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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

HIGHWAY 68 COALITION,

Plaintiff and Appellant,

v.

COUNTY OF MONTEREY et al.,

Defendants and Respondents;

DOMAIN CORPORATION, et al.,

Real Parties in Interest and
Respondents.

H045253

(Monterey County

Super. Ct. Nos. M130660 & M130670)

I. INTRODUCTION

This CEQA¹ case arises from the proposal of respondent Domain Corporation (Domain) to develop a residential subdivision in Monterey County (County) known as the Ferrini Ranch project. After preparing an environmental impact report (EIR) concerning the proposed project and considering public comments, the County's Board of Supervisors approved Alternative 5 for the project as the environmentally superior alternative.

¹ California Environmental Quality Act, Public Resources Code section 21000, et seq. All further statutory references are to the Public Resources Code unless otherwise indicated.

Appellant Highway 68 Coalition, self-described as “a social welfare organization . . . made up of property owners and tenants living and/or owning property in the Highway 68 corridor of Monterey County,” challenged the County’s approval of the Ferrini Ranch project by filing a petition for writ of mandate alleging violations of CEQA’s requirements for environmental review. The trial court denied the petition and on August 16, 2017, judgment was entered in favor of respondents and real parties on all claims raised in Highway 68’s amended petition for writ of mandate.

Landwatch Monterey County (Landwatch) also challenged the County’s approval of the Ferrini Ranch project by filing a petition for writ of mandate alleging violations of CEQA’s requirements for environmental review. Landwatch is a nonprofit organization promoting “sound land use and planning and legislation.” The trial court ordered the writ petitions consolidated.² The trial court denied the petition and on August 16, 2017, judgment was entered in favor of respondents and real parties on all claims raised in Landwatch’s petition for writ of mandate.

On appeal, Highway 68 contends that the trial court erred in denying its petition for writ of mandate for several reasons: (1) the project description for the Ferrini Ranch project did not comply with CEQA; (2) the EIR’s alternatives analysis did not comply with CEQA; and (3) the EIR’s analysis of the visual impacts of the project is legally inadequate. For reasons that we will explain, we find no merit in Highway 68’s contentions and therefore we will affirm the judgment.

In its appeal, Landwatch contends that the EIR is inadequate with regard to the Ferrini Ranch project’s water demand and supply analysis because (1) the cumulative impact analysis does not explain or provide water demand assumptions, fails to disclose

² On our own motion, the trial court cases having been assigned the same appellate court number, we will consider the two matters together for the purposes of record preparation, briefing, oral argument and disposition. We therefore reject the parties’ stipulation to partially consolidate on appeal as moot.

the need for additional groundwater management projects, improperly uses a ratio theory, and post-EIR disclosures did not cure the defects; (2) the final EIR (FEIR) does not supply the demand and supply data requested in the comments, (3) recirculation of the EIR is required because new information shows the EIR is inadequate; and (4) there is no substantial evidence to support the finding that payment of fees is adequate mitigation. For reasons that we will explain, we will affirm the August 16, 2017 judgment denying and dismissing Landwatch's writ petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2005 the application of Bollenbacher & Kelton, Inc., (now Domain) for approval of the Ferrini Ranch residential subdivision project was deemed complete by the Monterey County Planning Department. The property to be subdivided totaled 870 acres fronting on and south of Highway 68, and consisted of two areas separated by Toro Regional Park.

The applicant for the Ferrini Ranch project originally "requested approval to subdivide nine parcels totaling approximately 870 acres into 146 clustered market-rate single family residential lots on approximately 178 acres, 43 inclusionary housing units and 23 clustered market rate single family lots (averaging 5,000 square feet) on approximately 13 acres, agricultural industrial uses on approximately 35 acres, and roadway improvements on approximately 43 acres, with approximately 600 remaining acres of open space."

In 2012 a draft EIR (DEIR) analyzing the environmental impacts of the Ferrini Ranch project, as described in the 2005 application, was circulated for public review by the County. After receiving public comments on the DEIR, the County prepared a recirculated DEIR (RDEIR) in 2014. The RDEIR identified Alternative 5 as the environmentally superior alternative to the original project because the number of units was reduced from 212 to 185, open space was increased by over 100 acres, and the environmental impacts were reduced or avoided in comparison to the project as originally

proposed. Following the public review period for the RDEIR, the County prepared a FEIR responding to the comments received from persons and organizations on the DEIR and RDEIR.

In 2014 the County's Planning Commission received a staff report and held several public hearings regarding the Ferrini Ranch project. The Planning Commission recommended that the County's Board of Supervisors certify the EIR and approve the Ferrini Ranch project described in Alternative 5, as modified by the conditions of approval.

The County's Board of Supervisors held public hearings on the Ferrini Ranch project in 2014. On December 16, 2014, the Board of Supervisors adopted Resolution No.14-370 approving the Ferrini Ranch project. As set forth in Resolution No. 14-370, the Board of Supervisors selected Alternative 5, instead of the original project, to consider for approval. Resolution No. 14-370 also states that the Board of Supervisors certified the FEIR, adopted findings relating "to each potential significant environmental effect of the project, and adopted a statement of overriding considerations." In the statement of overriding considerations, the Board of Supervisors found "that the benefits of the project outweigh its unavoidable, adverse environmental impacts"

The Board of Supervisors also adopted Resolution No. 14-371, in which the Board approved a combined development permit for Alternative 5-PC, a use permit for removal of trees, and a use permit to allow development on slopes exceeding 30 percent. Resolution No. 14-371 also states that the permits are subject to the conditions of approval and substantial conformance with the vesting tentative map, which were both attached to the resolution

In 2015, Highway 68 filed a petition for writ of mandate and an amended petition for writ of mandate setting aside the County's approval of the Ferrini Ranch project. Highway 68 alleged in its petition that the EIR was inadequate in several respects, including the analysis of the environmental impacts on traffic, water, air quality, and

project alternatives, and the project description. Highway 68 also challenged the legality of the 1982 General Plan and the County's approval of the development permits and the vesting tentative map. The petition named the County and the Board of Supervisors as respondents, Domain and Islandia 29 as real parties in interest with ownership interests in the property, and Ferrini Ranch LLC as a real party in interest with an interest in the development entitlements.

Landwatch filed a petition for writ of mandate in 2015 naming the County as respondent and Bollenbacher & Kelton, Inc., Domain, and Islandia 29 as real parties in interest. In its petition, Landwatch sought a writ of mandate setting aside the County's certification of the EIR and its approval of the Ferrini Ranch project. Landwatch alleged that the County's project approval violated CEQA because the EIR was inadequate with regard the following: descriptions of the environmental setting and the project; analysis of all environmental impacts; mitigation measures; exercise of independent judgment; responses to public comments; disclosure of significant unavoidable impacts; alternatives analysis; failure to recirculate the RDEIR; lack of substantial evidence to support the findings; and defective notice of determination.

The trial court ordered the two petitions for writ of mandate consolidated for trial, which was held on four days in 2016 and 2017. The court issued a 142-page intended statement of decision on August 3, 2017, rejecting all claims of CEQA violations, including the claims that the EIR was inadequate as to the CEQA issues raised in this appeal (project description, alternatives analysis, visual impacts, and water supply). The intended statement of decision also denied both writ petitions.

On August 16, 2017, judgment was entered in favor of respondents and real parties on all claims raised in Highway 68's amended petition for writ of mandate. The judgment incorporated the intended statement of decision and included an order denying and dismissing Highway 68's writ petition.

Also on August 16, 2017, judgment was entered in favor of respondent and real parties on all claims raised in Landwatch’s petition for writ of mandate. The judgment incorporated the intended statement of decision and included an order denying and dismissing Landwatch’s writ petition.

Both Highway 68 and Landwatch filed a timely notice of appeal from the judgment.

