-376, emphasis added.)

The FEIR does not reconcile this new claim with the repeated statements in the DEIR, Geosyntec, *and the FEIR itself* that four subareas in the GSA/ETPA, including the San Benancio subarea, *are* hydrogeologically interconnected. (AR372, 374, 385, 837, 842, 20058.) The newly claimed lack of contiguity with “stressed areas” directly contradicts the statement in the preceding paragraph that the *currently stressed areas are interconnected*:

The Todd Engineering report concluded that although the proposed project may contribute to an adverse cumulative impact on some of the individual subareas *that are currently stressed*, the four subareas *are ultimately interconnected* and will maintain an overall water surplus.

(AR385, emphasis added.)

Unaccountably, the FEIR states its conclusion that the Project well sites are not contiguous with the stressed or less productive areas of less saturated thickness in the Geosyntec Study Areas is “similar to” Geosyntec’s conclusions. (AR385.) However, Geosyntec concludes that “major portions of the El Toro Planning Area subareas are hydrogeologically contiguous” and documents “substantial hydraulic interconnectivity” based on water chemistry and groundwater levels. (AR20058, 20136.) Geosyntec also illustrates large areas of low saturated thickness and “poor” groundwater production in the four interconnected subareas, *including the San Benancio Gulch subarea in which the Project wells are located*. (AR20134, 20133.)

Other than citing the 2010 Geosyntec update, the FEIR does not identify evidence supporting its new claim. The 2010 Geosyntec update identifies a “generally northeastern hydraulic gradient” and identifies “granitic rocks uplifted along the Harper Fault” that “likely *limit* hydraulic connection *to the northeast from the San Benancio subarea*,” i.e., limit connection *to the SVGB’s 180-*

Foot/400-Foot Aquifer Subbasin, which lies to the northeast. (AR19395, emphasis added.) However, the update does not address limited interconnection *within* the four interconnected subareas that includes the San Benancio subarea.

Misleading redlining: Although the FEIR claims that strikeouts and underlining indicate its revisions to Section 3.6 (AR317), the underlining does not include six paragraphs of new material in the cumulative impact analysis, including the change in geographic scope, the claim that the aquifer around the Project site is not contiguous with stressed areas, and the claim that the SVWP mitigates the Project's impact to cumulative conditions. (*Compare* AR842-843 [DEIR] to AR384-387 [FEIR].)

Continued inconsistent reliance on purported surplus: The FEIR's noncumulative and cumulative analyses both still cite Todd to claim that the Project would procure water from a subarea with a surplus, which is one of four interconnected subareas with a shared surplus. (AR372, 374, 385.)

The FEIR claims that Todd's surplus findings "are based on many of the same reports and similar topographic divide as the . . . Geosyntec Study." (AR374-375.) Todd's surplus claim is based on the 1996 Fugro Report discussed by Geosyntec. (AR1460.) But Geosyntec *rejects* Fugro's surplus conclusion (AR20155-20156), and the FEIR fails to disclose this.

The FEIR claims that its "overall water surplus" conclusion is "similar to the conclusions" of the Geosyntec Report. (AR385.) Again, Geosyntec does not find a surplus, but an overdraft leading to an annual *deficit* of 500-1,000 AFY. (AR20062, 20156.)

G. Planning commission denies the Project for inadequate water supply.

After hearing public objections to the FEIR's reliance on "surplus" water despite the overdraft (AR5403-5405) and to its belated and unsupported reliance on the SVWP to mitigate impacts (AR5393-5395, 5413, 5416-5417), the Planning Commission denied the Project. (AR5303-5312, 4343-4344.) The applicant appealed to the Board of Supervisors. (AR3776-3779.)

H. Board of Supervisors votes to deny the Project for inadequate water supply.

Petitioner LandWatch urged the Board to recirculate the water supply analysis, objecting that the FEIR relies on a new, more expansive, and unsupported cumulative analysis untested by comment and response. (AR14147-14153, 13329-13331, 13124-13125, 5824.) The Board directed staff to prepare findings to deny the Project based on known water problems and impairment of a lower income area's water supplies. (AR5199-5201, 5206-5215.) The motion permitted the applicant to submit new well tests, but without explaining the potential relevance of the tests. (AR5197-5198, 5209-5214.)

I. The Board reverses itself.

The new tests conclude the wells have sufficient *capacity* to serve the development and there is no short-term draw-down affecting wells within 1,000 feet. (AR3550, 3552, 3520-3523.) LandWatch submitted comments, including two technical memoranda by hydrogeologist Timothy Parker, objecting that the FEIR's water supply analysis is fundamentally new and that existing water projects cannot sustain CDT Subbasin groundwater levels hundreds of feet above the

Valley, or even halt seawater intrusion in the Valley. (AR13141-13154, 13124-13133, 6792-6799, 6785-6791, 5824-5830.) Parker explained that the new well tests were irrelevant to cumulative impacts and actually *confirm* the long-term decline of groundwater levels: groundwater levels at the Project’s two wells declined by 25 and 23 feet over the 15 and 12 year periods since the prior tests. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd].) As Real Party admits, the well tests were only intended to demonstrate water *supply*, not the *impacts from using* that supply. (AR4978 [“well test was never intended to address cumulative impacts”].) Nonetheless, the Board reversed itself to approve the Project. (AR4994-5007, 4937.)

J. The County did not provide reasoned, good faith responses to comments on the FEIR’s new analysis.

After the FEIR’s new analysis was released but before the Board certified it, LandWatch and hydrogeologist Parker objected that:

- Scope and rationales: The FEIR changes the rationales and geographic scope of the cumulative analysis. (AR14152-14153, 13124-13125 [LandWatch].)
- Overdraft: The FEIR changes the setting description by acknowledging overdraft; but it fails to acknowledge the long-term declines in groundwater levels in the CDT Subbasin, that this is a significant cumulative impact, and that the Project will aggravate it. (AR13149, 6792-6793, 6794-6795 [Parker].)
- Surplus claim: The FEIR’s continued reliance on a “surplus” in the four interconnected subareas is contradicted by its admission of overdraft, by

Geosyntec’s conclusion that pumping exceeds replenishment, and by Geosyntec’s rejection of the Fugro recharge estimates. (AR13143-13144, 13148-13149 [Parker].)

- Groundwater projects’ efficacy in CDT Subbasin: The FEIR provides no evidence that existing groundwater projects to maintain *Valley* groundwater levels could maintain *CDT Subbasin* groundwater levels, *which are hundreds of feet higher*; nowhere does the FEIR explain, analyze, or support its claim that the SVWP “indirectly” benefits the Project wells. (AR13144-13147, 13149-13151, 6795 [Parker]; AR14149-14150, 13125-13126, 6787-6788, 5828-5829 [LandWatch].)
- Groundwater projects’ efficacy in rest of Basin: The ability of groundwater projects to halt seawater intrusion is based on out-of-date demand projections. (AR13329-13331, 13127-13130 [LandWatch].) The County admits additional projects are required to sustain groundwater levels. (AR13126-13132, 13151-13152, 6788, 6791, 5825-5829 [LandWatch]; AR6795-6796 [Parker].) MCWRA’s hydrogeologist admits the 2009-2011 increases in *Valley* groundwater levels, cited by the FEIR and findings (AR368, 9, 49), were “short-term increases” that in “no way indicate a long-term trend in groundwater levels.” (AR14151 [Landwatch], *citing* AR13390 [MCWRA’s Franklin].)

The County did not recirculate the FEIR’s new analysis or respond substantively to these comments in the EIR. As explained below, responses at hearings and in the findings were conclusory and contradictory.

III. STATEMENT OF FACTS – WILDLIFE CORRIDORS

A. Project Background

The proposed Project would subdivide 344 acres of undeveloped hillside ranchland into 17 home sites ranging from 5.13 acres to 23.42 acres. (AR6, 704.) Seventeen residential lots would be developed on 164 acres, with an additional 154 acres to be added to Toro Park. A 26-acre parcel is reserved for water tanks and other infrastructure. (AR167.)

The property, now used for grazing, is about 2,000 feet southeast of Highway 68 on the eastern side of San Benancio Road at Meyer Road, extending about one mile into the foothills. (AR712, 691.) The 344-acre parcel is the “remainder parcel” from a previous subdivision of 14 residential lots. (AR150.) The 14 adjacent lots remain undeveloped. (*Id.*, AR5883.) The State of California has designated the property to be part of an “essential” wildlife corridor to forestall habitat fragmentation and protect biodiversity. (AR5271:7-8, 3719.)

B. County Approval Process and Discussion of Wildlife Corridors Near the Project

1. Initial Study

An Initial Study (IS) for the Project was made available for public review on July 24, 2003. (AR4.) The IS noted the Project might interfere with the movement of wildlife but found the impact would be less than significant. (AR1012.) The wildlife corridors are not described. Mitigation measures are noted, but they are not related to larger animals. (AR1013-1014.)

The IS relied upon Zander Studies dated July 13, 2001 and addendum dated October 3, 2001. (AR1013.) The Zander Studies do not refer to any survey done

for large mammals, but instead to a survey done “to characterize and map dominant vegetation types and to evaluate the potential of the property to support a target list of sensitive plant and animal species.” (AR1237.) A follow-up survey was conducted in 2005. (AR774, 775, 1238, 1275.) The three surveys identified four habitats on the property, and a fifth associated with the upper reaches of several intermittent drainage channels. (AR1238-1240.)

A comment letter about the IS identified the large animals that roam the property, including lions, coyotes, foxes, and wild pigs. (AR1044.) The Planning Commission required the preparation of an EIR. (AR4.)

In a March 2006 letter, the Highway 68 Coalition requested thorough examination of wildlife corridors for the EIR. (AR1181.)

2. DEIR

The DEIR, released in October 2008, says “Monterey County’s wildlife communities are varied and abundant. Some of the dominating communities consist of mountain lion, bobcat, coyote, birds of prey, boar, and seabirds.” (AR757.) Annual grasslands provide foraging habitat for small mammals, which serve as prey for other animals, including snakes, raptors, and coyotes. (AR758.)

The DEIR defines wildlife corridors as “established migration routes commonly used by resident and migratory species for passage from *one geographic location to another*.” (AR768, emphasis added). Such corridors link what would otherwise be isolated or fragmented habitats. (*Id.*) Wildlife corridors serve to (a) “sustain species with specific foraging requirements; b) preserve a species distribution potential; and c) retain diversity among many wildlife populations.” (AR768-769.) According to the DEIR, it would be a significant adverse environmental impact, to “interfere substantially with the movement of

any resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors...” (AR773.)

The DEIR notes amphibian “movement” corridors on the Project site. “The [stream] channels can provide movement corridors for amphibians when water is present and for other animals throughout the year.” (AR761.) The “other animals” are not identified.⁴ (*Id.*)

The DEIR recognized that the Project would cause a loss to the drainage channel habitats, a significant impact. (AR 776 [Impact 3.3-2].) Therefore, the DEIR recommended a mitigation measure, 3.3-2(d), which would require development to be located a “minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses.” (AR 776-78.)

The assessment of potential disturbance of sensitive habitat was based upon a 2001 plant/animal study (updated in 2005) by Zander (AR686,774) found in the DEIR’s Appendix. (AR1237-1293; *see* AR757-784 [DEIR summary].) The DEIR and the Zander Studies make no reference to any survey or investigation of wildlife movement and corridors in the Project vicinity. They do not mention the El Toro Creek underpass off Scenic Highway 68. There is no reference to large mammals, mountain lions or bobcats. (*Id.*) A comment raised the concern over failing to investigate mountain lions near the Project. (AR234.) The response acknowledged they are known to inhabit nearby rural areas of Monterey County. (AR236.) The DEIR fails to disclose the very facts need to determine if there is a significant environmental impact to movement corridors.

⁴ Respondents misstate that “other animals” refers to mountain lions, bobcats, coyotes and black tailed deer. (ROB at 63.) Neither the Zander Studies nor the DEIR so states, and Respondents do not cite the record.

3. June 2008 Planning Commission Hearing

The Planning Commission held a hearing on June 30, 2010. (AR5.) Several presentations before the Planning Commission criticized the DEIR's failure to acknowledge wildlife corridors near the Project and the Project's potential impacts on them. Molly Erickson presented the 2007 County General Plan FEIR discussion of wildlife linkages and corridors in the Toro Area, including a map showing the linkages. (AR 5419: 2-9, 18139-18141.) That 2007 General Plan EIR stated:

Specific to the wildlife corridors connecting Toro County Park to Fort Ord and to the Salinas River, potential residential development between San Benancio Road and River Road is on large un-subdivided properties and thus Policy 3.1 would require preservation of portions of these properties to maintain extant wildlife movement opportunities.

(AR18139.) Julie Engle testified that a major wildlife corridor connects the Fort Ord lands to areas near the Monterey Peninsula and to the Santa Lucia.

(AR5392:12-5393:15.) Tad Stearn, a representative of the EIR preparer, noted some potentially significant impacts on special status plant species, and recommended pre-construction surveys for sensitive wildlife species. (AR5330:2-15.) Mr. Stearn identified no specific large wildlife. The Planning Commission hearing was continued. (AR4.)

4. County receives the Central Coast Connectivity Project Study Northern Monterey County Linkages.

On October 21, 2010, the County was presented with "The Central Coast Connectivity Project Northern Monterey County Linkages: Report on the Mount Toro to Fort Ord Reserve Study 2008-2009" dated September 2010 ("Connectivity Study"). (AR17822-17865.)

The Big Sur Land Trust (“BSLT”) contracted with Connectivity for Wildlife and biologist Tanya Diamond to study vegetation, habitat, and wildlife sighting and signs on Marks Ranch to determine likely movement patterns for wildlife based on habitat preference. (AR17831.) The Connectivity Study was also to identify land and waterways that connect core habitat areas for wildlife between Central Coast mountain ranges including the Sierra de Salinas, Santa Lucia, Santa Cruz and Gabilan mountains. (AR17830.) The BSLT had recently purchased the Marks Ranch, located off Highway 68, as a research center to better understand wildlife movement. (AR5271:12-14, 17831.) The Connectivity Study used state-of-the-art detection methods including data collected from field observations to ground-truth habitat suitability models to predict likely movement patterns of focal species. (AR17831, 17835-17836.) Information gathered showed that the Marks Ranch and both sides of Highway 68 are host to several plant species and a wide range of wild animals, including mountain lions, gray fox, bobcat and coyotes among many others. (AR17831, 17833, 17839-17852.)

The Connectivity Study also found:

Currently, as animals move from Fort Ord and disperse into the Sierra de Salinas via the El Toro Creek underpass, they have unimpeded access through the area currently considered for development. This presently undeveloped gap and the El Toro Creek/Highway 68 bridge provides one of the last two remaining safe linkages for wildlife moving between the lowland dune and other coastal habitats of the Fort Ord Reserve and Monterey Bay National Marine Sanctuary with the upland habitats of the Sierra de Salinas.

(AR17853.) The Connectivity Study concluded the proposed development east of Highway 68 would decrease wildlife habitat and fragment the remaining habitat at this safe passage. (AR17853.) The Study recommended development configurations that would accommodate and enhance existing movement paths for wildlife. (AR17854.) The Connectivity Study was ongoing. (AR17830.)

5. Revised FEIR

The revised FEIR, completed in December 2013 (AR5), added two paragraphs to the DEIR analysis of wildlife corridors. (AR307.) The revised FEIR referred to a 2008 Technical Memorandum done for a nearby subdivision, Ferrini Ranch, that identified a broad range of wildlife. (AR307.) The “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.” (*Id.*) The El Toro Creek undercrossing is located .75 miles from the Project site. (AR307.) The Technical Memorandum is not appended to the FEIR and is not part of the Administrative Record. (JA1510, AR307.) The revised FEIR also notes that the BSLT and the Nature Conservancy have partnered with public agencies to protect the corridor between Fort Ord and Santa Lucia Range, but it does not mention the Connectivity Study. (*Id.*)

The County Planning Department had both the Connectivity Study and the Technical Memorandum for years before the release of the revised FEIR in 2013. (AR307, 17822.)