III. DISCUSSION

A. *CEQA Overview*

The California Supreme Court recently provided an overview of CEQA principles: “ ‘The foremost principle under CEQA is that the Legislature intended the act “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” ’ [Citations.] ‘With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. [Citations.]’ [Citation; see Guidelines, § 15002, subd. (f).]³ The basic purpose of an EIR is to ‘provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.’ (Pub. Resources Code, § 21061; see Guidelines, § 15003, subds. (b)-(e).) ‘Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it

³ “The regulations that guide the application of CEQA are set forth in title 14 of the California Code of Regulations and are often referred to as the CEQA Guidelines. [Citation.]” (*Pfeiffer v. City of Sunnyvale City Council* (201) 200 Cal.App.4th 1552, 1561, fn. 5; hereafter CEQA Guidelines or Guidelines.)

disagrees.’ [Citation.] The EIR “protects not only the environment but also informed self-government.’ [Citation.]” (*Sierra Club v. City of Fresno* (2018) 6 Cal.5th 502, 511-512, fn. omitted (*Sierra Club*).

Thus, “[a]s this court has observed, ‘the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. [Citation.]’ [Citation.]” (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 687.)

B. Standard of Review

The California Supreme Court stated the applicable standard of review in *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 934-935 (*Banning Ranch*). “ “[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,” for, on factual questions, our task “is not to weigh conflicting evidence and determine who has the better argument.” [Citation].’ ” (*Id.* at p. 935; *Sierra Club, supra*, 6 Cal.5th at p. 512.) The burden of showing that the EIR is inadequate is on the party challenging the EIR. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626 (*Native Plant Society*).

C. Highway 68’s Appeal

Highway 68 raises three CEQA issues on appeal: (1) the project description for the Ferrini Ranch project did not comply with CEQA; (2) the EIR’s alternatives analysis

did not comply with CEQA; and (3) the EIR’s analysis of the visual impacts of the project is legally inadequate. We will address each issue in turn.

1. Project Description

Highway 68 contends that the project description for the Ferrini Ranch project did not comply with CEQA because the project description in the RDEIR was inaccurate; the project description substantially changed between the RDEIR and the approved project; and the project description shifted and was unstable throughout the approval process.

“A ‘project’ under CEQA is ‘the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.’ (CEQA Guidelines, § 5378(a).)” (*Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 219, fn. omitted (*Rodeo Citizens*)). The requirements for an adequate project description in a draft EIR are stated in the CEQA Guidelines. (Guidelines, § 15124.)⁴

⁴ Guidelines, section 15124 provides: “The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. [¶] (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map. [¶] (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits. [¶] (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities. [¶] (d) A statement briefly describing the intended uses of the EIR. [¶] (1) This statement shall include, to the extent that the information is known to the lead agency, [¶] (A) A list of the agencies that are expected to use the EIR in their decision-making, and [¶] (B) A list of permits and other approvals required to implement the project. [¶] (C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements. [¶] (2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be

Under the Guidelines, “[w]ith respect to an EIR’s project description, only four items are mandatory: (1) a detailed map with the precise location and boundaries of the proposed project, (2) a statement of project objectives, (3) a general description of the project’s technical, economic, and environmental characteristics, and (4) a statement briefly describing the intended uses of the EIR and listing the agencies involved with and the approvals required for implementation. (Guidelines, § 15124.) Aside from these four items, the Guidelines advise that the project description should not ‘supply extensive detail beyond that needed for evaluation and review of the [project’s] environmental impact.’ (Guidelines, § 15124.)” (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 269-270.)

Appellate courts have ruled that CEQA also requires an “ ‘accurate, stable and finite project description, [which] is the *sine qua non* of an informative and legally sufficient EIR.’ [Citation.]” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal. App. 5th 321, 332 (*South of Market*)). “A project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading. [Citation.]” (*Ibid.*) “Whether an EIR correctly describes a project is a question of law, subject to de novo review. [Citation.]” (*Rodeo Citizens, supra*, 22 Cal.App.5th at p. 219.)

We understand Highway 68 to generally argue that the project description for the Ferrini Ranch project did not meet the CEQA requirement that the project description be accurate and stable due to substantial changes in the project components from the DEIR to the RDEIR, culminating in the County’s approval of a different project, Alternative 5.

These changes include, according to Highway 68, the County’s 2013 grant of a conservation easement that rendered the original project’s Ferrini Ranch Road entryway

listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.”

“legally impossible” and “the original project description infeasible.”⁵ Other changes asserted by Highway 68 as causing the project description to be inaccurate and unstable include a different entryway for project access; widening of Highway 68 and a new signalized intersection; changes to road segments and access points; additional grading; addition of soundwall/berms; deletion of improvements to Toro Park; reduction in the size of one parcel; and reduction of parking spots from 250 to 100. Highway 68 also asserts that more than 131 of the original 212 lots were relocated during the project approval process.

Respondents contend that Highway 68’s arguments lack merit because the changes to project components asserted by Highway 68, and the County’s approval of Alternative 5 incorporating those changes, were consistent with CEQA’s mandate that a public agency approve the environmentally superior project alternative. Respondents further argue that modifying a project “as originally proposed in order to lessen its environmental effects” does not constitute a change in the project description since CEQA encourages modification to avoid or reduce environmental impacts. As to Highway 68’s contention that the 2013 conservation easement rendered the project description inaccurate, respondents insist that this issue was not raised below and should be disregarded due to Highway 68’s failure to exhaust administrative remedies.

In performing our independent review regarding the adequacy of the project description we have found the decision in *South of Market, supra*, 33 Cal.App.5th 321 to be instructive. The *South of Market* court explained that “ ‘[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project;

⁵ We grant the parties’ joint motion for judicial notice of the “ ‘Location Map,’ which is attached to the staff report for the August, 27, 2013, County Board of Supervisors (Board) meeting, at which the Board adopted Resolution No. 13-291, authorizing the County’s Director of Resource Management to prepare documents for conserving 7.68 of Toro Park as habitat mitigation for the Blackie Road Safety Improvement project (the ‘Conservation Easement’)” as an administrative agency record. (Evid. Code, § 452, subd. (c).)

indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.’ [Citation.] The whole point of requiring evaluation of alternatives in the DEIR is to allow thoughtful consideration and public participation regarding other options that may be less harmful to the environment. [Citation.] ‘CEQA does not handcuff decisionmakers The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed. Decisionmakers should have the flexibility to implement that portion of a project which satisfies their environmental concerns.’ [Citation.] We do not conclude the project description is inadequate because the ultimate approval adopted characteristics of one of the proposed alternatives; that in fact, is one of the key purposes of the CEQA process.” (*Id.* at pp. 335-336, fn. omitted.)

Accordingly, in *South of Market* the appellate court rejected the project opponent’s contention that the project description was inadequate under CEQA because “the DEIR presented ‘multiple possible Projects rather than a finite description of a single project[.]’ ” (*South of Market, supra*, 33 Cal.App.5th at pp. 333-334.) The court concluded to the contrary that “the EIR in this case described one project—a mixed-use development involving the retention of two historic buildings, the demolition of all other buildings on the site, and the construction of four new buildings and active ground floor space—with two options for different allocations of residential and office units.” (*Id.* at pp. 333-334; see also *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 292 [addition of eight housing units is the type of change expected during the CEQA process and did not render project description defective]; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055 (*Treasure Island*) [project description adequate where the basic characteristics of the project “remained accurate, stable, and finite throughout the EIR process”].

In contrast, the project description was found to be inadequate in *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, because “[m]assive fruits blossomed from the tiny seed of the initial project description” to “a vastly wider proposal,” which “frustrated CEQA's public information aims.” (*Id.* at pp. 199-200.) More recently, in *Washoe Meadows v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277, the appellate court determined that “the five dramatically different projects [described] in the DEIR did not constitute a stable project description under CEQA.” (*Id.* at p. 290.)

In the present case, as described in the DEIR, “the proposed project would subdivide nine irregularly shaped parcels totaling approximately 870 acres to allow for the following: approximately 192 acres of low-density residential land uses providing a total of 212 residential units consisting of 146 market-rate residential lots, 23 market-rate clustered housing units, and 43 inclusionary units; approximately 600 acres of open space on three parcels (Parcels A, B, and C); approximately 35 acres of agricultural/industrial land uses on one parcel (Parcel D); and approximately 43 acres of roadways.”

The DEIR also discussed 4 project alternatives, including “Alternative 1–No Project/No Development”; “Alternative 2–‘Flatland’ Subdivision Design”; “Alternative 3–‘Reduced Impact’ Subdivision Design”; and “Alternative 4–‘Compact Footprint Subdivision Design.” The RDEIR included a new alternative, Alternative 5, which refined Alternative 3 and was identified in the RDEIR as the environmentally superior alternative to the project as originally proposed.

The RDEIR stated: “Similar to Alternative 3, [Alternative 5] reconfigures and reduces lots, increases open space by approximately 101 acres, substantially reduces the total area of potential development, further reduces the size of the winery-related uses, and further adjusts the density and lot pattern across the project site” Specifically, Alternative 5 reduced the total unit count from 212 to 185 housing units, “consisting of a total of 168 market-rate lots and 17 below market rate units.” Alternative 5 also proposed that primary access to the Ferrini Ranch project would be a new signalized intersection at

Highway 68, eliminating the previously proposed Ferrini Ranch Road that would have run through Toro Park.

The RDEIR concluded that “Alternative 5 reduces the project’s unit count, increases the amount of open space, and avoids or reduces impacts in the areas of biological, viewshed, public services, cultural, land use (loss of parkland and land use compatibility) and traffic when compared to the proposed project. For these reasons, Alternative 5 is considered the environmentally superior option.”

We determine that the project description for the Ferrini Ranch project was adequate under CEQA because the basic characteristics of the project—a residential subdivision located on an 870-acre property fronting on and south of Highway 68—remained accurate and stable throughout the EIR process. (See *Treasure Island, supra*, 227 Cal.App.4th at p. 1055.) The changes in the project, as described in Alternative 5 in the RDEIR, from the project as described in the DEIR were changes made to reduce or avoid environmental impacts, “one of the key purposes of the CEQA process.” (*South of Market, supra*, 33 Cal.5th at p. 336.) Similar to *South of Market*, we therefore conclude that the County’s ultimate approval of Alternative 5 did not make the project description inadequate. (See *id.* at p. 336.) Having reached our conclusion on the merits, we need not address respondents’ argument that we disregard Highway 68’s contention that the 2013 conservation easement rendered the project description inaccurate because Highway 68 failed to exhaust administrative remedies.

2. Alternatives Analysis

Highway 68 contends that the EIR’s analysis of project alternatives did not meet the requirements of CEQA for several reasons, including failure to analyze a reasonable range of feasible alternatives; inadequate comparison of the environmental impacts of the subdivision entryway in Alternative 5 and the entryway in the original project; and failure to compare alternatives to a feasible project. We will begin our evaluation with an overview of CEQA’s requirements for the alternatives analysis in an EIR.

The California Supreme Court has instructed that “[t]he EIR must set forth not only environmental impacts and mitigation measures to be reviewed and considered by state and local agencies, but also project alternatives [citations]—*including a ‘no project’ alternative.* ([Guidelines,] § 15126.6, italics added.) As we have said, ‘the mitigation and alternatives discussion forms the core of the EIR.’ [Citation.]” (*Friends of the Eel River v. North Coast Railroad Authority* (2018) 3 Cal.5th 677, 713.)

Our Supreme Court has also stated the requirements for the alternatives discussion in an EIR. “The CEQA Guidelines state that an EIR must ‘describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project’ ([Guidelines,] § 15126.6, subd. (a).) An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. [Citations.]” (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163 (*Bay-Delta*).

However, “‘[t]here is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.’ ([Guidelines,] § 15126.6, subd. (a).) The rule of reason ‘requires the EIR to set forth only those alternatives necessary to permit a reasoned choice’ and to ‘examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.’ (*Id.*, § 15126.6, subd. (f).)” (*Bay-Delta, supra*, 43 Cal.4th at p. 1163.)

“[I]t is appellants’ burden to demonstrate that the alternatives analysis is deficient. ‘Where an EIR is challenged as being legally inadequate, a court presumes a public agency’s decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise.’ [Citation.]” (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 987.)

We observe that Highway 68’s contentions regarding the inadequacy of the alternatives analysis are generally based on one claim: the 2013 conservation easement granted in Toro Park rendered infeasible the entryway planned for the original project,

Ferrini Ranch Road, which in turn rendered the entire original project infeasible and caused the EIR's alternatives analysis to be inadequate. Respondents assert that CEQA's requirements for the alternatives analysis in an EIR apply to the project as a whole, and not to an individual component such as the entryway. We agree.

This court stated in *California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4th 957, 993 that “ ‘[t]he pertinent statute and EIR guidelines require that an EIR describe alternatives to the proposed *project*.’ [Citation.] That requirement is ‘applicable only to the project as a whole, not to the various facets thereof, such as grading and access roads.’ [Citations.]” Further, “[a]s provided in the Guidelines: ‘[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish *most of the basic objectives of the project* and could avoid or substantially lessen one or more of the significant effects.’ (Guideline, § 15126.6, subd. (c), italics added.)” (*Id.* at p. 991; see also *Big Rock Mesas Property Owners Assn. v. Board of Supervisors* (1977) 73 Cal.App.3d 218, 227.)

In this case, the RDEIR described the basic objectives of the Ferrini Ranch project as follows: “Establish large permanent open spaces on the property in those areas identified on the plan as open space. [¶] Continue the history of cattle grazing upon a significant portion of the areas designated as open space on the plan. [¶] Secure approvals to create a residential community of 169 market-rate lots along with an additional 43 inclusionary units. [¶] Use a portion of the eastern side of the property, accessed via River Road, for a wine oriented facility of sufficient size to attract visitors and serve as a gateway to the Salinas Valley Wine Corridor. [¶] Create an economically viable and sound plan that will promote the development of this new community and provide sufficient funds to accomplish all of the other project objectives and build the necessary infrastructure. [¶] Provide additional public access and recreational opportunity through a public bike and pedestrian path connecting Toro County Park and River Road on the east and the San Benancio Canyon vicinity on the west.”

As we have noted, the RDEIR analyzed five alternatives: “Alternative 1–No Project/No Development”; “Alternative 2–‘Flatland’ Subdivision Design”; “Alternative 3–‘Reduced Impact’ Subdivision Design”; and “Alternative 4–‘Compact Footprint’ Subdivision Design.” The RDEIR also included a new Alternative 5, “Reduced Impact/Reduced Unit Count.” In the alternatives analysis, the RDEIR described in detail the environmental impacts of each of the five alternatives compared with impacts resulting from the proposed project. Regarding alternative 5, the RDEIR stated: “This alternative is a new alternative included as part of this Recirculated Draft EIR. The Alternative 5 site plan concept further modifies and refines Alternative 3 and proposes a reduction in unit count and additional specific modifications to the proposed project as defined by the 2005 Vesting Tentative Map. This Alternative reduces the total unit count from 212 to 185 units, consisting of a total of 168 market-rate lots and 17 below market rate units.” The RDEIR also stated: “The intent of [Alternative 5] is to avoid and lessen the potential environmental impacts to archaeological, biological, geological, traffic and aesthetic resources.”

Alternative 5 proposed that the primary access to the Ferrini Ranch project would be as follows: “Similar to Alternative 3B, the Ferrini Ranch Subdivision Alternative Project Access (as described in the Ferrini Ranch Subdivision Traffic Impact Report) would realign the existing unsignalized Torero Drive intersection approximately 800 feet to the west on State Route 68. The new Torero Drive connection to SR 68 would include a full-access signalized intersection including a new access connection to the Ferrini Ranch Subdivision on the south side of State Route 68. Similar to Alternative 3B, under Alternative 5, this alternative would eliminate the proposed Ferrini Ranch Road that runs through Toro Park and the associated improvements needed at the park entrance. Under Alternative 5, no portion of the proposed Ferrini Ranch development would be located on park property that is owned and operated by the Monterey County Parks Department.”