The revised FEIR also amended Mitigations Measures related to impacts to species and habitat, but none of the changes mentions or addresses impacts to large animal movement corridors. (AR307-310.)

6. January 8, 2014 Planning Commission Hearing

Shortly after the revised FEIR was completed, the Planning Commission noticed a hearing for January 8, 2014. (AR5.) Before the hearing, a Planning Department memorandum proposed new conditions of approval requiring that the owner prepare and submit a Wildlife Corridor Plan before filing the first final map

to preserve wildlife movement and corridors across the property. (AR4468-4469.) The staff letter proposes the Plan as a condition of project approval to “preserve the wildlife corridors between Toro County Park and the Fort Ord National Monument.” (AR4468.)

Staff presentations acknowledged wildlife was an important issue and a Wildlife Corridor Plan would be added as a condition of Project approval. (AR5248:18-21.) Staff read the new condition into the record. (AR5248:18-5250:25.)

The Staff Report for the hearing presented a one paragraph summary of the Connectivity Study, including the finding that wildlife moves under the bridge. (AR4367.) The Staff Report incorrectly implied that the Connectivity Study established that “due to the distance from the project site and limited development proposed, the project would not result in substantial adverse effect on this wildlife corridor.” (AR4367.) The Connectivity Study concludes just the opposite. (AR17853.) The Connectivity Study was not appended to the Staff Report nor provided to the public. (AR4358.)

Contradicting the Staff Report, a representative of the BSLT (Rachel Saunders) explained it had purchased the nearby Marks Ranch adjacent to Highway 68, next to Ferrini Ranch, and within the wildlife corridor. (AR5271:10-12.) BSLT made the purchase intending to transfer the property to a public agency to conserve the wildlife population. (*Id.*) BSLT commissioned wildlife studies to better understand the wildlife movement in the wildlife corridor. (AR3772, 5271:11-14.) The Connectivity Study concluded the inability of wildlife to move across the landscape would greatly threaten biodiversity. (AR5270:19-5271: 3.) Ms. Saunders also pointed out the State of California designated the area, including the Project site, an “essential” thoroughfare for wildlife movement, necessary to prevent habitat fragmentation. (AR5271:7-8.) Most significantly, BSLT presented

maps showing wildlife movements near and traversing the Project site. (AR5271: 4- 5272: 23, 14251-14255.)

Tanya Diamond, a wildlife ecologist and an author of the Connectivity Study, also disputed the Staff Report, presenting data showing that the wildlife corridor includes both the habitat on the sides of Highway 68 leading to El Toro Creek as well as the underpass.⁵ (AR5280:18-23.) Many animals traverse the habitat daily. (AR5280:24-5281:3, 17840-17849, 17859-17865.) Ms. Diamond testified that, to be functional, the area protected for the wildlife corridor must be at least 1.2 miles wide. (AR5282:7-14.) Ms. Diamond rejected the Staff Report's conclusion that the Project would not impact the corridor because it was $\frac{3}{4}$ of a mile from El Toro Creek, explaining that "[i]n fact, it really would, because the corridor is the adjacent habitat on either side of the underpass and must be large enough to encompass the whole range of species." (AR5281:19-5282:6.) She concluded that "the Harper Canyon development would significantly impact the wildlife corridor." (AR5282:15-17.)

The Planning Commission adopted a resolution denying the Project, which was appealed to the Board of Supervisors by Real Party in Interest. (AR5.)

7. May 14, 2014 Board of Supervisors Hearing and Subsequent Hearings

The Board heard Real Parties appeal on May 14, 2014. (AR5.) The Staff Report for the Project again misstated the conclusion of the Connectivity Study: "due to the distance from the Project site and limited development proposed, the

⁵ Ms. Diamond had worked on wildlife corridor studies for the last eight years with the last four years concentrated in this area. (AR528011-13.) She presented written comments to the Commission. (AR14333.)

Project would not result in substantial adverse effect on this wildlife corridor.” (AR3772.)

Rachel Saunders appeared again on behalf of the BSLT, reiterating the points made at the Planning Commission hearing in January. She again objected that the Project would negatively affect wildlife movement, explaining that the underpass is a safe crossing, but it is only a small part of the larger wildlife corridor comprised of the habitat on either side of the road, which, “taken together, is an important corridor.” (AR5179.)

At the conclusion of the hearing, County Staff acknowledged that the BSLT had identified wildlife corridors. Staff claimed, “because of the sparsity of development and the highlighted information there is that 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.” (AR5159:17-25.)

The Board of Supervisors instructed staff to prepare a resolution denying the appeal and requested Harper Canyon to provide updated water quantity and quality testing data and continued the hearing to August 26, 2014. (AR5.) After additional postponements, the Board took up the Project again on March 3, 2015. (*Id.*)

Before the March 3, 2015 Board meeting, on February 20, 2015, Harper’s counsel filed approximately 2,700 pages of documents with the Planning Department. No other party was served. (AR6809.) Included with this submittal was Master Response 3-Wildlife Corridors Ferrini Ranch Subdivision Final Environmental Impact Report. (AR6814-6818.) Harper’s counsel failed to mention the Master Response during his oral presentation on March 3, 2015, (AR4978:11-4980:17.)

At the March 3, 2015, Board hearing, staff said that the EIR found no significant impacts to wildlife corridors from the Project. (AR4973:4-16.) Staff

did reference Alternative 3 as the environmentally superior Project, because it provided for the reduction of three lots to accommodate the wildlife corridors (*id.*), even though the EIR had not mentioned this attribute. (AR957-960.) Alternative 3 was not chosen. (AR6.) Staff did not refer to Master Response 3-Wildlife Corridors submitted by Harper. (AR4972:2-4974:9.)

The Board approved the Project on April 7, 2015 with Resolution 15-084. (AR6.) Findings 7(d) states that the subdivision will not cause environmental damages to fish or wildlife because the Project is conditioned on a Wildlife Corridor Plan (condition 21). (AR16.) Finding 8 states that the FEIR has been completed in compliance with CEQA. (AR17.) Finding 9(c)(6) requires that home sites, landscaped areas and outbuildings be at least 75 feet to 100 feet from active drainage channels to avoid disturbing natural drainage courses. (AR24.)

IV. PROCEEDINGS BELOW

LandWatch and Meyer filed Petitions for Writ of Mandate on May 4 and May 6, 2015 alleging violations of CEQA. (JA23-42, 43-77.) After Opening Briefs (JA236-295, 306-361), Opposition Briefs (JA396-412, 435-456, 459-552, 553-608), and Reply Briefs (JA712-741, 757-789), the trial Court requested additional briefing on water and traffic issues (JA799-802), which was submitted (JA803-821, 840-907, 908-923).

After the trial Court took the matter under submission May 3, 2018 (RT193), Respondents moved to reopen the case (JA1049-1074), Petitioners opposed (JA1092-1114), and the trial Court issued the Intended Decision August 31, 2018 (JA1117-1264). Respondents filed Joint Objections to the Intended Decision (JA1287-1308) and Petitioners responded (JA1309-1320, 1321-1325). The Court requested supplemental briefing on remedies, which was provided (JA1328-1347, 1348-1359, 1360-1372). The Court issued its Final Statement of Decision and

Ruling on Remedy (“FSOD” or “Decision”) December 3, 2018, partially granting and partially denying writs of mandate. (JA1373-1517.)

Judgment for LandWatch, entered March 8, 2019 (JA1521-1524), was noticed May 14, 2019 (JA1753-1906). Respondents filed Notices of Appeal May 2, 2019. (JA1534-1541.) LandWatch filed Notice of Cross-Appeal May 15, 2019. (JA1917-1919.)

Judgment for Meyer, entered April 15, 2019 (JA1579-1582), was noticed May 13, 2019 (JA1576-1729). Respondents filed Notices of Appeal May 17, 2019. (JA1920-1921, 1928-1931.) Meyer filed Notice of Cross-Appeal June 4, 2019. (JA1948-1950.)

This Court assigned both appeals the same case number. The parties stipulated a briefing sequence on July 26, 2019 and stipulated a Joint Appendix on January 21, 2020 (JA1987-1999.)

V. STANDARD OF REVIEW

In a case challenging CEQA compliance, the Court must determine whether there was a prejudicial abuse of discretion. (C.C.P. § 1094.5(b); Public Resources Code (hereinafter, “CEQA”), § 21168.) Abuse of discretion is established if the agency has not proceeded in a manner required by CEQA or if the determination or decision is not supported by substantial evidence. (*Sierra Club v. County of Fresno* (“*Sierra Club (Friant Ranch)*”) (2018) 6 Cal.5th 502, 512.) Courts resolve CEQA issues “by independently determining whether the administrative record demonstrates any legal error by the [agency] and whether it contains substantial evidence to support the [agency’s] factual determinations.” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (“*Vineyard*”) (2007) 40 Cal.4th 412, 427.) This Court is not bound by the trial Court’s determinations, which do not decide questions of fact. (*Napa Citizens for Honest Government v.*

Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 357.)

The standard of review is determined by the nature of the alleged violations: when the claimed violation is of procedural error, *including the informational adequacy of the EIR*, review is de novo under the non-deferential independent judgment standard, while only a claim of unsupported factual determination is reviewed under the more deferential substantial evidence standard. (*Sierra Club (Friant Ranch)*, *supra*, 6 Cal.5th at 512-515.)

The standard of review for Petitioners' recirculation claim under Guidelines Section 15088.5(a)(4) has not been decided by the courts, and non-deferential de novo review is supported by Supreme Court decisions in similar contexts. However, this Court need not resolve the issue, because the trial Court correctly held that the County's decision not to recirculate the EIR's water supply analysis was not supported by substantial evidence. (JA1429.)

Also, Petitioners' claim that the EIR's discussion of wildlife corridors was informationally inadequate is reviewed under the non-deferential independent judgment standard. (*Sierra Club (Friant Ranch)*, *supra*, 6 Cal.5th at 512-516.) Petitioners' claim that the County's wildlife corridor findings are not supported by the facts is reviewed under the substantial evidence standard of review. Petitioners' claims in their cross-appeal also challenge the informational adequacy of the EIR. They are subject to de novo, non-deferential review. (*Id.*) The test of informational inadequacy is not simply whether an EIR *omits* required discussion. (*Id.* at 516.) Instead, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Id.* [internal quotes omitted].)

VI. OPPOSITION TO RESPONDENTS' OPENING BRIEF ON APPEAL

A. Recirculation was required because significant new information in the FEIR disclosed that the DEIR was so fundamentally inadequate that comment opportunity was meaningless.

Contrary to Respondents (ROB at 39-60), the trial Court did not err in finding that the County's decision not to recirculate the water supply analysis was not supported by substantial evidence. (JA1413-1429.)

An agency must recirculate the EIR for comments and responses when significant new information is added to an EIR after the DEIR is released. (CEQA § 21092.1; Guidelines, § 15088.5(a).) In its seminal recirculation case, the California Supreme Court explained the central role of public participation through comment and response, holding this “public participation is an ‘essential part of the CEQA process.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1123.) Recirculation is intended to permit public comment on the new information and *to require agency responses* to those comments. (Guidelines, § 15088.5(f).)

Laurel Heights II enumerated the four categories of “significant new information” that require recirculation, now identified in Guidelines Section 15088.5(a)(1)-(4). (*Laurel Heights II* at 1130 and n. 15.) Petitioners here seek recirculation under the fourth category, alleging that significant new information after the DEIR disclosed “that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.” (*Id.* at 1130.)

1. Recirculation is required when the DEIR's discussion is *inadequate*, not just when it is *missing*. A court properly determines *inadequacy* by comparing the DEIR to the FEIR.

Respondents argue that *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043 is the paradigm fourth category recirculation case and that it stands for the proposition that recirculation can be ordered only in the rare situation in which the analysis in the DEIR is entirely missing or purely conclusory. (ROB at 43-46.) Respondents are wrong. Section 15088.5(a)(4) *also* requires recirculation when the new information demonstrates that the information in the DEIR was so “basically *inadequate*” as to preclude meaningful comment.

Here, the trial Court determined that the DEIR's discussion is inadequate because it is both inconsistent with, and fundamentally different than, the FEIR's discussion. (JA1413-1429.) Accordingly, Respondents' citation of cases in which recirculation was ordered due to missing discussion or conclusory statements is irrelevant.

The paradigm fourth category recirculation case discussed by *Laurel Heights II* is not *Mountain Lion*, which it merely mentions, but *Sutter Sensible Planning, Inc. v. Board of Supervisors* (“*Sutter*”) (1981) 122 Cal.App.3d 813, which it discusses at length. (*Laurel Heights II, supra*, 6 Cal.4th at 1126-1132.) Emphasizing that “section 21092.1 was intended to encourage meaningful public comment,” the Court holds that “new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1.” (*Id.* at 1130.) The Court identifies *Sutter* as a fourth category case: “it is apparent that the court and the agency viewed the draft EIR as fundamentally and *basically inadequate* in many respects.” (*Id.* at 1131, emphasis added.) In particular, *Laurel Heights II* explains that in *Sutter*:

The revised final EIR “fundamentally” reorganized the previous information and provided a substantial amount of new information, including additional details about the potential effects of the plant on the environment and substituting some new data for information which had been repudiated by its purported author.

(*Id.* at 1127-1128.)

Sutter is directly analogous here. In *Sutter* the DEIR did not *omit* relevant analysis; it provided a discussion quantifying water use and identifying its source as three deep wells. (*Sutter, supra*, 122 Cal.App.3d at 816.) The *Sutter* DEIR also addressed other topics for which recirculation was ordered, including liquid and solid waste disposal, traffic, odor, drainage, and aesthetics. (*Id.*) Comments criticized the DEIR, not for *omitting* analysis entirely, but for “for failing to *adequately* consider the plant's effect on ground water levels, increased truck and rail traffic, the reliability of the project's system for disposing of waste water by ‘evapo-transpiration’ on pasture land . . . and quantities of residual pesticides in the waste water.” (*Id.* at 817, emphasis added.) In response, the agency issued a revised final EIR that added information and analysis and repudiated information in the DEIR, just as happened here:

In its own words, “(t)he revision respond(ed) to the testimony provided at public hearings on the issue by incorporating some testimony, adding information, answering questions raised and a fundamental reorganization of the material previously presented.” Among the new information included therein were 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 817–818.) Here, as discussed in the next section, the FEIR’s changes were similar in scope.

In ordering recirculation, the *Sutter* Court held that “[c]omments are an integral part of CEQA” and that “the policy of citizen input” underlying CEQA is intended to “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.” (*Id.* at 820.) “Moreover, where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, *these comments may not simply be ignored.*” (*Id.* at 820, emphasis added.) Here, as discussed in Section VI.A.4 below, comments from hydrogeologist Parker were ignored.

Similarly, in *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (“*Save Our Peninsula*”) (2001) 87 Cal.App.4th 99, this Court ordered recirculation because post-DEIR information disclosed that the substantive discussion in the DEIR was inadequate, not that it was omitted. The DEIR discussed groundwater flows between the subbasin and the adjacent aquifer; acknowledged that increased pumping would be significant; estimated baseline water demand; estimated future demand; drew conclusions regarding groundwater recharge impacts in normal, dry, and wet years; drew conclusions regarding reduced flows to the aquifer; and proposed some mitigation. (*Id.* at 109-110.) Comments on the DEIR objected to baseline data (*id.* at 110) and to recharge calculations and the lack of riparian rights (*id.* at 112.) The final EIR responded with new baseline information, new discussion of riparian rights, and a new mitigation measure. (*Id.* at 111-113.) Staff also amended the EIR to add applicant-proposed mitigation via pumping reductions on another parcel. (*Id.* at 112-114.) Citing *Laurel Heights II* and *Sutter*, this Court ordered recirculation because the County had untimely presented three kinds of critical water supply

information, which had not been “subjected to the test of public scrutiny” (*id.* at 131): new environmental setting/baseline information (*id.* at 124-128), new information about mitigation (*id.* at 128-131), and new information about riparian rights (*id.* at 131-134). As discussed in the next section, the FEIR here made similar changes.