We are not convinced by Highway 68's argument that the 2013 conservation easement granted in Toro Park rendered infeasible the entryway planned for the original project, Ferrini Ranch Road, which in turn rendered the entire original project infeasible and caused the EIR's alternatives analysis to be inadequate due to failure to compare feasible alternatives. As we have discussed, CEQA's alternatives "requirement is 'applicable only to the project as a whole, not to the various facets thereof, such as grading and access roads.' [Citations.]" (*California Native Plant Society v. City of Santa Cruz, supra*, 177 Cal.App.4th at p. 993.) Highway 68 has provided no authority for the proposition that where the project's entryway or access road component is changed from the entryway or access road component originally proposed, in order to reduce environmental impacts, that change causes the alternatives analysis to be inadequate under CEQA.

Highway 68 has also failed to demonstrate that the range of alternatives discussed in the RDEIR is inadequate because it does not " 'include those that could feasibly accomplish *most of the basic objectives of the project* and could avoid or substantially lessen one or more of the significant effects.' (Guideline, § 15126.6, subd. (c), italics added.)" (*California Native Plant Society v. City of Santa Cruz, supra*, 177 Cal.App.4th at p. 991.) As this court has stated: "While the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives." (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087 (*Watsonville Pilots*).

Additionally, Highway 68 contends that the alternatives analysis is deficient because the discussion of the environmental impacts of the Alternative 5 entryway in comparison to the environmental impacts of the originally proposed Ferrari Ranch Road entryway is inadequate. According to Highway 68, the RDEIR did not adequately

discuss the visual impacts of the Alternative 5 entryway and provided only a conclusory statement that the environmental impacts of the Alternative 5 entryway would be less than Ferrini Ranch Road.

“An EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making. [Citation.] [Citation.]” (*Sierra Club, supra*, 6 Cal. 5th at p. 513.) “The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. ‘Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. . . . [¶] When the alternatives have been set forth in this manner, an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.’ [Citations.] As with the range of alternatives that must be discussed, the level of analysis is subject to a rule of reason.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1989) 47 Cal.3d 376, 406-407.)

More recently, our Supreme Court reiterated that “ ‘[a]n EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making. [Citation.]’ [Citation.]” (*Sierra Club*, 6 Cal.5th at p. 513.) We find that standard has been met in this case.

Regarding the new primary access point discussed in Alternative 3 and also included in Alternative 5, the RDEIR states that “the new at-grade intersection, would result in the removal of fewer trees compared to the Toro County Park entrance and Ferrini Ranch Road construction due to the smaller construction footprint of this feature and based upon an aerial review of existing tree coverage” “In addition, [the new entryway] would eliminate the portion of Ferrini Ranch Road that runs through Toro Park and is parallel and immediately adjacent to State Route 68 proposed immediately next to pond 18. This alternative therefore avoids road construction immediately adjacent to

Pond 18, which supports a population of California tiger salamander. By eliminating this section of Ferrini Ranch Road both construction and potential permanent impacts are reduced to the breeding pond and the potential estivation habitat that is immediately adjacent to the pond.”

As to visual impacts of the new primary access point in Alternatives 3 and 5, the RDEIR states: “[A] new signalized at-grade intersection and related grading and improvements would be visible along the State Route 68 corridor. However, the visual impact of constructing Ferrini Ranch Road . . . , would be considered to have greater impact due to the location of grading and road cuts within Toro Regional Park and the fact that the proposed road would be immediately adjacent to State Route 68 corridor, including the related cuts and tree removal along that alignment, views would be more prominent since that proposed section of Ferrini Ranch Road (including road and traffic views) would be highly visible to those traveling eastbound along State Route 68. Additionally, [the Ferrini Ranch Road option] would be converting existing open space within public park land to create a section of Ferrini Ranch Road. The combination of all of these factors is considered a significant unavoidable visual impact in the Draft EIR. Additionally, there are a number of signalized intersections already located on State Route 68. For those reasons, [the new primary access point] would have fewer impacts to the State Route 68 scenic highway.” The RDEIR also included several maps depicting the Ferrini Ranch project with the new primary access point, including Figures 4-1C, 4-1D, 4-3A, and 4-3B.

The RDEIR concludes that “[u]nder Alternative 5, a new at-grade intersection and related grading and improvements would be visible along the State Route 68 corridor. However, the visual impact of constructing Ferrini Ranch Road that runs through Toro Park and is parallel and immediately adjacent to State Route 68 under the proposed project, and the related grading, road cuts and tree removal along that alignment, would be considered to have greater impact.”

Based on our review, we find that the alternatives discussion in the RDEIR provided sufficient analysis to allow for informed decision making regarding the new primary access point proposed in Alternative 5 in comparison with the Ferrini Ranch Road access as originally proposed. (See *Sierra Club, supra*, 6 Cal. 5th at p. 513.) We also determine, as we have discussed, that Highway 68 has not met its burden to show that the alternatives analysis is otherwise inadequate. (See *California Native Plant Society v. City of Santa Cruz, supra* 177 Cal. App. 4th at p. 987.)

3. Visual Impacts Analysis

Highway 68 contends that the EIR's analysis of the visual impacts of the Ferrini Ranch project is inadequate because the County did not comply with its policies requiring visually sensitive property to be staked and flagged to indicate the visual impact of the project. According to Highway 68, the County's policies requiring staking and flagging are set forth in the Toro Area Plan, Resolution 09-360 and its predecessor policies. Highway 68 also contends that the EIR's analysis of the visual impacts of the Ferrini Ranch project is inadequate because the analysis did not include "the location of the building envelope on each new parcel."⁶

The general rule is that "the EIR must identify a project's significant effects on the environment and describe feasible measures for mitigating significant adverse impacts. (§ 21001.1; Guidelines, § 15126.4, subd. (a)(1).)" (*Pfeiffer v. City of Sunnyvale City Council, supra*, 200 Cal.App.4th 1552, 1577.) "Whether an EIR has omitted essential information is a procedural question subject to de novo review. [Citations.]" (*Banning Ranch, supra*, 2 Cal.5th 918, 935.)

The California Supreme Court recently addressed the standard for determining whether an EIR's analysis of the environmental impacts of a project is adequate under CEQA: "The ultimate inquiry, as case law and the CEQA guidelines make clear, is

⁶ A building envelope is the "developable areas of each lot." (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1444.)

whether the EIR includes enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’ ([Citations] [‘Whether an EIR will be found in compliance with CEQA involves an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.’]; Guidelines, § 15151 [‘An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.’].)” (*Sierra Club, supra*, 6 Cal.5th at p. 516.)

In short, “the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Sierra Club, supra*, 6 Cal 5th at p. 516.) However, “ ‘[n]oncompliance with CEQA’s information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).)’ [Citations.]” (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1384–1385, fn. omitted (*Sunnyvale West*), disapproved on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 458 (*Neighbors for Smart Rail*.)

“An omission in an EIR’s significant impacts analysis is deemed prejudicial if it deprived the public and decision makers of substantial relevant information about the project’s likely adverse impacts. Although an agency’s failure to disclose information called for by CEQA may be prejudicial ‘regardless of whether a different outcome would have resulted if the public agency had complied’ with the law ([Guidelines,] § 21005, subd. (a)), under CEQA ‘there is no presumption that error is prejudicial’ ([*id.*,] subd. (b)). Insubstantial or merely technical omissions are not grounds for relief. [Citation.] ‘A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation,

thereby thwarting the statutory goals of the EIR process.’ [Citation.]” (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 463.)

We need not determine whether, as Highway 68 contends, that before certifying the EIR the County was required to perform staking and flagging and show the location of building envelopes on the visually sensitive Ferrini Ranch property pursuant to Resolution 09-360⁷ and its predecessor policies. Even assuming, without deciding, that the County should have employed these methodologies to analyze the visual impact of the Ferrini Ranch project, Highway 68 has not shown that the omission is prejudicial.

Our review shows that the EIR includes extensive analysis of the visual impacts of the Ferrini Ranch project, which subdivides a portion of the property into lots on which homes or other structures may be built after the project is approved. Section 3.1 of the DEIR is a 70-page analysis of “the potential impacts of the project on aesthetics and visual resources.” The DEIR states: “The primary visual and aesthetic issues include the change in character to portions of the project site from undeveloped grazing land to rural residential uses and the potential impacts to views from adjacent viewpoints, including State Route 68, River Road, Toro County Park, the Bureau of Land Management (BLM) public land, and surrounding properties.”

⁷ Resolution 09-360 provides in part: “The purpose of staking and/or flagging is to provide visualization and analysis of projects in relation to County policies and regulations. Staking and/or flagging is intended to help planners and the public visualize the mass and form of a proposed project, or to assist in visualizing road cuts in areas of visual sensitivity. Staking and/or flagging: [¶] 1) Shall be required when any of the following conditions exist: [¶] > All or part of the project site is designated with a Design Overlay (‘D’). [¶] > All or part of the project site is designated as Visually Sensitive (‘VS’) on an adopted visual sensitivity map (Toro Area Plan, Greater Monterey Peninsula Area Plan, North County Area Plan). [¶] > When the project/site has potential to create ridgeline development, as determined by the project planner. [¶] When the application includes a variance to height restrictions. [¶] 2) May be required where the project planner determines that the project has potential to create an adverse visual impact. [¶] 3) May be exempted when the project planner determines that no visual analysis is required for the project (e.g. Lot Line Adjustment).”

The methodology used by the County to assess the visual impacts of the Ferrini Ranch project is summarized in the DEIR as follows: “Analysis of potential aesthetic impacts is based upon field review of the project site and surrounding areas, photographs of visual vantage points on and in the vicinity of the project site, a review of Monterey County’s plans and policies, and preparation of visual simulations of the post-project environment. Critical viewshed and visual sensitivity maps . . . were provided by Monterey County. The approach adapted for this visual assessment uses static visual simulations” The DEIR included numerous maps and photographs depicting existing conditions and visual simulations of the proposed development.

The DEIR acknowledged that “[i]mplementation of the project will result in the creation of residential lots and construction of homes and roadway improvements in areas designated as critical viewshed and areas of visual sensitivity, as defined by Monterey County resources maps and the Toro Area Plan. Development within visually sensitive areas is a **potentially significant impact** of the project.”

The DEIR also acknowledged the application of County policies concerning development in areas of visual sensitivity. For example, the DEIR states: “Policy 26.1.6.1 of the *Toro Area Plan* states that no development within areas of visual sensitivity shall be permitted without a finding by the Board of Supervisors or its designee that such development will not adversely affect the natural scenic beauty of the area. Additionally, areas of visual sensitivity shall be reviewed critically for landscaping and building design and siting which will enhance the scenic value of the area. Policy 26.1.6.1 is applicable to portions of the project site. Compliance with these existing development standards and design review provisions of the D and VS zoning districts as defined by Chapters 21.44 and 21.46 the *Monterey County Zoning Code*, respectively, as well as applicable policies of the *Monterey County General Plan* and *Toro Area Plan*, will adequately address most aesthetic and visual impact issues in areas of visual sensitivity. Development standards for all lots and improvements within the

subdivision would require the following: [¶] Flagging and staking of any portion of the project that may have the potential to create a substantially adverse visual impact or be visible from public viewing areas (including Monterey County Planning Department review and consideration of flagging and staking in the field).”

The mitigation measures proposed in the DEIR to reduce the visual impacts were summarized as follows: “The significant impact of visual alterations within the State Route 68 scenic corridor and locally designated scenic roads are remedied by mitigation measures previously identified. Implementation of mitigation measure **MM 3.1-1a**^[8] and existing zoning requirements will mitigate most effects of development along the corridor to a less than significant level by enforcing Monterey County visual protection standards and requiring implementation of specific visual screening and landscaping standards, thereby minimizing the visual effect that development will have within the scenic corridor. Impacts to physical changes at the San Benancio Road access point will also be mitigated to a less than significant level by these measures, where improvements are regulated but not necessarily prohibited. [¶] Similar to the findings under **Impact 3.1-1**, improvements necessary for construction of Ferrini Ranch Road, a linear feature within 100 feet of the state-designated scenic corridor, will also remain **significant and unavoidable** if unable to be relocated through design or through an acceptable alternative.”

Further, the RDEIR’s description of Alternative 5 states that this alternative will have less visual impact than the original Ferrini Ranch proposal, due to design changes including, among other things, reduction in the number of lots, reduction in the size of

⁸ Mitigation measure 3.1-1a states: “Prior to final map approval, the project applicant shall reconfigure the lot and development pattern to relocate building sites for residential lots outside of the critical viewshed areas and 100-foot scenic roadway setback. Buildings on lots where building sites cannot be fully located outside the critical viewshed must not be visible from scenic roadways (SR 68, River Road, or San Benancio Road).”

lots, and constructing of vegetation-covered berms along ridgelines. In particular, Alternative 5 proposed a primary access point, as we have discussed, that is different than Ferrini Ranch Road originally proposed and would have a lesser visual impact.

Our review therefore shows that the EIR's extensive analysis of the visual impacts of the Ferrini Ranch project is adequate under CEQA because the analysis served "its purpose as an informational document" by providing sufficient information regarding the visual impacts "to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision." (Guidelines, § 15151; *Sierra Club, supra*, 6 Cal.5th at p. 516.)

Highway 68 has not met its burden to show that the omission of flagging, staking, and building envelopes was prejudicial because the omission precluded informed decisionmaking and informed public participation regarding the visual impacts of the project. (See *Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 463.) The conclusory assertions of Highway 68 that "the County's failure to stake and flag the subject property made it impossible to conduct the comprehensive and critical analysis required by the Toro Area Plan" and "made it impossible to assess whether the numerous mitigation measures proposed for project approval would . . . cause environmental impacts" is not persuasive in light of the sufficiency of the EIR's detailed visual impacts analysis. The " "courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." ' [Citation.]" (*Sierra Club, supra*, 6 Cal.5th at p. 522.)

We are also not convinced by Highway 68's argument that the County improperly deferred mitigation of visual impacts to a time after project approval. To begin with, Highway 68's reliance on the decision in *Banning Ranch, supra*, 2 Cal.5th 918 is misplaced because that decision is distinguishable.

In *Banning Ranch*, the City of Newport Beach's EIR concerned a proposed development in the coastal zone designated by the Legislature for special protection under the Coastal Act, section 30001.5. (*Banning Ranch, supra*, 2 Cal.5th at p. 392.)

The EIR for the proposed development did not include any analysis of the Coastal Act's requirements for environmentally sensitive habitat areas (ESHA) in its analysis of project alternatives and mitigation measures. (*Banning Ranch, supra*, 2 Cal.5th at p. 392.) Our Supreme Court rejected the City of Newport Beach's argument that ESHA would be considered during the permitting phase of the project, ruling that "[s]uch a delay is inconsistent with CEQA's policy of integrated review. (§ 21003, subd. (a).) [A] lead agency must consider related regulations and matters of regional significance when weighing project alternatives. (Guidelines, § 15126.6.)" (*Banning Ranch, supra*, 2 Cal.5th at p. 939.)

In contrast, in the present case the County extensively considered the visual impacts of the Ferrini Ranch project, as well as the application of the County's regulations and policies governing development in visually sensitive areas. In addition, mitigation of visual impacts was addressed in the conditions of approval attached to Resolution 14-371. For example, Condition 19 states: "CC&R's shall establish design criteria for development of lots within areas of Visual Sensitivity. The County shall be made a party to the design criteria within the CC&R's and shall administer the provisions of the design criteria through review of a discretionary permit (Administrative or Use Permit) based upon visually sensitive zoning overlay criteria. The Design Criteria shall include the following provisions: [¶] 1. Building height shall not exceed 20 feet above average natural grade. [¶] 2. The structures shall be of a low profile design, using the natural topography and vegetation to minimize visibility and reduce visual impacts. [¶] 3. Structure colors shall be natural earth tones. No white colors or bright colors contrasting with the natural setting are permitted. [¶] 4. Materials shall use finishes that minimize reflective surfaces. [¶] 5. Lighting shall be carefully controlled to maintain the quality of darkness. [¶] The Design Criteria shall be placed within the CC&Rs and recorded on the property with recordation of the Final Map."