In *Spring Valley Lake Assn. v. City of Victorville* (“*Spring Valley*”) (2016) 248 Cal.App.4th 91, 108-109 recirculation of its hydrology and water quality section was required not because the DEIR omitted any analysis, but because the substantive discussion in the DEIR was disclosed as inadequate by later information in the final EIR. The DEIR provided a 26-page discussion of hydrology and water quality impacts. (*Id.*) However, the final EIR replaced that discussion, redesigning stormwater mitigation, relying on new technical reports, and failing to identify the amendments to the DEIR text:

Essentially, 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.” The Court held that recirculation was required because “[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.

(*Id.* at 108-109.)

In short, *Sutter*, *Save Our Peninsula*, and *Spring Valley* all hold that recirculation is not limited to the rare situation in which the DEIR omits discussion entirely or provides only a conclusory discussion. Recirculation was required *despite* the DEIR’s substantive discussion because post-DEIR information disclosed that the DEIR was so *inadequate* as to preclude meaningful comment. And in each case, the Court determined that new information was “significant” by *comparing the DEIR to the subsequent information relied on by the agency*.

Respondents’ argument that recirculation “does not apply because the Draft EIR contained a thorough analysis of impacts to groundwater resources” (ROB at 42) fails on its face. The Court cannot determine whether recirculation was required by considering only the DEIR. The question is whether the DEIR is inadequate *given new information*. This requires a comparison of that new information to the DEIR.

2. The trial Court properly found that new information in the FEIR was significant because it disclosed that the DEIR is so inadequate that it precluded meaningful comment.

Preliminarily, the inquiry in a Section 15088.5(a)(4) claim is *not* whether substantial evidence supported the ultimate determination that groundwater impacts were less than significant. That would collapse a Section 15088.5(a)(4) claim into a Section 15088.5(a)(1) claim that new information discloses a previously undisclosed significant impact. (Guidelines, § 15088.5(a)(4), (a)(1).) Thus, Respondents’ argument that the trial Court found that substantial evidence supports the County’s ultimate significance determination is not relevant to Petitioners’ Section 15088.5(a)(4) claim. (*See, e.g.*, ROB at 42, 51, 68, 69.)

The relevant inquiry is whether there is substantial evidence the FEIR added significant new information to the DEIR. To find for Respondents, the Court would have to find that the new information disclosed in the FEIR was *not* “significant” because it “*merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.*” (Guidelines, § 15088.5(b).) Substantial evidence does not support such a finding. Recirculation was required.

Contrary to Respondents (ROB at 49-51), the FEIR’s new information was not merely gratuitous “additional study.” The FEIR’s changes to the setting description, scope of cumulative analysis, kinds of impact considered (seawater

intrusion), reasoning, and cumulative impact mitigation (impact fees) were all significant new information that fundamentally changed the DEIR's discussion.

As the trial Court held,

. . . considerable defects in the DEIR necessitated a complete revision of the relevant chapter of the FEIR, depriving the public of a meaningful opportunity to comment on, inter alia, an analysis based upon the correct environmental setting, the overdraft condition, and wholly new rationales underlying the FEIR's cumulative analysis. Given the breadth and scope of the revision, the court concludes that the Board's decision not to recirculate the DEIR was not supported by substantial evidence.

(JA1429.) The trial Court's decision echoes the holding in *Spring Valley*, in which the Court considered the *collective* impact of *all* of the similar revisions and held that "[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" (*Spring Valley, supra*, 248 Cal.App.4th at 108.)

This Court should disregard Respondents repeated claims that the basis of the trial Court's decision was merely a "nomenclature" change for the local basin. (ROB at 15, 35, 42, 47, 49, 51, 55, 68.) The trial Court summarized the *numerous* bases for its decision, including:

- the DEIR's failure to disclose "the actual setting, the SVGB;"
- failure to disclose overdraft conditions;
- "wholesale revision to the Groundwater and Hydrogeology section;"
- "reliance upon a new technical study;"
- "a complete rewrite of the DEIR's cumulative impact analysis," based on "entirely new reasoning," and
- "an expanded geographic scope of analysis." (JA1414.)

The trial Court's decision then discusses each of these in detail. (JA1413-1429.)

- a. The FEIR's revisions to the environmental setting are significant new information.

To determine impacts, "the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the 'baseline' for environmental analysis." (JA1415 [FSOD], *quoting Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315.) Baseline environmental setting information is also critical to cumulative impact analysis, which must consider the combined impacts from past and present projects. (Guidelines, §§ 15355(b), 15065(a)(3), 15130(b)(1)(A); *see Friends of the Eel River v. Sonoma Cty. Water Agency* (2003) 108 Cal. App. 4th 859, 874-75 [incomplete setting description "fails to set the stage for a discussion of the cumulative impact"].)

Thus, it is critical to provide accurate setting information in the DEIR, not later in the process. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 127-128; *Communities for a Better Env't v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal. App. 4th 70, 89 [baseline required "at the beginning of the CEQA process"]; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal. App. 4th 1109, 1124 [tardy baseline disclosure not cured by later analysis].) CEQA requires baseline information and impact analysis be in the DEIR so that the public can comment, the final EIR can respond, and the agency may have the benefit of that interchange. (*San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus* (1994) 27 Cal. App. 4th 713, 727.)

In *Save Our Peninsula*, this Court held recirculation was required because Monterey County belatedly disclosed baseline water use and recharacterized the water source as riparian. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 111, 114, 122-128 [quantity], 112, 131-134 [source].) In *Sutter*, recirculation was required

because the final EIR included “a more elaborate discussion of groundwater availability and the projected impact of the plant on the water table” and substituted new “estimates of evapo-transpiration potentials . . . for figures used in the previous EIR which were repudiated by their purported author.” (*Sutter, supra*, 122 Cal.App.3d at 817-818.)

Here, the FEIR makes analogous setting description changes, which therefore warrant recirculation. (*See* JA1415-1424 [FSOD].) These changes to the setting description are not merely “insignificant modifications.” (Guidelines, § 15088.5(b).)

Superseded technical reports: First, the FEIR acknowledges that the technical reports on which the DEIR relies were “superseded” by the 2007 Geosyntec Report. (AR353; *see also* AR372 [striking DEIR’s references].) This was significant new information because the superseded reports include the 1996 Fugro Report, which was the source for the claimed surplus in the four interconnected subareas, on which the DEIR’s significance determinations rested. (AR836, 837, 842-843 [DEIR]; *see also* AR1459-1460 [Todd], 22910 [Fugro].) Furthermore, Geosyntec rejects the Fugro “surplus” estimates in light of actual overdraft conditions. (AR20155-20156.)

New technical reports are significant new information warranting recirculation. (*Sutter, supra*, 122 Cal.App.3d at 817-818 [new evapo-transpiration estimates substituted for repudiated figures in DEIR]; *Spring Valley, supra*, 248 Cal.App.4th at 108 [new technical reports]; *Save Our Peninsula, supra*, 87 Cal.App.4th at 111-114 [new reports of baseline water use and recharge]; *see CBE v. Richmond, supra*, 184 Cal. App. 4th at 88 [expert’s belated analysis and calculations].)

Overdraft: Second, the FEIR admits “an overdraft condition within the Geosyntec Study Area,” from which the Project wells would draw water. (AR363;

see also AR375, 385.) The DEIR does *not* disclose overdraft conditions in this area. To the contrary, the DEIR repeatedly claims a *surplus* in the San Benancio Gulch subarea and a shared surplus in the four interconnected subareas. (AR837, 838, 842-843, 863, 972, 1460.)

Respondents claim that the DEIR somehow disclosed overdraft conditions by mentioning the B-8 zoning overlay area and referencing unspecified “deficient” water conditions within the ETBG. (ROB at 52, *citing* AR829-830, 837.) Given the DEIR’s repeated claims of a *surplus*, and its emphasis that that the Project wells are not *in* the B-8 area (AR830), these oblique references did *not* disclose overdraft, much less the dramatic 47-year overdraft condition revealed by the Geosyntec Report.

Respondents also claim that the CDT or “El Toro Groundwater Basin” overdraft was disclosed because the DEIR “relied on” Geosyntec. (ROB at 52.) But the DEIR cites Geosyntec *only* to note groundwater flow direction. (AR830.) The DEIR does *not* disclose Geosyntec’s overdraft conclusion. When assessing EIR adequacy, it is neither sufficient nor relevant that essential information is elsewhere in the record. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1240; *Vineyard, supra*, 40 Cal.4th at 443.)

Respondents claim that the DEIR disclosed the overdraft because a table shows a future deficit in *one* of the four interconnected subareas (ROB at 52, 27, *citing* AR843), but this is *not* the San Benancio Gulch subarea containing Project wells. Furthermore, the DEIR relies on a shared “overall” surplus among the four interconnected subareas. (AR843.)

Respondents claim that overdraft is irrelevant because it is a “condition, not a project impact.” (ROB at 53.) But that “condition” is a critical part of the *setting* description and the cumulative impact analysis mandated by CEQA. (Guidelines, §§ 15125, 15130(b)(4), (5).)

Respondents also claim that *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal. App. 4th 316, 334-335, 337-338 and *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1091-1092 justify the DEIR's non-disclosure of overdraft conditions. (ROB at 53-54.) The cases are inapplicable because overdraft *was in fact* disclosed; neither involves a recirculation claim; and, unlike here, the EIR properly concluded the project would have *no* impact because water use would not increase beyond existing conditions. (*Cherry Pass* at 330-331, 333; *Watsonville Pilots* at 1091-1094.)

In sum, the DEIR does not disclose the existence, much less the magnitude, of overdraft in the El Toro Groundwater Basin. To the contrary, it claims and relies on a surplus of recharge over pumping. The FEIR's disclosure of overdraft was significant new information.

Sustained groundwater levels: Third, the FEIR revises the setting description by striking out the DEIR's claim that the Nacimiento and San Antonio Reservoirs have "sustained groundwater levels" at the Project site. (*Compare* AR830 to AR363; *see* AR13146 [Parker].) The FEIR's admission that prior groundwater management efforts have *not* sustained groundwater levels further demonstrates that the DEIR's analysis, relying on the efficacy of prior projects, was inadequate. Indeed, the post-FEIR Project well tests demonstrate that groundwater levels at the Project site declined by 25 and 23 feet over the 15 and 12-year periods since their prior tests. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd].)

Basin descriptions and geographic scope of analysis: Fourth, the FEIR revises the DEIR's setting description by identifying the Project wells' groundwater basin as the Corral de Tierra Subbasin, a *subbasin* of the SVGB, instead of the El Toro Groundwater Basin, which the DEIR identifies as a *separate* basin. (AR352-353, 358, 362, 384, 129 [FEIR], 825 [DEIR].) The consequence of

the change was not merely nomenclature, as Respondents argue to trivialize and ignore the multiple bases for the trial Court’s decision.⁶ (ROB at 15, 35, 42, 47, 49, 51, 55, 68.) The *substantive* consequence of the revised subbasin/basin descriptions was the change to the geographic scope of, and the kinds of impacts considered in, the cumulative impact analysis.⁷ As the trial Court found, by focusing on the “El Toro Groundwater Basin,” the DEIR “obscure[es] the potential impacts of the Project upon its actual setting, the SVGB.” (JA1414; *see* JA14116-1419.)

CEQA requires that an adequate cumulative analysis define “the geographic scope of the area affected by the cumulative effect” and explain “the geographic limitation used.” (Guidelines, § 15130(b)(3).) An arbitrary or truncated geographic scope renders an EIR inadequate. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 722–723; *Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428-431; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213, 1218.) Here, the DEIR’s groundwater cumulative analysis was inadequate because it was truncated to the four interconnected subareas in the ETGB (AR842-843), whereas, the FEIR’s groundwater cumulative analysis concerns effects in “adjacent

⁶ Contrary to Respondents (ROB at 3, 49 n. 15), Petitioners *did* object to the DEIR’s incorrect basin names and descriptions, explaining that DWR has identified the CDT Subbasin since 1975. (AR1312.) Furthermore, contrary to Respondents (ROB at 24), the term “El Toro Groundwater Basin” does not appear in the 1992 General Plan or Toro Area Plan, which refer to the “El Toro Basin,” which it identifies as a “watershed” not a *groundwater* basin. (AR21900, 22012.) The FEIR argues that this watershed area is *not* coextensive with the groundwater basin. (AR128-129, 354.)

⁷ The FEIR also changes the scope of the *noncumulative* analysis. (*Compare* AR372 to AR836.)

subbasins, and the basin as a whole.” (AR384.)

CEQA requires an adequate cumulative analysis to identify cumulative environmental *effects*. (Guidelines, § 15130(b)(4), (5).) The DEIR’s analysis and was limited to Project effects on the purported water supply surplus (AR842-843), whereas the FEIR considers Project effects on both water supply *and* seawater intrusion. (AR384-387.)

Contrary to Respondents (ROB at 51), the DEIR’s mention that “a small portion” of the site is in the Salinas Valley Groundwater Basin (AR825), did not disclose that the Project’s *wells*, identified as in the ETGB (AR826), might cause impacts *outside* of the ETGB. (*See* AR13147, 13154 [Parker: no analysis of lost recharge to Valley from CDT Subbasin].) Neither the DEIR’s cumulative nor its noncumulative analyses consider or discuss the impact of the Project *outside* of the ETGB. (AR836-838, 842-843.)

Contrary to Respondents (ROB at 54-55), Petitioners do not dispute agency discretion to determine the scope of analysis or claim that the DEIR *omits* the scope determination. Both the DEIR and FEIR identify the scope by describing it in the first paragraph of their cumulative analyses. (AR384, 842.) Petitioners object that the FEIR *changes* the scope of analysis, demonstrating the inadequacy of the DEIR’s scope.⁸ (*See San Joaquin Raptor/Wildlife Rescue Center. v. County of Stanislaus, supra*, 27 Cal.App.4th at 740-741 [DEIR’s scope inadequate because less than FEIR’s scope].)

⁸ Respondents’ citations to *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 127-128 and *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 966-967 are inapt because neither involve the geographic scope of cumulative analysis, but instead involve changes to the scope of the project itself, which is not at issue here. (ROB at 57.) Furthermore, the trial Court properly distinguished *High Sierra*, in which, unlike here, the DEIR was *not* materially inadequate. (JA1518-1519.)

b. The FEIR's revisions to reasoning regarding impact significance are significant new information.

A change in the reasoning supporting a significance conclusion is significant new information warranting recirculation. *Sutter* required recirculation because the FEIR provided “a more elaborate discussion of ground water availability and the projected impact of the plant on the water table.” (*Sutter, supra*, 12 Cal.App.3d at 817.) *Spring Valley* required recirculation because the FEIR relied on new mitigation through “a complete redesign of the project's stormwater management system.” (*Spring Valley, supra*, 248 Cal.App.4th at 106.) *Save Our Peninsula* required recirculation for new reasoning about riparian and appropriative rights, new calculations of project impacts, and new mitigation via pumping offsets. (*Save Our Peninsula* at 111-115.) *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 required recirculation for new mitigation, the feasibility of which was not discussed in the DEIR.