Deferral of mitigation measures does not always violate CEQA. “ ‘Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.’ (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)” (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 240 (*Center for Biological Diversity*)). “ ‘In sum, “it is sufficient to articulate specific performance criteria and make further [project] approvals contingent on finding a way to meet them.” ’ [Citation.]” (*Id.* at p. 241; see also *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070 [deferral of mitigation did not violate CEQA where county conditioned the issuance of conditional use permit on compliance with a mitigation measure]; *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 838 [deferral of mitigation did not violate CEQA where prior to the issuance of building permits Wal-Mart must submit stormwater management plan for the City’s approval].)

Similarly, the County’s deferral of staking and flagging and the implementation of other mitigation measures to a time after project approval is sufficient under CEQA because the County has articulated specific conditions of approval and mitigation measures pertaining to visual impacts, and has made permits contingent upon compliance. (See *Center for Biological Diversity, supra*, 234 Cal. App. 4th at p. 241.)

4. Conclusion

For the reasons we have discussed, we find no merit in Highway 68’s contention that the County’s approval of the Ferrini Ranch project should be set aside because the EIR’s project description of the project did not comply with CEQA, the EIR’s alternatives analysis did not comply with CEQA, and the EIR’s analysis of the visual impacts of the project is legally inadequate. We will therefore affirm the August 16, 2017 judgment denying and dismissing Highway 68’s writ petition.

D. Landwatch's Appeal

Landwatch contends that the EIR is inadequate with regard to the Ferrini Ranch project's water demand and supply analysis because (1) the cumulative impact analysis does not explain or provide water demand assumptions, fails to disclose the need for additional groundwater management projects, improperly uses a ratio theory, and post-EIR disclosures did not cure the defects; (2) the FEIR does not supply the demand and supply data requested in the comments, (3) recirculation of the EIR is required because new information shows the EIR is inadequate; and (4) there is no substantial evidence to support the finding that payment of fees is adequate mitigation. We will begin our review with the information about the Ferrini Ranch project's water demand and supply that is summarized in the DEIR and the FEIR.

DEIR and FEIR Summary

In summary, the DEIR states: "The proposed project would be provided water service by California Water Service Company." "The two principal aquifers serving the project are the 180-Foot Aquifer and the 400-Foot Aquifer of the Salinas Valley Groundwater Basin." "Implementation of the proposed project would result in a gross increase in groundwater pumping of approximately 113 acre-feet per year (AFY), which would result in an increased long-term water demand on the Salinas Valley Groundwater Basin. However, the project site is located within [Monterey County Water Resources Agency's] Zone 2C and will obtain potable water from the 180/400-Foot Aquifer Subbasin. The quantity and source of water would result in a **less than significant impact** on groundwater resources."

Regarding the cumulative impact of the Ferrini Ranch project's water demands, the DEIR concludes that "[i]mplementation of the proposed project, when combined with other reasonably foreseeable projects, would increase groundwater pumping in the Salinas Valley Groundwater Basin. This is considered a **less than significant cumulative impact**. [¶] As discussed in this section, the proposed project is located

within Monterey County Water Resources Agency's Zone 2C, which provides additional water resources from the Nacimiento and San Antonio Reservoirs via the Salinas River. The project applicant contributes financially to the [Salinas Valley Water Project] and its groundwater management strategies. The project's impact on the groundwater basin is therefore mitigated by this contribution. [¶] According to [Department of Water Resources] basin maps, the project site is located in the northeast portion of the Corral de Tierra Subbasin (DWR 2010) of the Salinas Valley Groundwater Basin. However, potable water for the proposed project would be provided by wells in [California Water Service Company's] Salinas District, which procures water from the 180/400-Foot Aquifer Subbasin of the Salinas Valley Groundwater Basin. Since the [Salinas Valley Water Project] went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins. [¶] Although the [Salinas Valley Water Project] will not deliver potable water to the project site, it was developed to meet projected water demands based on development and population forecasts. Development forecasts for the project site previously assumed a maximum allowable buildout of 447 units. The proposed project now includes only 212 residential lots and has been deemed consistent with [Association of Monterey Bay Government's] 2008 population forecasts. The higher density (and associated water consumption) was accounted for in the [Salinas Valley Water Project]. For all of these reasons, the cumulative effect of the project on water demand is considered **less than significant.**"

The FEIR further explains that "[t]he project is estimated to have a total demand on this subbasin of 95 acre feet per year. The DEIR found this demand on the subbasin was less than significant due to a combination of factors. First is the insignificant demand (95 acre feet per year) versus the total storage capacity of the subbasin (7.24 million acre feet per year). Second is the small demand of this project (95 AFY) in relation to the overall annual demand for the subbasin in 2005 of 118,372 AFY

(Agricultural Pumping: 97,028 and Urban Pumping 21,344 (Monterey County Water Resources Agency 2007).) It should be noted that the total pumping from the [Salinas Valley Groundwater Basin] is 500,000 AFY with a 90/10 split between agriculture and urban uses. Third is the consistency with the [California Water Services Company] Urban Water Management Plan, and fourth is the positive influence of the suite of projects implemented to combat seawater intrusion[:] the Salinas Valley Water Project, CSIP, Lake Nacimiento and Lake San Antonio. DEIR page 3.6-17 provides graphs demonstrating that the rate [of] seawater intrusion has been slowing since 2005. The most recent data from the [Monterey County Water Resources Agency] shows a continued slowing of the seawater intrusion.”

1. Cumulative Impacts Analysis

CEQA Requirements

“An EIR must ‘discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable,’ which “means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (CEQA Guidelines, §§ 15130, subd. (a),^{9]} 15065, subd. (a)(3)^{10]}; see § 21083,

⁹ Guidelines, section 15130, subdivision (a) provides: “An EIR shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable, as defined in section 15065(a)(3). Where a lead agency is examining a project with an incremental effect that is not ‘cumulatively considerable,’ a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

¹⁰ Guidelines, section 15065, subdivision (a)(3) provides: “A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur: [¶] . . . [¶] The project has possible environmental effects that are individually limited but cumulatively considerable. ‘Cumulatively considerable’ means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”

subd. (b)(2).) An adequate discussion of significant cumulative impacts ordinarily includes either ‘[a] list of past, present, and probable future projects producing related or cumulative impacts’ or ‘[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. (CEQA Guidelines, § 15130, subd. (b)(1).)’ (*Sunnyvale West, supra*, 190 Cal.App.4th at p. 1381, fn. omitted.)

Standard of Review

The standard of review that applies to the issue of whether an agency adequately determined under CEQA that a project’s incremental effect is not cumulatively considerable is substantial evidence. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358 (*Leonoff*)); see also *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 622 [A decision to not identify an impact as significant is reviewed for substantial evidence].)

The party challenging the agency’s findings in the EIR must affirmatively show that there is no substantial evidence in the record to support the agency’s findings. (*Native Plant Society, supra*, 172 Cal.App.4th at p. 626.) This requires setting forth all of the evidence material to the agency’s finding, then showing that the evidence could not reasonably support the finding. (*Ibid.*) “[S]imply pointing to portions of the administrative record” that arguably supports the position of the party challenging the EIR is insufficient. (*Ibid.*)

Under the substantial evidence standard of review, Landwatch therefore has the following burden: it must show that the EIR is inadequate because it did not provide information and reasonable inferences from which a fair argument can be made to support the DEIR’s conclusion that the Ferrini Ranch project’s contribution to the cumulative effect on water is not cumulatively considerable.