Here, recirculation was required because the FEIR made similar changes to its analysis. (See JA1424-1429 [FSOD].) As Respondents acknowledge, the DEIR's rationale for its cumulative impact conclusion was the purported surplus in the four interconnected subareas. (ROB at 27, citing AR842-843.) By contrast, the FEIR offered three *new* rationales for its cumulative impact conclusion, one of which directly contradicts the DEIR's claim of interconnected subareas. (See JA1423-1426 [FSOD].) These changes to the DEIR's reasoning are not merely “insignificant modifications.” (Guidelines, § 15088.5(b).)

Water mining: First, citing Geosyntec, the FEIR argues that the Project's impact is not cumulatively considerable because, despite overdraft conditions, the Project itself could pump for decades. (AR385.) By contrast, the DEIR does not propose this water mining as a reason to find impacts less than significant, because

its “conclusion was based on a surplus.” (JA1425 [FSOD]; *see* AR842-843).)

Respondents claim the DEIR’s specification of aquifer thickness in its *setting* description (AR829) notified the public that impacts were insignificant because the Project itself has a long-term supply. (ROB at 59.) Not so. The DEIR relates aquifer thickness to gallon-per-minute well yields, not to feasibility of water mining, much less impact significance. Furthermore, the DEIR’s argument that Project pumping is less than the “surplus,” and its identification of aquifer depletion as a significant impact (AR833), entails a commitment *not* to mine groundwater *to avoid impacts to other users*. Indeed, the “ultimate question under CEQA [] is not whether an EIR establishes a likely source of water but whether it addresses the reasonably foreseeable *impacts* of supplying water.” (*Vineyard, supra*, 40 Cal.4th at 434 [original emphasis]; *see also California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377 [CEQA concerns project’s impact on environment, not environment’s impact on project].)

Hydrogeological isolation from stressed areas: Second, although the DEIR repeatedly asserts and relies on the claim that Project wells are within one of four hydrogeologically *interconnected* subareas that enjoy a common surplus (AR826, 837, 842-843.), the FEIR makes the contradictory claim that Project wells are *not* connected to “the less productive and stressed” areas within these subareas. (AR385; *see also* AR375-376.) As the trial Court found, this new rationale “directly contradicted the core underpinning of the DEIR’s conclusion,” which relies on the hydrogeological interconnection of four subareas sharing a surplus. (JA1425 [FSOD]; *see* AR842-843.)

Respondents argue that both the FEIR and DEIR disclosed the hydrogeological *connection* between the Toro Area and the SVGB (ROB at 59-60.), but that is neither disputed nor relevant. At issue is the FEIR’s *new* claim that

the well site is *not connected* to “stressed areas” in the Toro Area. In briefing to the trial Court, Respondents emphasized that the FEIR’s hydrogeological isolation claim provided substantial evidence for the FEIR’s conclusions. (JA495-496, 508, 566.) However, Respondents’ current brief before this Appellate Court neither *mentions* the FEIR’s new hydrogeological isolation claim nor *explains why the trial Court was wrong to find this claim is a critical new rationale in the FEIR*, which contradicts the DEIR. (JA1425 [FSOD].)

New mitigation: Third, the FEIR’s cumulative analysis claims that the “project’s impact on the groundwater basin is . . . mitigated by” its payment of Zone 2C assessments “because the SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins.” (AR387.) However, as the trial Court found (JA1425), the DEIR does not even consider mitigation of cumulative effects, because it finds a surplus. (AR842-843; *see* Guidelines, § 15126.4(a)(3) [mitigation unnecessary for non-significant impacts].)

And even if the Court were to *infer* that the reference to the Salinas Valley Water Project in the *setting* and *noncumulative* analysis were relevant to the DEIR’s cumulative analysis, “the rationale would still differ from the FEIR because the FEIR greatly expanded the geographic scope.” (JA1425-1426 [FSOD].) “Put simply, the DEIR’s determination that the SVWP would mitigate Project impacts to the four interconnected subareas is not equivalent to the FEIR’s conclusion that the SVWP would mitigate impacts to *the entire SVGB*.” (JA1426 [FSOD], original emphasis.)

Thus, contrary to Respondents (ROB at 46-47, 56), this case *is* akin to *Save Our Peninsula* and *Spring Valley*, where recirculation was required because the agency added new mitigation. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at 128-131; *Spring Valley*, *supra*, 248 Cal.App.4th at 108-109; *see also Gray*, *supra*, 167 Cal.App.4th at 1120.)

As Respondents admit, the FEIR expressly relies on impact fee mitigation. (ROB at 58, *citing* 14 CCR 15130(a)(3) [impact fees may render contribution less than considerable].) Contrary to Respondents, that these impact fees are a “pre-existing legal requirement” is irrelevant. (ROB at 56.) Impact fee mitigation *must* be part of a committed, pre-existing program. (*California Native Plant Society v. City of Santa Cruz* (2009) 170 Cal.App.4th 957, 1055 [“payment of fees must be tied to a functioning mitigation program”]; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-1189 [impact fees inadequate because second-phase fee not yet adopted]; *Save Our Peninsula, supra*, 87 Cal.App.4th at 140 138-142 [impact fee program adequate because pre-existing]; Guidelines, §15126.4(a)(2) [mitigation must be “fully enforceable”].)

In sum, the FEIR’s three new rationales were not “insignificant modifications” but instead demonstrate that the DEIR’s analysis was so inadequate as to deny the public opportunity for meaningful comment. (Guidelines, § 15088.5(a), (b).) The DEIR does *not* advise the public that its cumulative analysis relies on water mining, or isolation of Project wells from stressed areas, or payment of impact fees. The DEIR did *not* consider or propose mitigation for the Project’s contribution to cumulative impacts *outside* the El Toro Groundwater Basin, including seawater intrusion. The public had neither reason nor duty to anticipate and object to the FEIR’s new cumulative analyses, because the agency, not the public, bears the burden of “producing relevant environmental data” for cumulative analysis. (*Kings County, supra*, 221 Cal.App.3d at 724; *see also Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at 1218.)

Complete and misleading rewrite: Finally, contrary to Respondents (ROB at 46 n. 13, 56), recirculation is warranted given the complete rewrite of the hydrogeology section and its misleading strikeout and underlining. (*Sutter, supra*, 122 Cal.App.3d at 817 [“fundamental reorganization of the material previously

presented”]; *Spring Valley, supra*, 248 Cal.App.4th at 108 [“globally amended” analysis].) Here, the FEIR prefaces its 39-page rewrite by claiming “[d]ue to changes in circumstances as a result of ongoing groundwater studies and implementation of new basin management programs, the entire Section 3.6 has been provided in track changes (striketrough and underline).” (AR317, AR350-388.)

Spring Valley faults the agency for failing to provide strikeout text to identify changes. (*Spring Valley, supra*, 248 Cal.App.4th at 108.) But here, the FEIR’s revisions, *purportedly* identified by strikeout and underlining, are affirmatively misleading because the underlining does not reflect *all* the changes, particularly changes to the cumulative impact discussion. (*Compare* AR842-843 [DEIR] *to* AR384-387 [FEIR].) Six paragraphs of new cumulative analysis material are *not* underlined, including the changed geographic scope (AR384), the claim that Project wells are isolated from stressed areas (AR385), and the claim impact that fee payment is adequate mitigation (AR387). So, contrary to Respondents’ claim (ROB at 56), the revisions do *not* “clearly show[] the specific amendments to the text.”

Finally, contrary to Respondents (ROB at 55-56), Petitioners’ claim is akin to the hydrogeology holding in *Spring Valley*, not its biology holding. Respondents note that *Spring Valley* did not require recirculation of the biological analysis despite the FEIR’s expanded scope because “the revisions did not change the nature of the potential impacts, their likelihood to occur, or the mitigation for them.” (ROB at 55-56, *citing Spring Valley, supra*, 248 Cal.App.4th at 108.) But here the revisions *do* change the nature of potential impacts by including both seawater intrusion and inadequate groundwater levels outside the CDT Subbasin. And the revisions *do* change the mitigation, by identifying impact fees as cumulative impact mitigation. This case is directly analogous to *Spring Valley*’s

hydrology holding, requiring recirculation due to new mitigation, new technical reports, and a “globally amended” hydrology and water quality analysis. (*Id.*; see JA1427-1428 [FSOD].)

3. The trial Court did not misapply the standard of review.

Contrary to Respondents (ROB at 41-42), the trial Court’s decision does not hinge on misapplication of the de novo standard of review. The trial Court correctly observed in its Intended Decision that neither *Laurel Heights II* nor any appellate decision has decided the standard of review for a Section 15088.5(a)(4) recirculation claim. (JA1164.) However, the trial Court’s Final Statement of Decision expressly holds that “the decision not to recirculate the DEIR was not supported by substantial evidence.” (JA1429.)

Although it is not required here, the de novo standard of review would be justified in this Section 15088.5(a)(4) recirculation claim. In *Laurel Heights II*, the Supreme Court recognized that the fourth recirculation criterion differs from the first three, stating:

With the addition of the fourth category of "triggering information" to the list, we recognize that "significance" for purposes of section 21092.1 cannot be defined exclusively in terms of the grounds for recirculation found in section 21166, from which the first three categories are drawn. The different circumstances governed by these statutes mandate this conclusion.

(*Laurel Heights II*, 6 Cal.4th at 1130.) In substance the fourth recirculation criterion is similar to whether an EIR precludes informed decisionmaking and informed public participation by omitting essential information. An unbroken line of Supreme Court decisions after *Laurel Heights II* hold this question is reviewed de novo. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237; *Vineyard, supra*, 40 Cal.4th at 435; *Banning Ranch Conservancy v. City of*

Newport Beach (2017) 2 Cal.5th 918, 935; *Sierra Club (Friant Ranch)*, *supra*, 5 Cal.5th at 512-515.) Therefore, applying the "substantial evidence" test to a claim that recirculation is required under the fourth criterion is inconsistent with these later Supreme Court decisions. Appellate decisions in 15088.5(a)(4) cases *assume, but do not decide*, the applicability of substantial evidence review. (E.g., *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 224; *Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.) Such cases are not authority for propositions not expressly considered. (*Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1005-1006.)

Moreover, in *Laurel Heights II* the Supreme Court recognized that the standard of review for a recirculation claim is case-specific, concluding that, while a "more stringent standard of review . . . may have merit in the abstract, it does not apply to the facts of the present case" and that "the substantial evidence standard" applies "*in this case.*" (*Laurel Heights II*, *supra*, 6 Cal.4th at 1133 [emphasis added].) In *Laurel Heights II*, the recirculation dispute involved five sources of new information that clarified or confirmed matters already fully disclosed and analyzed in the Regent's informationally adequate EIR. (*Id.* at 1136.) *Laurel Heights II* discusses whether this information constitutes "significant new information" only under the first three criteria of Guideline Section 15088.5. (*Id.*, at 1137-1142.)

Regardless of the standard of review, there is no merit in Respondents' claim that the trial Court "failed to show deference to the County's recirculation decision by improperly conducting an independent assessment of the technical adequacy" of the DEIR. (ROB at 42.) The trial Court adhered to the record before it by simply comparing the DEIR to the FEIR to identify material changes and inconsistencies. (JA1413-1429.) The trial Court was guided by directly analogous caselaw in

determining that the public was denied a meaningful comment opportunity on these facts. As in *Sutter*, *Save Our Peninsula*, and *Spring Valley*, this Court too must examine the nature of the new information, what it reveals about the continuing adequacy of the analysis in the DEIR, and whether its untimely disclosure deprived the public of a meaningful comment opportunity.

Furthermore, there were no detailed factual findings to which the trial Court *could* defer. The recirculation findings recite only criteria for Section 15088.5(a)(1-3) claims and do not acknowledge Section 15088.5(a)(4) claims. (AR35-36.) The recirculation findings regarding changes to the water supply setting and analysis are conclusory and do not address Petitioners' specific Section 15088.5(a)(4) objections that numerous changes to the setting and analysis precluded meaningful comment. (AR37 [referencing setting "modifications" and "updated" analysis].) Here, the lack of substantial evidence that the changes were merely insignificant modifications is shown by failures to ground this conclusory finding with facts or to disclose the analytic route between facts and conclusions in light of Petitioners' specific objections. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* ("Laurel Heights I") (1988) 47 Cal.3d 376, 404; *Topanga Ass'n. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.)

4. Failure to recirculate the revised Groundwater Resources and Hydrogeology section was prejudicial.

Respondents argue in the alternative that even if the County erred in failing to recirculate the DEIR, there was no prejudice. (ROB at 68-70.) Respondents are wrong.

Prejudice occurs if agency error "precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR

process.” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463, quoting *Kings County, supra*, 221 Cal.App.3d at 712.) In *Save Our Peninsula*, this Court applied that prejudice standard in ordering recirculation. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 118.) Where a court finds that new information is “significant” in a Section 15088.5(a)(4) claim, it is essentially finding that the agency thwarted informed public participation because “meaningful public review and comment were precluded.” (Guidelines, § 15088.5(a)(4).)

a. Failure to respond to comments on the significant new information in a revised FEIR was prejudicial.

The point of recirculation is that CEQA requires *both* the opportunity to comment on significant new information *and a response* to those comments *in the EIR itself*. (Guidelines, § 15088.5(f).) Here, the public challenged the FEIR’s new analysis substantively, but the County did not respond to those comments with reasoned, good faith analysis in a revised final EIR. For example, Petitioners and hydrogeologist Parker objected:

- The FEIR’s admission of “overdraft” fails to acknowledge long-term CDT Subbasin groundwater level declines or that these declines meet the EIR’s definition of significant impact. (AR13149, 6792-6793, 6794-6795 [Parker].)
- The FEIR fails to demonstrate that groundwater projects to maintain *Valley* groundwater levels could maintain groundwater levels in the *CDT Subbasin*, 250 to 350 feet higher. (AR14149-14150, 13125-13126, 6787-6788, 5828-5829 [LandWatch]; AR13144-13147, 13149-13151, 6795 [Parker].)

- Existing groundwater projects cannot even maintain *Valley* groundwater levels because they assume out-of-date demand projections (AR13329-13331, 13127-13130), the County admits additional projects are needed (AR13126-13132, 13151-13152, 6788, 6791, 5825-5829 [LandWatch]; AR6795-6796 [Parker]), and County staff admit the 2009-2011 increase in Valley groundwater levels is not indicative of a long-term trend (AR13390).
- Geosyntec directly contradicts the FEIR’s continued reliance on a purported “surplus.” (AR13143-13144, 13148-13149 [Parker].)

Contrary to Respondents (ROB at 68-69), it was not sufficient that Petitioners could *comment* on these deficiencies, because the County did not *respond* in a revised final EIR.

Responses to comments, set out in a final EIR, are mandatory and critical to public participation and informed decision-making. (Guidelines, §§ 15088.5(f), 15088; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516–517 [“a lead agency’s response to comments is an integral part of the EIR”]; *People v. County of Kern* (1974) 39 Cal.App.3d 831, 841 [“requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug “].) The *point* of public comments is to elicit agency response. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723 [comments themselves insufficient; responses required]; *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1240.) At a minimum, comment responses must acknowledge conflicting opinions and explain why suggestions in comments are

rejected, supporting the statements with relevant data. (*Banning Ranch Conservancy, supra*, 2 Cal.5th at 940-941; *see Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1367, 1371.)

Thus, *Sutter* holds that recirculation was required for new information because comments are “integral” to the EIR process and require “lead agency responses.” (*Sutter, supra*, 122 Cal.App.3d at 820.) *Save Our Peninsula* required recirculation to ensure the opportunity for “public comment *and meaningful response*.” (*Save Our Peninsula, supra*, 87 Cal.App.4th at 123, emphasis added; *see also id.* at 115, 120, 133.)

And the comment responses must be *in a final EIR*. The holding in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.4th at 727 rejects Respondent’s argument that omission of setting information was not prejudicial because it was disclosed later at the hearing, emphasizing the critical importance of comment and response in a final EIR to “an informed decision.” (*Id.*) The California Supreme Court has repeatedly affirmed that oral reports and information outside the EIR are not sufficient. (*Vineyard, supra*, 40 Cal.4th at 442 [“To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA”]; *Laurel Heights I, supra*, 47 Cal.3d at 405 [“whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”]; *see also CBE v. Richmond, supra*, 184 Cal. App. 4th at 88 [post-EIR testimony cannot cure DEIR’s omissions]; *Sierra Club v. Tahoe Regional Planning Agency* (2013) 916 F.Supp.2d 1098, 1139 [mitigation adequacy must be reviewed solely on EIR information; “[a]dditional documentation in the record, however, does not make up for the lack of analysis in the EIR”]; *Santiago County Water District v.*

County of Orange (1981) 118 Cal.App.3d 818, 831 [rejecting water supply information outside EIR because “[i]t is the adequacy of the EIR with which we are concerned . . .”].) Thus, even had the County responded substantively to public comments on the FEIR’s new analysis, its failure to do so in the EIR itself was fatal.

b. Failure to respond substantively, even outside the FEIR, was prejudicial.

Even if CEQA did countenance comment responses outside the FEIR, the County did *not* respond substantively, even outside the EIR, contrary to Respondents (ROB at 69). The County never substantively addressed Parker’s objection that projects to maintain *Valley* groundwater levels have not maintained, and could not maintain, *CDT Subbasin* groundwater levels, which are hundreds of feet above the Valley; or that long-term CDT Subbasin groundwater declines are a significant cumulative impact; or that there is no “surplus.”

Respondents cite three pages of Planning Director Novo’s oral testimony as evidence of comment response. (ROB at 69, *citing* AR4911-4912, 4993.) However, at AR4912 Novo simply reiterates the conclusory assertion that the “project area” somehow benefits from existing groundwater projects which “replenish the aquifer on a continuous basis.” But, like the Staff Report (AR3767), Novo *admitted* a long-term trend of “lowering water levels in that area” (AR4992). At AR4993, Supervisor Potter questioned the efficacy of the Salinas Valley Water Project. Novo deferred to staff, who testified that “[w]e need decades to really tell what impact the project will have.” (AR4994.) Potter then concludes that the Project should *not* be approved because it will aggravate existing overdraft.⁹

⁹ Although in briefing below, Respondents made additional arguments that

(AR4994-4997.)

The County's findings make the *conclusory* assertion that higher Valley groundwater levels will retard CDT Subbasin outflows. (AR9, 46, 50.) However, there was no acknowledgment of Parker's expert opinion to the contrary, much less the detailed analysis in response required by CEQA.¹⁰ (*Banning Ranch, supra*, 2 Cal.5th at 940-941; see AR13144-13147, 13149-13151, 6795 [Parker].) Again, this finding is contradicted by the Staff Report's admission that "[l]ong term trends predict lower groundwater levels in the study area as a whole into the future."

(AR3767.)

Elsewhere, the findings claim incorrectly that groundwater levels at the Project site are *not* declining:

According to MCWRA and the El Toro Ground Water Study (2007) and the Geosyntec 2010 Supplement, 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.

(AR8, emphasis added.) The finding that the two reservoirs have sustained groundwater levels was taken verbatim from the DEIR (AR830), *but the FEIR retracts it* (AR363). And the Geosyntec 2007 El Toro Ground Water Study does

post-EIR Staff Reports and testimony addressed public comments about the FEIR (JA492:23-28, 512:5-513:2; 530:4-6), Respondents waived these arguments here by failing to raise them in their opening brief. (*Katellaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216 n. 4.) At any rate, Petitioners have previously explained the inadequacy of these arguments. (JA875:1-877:18; JA773:17-774:28.)

¹⁰ The findings addressing the applicant's appeal of the Planning Commission decision do not address Parker's objections, which were made to the Board of Supervisors. (AR44-53.)

not support this claim: it directly contradicts it by documenting 47 years of declining groundwater levels (AR20113-20115, 20120, 20156), despite the reservoirs presence since 1957 and 1967 (AR6069). And “the wells and the project site” are no exception: their groundwater has declined by 25 and 23 feet over the past 15 and 12-year periods. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd].)

The findings claim that the 2009-2011 increase in groundwater levels demonstrates the success of groundwater projects in halting seawater intrusion. (AR49-50, *citing* AR4286-4334 [MCWRA presentation]; *see* AR17731-17779 [legible copy].) However, the findings neither discuss nor acknowledge comments objecting that MCWRA’s subsequent 2014 report indicates that groundwater levels in the aquifers affected by seawater intrusion, the Pressure 180-Foot and 400-Foot Aquifers, were still below sea level *and had declined below the 2011 level*, or that MCWRA’s senior hydrogeologist concluded in 2015 that groundwater levels were at “historic lows” and that seawater intrusion “has restarted its march down the valley.” (*Compare* AR6031 [2014 vs. 1985] to 5978 [2011 vs. 1985]; AR5850.) Nor do the findings disclose that MCWRA’s reports do not even include *CDT Subbasin* groundwater levels. (AR17731-17779 [2011 presentation]; AR5853-6031 [2003-2014 reports].)

In sum, failure to respond substantively to substantive comments on the new analysis in a revised FEIR was prejudicial. Even if such prejudice could be cured outside of the FEIR through hearing testimony or conclusory findings – which CEQA forbids – the County did not respond substantively.

Finally, Respondents argue there was no prejudice because the public commented on the *DEIR*’s inadequacies and that recirculation is not required where Petitioners commented on the “very matters they claimed were not made available for public review,” such as the overdraft condition. (ROB at 68; *see also*

page 53.) Not so. During the DEIR comment period, the public could not anticipate and comment on the *FEIR's future changes* to the DEIR's setting description, analytic scope, reasoning, or mitigation.¹¹ The agency, not the public, is burdened to produce cumulative analysis. (*Kings County, supra*, 221 Cal.App.3d at 724; *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1218.) Recirculation is proper even if the agency's provision of the significant new information is *prompted by* comments on the DEIR's flaws. (*Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 252 [recirculation required where agency supplied missing rationale in response to comment objecting to omission].) As the trial Court held here, the public was entitled to comment and receive a response on the FEIR's new reasoning. (JA1414-1415, 1424-1426.)

- c. Prejudice does not depend on whether a different outcome would have resulted. Regardless, a Court cannot speculate on how missing comment responses would have affected that outcome.

Prejudice may occur “regardless of whether a different outcome would have resulted if the public agency had complied” with CEQA. (CEQA, § 21005(a).) Thus, contrary to Respondents (ROB at 17, 69), substantial evidence to support an

¹¹ Contrary to Respondents, *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1600 is not relevant. The Court held only that the EIR was descriptively adequate because the contested material was expressly incorporated by reference, which did not occur here. Nor is *Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 949-950 on point. It holds only that recirculation was not required because petitioners could and did comment on the need for additional mitigation during an *extended comment period*, which did not occur here.

ultimate finding does not preclude prejudice. (*Joy Road Forest and Watershed Ass’n. v. California Dept. Of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, 684.) In *Joy Road*, as occurred here, the Court found the cumulative analysis in the initial review “woefully inadequate.” (*Id.* at 676.) Recirculation was required even though “there is substantial evidence to support CDF’s ultimate finding,” because “that evidence does not ‘cure’ the defect” in the initial review (*Id.* at 684.) Similarly, in *Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal.App.4th 556, 574, 576, the Court set aside the project approval for failure to circulate the cumulative analysis for public review, even though the agency found the project would have no significant impact.¹² *Joy Road* and *Schoen* invalidate project approval because there was inadequate comment opportunity, *despite* substantial evidence of no significant effect in *Joy Road* and an unchallenged substantive conclusion in *Schoen*.

Furthermore, the Court cannot determine how compliance with CEQA’s comment and response obligations would have affected decision-making. The California Supreme Court held that where an agency has failed to consider public comments, “courts are generally not in a position to assess the importance of the omitted information to determine whether it would have altered the agency decision . . .” (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (“EPIC”) (2008) 44 Cal.4th 459, 487.) *EPIC* holds that “a determination of whether omitted information would have affected an

¹² Although *Joy Road* and, *Schoen* concern the adequacy of environmental review under certified regulatory programs, their holdings apply because those programs must comply with relevant CEQA’s provisions, including recirculation provisions at CEQA Section 21092.1 and public comment requirements. (*Joy Road, supra*, 142 Cal.App.4th at 667-668; *Schoen, supra*, 58 Cal.App.4th at 566, 572.)

agency's decision . . . is highly speculative, an inquiry that takes the court beyond the realm of its competence.” (*Id.* at 488.) Similarly, in *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 703 the Court set aside the project because the agency had not circulated the cumulative analysis for comments, holding that a trial court should not “evaluate the omitted information and independently determine its value.”

Here, the Court should not speculate on the effect of comments the County did not solicit and the responses it did not provide. Indeed, the trial Court acknowledged that on remand, “the new FEIR may be markedly different than the existing FEIR; the County may arrive at different conclusions and/or develop new mitigation measures that would bear on the Board’s groundwater supply findings.” (JA1516 n. 45.)

In *EPIC*, the Supreme Court excused as non-prejudicial only agency failure to respond to “repetitive,” “patently irrelevant,” or supportive comments. (*EPIC, supra*, 44 Cal.4th at 487.) “Short of these showings, *which the agency that failed to consider the comments would have the burden to make*, the omission of the information *must be deemed prejudicial*.” (*Id.*, emphasis added; *see also North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 670 [agency burdened to establish lack of prejudice].) Petitioners’ and hydrogeologist Parker’s comments on the FEIR’s revised water supply analysis were not repetitive, irrelevant, or supportive. Respondents have not even *attempted* to meet their burden to show otherwise. The omission of comment responses must be deemed prejudicial.

B. The trial Court correctly found that the EIR is defective as a matter of law because it lacked required information about Project impacts to wildlife corridors and that there was no substantial evidence that these impacts would be insignificant.

The trial Court correctly found that the FEIR suffers from an informational deficiency. (*See, e.g.*, JA1509 [DEIR fails to acknowledge larger wildlife movement or corridor other than drainage channel exists]; AR1510 [FEIR discussion “deficient for several reasons”].) The Court reviews such claims of informational deficiency de novo to determine if the EIR “comports with its intended function of including detail sufficient 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 (Friant Ranch)*, *supra*, 6 Cal.5th at 516, internal quotes omitted.) As the California Supreme Court held:

... “noncompliance with information disclosure provisions ‘which precludes relevant information from being presented to the public agency . . . may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.’ (§ 21005, subd. (a).) . . . [W]hen an agency fails to proceed [as CEQA requires], harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision-making and informed public participation. Case law is clear that, in such cases, the error is prejudicial.”

(*Id.* at 515, original emphasis, *quoting County of Amador v. El Dorado County Water Agency* (1999) 76 CalApp.4th 931, 945-46 [citations omitted].)

Here, the EIR fails to describe the environmental setting because it failed to identify and locate the wildlife corridor. It also failed to analyze the Project’s

potential impact on wildlife movement and fragmentation. These omissions are subject to non-deferential review.

The information deficiency is by itself a sufficient basis for rejecting the EIR, but the trial Court carried its analysis further. Noting the implied conclusion of the FEIR that the wildlife corridor was sufficiently far from the Project as to mitigate any possible impacts, the Court looked in vain for support for that conclusion. Even under a deferential standard of review, the trial Court correctly found that neither the FEIR nor the post-EIR statements of County staff are supported by substantial evidence, and therefore cannot save the EIR from its fundamental shortcomings.

1. The EIR's analysis of the project's environmental impacts on wildlife corridors is legally deficient.

- a. The inadequate description of the environmental setting and impact analysis renders the EIR invalid as a matter of law.

The EIR's description of the environmental setting of the Project and surrounding area ignored wildlife movement and wildlife corridors. The EIR fails to describe where an acknowledged wildlife corridor begins and ends, its width, and how far the Project intrudes upon the corridor. (AR768, 307-308; *see* JA1510 [FSOD].) The Project site is in an area identified by the State of California as an essential thoroughfare for wildlife movement, which must be protected to prevent habitat fragmentation. (AR5270:19-5271:8, 3719.) But the biological surveys undertaken as part of the environmental review fail to address wildlife movement and corridors on and near the Project. (AR686, 757-786 [DEIR], 307-310 [revised FEIR], 1237-1293 [appended Zander Studies].)

The trial Court correctly found that the “FEIR did not address starting point, terminus or how far the corridor continues in the direction of the Project site and did not address the width of the wildlife corridor.” (JA1510.) Following established CEQA precedent, the trial Court concluded that “[a]bsent that information it is impossible for a reader to accurately determine the degree of the Project’s impact upon the wildlife corridor.” (JA1511.) Respondents provide no legal or factual basis for disturbing this ruling.

The inadequate investigation, consideration, and documentation of the environmental setting precluded the FEIR from accurately assessing the adverse effect the Project had on wildlife. (*Galante Vineyards, supra*, 60 Cal.App.4th at 1122.) Nor could the EIR inform the critical discussion of mitigation measures and project alternatives. (*Sierra Club (Friant Ranch), supra*, 6 Cal 5th at 514; Guidelines, § 15151 [“An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences”].) The “description should place special emphasis on environmental resources that are rare or unique to the region and would be affected by the project.” (Guidelines, § 15125 (c); *see* Kostka and Zischke, *Practice Under the California Environmental Quality Act* (2nd Ed., 2019 Update) §12.17, p. 12-24, 12-25.)

Friends of Eel River v. Sonoma County (2003) 108 Cal App 4th 859 explains the importance of an adequate environmental setting:

An EIR must contain an accurate description of the project's environmental setting. An EIR “must describe the physical environmental conditions near the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: “Knowledge of the regional setting is critical to the assessment of environmental

impacts. . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." Guidelines, § 15125, subd. (c).

(*Id.* at 874; *accord Galante Vineyards, supra*, 60 Cal App 4th at 1122.)

San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus addressed a wetlands and wildlife preserve near a proposed project site:

If an investigation specifically considering the presence and extent of wetland areas adjacent to and within the site was conducted and the results demonstrated there were no wetlands within the site, this should have been explained in the FEIR. The investigators should have been identified, the actions taken by them disclosed and their conclusions supported by facts and analysis. (Cf. *Laurel Heights, supra*, 47 Cal.3d at p. 410.)

(*San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus, supra*, 27 Cal App 4th at 728.)

Zander & Associates, the investigators here, studied the Project property and adjacent areas. They concluded that ephemeral stream-courses served as “movement corridors” for “amphibians and other animals.” (AR761.) The Zander Studies inventoried the habitats found on the Project property and looked for Special Status species known to occur in the vicinity. (AR1237, 1270 [Table 2], 1255, 1275, 1280, 1290-1293 [Table 2 Special Animal Species].) The only species identified on the Project site by Zander are several small Special Status species; Zander does not consider the presence of large mammals that use habitat corridors to cross the site. (AR1253, 1290.) The term “wildlife corridor” does not appear in the Zander Studies. (*See* AR1237-1293.)

The DEIR relied exclusively on the Zander Studies for wildlife information. (AR686, 774.) There was no reference to wildlife corridors or wildlife traversing

near or on the property in the site description, in either the Zander Studies or in the DEIR. (AR686, 757-786 [DEIR], 307-310 [revised FEIR], 1237-1293 [appended Zander Studies].) The DEIR does generally reference County-wide “dominating communities” of large animals, including mountain lions and bobcats. (AR757.) In its discussion of Biological Communities, the DEIR does not consider, inventory, or identify any specific species that use the project site as part of a wildlife corridor. (AR757-768 [“Biological Communities”].) While the DEIR explains the function and purpose of “wildlife corridors” in the abstract, (AR768-769), it does not discuss whether any exist near the site. (*Id.*)

The revised FEIR likewise fails to acknowledge that wildlife corridors pass through the Project site even though the County was on notice of the wildlife studies incorporated into the 2007 General Plan FEIR and the Connectivity Study. (AR307-310, 5419:2-9, 5392:12-5393:15, 18139-18141, 17822, 17831-17853.) Instead, the FEIR references a Technical Memorandum for a different project. (AR307; *see* JA1510.) The FEIR also references the BSLT partnership with Nature Conservancy but made no reference to the Connectivity Study or its findings that wildlife corridors exist at the Project site. (AR17853, 307.)