Analysis

For several reasons, we determine that Landwatch has not met its burden. First, Landwatch contends that the EIR's inadequate analysis of the Ferrini Ranch's cumulative water impact constitutes a failure to meet the information disclosure requirements of CEQA and is therefore a failure to proceed in the manner required by law. Respondents point out that Landwatch's challenge to the County's determinations regarding the project's cumulative water impact raises factual issues, which are not procedural defects subject to de novo review. We agree with respondents, since, as this court has stated, the issue of whether an agency adequately determined under CEQA that a project's incremental effect is not cumulatively considerable is substantial evidence. (*Leonoff, supra*, 222 Cal.App.3d at p. 1358; see also *Treasure Island, supra*, 227 Cal.App.4th at p. 1046 [rejecting appellant's efforts to reframe factual issues to allege procedural violations under CEQA].)

Second, Landwatch's framing of the cumulative impacts issue misconstrues the information provided in the DEIR. Landwatch asserts that "the EIR's claim that the cumulative *impacts* from *using* that supply are less than significant *depends critically* on the claim that the existing groundwater management projects will balance the Basin hydrologically and stop seawater intrusion." (Italics added.) Landwatch further asserts that "[b]ecause it assumes existing projects are sufficient, the EIR fails to disclose that overdraft and seawater intrusion will continue if the necessary additional water projects are not constructed."

However, our review shows that the DEIR did not base its conclusion that the Ferrini Ranch project's water impact was not cumulatively considerable on the ability of groundwater management projects to hydrologically balance the groundwater basins and stop seawater intrusions. Regarding the Salinas Valley Water Project, the DEIR indicates that water balance and the cessation of seawater intrusions is a long term objective of that groundwater management project: "The Salinas Valley Water Project (SVWP)

provides for the long-term management and protection of groundwater resources in the basin by meeting the following objectives: stopping seawater intrusion and providing adequate water supplies and flexibility to meet current and future (year 2030) needs. Through the construction of a variety of improvement projects at the San Antonio and Nacimiento Reservoirs and along the Salinas River, the [Silicon Valley Management Project] provides the surface water supply.”

The DEIR also provides water demand and supply data for the Ferrini Ranch project. For example, the DEIR states: “Applying water demand rates and loss rates similar to those identified for other approved developments (i.e., September Ranch, Monterra, and Tehema) would result in a water demand of approximately 95.17 AFY[.]” “As shown in Table 3.6-3, the proposed project would result in an estimated gross water demand of 89.55 AFY for residential use and 5.62 AFY for agricultural/industrial use for a total water consumption rate of 95.17 AFY, which is approximately 94.67 AFY greater than the pre-project water demand of 0.5 AFY.”

In addition, the DEIR states: “The 180/400-Foot Aquifer Subbasin has an estimated total storage capacity of approximately 7,240,000 acre-feet of groundwater, with the two main water-bearing units being the 180-Foot Aquifer and the 400-Foot Aquifer (named for the average depth at which they occur) (DWR 2004).” “According to the [California Water Services Company], the wells in the Spreckels area of the Salinas District have a design capacity of producing approximately 4,260 gallons per minute (GPM). Currently, [California Water Services Company] are serving approximately 2,216 connections with an average demand of 1,464.72 AFY (approximately 908 GPM) (He 2007). The project’s estimated water use of 95 AFY represents a 6 percent increase over existing demand from these wells. However, the wells in this area are operating at only 34 percent of their capacity. The project’s water demand, relative to the size of the groundwater basin and capacity of the existing water delivery system, is not significant

with respect to neighboring wells and stabilizing groundwater levels in the basin as a whole.”

The DEIR further states: “Since the project site is located within [Monterey County Water Resource Agency’s] Zone 2C, it benefits from the Salinas Valley Water Project. . . . [T]he [Salinas Valley Water Project] was developed by the [Monterey County Water Resource Agency] to address water resource management issues within the Salinas Valley and provide for the long-term management and protection of groundwater resources. Since construction of the [Salinas Valley Water Project], groundwater levels are rising in some areas of the Salinas Valley, and the basin as a whole appears to be becoming more hydrologically balanced. Because the project is within the benefit area of Zone 2C, and due to the relatively large size of the groundwater basin compared to project demand, increased pumping within the 180/400-Foot Aquifer Subbasin to serve the proposed project would have a **less than significant impact** on nearby wells. No mitigation measures are necessary.” “The proposed project would result in an increased gross water demand of approximately 95 AFY and would result in approximately 0.11 AFY less recharge. When compared to existing conditions, the proposed project would result in a net negative change of approximately -95 AFY, as summarized in **Table 3.6-4.**”

Landwatch does not attempt to demonstrate that the DEIR lacks sufficient information and reasonable inferences from which a fair argument can be made to support the DEIR’s conclusion that the Ferrini Ranch project’s contribution to the cumulative effect on water impacts is not cumulatively considerable. (See Guidelines, § 15384, subd. (a).) Instead, Landwatch’s argument focuses on its general contention that “[b]ecause it assumes existing projects are sufficient, the EIR fails to disclose that overdraft and seawater intrusion will continue if the necessary additional water projects are not constructed. The EIR also fails to disclose that these necessary additional water

supply projects, which are not yet funded or environmentally reviewed, would themselves cause potentially significant environmental impacts. [Citations.]”

That argument does not satisfy Landwatch’s burden, because the argument seeks information that CEQA does not require. This court has stated: “The purpose of an EIR is to identify and discuss the impact of the proposed project on the existing environment. . . . The FEIR was not required to resolve the overdraft problem, a feat that was far beyond its scope.” (*Watsonville Pilots, supra*, 183 Cal.App.4th at p. 1094.) In *Watsonville Pilots*, this court found sufficient the FEIR’s conclusion “that the impact of the new development contemplated by the 2030 General Plan will be offset by decreased water usage associated with the conversion of farmland and the City’s water conservation measures. Thus, the overdraft problem will remain but will not be exacerbated by the proposed project.” (*Ibid.*) The DEIR reaches a similar conclusion in the present case—that the overdraft problem in the Salinas Valley Groundwater Basin remains, but is not exacerbated by the Ferrini Ranch project due to the low amount of the project’s water demand in combination with the other demands on the available water supply and the water resource management by Salinas Valley Water Project, the Monterey County Water Resource Agency, and other entities.

We are also not convinced by Landwatch’s argument that the DEIR improperly used a ratio theory to support the finding that the Ferrini Ranch project’s contribution to the cumulative impact on water impacts was not cumulatively considerable. Relying on the decision in *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal.App.3d 692 (*Kings County*), Landwatch argues that the FEIR improperly concluded that the project had a less than significant effect due to the project’s “ ‘small demand . . . in relation to the overall annual demand for the subbasin.’ ”

However, the decision in *Kings County* is distinguishable. In *Kings County*, the appellate court ruled that “[u]nder [the project proponent’s] ‘ratio’ theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We

conclude the standard for a cumulative impacts analysis is defined by the use of the term ‘collectively significant’ in Guidelines section 15355^[11] and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project’s relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.” (*Kings County, supra*, 221 Cal.App.3d at p. 721.)

We understand the decision in *Kings County* to stand for the proposition that under CEQA, a project’s cumulative impact cannot be deemed insignificant on the sole ground that the project’s individual contribution to an existing environmental impact is relatively small. (*Kings County, supra*, 221 Cal.App.3d at p. 721.) However, the *Kings County* “ ‘ratio theory’ ” does not mean that “any additional effect a project may have ‘necessarily creates a significant cumulative impact; the “one [additional] molecule rule” is not the law.’ [Citation.] Rather, to conduct a proper assessment of cumulative impact, an EIR must consider not just whether that cumulative impact is significant but also whether the proposed project’s incremental effects are cumulatively considerable. [Citation.]” (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 223,

Here, the record reflects that the DEIR included information and reasonable inferences from which a fair argument may be made that the Ferrini Ranch project’s contribution to the cumulative effect on water is not cumulatively considerable, without

¹¹ Guidelines, section 15355 provides: “ ‘Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. [¶] (a) The individual effects may be changes resulting from a single project or a number of separate projects. [¶] (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”

relying solely on the project's small proportion of water use in relation to the existing impact on groundwater in the Salinas Valley. (See Guidelines, §§ 15130, subd. (a), 15065, subd. (a)(3); § 21083, subd. (b)(2).)