As *San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus* holds, an inadequate description of the environmental setting of a project renders the EIR inadequate as a matter of law, and nullifies both any identification of environmental impacts and any evaluation of the adequacy of mitigation measures:

The failure to provide clear and definite analysis of the location, extent and character of wetlands possibly within and adjacent to the development project and failing to discuss SJWF [San Joaquin Wetlands Farm], precludes this court from concluding that all the environmental impacts of the development project were identified and analyzed in the FEIR. . . .

Thus, the description of the environmental setting is not only inadequate as a matter of law but it also renders the identification of

environmental impacts legally inadequate and precludes a determination that substantial evidence supports the Board's finding that the environmental impacts on wildlife and vegetation had been mitigated to insignificance.

(San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus, supra, 27 Cal App 4th at 729.)

The trial Court followed these principles, finding that the “FEIR contained no analysis of the project’s potential effects upon that corridor.” (JA1510.) The EIR contained no discussion of the relevant environmental setting, specifically the wildlife corridors or wildlife movement near the Project. (AR686, 757-786 [DEIR], 307-310 [revised FEIR], 1237-1293 [DEIR Appendices].) The trial Court found that the “FEIR contained neither analysis nor evidentiary support for its conclusion that this ‘corridor’ was sufficiently far from the project site to mitigate any possible Project impacts to the corridor.” (JA1510, citing AR307.)

No analysis in the EIR, or elsewhere in the record, supports staff’s conclusion that the Project is outside the wildlife corridor. (AR3772, 4367, 4468-4469.) Nor does staff offer any explanation or evidence to justify the conclusion that a limited development, had it been approved, would lessen any adverse effect upon the wildlife corridor. (AR3772, 4367, 4468-4469, 4973:4-16, 5159:17-25, 5151:14-22. 5330:2-13; *see* JA1511.)

In approving the EIR and the Project, the County Board of Supervisors ignored the abundance of uncontroverted evidence that a wildlife corridor ran near and through the Project site. (AR5178-5179, 5271-5272, 5281-5282, 14251-14255, 14333, 17853, 18139-18141; *see* JA1511.)

Respondents also argue that a reference to a study for the nearby Ferrini Ranch project (“Study”), with the staff analysis, provides the requisite information to determine the environmental setting of wildlife movement and corridors near the project. (ROB at 64, citing AR307.) This Study, they claim, shows that, due to the

distance of the Project from Toro Creek, its density, and the sparsity of other development, the Project would not significantly affect the Toro Creek wildlife corridor. (ROB at 64.) Respondents' arguments fail for several reasons.

First, the Study ("a Technical Memorandum prepared by WRA, Inc., in December 2008") was not appended to the FEIR, nor did the FEIR say where in the record one might find it. (AR 307.) The Court found it was not in the record. (JA1510.) Hence, the public could not review it and could only speculate about its contents. The data in an EIR must be presented in a manner calculated to adequately inform the public and decision makers who may not be previously familiar with the details of the project. "Information scattered about in EIR appendices, or in a report buried in an appendix, is not a substitute for a good faith reasoned analysis..." (*Vineyard, supra*, 40 Cal.4th at 442.) "To the extent the County, in certifying the EIR, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA." (*Id.*)

In addition, the Study was prepared for a different project and did not reference the Project site. (AR307; *see* JA1510.) The reference to the Study does not furnish the omitted description of wildlife corridors, including end points, width, and proximity to the Project. (*Id.*) The FEIR provides no information about the wildlife corridor's extension and location *beyond* the under-passing of SR 68, much less any evidence that the distance between the Project site and the "wildlife corridor" under-passing of SR 68 was sufficient to mitigate any Project impacts on the wildlife corridor. (*Id.*)

Respondents also reference a page from the Master Response 3-Wildlife Corridors, Ferrini Ranch FEIR (September 2014). (ROB at 64, citing AR6817.) The document was not part of *this Project's* EIR and was not provided to the public during the environmental review of the Project. It was provided to the Clerk

of the Board on February 20, 2014 approximately nine months after the first Board hearing in anticipation of the Board's March 3, 2015 hearing. (AR5, 6809.) The document was not cited by Harper's counsel at the March 3, 2015 hearing. (AR4978:11-4980:17.) Similar to the Technical Memorandum referred to above, Master Response 3 is for a different project, Ferrini Ranch. (AR6814.) The Master Response contains no reference to Harper Canyon project. (AR6809-6814.) Close scrutiny of the Master Response 3 provides no information to support staff's assertion that the corridor was sufficiently far from the Project site to mitigate any Project impacts. (*Id.*) Like the Technical Memorandum (AR307), the Master Response 3 was unavailable to the public and decision makers during the environmental review process. It did not adequately inform the public or decision makers with details of the project. (*Vineyard, supra*, 40 Cal.4th at 442.) In addition, the County's findings of approval do not reference these Ferrini Ranch studies. (AR4-6, 16, 24.)

Respondents mischaracterize the issue as a battle of differing experts instead of Petitioners' claim of informational deficiency. (ROB at 63.) There is no factual dispute, because the EIR omitted an analysis of wildlife movement and wildlife corridors. It is purely a question of law – whether the EIR complies with CEQA's requirements for an adequate setting description – not a factual dispute. (*Friends of Eel River, supra*, 108 Cal App.4th at 874-875; *see Guidelines* §15125(a).)

Ultimately, a reader has no basis for assessing the project's impact on the wildlife corridor. (JA1511; *see Sierra Club (Friant Ranch), supra*, 6 Cal.5th at 516.) Without the required analysis of the wildlife corridor in the EIR, neither the Court nor the public can perform their intended roles in the CEQA process. (*Laurel Heights I, supra*, 47 Cal. 3rd at 404; *Sierra Club (Friant Ranch), supra*, 6 Cal 5th at 516.)

b. Substantial evidence review is not appropriate for claims of informational deficiency.

Respondents assert that because there is some substantial evidence in the EIR and record about wildlife corridors, they should have prevailed. (ROB at 63-65.) Administrative decisions relating to methodology, mitigation measures or findings will be upheld if supported by substantial evidence in the record. But “[o]ur Courts of Appeal have consistently recognized that adequacy of discussion claims are not typically amenable to substantial evidence review.” (*Sierra Club (Friant Ranch)*, 6 Cal.5th at 515.) For example,

. . . whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Id.* at 514.) Or for example,

Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.

(*Id.* at 517.) Thus, even if there were substantial evidence to support findings – and there was not – such evidence is not relevant to determining whether the EIR was informationally adequate.

2. The EIR's informational deficiency is prejudicial.

Agency error is prejudicial when it “precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*Neighbors for a Smart Rail, supra* at 57 Cal 4th at 463; *accord Save Our Peninsula, supra*, 87 Cal App. 4th at 117-118.)

Recently, in *Banning Ranch Conservancy*, the California Supreme Court addressed prejudice, defining what would be considered an insubstantial or merely technical omission not grounds for relief:

To be prejudicial, a failure to account for related regulations must substantially impair the EIR's informational function. Here, the City's failure to discuss ESHA requirements and impacts was neither insubstantial nor merely technical. The omission resulted in inadequate evaluation of Project alternatives and mitigation measures.

(*Banning Ranch Conservancy, supra*, 2 Cal.5th at 942)

Here, the trial Court found the EIR's informational deficiencies prejudicial:

Here, the DEIR failed to include any analysis of the Project's impact upon significant portions of the wildlife corridor. The public thus had no opportunity to comment, informed public participation was entirely precluded. Further, the FEIR's discussion implied, but did not contain, analysis. Staff's reasoning post-FEIR was similarly conclusory, providing neither the public nor the Board with adequate information.” These defects were a paradigmatic example of prejudicial error...(citations omitted) the omission of required information constitutes a failure to proceed in the manner required by law where it precludes informed decision-making by the agency or informed participation by the public).

(JA1512.)

Respondents argue lack of prejudice because the County adopted Condition 21 that provides for a Wildlife Corridor Plan before the first final map.¹³ (ROB at 70-71.) Condition 21 does not rectify *the EIR's* failure to adequately discuss environmental setting, which is necessary for informed decision-making and public participation. (JA1512.) Respondents' argument that Condition 21 will ensure any potential impacts to wildlife corridors will be insubstantial is pure conjecture. Respondents' argument ignores that an EIR's purpose is to inform, and that purpose is not satisfied by simply stating information will be provided. (*SCOPE*, *supra*, 106 Cal App 4th at 723.) The omission of required information is prejudicial where it precludes informed decision-making. (*CEQA*, § 21005 (a).)

Because the EIR did not "accurately and fully" assess the environmental setting, any discussion of the efficacy of proposed mitigation measures or conditions of Project approval is speculative. The environmental setting description, inadequate here, is the baseline for assessing the nature and magnitude of the environmental impacts, and thus it informs the essential discussion of mitigation measures and project alternatives. (*Sierra Club (Friant Ranch)* 6 Cal.5th at 514.) The trial Court appreciated this point noting, "a new analysis of wildlife corridors could result in a change to lot locations." (JA1514.) Staff noted that Alternative 3, the environmentally superior alternative, would provide benefits to the wildlife corridors because of the "removal of four lots here in the center of the project which would allow that contiguous open space, the remainder parcel, Toro Park, through and on through..." (AR4973:4-16.) However, the DEIR never

¹³ Respondents failed to raise this argument to the trial Court. (JA601:14-605:15.) Because a party may not raise new issues for the first time on appeal, the argument is waived. (*El Morro Community Ass'n v. California Dept. of Parks and Recreation* (2004) 122 Cal. App. 4th 1341, 1351.)

explored the issue because there was no assessment of the Project's impact on wildlife corridors. (AR957-960.)

Respondents cite *Save Cuyama Valley v. City. of Santa Barbara* (2013) 213 Cal. App. 4th 1059, 1073-74 for the proposition that a commitment to mitigation can overcome an EIR's erroneous conclusion. (ROB at 70.) The facts of *Cuyama* are substantially different. In *Cuyama*, the EIR was factually correct in declaring groundwater impact would be less than significant, but the degree of insignificance was misstated. All the underlying information in the report was correct and available for public consideration. (*Id.* at 1073.) The Court found no prejudice. Crucially, in *Cuyama* it was not disputed that the mitigation "would be wholly effective in negating the mine's adverse impact on water quality." (*Id.* at 1073-1074.) *Cuyama's* error was harmless. The error here goes to the heart of CEQA. Without a baseline analysis of environmental resources that might be affected by the Project, the EIR becomes meaningless and the efficacy of mitigation purely speculative. (*Sierra Club (Friant Ranch)*, *supra*, 6 Cal.5th at 514 ["An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR"].)

3. No substantial evidence supports the EIR's conclusion or the Board's finding that the Project would have no significant impact upon wildlife corridors.

Respondents argue that substantial evidence supported the County's determination that the Project will not affect wildlife corridors. (ROB at 61-65.) After exhaustively reviewing the record, the trial Court correctly found no substantial evidence to support the EIR's conclusion or the County's finding of no significant impact. (JA1510-1511.) Substantial evidence, as defined in the CEQA Guidelines:

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....Substantial evidence includes facts, reasonable assumption based on facts, and expert opinion support by facts. Substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate...

(Guidelines, §15384 (a).)

The trial court here found there was no substantial evidence because:

- The FEIR contained no analysis of the Project’s potential effect upon that corridor. (JA1510.)
- The EIR did not even try to define the wildlife corridor boundaries. (JA1510.)
- The FEIR assumed, without evidentiary support for its conclusion, the corridor was sufficiently far from the Project site to mitigate any possible Project impacts to the corridor. (JA1510, citing AR307.)
- Staff’s conclusion that the Project location is outside the wildlife corridor is not supported by evidence in the record. (JA151, citing AR5159:20-25 [staff’s unsubstantiated opinion].)
- Staff offers no explanation or evidence to explain its conclusion that limited development would lessen the impact upon the wildlife corridor. (JA1511.)

Respondents argue that the draft EIR identification of stream-courses provides substantial evidence of “habitat corridors” for large animals such as coyote, deer, and other species. (ROB at 62, citing AR776, 777.) Respondents also argue that the Zander Studies provide the basis for the draft EIR’s analysis of wildlife corridors. (ROB at 61, citing AR686, 786-787, 776, 996, 1221, 1237-294.)

Respondents then suggest the requisite evidence is implied by Mitigation Measure 3.3-2(d), requiring improvements be at least 75 feet to 100 feet from active drainage channels, as recommended by Zander. (ROB at 63, citing AR778.).

The Zander Studies do not investigate wildlife movement or wildlife corridors, either regionally or near the Project. (AR1237-1293.) The Zander Studies never use the term “wildlife corridor.” Their only use of the word “corridor” is the reference to “[S]tream channels throughout the project site provide habitat corridors.” (AR777.) Zander’s proposed Mitigation Measure 3.3-2(d) does not address wildlife movement or wildlife corridors, particularly for large animal species.

Respondents also rely on generalized and indirect comments in the administrative record, seeking to transform them into evidence that wildlife movement and corridors near the Project were surveyed. (ROB at 61.) Respondents refer to AR757-758, but that provides no information on wildlife movement near the Project. (ROB at 62.) It contains only a non-specific reference to regional communities of large animals. Respondents cite AR707 and AR761 that discuss winter storm water drainage running into El Toro Creek. AR761 states that *wildlife habitat* in these drainages does not vary substantially from that described for oak woodland or annual grassland habitat. Neither reference discusses large *wildlife movement* nor *movement corridors* near the Project. Similarly, Respondents misstate that all the species identified as occurring on Fort Ord land (AR307), had been identified in the EIR as potentially on the Project site. (ROB at 64 n. 22, citing AR757-758, 761, 768, and 1293.) Species present on the Project site are not specifically identified in AR757-758, 761, 768, and 1293.

None of Respondents’ citations reference wildlife movement or corridors near the Project. Respondents’ argue that a string citation to the record is evidence of the environmental setting assessments at issue. (ROB at 63, n. 21.)

However, the citations provide no discussion or assessment of wildlife movement or corridor in the Project site, nor identification of the starting point, terminus or width of the corridor, or the location of the corridor vis-a-vis the Project.

(JA1510.)

Respondents also suggest that the Technical Memorandum for the nearby Ferrini Ranch project and its EIR's Master Response 3 - Wildlife Corridors provide substantial evidence. (ROB at 64, citing AR307, 6809-6814.) These documents are for a different Project and provide no facts or analysis regarding wildlife corridor near *this* Project. (*Id.*; see Section VI.B.1.a above.)

The trial Court did not refuse to defer to the judgment and expertise of staff members about the environmental consequences of the distance from the underpass and the sparsity of the development. (ROB at 65.) The trial Court found that “[n]either Staff nor the FEIR have defined the boundaries of the wildlife corridors.” (JA1511.) Without knowing the boundaries of the wildlife corridor, the staff conclusions had no factual basis to which the trial Court could defer. (JA1511; CEQA, § 21082.2(c) [unsubstantiated opinion is not substantial evidence].)

The Zander Studies do not support the conclusions in the staff's report. Instead, it focuses on the Project's effects on the habitats within the property. It states, “the increase in human activity will likely displace some of the wildlife that are less tolerant of disturbance, but these animals may be able to move into the adjacent open space area.” (AR1264.) The limited observation that some animals on Project land may permanently relocate says nothing about the consequence of disruption of wildlife corridors that extend far beyond Project boundaries.

VII. PETITIONERS' OPENING BRIEF ON CROSS-APPEAL

In addition to their recirculation and wildlife corridor arguments, on which they prevailed, Petitioners argued below that the FEIR was itself informationally inadequate because:

- (1) The water supply setting description and cumulative analysis were untimely. (JA255:1-257:19, 259:16:-262:3.)
- (2) The water supply setting description in the FEIR is contradictory and incomplete, inconsistently claiming both surplus and overdraft; inconsistently claiming both hydrogeological connection of the Project wells to stressed areas and lack of that connection; and failing to disclose declining groundwater levels and aquifer depletion that constitute a significant cumulative impact. (JA257:20-259:12, 765:8-767:5.)
- (3) The water supply cumulative analysis fails to make required determinations whether there is a significant cumulative impact in the CDT Subbasin, and, if so, whether the Project makes a considerable contribution. (JA262:4-264:17, 767:6-770:4.)

The trial Court subsumed the first claim, untimely disclosure, in the recirculation claim and addressed both in Section 1.4 of its Decision, holding recirculation was required. (JA1408; *see* JA1408-1429.)

The trial Court rejected Petitioners' claim that the FEIR's cumulative analysis is informationally inadequate in its Decision in Section 1.5.1. (JA1429-1432.) The trial Court did not reach Petitioners' claim that the setting description in the FEIR was informationally inadequate. Petitioners cross-appeal the trial

Court's disposition of Petitioners' claims that the setting description and cumulative analysis were informationally inadequate.

Petitioners argued below there was no substantial evidence to support findings regarding water supply impacts, *and* that the Court should not and need not reach this question given the informational inadequacies. (JA268:6-276:8; JA778:6-7; JA1111:20-22.) In Section 1.5.2 (JA1432-1440), the trial Court addressed Petitioners' claim that the findings were not supported by substantial evidence, which Petitioners do not challenge in this appeal. However, the trial Court did not address Petitioners' argument that it should not and need not have reached the substantial evidence claim. Petitioners appeal the trial Court's decision to *reach* the substantial evidence claim.

A. The FEIR's Revised Hydrogeology section is informationally inadequate.

CEQA mandates that an EIR provide adequate setting description and cumulative analysis. (Guidelines, §§ 15125, 15130.) Thus, failure to provide essential baseline information or an adequate cumulative analysis is a failure to proceed as required by CEQA, rendering the EIR inadequate as an "informational document." (*Friends of the Eel River, supra*, 108 Cal.App.4th at 881; *see id.* at 875 ["EIR's incomplete description of the Project's environmental setting fails to set the stage for a discussion of the cumulative impact"]; *Env'tl. Planning & Info. Council v. City. of El Dorado* (1982) 131 Cal. App. 3d 350, 358 [EIR will "fail as an informative document" if baseline disclosure inadequate]; *San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus, supra*, 27 Cal. App. 4th at 729 [incomplete or misleading baseline description is "inadequate as a matter of law"]; *Galante Vineyards, supra*, 60 Cal. App. 4th at 1122.)

The Court reviews such claims of informational adequacy *de novo*, without

deference to the agency, to determine if the EIR “comports with its intended function of including detail sufficient 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 (Friant Ranch)*, *supra*, 6 Cal.5th at 516, internal quotes omitted.)

The FEIR’s setting description and cumulative analysis are informationally inadequate regarding the Toro Area in the CDT Subbasin, which was the geographic scope of the DEIR’s cumulative analysis and included in the FEIR’s scope. As discussed below in Section VII.A.1 and 2, the FEIR makes contradictory claims that there is both a surplus and an overdraft in the CDT Subbasin; and it fails to disclose the fact and magnitude of aquifer depletion and falling groundwater levels, even though it *defines* a significant impact in terms of aquifer depletion and falling groundwater levels. It makes the contradictory claim that the Project wells’ aquifer is both *interconnected* and *not interconnected* with “stressed” areas. And it fails to make the determination whether there is a significant cumulative impact *in the CDT Subbasin*, and, if so, whether the Project makes a considerable contribution.

The DEIR limited its cumulative analysis to four subareas in the El Toro Groundwater Basin. (AR842-843.) The trial Court found this *limited* scope of analysis in the DEIR “misled the public as to the Project’s impacts.” (JA1417.) But the FEIR *also misled the public* when it “shifted the focus of analysis from the Toro Area to the larger SVGB.” (ROB at 29.) It is the Toro Area where Geosyntec concludes that additional pumping will further deplete the aquifer, cause “long term declines in groundwater levels,” and result in more failing or unproductive wells. (AR20163.) But rather than address the cumulative impact in the Toro Area, the FEIR shifts the focus to SVGB-wide groundwater levels and seawater intrusion. (AR384-387.) Seawater intrusion does not affect the Toro

Area (AR367), and projects to maintain Valley groundwater levels have not and cannot sustain groundwater levels hundreds of feet above the Valley in the CDT Subbasin. (AR13144-13147, 13149-13151, 6795 [Parker].) Respondents' argument that the FEIR's shifted focus to the larger area "logically lessens" the Project's impact (ROB at 29) is cynical, because the enlarged scope of analysis effectively distracts attention from the falling groundwater levels, aquifer depletion, and failing wells in the Toro Area, by discussing different problems in different areas.

Respondents cannot have it both ways. They cannot claim that recirculation was unnecessary because DEIR adequately identified and explained a geographic scope *limited to* the four interconnected subareas in the Toro Area, but that the FEIR's shifted focus of analysis was also adequate, even though it fails adequately to disclose setting information and to explain significance determinations for these four subareas.

1. The FEIR's setting description for the CDT Subbasin is informationally inadequate because it claims both a surplus and an overdraft and fails to disclose the fact and magnitude of aquifer depletion and falling groundwater levels.

An EIR must describe the existing environmental setting ("baseline") so that it considers impacts "in the full environmental context." (Guidelines, § 15125(a), (c).) An accurate baseline is critical because impact assessment must be based on "changes in the existing physical conditions in the affected area." (Guidelines, § 15126.2(a); *see Neighbors For Smart Rail, supra*, 57 Cal.4th at 447.) Here, the affected area includes the four interconnected subareas in the CDT Subbasin.

Additionally, the setting description must support cumulative analysis. In *Friends of the Eel River*, the nondisclosure of cumulative water diversions "fails to set the stage for a discussion of the cumulative impact" and "does not comply with

Guidelines section 15125.” (*Friends of the Eel River, supra*, 108 Cal. App. 4th at 875.) CEQA requires that cumulative impacts be assessed in context, considering “the impacts of *both* the project under review and the relevant past, present and future projects.” (*Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 119 [original emphasis].) Thus, a valid determination whether a project’s impact is “cumulatively considerable” *must assess the severity of the cumulative problem* because “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (*Id.* at 120.)

Here, the FEIR’s setting description for the CDT Subbasin groundwater conditions is inadequate because it is both contradictory and incomplete. First, the setting description is contradictory because, despite the FEIR’s acknowledgement of the *overdraft* condition in the Geosyntec Study Area (AR363), the FEIR still cites the Todd 2003 report to claim a 29.9 AFY *surplus* in the San Benancio Gulch subarea (AR372) and a 314.82 AFY shared surplus in the four interconnected subareas (AR374), all of which are in the Geosyntec Study Area (AR20071). And the FEIR *still* cites these surpluses in support of its significance conclusions. (AR372-376, 385.)

The trial Court found the FEIR “did not rely upon a groundwater surplus” and “removed the purported groundwater surplus as a rationale.” (JA1407, 1422.) Petitioners respectfully disagree. The FEIR makes the surplus claim in three separate locations as one of its distinct bases for both its noncumulative and cumulative impact conclusions. (AR372-373, 374, 385.) The FEIR’s cumulative analysis asserts:

The Todd Engineering report concluded that although the proposed project may contribute to an adverse cumulative impact on some of the individual

subareas that are currently stressed, the four subareas are ultimately interconnected and *will maintain an overall water surplus where recharge exceeds extraction*. The project's contribution would be considered minimal. This conclusion was similar to the conclusions of the subsequent El Toro Groundwater Study prepared by Geosyntec.

(AR385, emphasis added.) Although the FEIR's cumulative analysis identifies additional rationales, including impact fees, the analysis is founded on multiple rationales, including the surplus claim, because it concludes that "[f]or *all of these* reasons, the cumulative effect of the project on water demand is considered less than significant." (AR387, emphasis added.) Furthermore, Respondents cannot argue that the FEIR repudiates the DEIR's critical surplus claim *and* that the DEIR and FEIR analyses are not inconsistent enough to warrant recirculation.

Like the DEIR's surplus claims (AR836-838, 843), the FEIR's surplus claims are based on the Todd Report, which is based on the 1996 Fugro Report's recharge estimates. (AR372, 385 [FEIR], 1460 [Todd].) But the Geosyntec Report, which the FEIR says "superseded" Fugro (AR353), expressly *rejects* the Fugro Report's recharge estimates and its surplus conclusion. (AR20155-20156.) Geosyntec reaches the *opposite* conclusion: "the rate of groundwater pumping from the El Toro Primary Aquifer System exceeds the rate of groundwater replenishment" (AR20062.) The FEIR's claim that the surplus conclusion in the Todd Report "was similar to the conclusions" of the Geosyntec Report is misleading. (AR385 [FEIR]; *see* AR13148 [Parker].)

This conflicting setting description is akin to the "fundamentally inadequate and misleading" description in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656, where the EIR claimed both *an increase and a decrease* in mining operations. Sending such "conflicting signals to decisionmakers" will "mislead the public and thwart the EIR process," prejudicially rendering the EIR "insufficient as an informational document." (*Id.*

at 655-657; *see also Vineyard, supra*, 40 Cal.4th at 439 [setting aside EIR for “factual inconsistencies and lack of clarity” regarding water supply and demand data]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 284 [“the EIR does not adequately analyze the project's water supply impacts” in light of “unexplained discrepancy”].)

Second, the setting description is materially incomplete because it fails to disclose the *consequence* of the overdraft, i.e., the fact and the magnitude of the aquifer depletion and falling groundwater levels revealed by the Geosyntec Report: 47 years of 500-1,000 acre-foot deficits and groundwater level declines from 0.6 to 1.8 feet per year, which has *already* resulted in “lowering of the water table below the screened intervals of existing wells completed in shallower portions of the aquifer system.” (AR20163, 20156, 20061.) The omission is critical because these conditions are precisely what the FEIR’s threshold of significance identifies as a significant impact:

Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a *net deficit* in aquifer volume or a *lowering of the local groundwater table level* (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted . . .

(AR371, emphasis added.) The FEIR’s non-quantitative reference to overdraft (AR363, 375), coupled with its misleading and contradictory claims of a “surplus,” is not a sufficient description of the environmental setting to apply its significance threshold. The FEIR fails to disclose *the very facts needed* to determine whether there is a significant *cumulative* impact under the FEIR’s own definition of significance. The setting description is inadequate because it does not “make further analysis possible.” (*County of Amador, supra*, 76 Cal.App.4th at 954.) As argued in Section VII.A.3 below, disclosing the severity of the cumulative impact

in the Toro Area was required, because the “greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (*CBE v. CRA, supra*, 103 Cal.App.4th at 120.)

2. The FEIR’s setting description is informationally inadequate because it claims that the aquifer in the Project vicinity is both interconnected and *not* interconnected with “stressed areas.”

The FEIR also makes contradictory claims about the hydrogeologic interconnection of the Project’s well sites to “stressed” areas. First, the FEIR claims that Project’s water supply *is* “interconnected” to four subareas, some of which are “*currently stressed*.”

The Todd Engineering report concluded that although the proposed project may contribute to an adverse cumulative impact on some of the individual subareas *that are currently stressed, the four subareas are ultimately interconnected* and will maintain an overall water surplus where recharge exceeds extraction. The project’s contribution would be considered minimal. This conclusion was similar to the conclusions of the subsequent El Toro Groundwater Study prepared by Geosyntec.

(AR385; *see also* AR363, 374 [FEIR: four subareas interconnected.]) In the next paragraph, the FEIR claims that the site *is not* “hydrogeologically contiguous” with the “less productive and *stressed* areas.”

. . 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.

(AR385.) The FEIR claims that the lack of connection to the stressed areas means that Project pumping “would not likely affect” these areas. (AR376.)

So, the FEIR concludes: (1) there is no cumulative impact to “stressed areas”

because they are interconnected and share a surplus and (2) there is no cumulative impact to “stressed areas” because they are *not* interconnected. Both cannot be true.

The FEIR claims Geosyntec supports both contradictory conclusions (AR385), but Geosyntec supports only the conclusion that the stressed areas *are* interconnected. Geosyntec was charged to determine “hydrogeologic connectivity between existing subareas” (AR20059) and concludes “major portions of the El Toro Planning Area subareas are hydrogeologically contiguous.” (AR20058; *see also* AR20136.) Geosyntec illustrates large areas of low saturated thickness and “poor” groundwater production, the FEIR’s hallmarks for “stressed areas” (AR375-376, 385), within the four interconnected subareas, *including the San Benancio Gulch subarea*. (AR20134, 20133.) Nothing in Geosyntec’s 2010 update suggests limited connectivity among the four subareas; its conclusion that the San Benancio subarea is connected *to the SVGB* does not demonstrate the San Benancio well sites are *not also connected* to stressed areas. (AR19395.)

Regardless which conclusion Respondents now argue, the FEIR’s setting description is inadequate because its critical claims are conflicting. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at 656; *Vineyard, supra*, 40 Cal.4th at 439; *Preserve Wild Santee, supra*, 210 Cal.App.4th at 284.) As the trial Court found, the claim that the aquifer around the Project site is not connected to stressed areas “directly contradicted” the claim that the Project wells are in “one of four hydrogeologically interconnected subareas of the El Toro Groundwater Basin.” (JA1425 [FSOD].)

3. The FEIR's cumulative analysis is informationally inadequate.

The FEIR fails to make or explain required cumulative impact determinations, leaving the public uncertain whether the County (1) denies there is a significant cumulative impact in the CDT Subbasin from cumulative pumping or (2) denies that the Project makes a considerable contribution. (AR5825; JA262:4-264:17; JA767:6-770:4.) The trial Court erred in rejecting this claim. (JA1429-1432 [FSOD].)

- a. The FEIR fails to determine whether there is a significant cumulative impact in the CDT Subbasin, and, if so, whether the Project makes a “considerable contribution.”

CEQA recognizes that significant impacts may be caused by cumulative effects of multiple projects affecting the same resource. (Guidelines, §§ 15065(a)(3), 15355.) Thus, cumulative impact analysis requires an agency to make two determinations: (1) whether the impact of *the project in combination other projects* exceeds the significance threshold, and (2) if so, whether the project's effect is a considerable contribution. (Guidelines, § 15130(a); Kostka and Zischke, *Practice Under the California Environmental Quality Act* (2nd Ed., 2019 Update), § 13.39.) The step-one determination is necessary because the impacts of individual projects may be “individually minor but collectively significant.” (*CBE v. CRA, supra*, 103 Cal.App.4th at 120.) In step two, if the cumulative effect is significant, the agency must consider whether the contribution of the project under review is “considerable,” i.e., “whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect.” (*Id.* at 120.) The step-two determination depends on the severity of the cumulative impact identified in step one, because the “greater the existing environmental

problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant.” (*Id.*)

Here, in step one, the FEIR was required to adequately characterize cumulative conditions to determine whether cumulative groundwater pumping from *all* projects is a significant impact, i.e., substantially depletes the CDT Subbasin so as to lower groundwater levels and impair wells. As argued in Section VII.A.1 above, the FEIR fails to disclose the severity of the relevant cumulative conditions in the CDT Subbasin. Thus, it fails to determine or disclose whether those conditions constitute a significant cumulative impact. Since the FEIR defines substantial depletion and lowering groundwater levels that impair wells as a significant impact (AR371), failure to make the determination was prejudicial.

Had the FEIR determined that CDT Subbasin impacts are cumulatively significant, the FEIR would then be required to determine whether the Project's incremental contribution, even if “individually minor,” would be “considerable” in the context of the severity of the cumulative conditions. (*CBE v. CRA, supra*, 103 Cal.App.4th 98, 119-120.) The FEIR fails to reach this second step.

In arguments below, Respondents erroneously conflated the thresholds for “significant impact” and “considerable contribution.” Respondents claimed that the “relevant standard” for the cumulative analysis is the *single* determination whether the Project, *by itself*, would “substantially deplete groundwater supplies . . . such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level . . .” (JA505:19-506:4, 507:21-22, 524:7-9.) But a “substantial” depletion is the FEIR's criterion to determine whether there is a “significant impact” (AR371), not whether a project makes a “considerable contribution” to a significant cumulative impact. Respondents approach fails to recognize the paradigm scenario in which an “individually minor” impact, i.e., one that is not itself a significant impact, may nonetheless be a considerable

contribution. (*CBE v. CRA, supra*, 103 Cal.App.4th at 119-120; Guidelines, § 15355.) Respondents approach obviates cumulative analysis because Respondents would *never* find a considerable contribution unless they *also* found that the Project’s impact, by itself, is significant.

Respondents make the same error as in *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (“*LAUSD*”) (1977) 58 Cal. App. 4th 1019, 1024-1026, in which the cumulative analysis was legally inadequate because the agency considered only whether the project by itself would “substantially” increase the impact, based on the CEQA Guidelines Appendix G language. Here, Respondents also erroneously rely on similar language in the Appendix G, Section IX(b), threshold to argue there is no considerable contribution to a significant cumulative effect unless the Project *by itself* “substantially” increases that effect.

The trial Court held that an agency may dispense with this two-step cumulative analysis and “use the same threshold of significance to assess a project’s individual and cumulative impacts,” *citing Save Cuyama Valley, supra*, 213 Cal. App. 4th at 1065, 1072 and *Rialto Citizens for Resp. Growth v. City of Rialto* (2015) 208 Cal.App.4th 899, 933. (JA1431.) But in both cases the Court held only that, where the resource has *already* been analyzed as cumulatively impaired and a threshold for “considerable contribution” has *already* been identified, an agency may dispense with *noncumulative* impact analysis, rely on the necessarily *more stringent threshold* for “considerable contribution,” and need not replicate the prior cumulative analysis.

Save Cuyama Valley excuses presentation of a “*noncumulative*” analysis because the agency’s previously adopted numeric threshold for a considerable contribution, based on the agency’s determination of “the tolerable impact an individual project on the amount of water available basin-wide,” was “undoubtedly more stringent” than a noncumulative threshold would be. (213 Cal. App. 4th at

1072.) Since the project met the *more* stringent threshold for considerable contribution, it clearly made no significant impact by itself. (*Id.*) Respondents turn this analysis on its head, arguing that if the Project meets the *less* stringent threshold for *noncumulative* impacts, there can be no considerable contribution to a significant cumulative impact. This argument fails to recognize that an individually minor impact may be a considerable contribution. (*CBE v. CRA*, *supra*, 103 Cal.App.4th at 119-120; *LAUSD*, *supra*, 58 Cal. App. 4th at 1024-1026.)

In *Rialto Citizens*, the issue was whether the agency properly relied on the air district's prior quantification of cumulative sources and threshold for considerable contribution. (208 Cal.App.4th at 931-933.) The air district recommended the agency use its threshold and did not recommend it independently evaluate cumulative sources. Accordingly, the Court held that the EIR need not quantify cumulative emission sources because, unlike here, its cumulative analysis did recognize "the serious nature of the existing problems," and acknowledged that the project made a considerable contribution. (*Id.* at 933-934.)

In short, *Save Cuyama Valley* and *Rialto Citizens* vindicate the rule that an agency must use a threshold for considerable contribution based on an analysis of the severity of the cumulative problem, even if that analysis was performed previously, or by another agency. Here, however, the FEIR fails to disclose the severity of cumulative aquifer depletion and falling groundwater levels in the CDT Subbasin, fails to determine whether this constitutes a significant cumulative impact, and fails to determine if Project pumping is a considerable contribution.

Citing *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 906, the trial Court agrees that a project's incremental contribution must be evaluated "in light of the serious nature of the existing problems." (JA1432 [FSOD].) *City of Long Beach* held that the agency *did*

disclose the serious traffic and air quality problems. (*Id.* at 909-911.) However, contrary to the trial Court (JA1432), the FEIR is inadequate here because it *does not disclose* “the serious nature of the existing problem.” It fails to disclose the depletion of the CDT Subbasin, whether it is cumulatively significant, or whether the Project’s contribution is considerable. (*Id.*; see *Santiago County Water Dist.*, *supra*, 118 Cal.App.3d at 831 [“[w]hat is needed is some information about how adverse the adverse impact will be”]; *Galante Vineyards*, *supra*, 60 Cal.App.4th at 1123 [same]; *Cleveland National Forest Foundation*, *supra*, 3 Cal.5th at 514–515 [EIR must “reasonably describe the nature and magnitude of the adverse effect”].)

b. The FEIR fails to determine the significance of impacts with and without mitigation.

The FEIR is also informationally inadequate because it fails to determine the significance of the Project’s impact to the CDT Subbasin *absent* the purported mitigation through payment of Zone 2C impact fees. The trial Court’s rejection of Petitioners’ argument was error. (JA1430-1431.) *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 653-658 requires that an EIR specify whether impacts are significant *absent* mitigation, so its impacts are adequately described and the need for and sufficiency of mitigation are separately evaluated. In *Lotus*, the EIR erred by “incorporating the proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant.” (*Id.* at 655-656.) Similarly, the FEIR here incorporates payment of Zone 2C impact fees into the Project description, without evaluating impacts with and without that Zone 2C mitigation. *Lotus* holds that an EIR’s failure “to separately analyze the significance of impacts . . . before proposing mitigation measures is not merely a harmless procedural failing,” because it “precludes both identification of potential environmental consequences

arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences.” (*Id.* at 658, *cited with approval by Cleveland National Forest Foundation, supra*, 3 Cal.5th at 529.)

Here, as in *Lotus* (*id.* at 657), the public challenged proposed mitigation. DEIR and FEIR comments challenged the sufficiency of the Zone 2C projects to address serious problems in the CDT Subbasin, explaining that groundwater levels have fallen for years, despite projects intended to maintain groundwater levels in the Valley. (AR161-162, 234 [DEIR comments]; AR13144-13147, 13149-13151, 6795 [Parker]; AR14149-14150, 13125-13126, 6787-6788, 5828-5829 [LandWatch].) Despite these challenges, the FEIR does not assess CDT Subbasin conditions with and without the Salinas Valley Water Project, explicitly identified as mitigation (AR387.) As in *Lotus*, the error was prejudicial because the “shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation.” (*Lotus, supra*, 223 Cal.App.4th at 658.) The failure separately to assess the efficacy of Zone 2C projects as mitigation in the CDT Subbasin is particularly prejudicial in light of the record’s equivocation. Whereas the conclusory CEQA findings claim some unquantified and unsubstantiated reduction in *outflows* from the CDT Subbasin (AR9, 46, 50), the Staff Report admits that “[l]ong term trends predict lower groundwater levels in the study area as a whole into the future (Geosyntec, page ES-3).” (AR3767, *emphasis added.*)

In sum, the FEIR violates CEQA’s mandate that impacts “shall be clearly identified and described.” (Guidelines, § 15126.2(a); *see also* § 15130(b)(4), (5); *see Galante Vineyards, supra*, 60 Cal.App.4th at 1123 [EIR must disclose “how adverse the impact will be”].) In *Cleveland National Forest Foundation*, the California Supreme Court held that an EIR must place a project’s effects in a “meaningful context” of cumulative effects in order to “reasonably describe the

nature and magnitude of the adverse effect” and “*to inform the critical discussion of mitigation measures* and project alternatives at the core of the EIR.” (3 Cal.5th at 514–515, emphasis added.) The FEIR is inadequate because it does not disclose the fact or magnitude of 47 years of aquifer depletion and falling groundwater levels in the CDT Subbasin, whether that is a significant cumulative impact, *whether the Project’s contribution is considerable absent mitigation, and to what extent mitigation would reduce its impact.*

The trial Court held an EIR need only provide a “brief explanation” if it concludes a project’s contribution is not considerable, citing Guidelines 15130(a). (JA1430.) But because the FEIR relies on payment of impact fees for a “regional mitigation strategy” (AR387), it must “identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.” (Guidelines, § 15130(a)(3).) Here those facts and analysis must include some showing this “regional mitigation strategy” actually mitigates impacts *to the CDT Subbasin*, particularly given decades of failure of regional groundwater projects to halt falling groundwater levels, and expert opinion challenging the sufficiency of such mitigation. (AR13144-13147, 13149-13151, 6795.)

B. 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.

Despite Petitioners’ argument that the Court should not reach the issue (JA268:6-276:8; JA778:6-7; JA1111:20-22), the trial Court found the FEIR’s water supply impact analysis was supported by substantial evidence. (JA1432-1440.) Petitioners submit that the trial Court should not have reached this issue given the informational inadequacy of the FEIR.

First, a Court cannot evaluate whether there is substantial evidence without considering responses to comments on the analysis that was first presented in the FEIR. In *Banning Ranch Conservancy*, the California Supreme Court set aside an EIR’s analysis of habitat impacts due to failure to respond to comments. (*Banning Ranch, supra*, 2 Cal.5th at 940-941.) The Court held that the EIR failed to “lay out any competing views,” “summarize the main points of disagreement,” and “explain why it declined” to accept those views. (*Id.*)

Failure to respond adequately to comments precludes finding there is substantial evidence. In *California Oak Foundation*, the Court held that the “EIR’s failure to present a ‘reasoned analysis in response’ to SCOPE’s comments” challenging a water entitlement “renders the EIR defective as an informational document upon which the public and its officials can rely in making informed judgments,” and, that because the EIR inadequately addresses the contested water entitlement, “substantial evidence of sufficient water supplies simply does not exist.” (*California Oak Foundation, supra*, 133 Cal.App.4th at 1242.) Similarly, in *Santa Clarita Organization for Planning the Environment*, where the EIR failed to respond adequately to comments challenging water entitlement, the EIR approval was “not supported by substantial evidence.” (*SCOPE, supra*, 106 Cal.App.4th at 724; *see id.* at 722 [comment responses inadequate].)

Here the Court should not affirm a determination that substantial evidence supports the County’s findings because the County failed to respond to substantive challenges from hydrogeologist Parker and LandWatch to the significant new information in the FEIR. As argued in Section VI.A.4.a and b above, neither the EIR nor staff comments at hearings substantively address hydrogeologist Parker’s objections that existing groundwater projects have not and cannot mitigate aquifer depletion and falling groundwater levels in the CDT Subbasin or halt sweater intrusion in other SVGB subbasins. Nor do they substantively respond to

objections that the setting description is contradictory and incomplete and that the FEIR fails to *make* the cumulative impact significance determinations needed to support findings.

As the trial Court found, the FEIR was never subjected to the “critical evaluation” required of a DEIR, a process essential to “evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” (JA1313-1415, *quoting Save Our Peninsula, supra*, 87 Cal.App.4th at 131.) Thus, material changes to the cumulative water analysis are foreseeable after recirculation for public comment and response. (*Schoen, supra*, 58 Cal.App.4th 556, 574 [failure to consider expert’s comments prejudicial because they “may have resulted in a different analysis or conclusion”].) Comments and responses may change the analysis because that is the *purpose* of public participation. (*City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 557 [comments purpose is to produce “better EIR” by drawing attention to points that may be overlooked and forcing decision makers “to confront real downsides” of project]; *see also Sutter, supra*, 122 Cal.App.3d 813, 822; *Laurel Heights II, supra*, 6 Cal.4th at 1132; *San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus, supra*, 27 Cal.App.4th at 727 [comments and responses essential to provide decision makers sufficient information].)

As argued in Section VI.A.4.c above, a Court is neither required nor competent to determine the effect of failure to respond to comments that are not merely repetitive, irrelevant, or supportive. (*EPIC, supra*, 44 Cal.4th at 487; *see also Ultramar, supra*, 17 Cal.App.4th at 703; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1021.) Thus, the Court need not reach to issue of substantial evidence and should not affirm the trial Court’s holding, because it cannot determine whether the missing comment responses would have provided critical information.

Besides comment responses, the County must consider additional data on remand. For example, the County will have the ten more years of groundwater monitoring data it said it needs to evaluate the efficacy of the Salinas Valley Water Project. (AR22881, 17744, 13229.) It should also have the study of its efficacy that the FEIR promised by 2018. (AR368.) This information will certainly affect the recirculated analysis, one way or the other. Indeed, the trial Court held that, on remand, “the new FEIR may be markedly different from the existing FEIR; the County may arrive at different conclusions and/or develop new mitigation measures that would bear on the Board's groundwater supply findings.” (JA1515 n. 45.)

CEQA does not require this Court to reach each of Petitioners’ contentions. (*Friends of Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1387 [*CEQA Section 21005(c)* not mandatory].) A Court need not address claims “that may be rendered moot by any subsequent CEQA review.” (*CBE v. Richmond, supra*, 184 Cal. App.4th at 101 [declining to address cumulative analysis and recirculation claims given EIR’s informational inadequacy]; *see also Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 920 [declining to “hypothesize on the remaining issues” given remand]; *Berkeley Keep Jets Over the Bay Committee, supra*, 91 Cal.App.4th at 1383 n. 24 [noise claims mooted].)

In sum, this Court should decline to speculate as to whether the County’s findings were supported by substantial evidence given the missing comment responses and the likelihood that the analysis on remand will differ.

CONCLUSION

LandWatch and Meyer respectfully request this Court to AFFIRM the trial Court's Judgments regarding recirculation and wildlife corridors and to REVERSE its Judgments that the water supply analysis was informationally adequate and that substantial evidence supported the County's water supply findings and REMAND the matter to the trial Court with instructions to issue the writ sought.

Dated: May 22, 2020

Respectfully submitted,

M. R. WOLFE & ASSOCIATES, P.C.



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Dated: May 22, 2020

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CERTIFICATION OF LENGTH

I, John Farrow, declare:

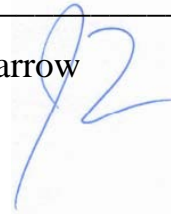
In accordance with Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the length of this brief excluding tables, as calculated by the word processing software with which it was produced, is 27,802 words.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: May 22, 2020

By: _____

John Farrow



PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 555 Sutter Street, Suite 405, San Francisco, California, 94102. On May 25, 2020 I served the attached document(s):

JOINT OPPOSITION AND OPENING BRIEF OF RESPONDENTS AND CROSS-APPELLANTS LANDWATCH MONTEREY COUNTY AND MEYER COMMUNITY GROUP

on the following parties in the manner indicated:

SEE ATTACHED SERVICE LIST

- [x] **BY FIRST CLASS MAIL:** I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. On the date written above, following ordinary business practices, I placed for collection and mailing at my place of employment a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown above.
- [x] **BY ELECTRONIC TRANSMISSION OR EMAIL** by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below, via the Court's electronic filing service provider. I did not receive any electronic message or other indication that the transmission was unsuccessful.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on May 25, 2020 at San Mateo, California.

Dated: May 25, 2020



John Farrow

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