For example, the DEIR states that “[t]he project’s estimated water use of 95 AFY represents a 6 percent increase over existing demand from [the supplying] wells. However, the wells in this area are operating at only 34 percent of their capacity. The project’s water demand, relative to the size of the groundwater basin and capacity of the existing water delivery system, is not significant with respect to neighboring wells and stabilizing groundwater levels in the basin as a whole.”

From this information, it is reasonable to infer that the existing demands of other projects and water users cause a cumulative effect on well water consisting of using 34 percent of supply. Therefore, it is also reasonable to determine that the Ferrini Ranch project’s estimated water use of a 6 percent increase over existing demand from the supplying wells does not constitute an impact on water that is cumulatively considerable. The DEIR therefore satisfies the requirement set forth in the Guidelines, section 15130, subdivision (a) that “[w]here a lead agency is examining a project with an incremental effect that is not ‘cumulatively considerable,’ a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.”

For these reasons, we determine that Landwatch has not met its burden to show that that the EIR is inadequate because it did not provide information and reasonable inferences from which a fair argument can be made to support the DEIR’s conclusion that the Ferrini Ranch project’s contribution to the cumulative effect on water is not cumulatively considerable.

2. Response to Comments

Landwatch contends that some of the County’s responses to its comments on the DEIR was prejudicially inadequate, for the following reasons: “LandWatch’s comments

objected that the [Salinas Valley Water Project] EIR cumulative demand assumptions on which the DEIR relies are outdated and requested a clear statement of 1) supply sustainable without overdraft or seawater intrusion and 2) current and future cumulative demand, and 3) whether these data are consistent with the [Salinas Valley Water Project] EIR assumptions. [Citations.] The FEIR sweeps the issue under the rug through its conclusory response that the [Salinas Valley Water Project] EIR assumptions are ‘conservative’ [citation], but without providing these assumptions or comparing them to current assumptions as requested[.]”

The CEQA Guidelines provide that “[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions and may respond to late comments.” (Guidelines, § 15088, subd. (a).) After the designated lead agency makes a draft EIR available to the public, the public may comment on the draft. (§ 21091, subd. (a).) The agency’s response must “demonstrate a ‘good faith, reasoned analysis,’ ” but “need not be exhaustive.” (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 937.)

In *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459 (*EPIC*), the California Supreme Court stated: “ “[P]ublic review and comment . . . ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise [Citations.] Thus public review provides the dual purpose of bolstering the public's confidence in the agency’s decision and providing the agency with information from a variety of experts and sources.” [Citation.]’ ” (*Id.* at p. 486.)

“If it is established that a state agency’s failure to consider some public comments has frustrated the purpose of the public comment requirements of the environmental review process, then the error is prejudicial. [Citation.] . . . [¶] On the other hand, an

agency's failure to consider public comments is not necessarily prejudicial.” (*EPIC, supra*, 44 Cal.4th at p. 487, fn. omitted.) “Agencies generally have considerable leeway regarding such response.” (*Id.* at p. 487, fn. 9.)

In the present case, we determine that that even assuming that the County failed to provide written responses to comments as Landwatch asserts, the error was not prejudicial. Landwatch complains that the County's responses fail to answer Landwatch's query as to “whether the substantially greater pumping than assumed in the [Salinas Valley Water Project] EIR precludes reliance on existing projects to balance the Basin and halt seawater intrusion.” “LandWatch's DEIR comments objected to the County's ‘uncritical reliance on the [Salinas Valley Water Project] and the [Salinas Valley Water Project] EIR despite unanticipated changes to existing and projected land use and water demand.’ ”

We understand Landwatch to be commenting on its concern that the DEIR for the Ferrini Ranch project has not provided sufficient data to show that the overdraft and seawater intrusion problems in the Salinas Valley groundwater basin will be solved by participation in the Salinas Valley Water Project. Again, however, Landwatch seeks information that CEQA does not require. We reiterate that “[t]he purpose of an EIR is to identify and discuss the impact of the proposed project on the existing environment. . . . The FEIR was not required to resolve the overdraft problem, a feat that was far beyond its scope.” (*Watsonville Pilots, supra*, 183 Cal.App.4th at p. 1094.) Accordingly, any failure by the County to respond to Landwatch's comments, as Landwatch contends, did not frustrate “the purpose of the public comment requirements of the environmental review process” and the error is not prejudicial. (See *EPIC, supra*, 44 Cal.4th at p. 487.)

3. Recirculation

Landwatch argues that significant new information, consisting of “post-EIR testimony and admissions [that] demonstrate that the County no longer believes that

existing water projects will balance the Basin and halt seawater intrusion” and “there will be impacts if new projects are built” requires recirculation of the EIR.

“Section 21092.1 provides that when a lead agency adds ‘significant new information’ to an EIR after completion of consultation with other agencies and the public (see §§ 21104, 21153) but before certifying the EIR, the lead agency must pursue an additional round of consultation. In [*Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1004) 6 Cal. 4th 1112] at page 1129 [*(Laurel Heights II)*], we held that new information is ‘significant,’ within the meaning of section 21092.1, only if as a result of the additional information ‘the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.’ (Accord, CEQA Guidelines, [§] 15088.5, subd. (a).) Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new substantial impact or a substantially increased impact on the environment. [Citation.] We further held the lead agency’s determination that a newly disclosed impact is not ‘significant’ so as to warrant recirculation is reviewed only for support by substantial evidence. [Citation.]” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447 (*Vineyard*)). “‘[I]n applying the substantial evidence standard, “the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.”’ [Citations.]” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1135.)

Applying the standard of review as directed by our Supreme Court, we determine that Landwatch has failed to show that recirculation was required under CEQA because there was new information that was significant because it deprived “ ‘the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.’ ” (*Vineyard, supra*, 40 Cal.4th at p. 447.) The information asserted by Landwatch does not constitute significant

new information under CEQA. As we have discussed, the DEIR did not base its conclusion that the Ferrini Ranch project's water impact was not cumulatively considerable on the ability of groundwater management projects to hydrologically balance the groundwater basins and stop seawater intrusions. Further, the omission of information, such as a failure to state in the EIR that "there will be impacts if new projects are built" cannot constitute significant new information under CEQA. We therefore find no merit in Landwatch's contention that recirculation of the EIR is required.

4. Fee-based Mitigation

Landwatch contends that "[p]aying impact fees for existing groundwater management projects is not adequate mitigation because those projects will not halt seawater intrusion."

The DEIR states: "[T]he [Monterey County Water Resources Agency] constructed the Salinas Valley Water Project to address water resource management issues within the Salinas Valley. The [Salinas Valley Water Project] provides for the long-term management and protection of groundwater resources by stopping seawater intrusion and providing adequate water supplies and flexibility to meet the current and future water demand. In addition, the [Salinas Valley Water Project] provides the surface water supply necessary to attain a hydrologically balanced groundwater basin. The [Salinas Valley Water Project] went into operation in 2010. . . . [T]hese improvements were funded by a special assessment zone, MCWRA Zone 2C. Property owners in Zone 2C are assessed a special tax to fund the [Salinas Valley Water Project]. Although the [Salinas Valley Water Project] does not physically deliver potable water to urban users, it does provide water to agricultural users, which in turn reduces pumping of groundwater for agricultural uses and makes more groundwater available for urban uses. The project site is located in Zone 2C and will obtain its water source from the Salinas Valley Groundwater Basin that benefits from the [Salinas Valley Water Project]. Since the

project site is located within Zone 2C, the property owner contributes financially towards the [Salinas Valley Water Project]. For these reasons, the proposed project is considered to have a long-term sustainable groundwater supply, and this would be considered a **less than significant impact.**”

This court has stated: “Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under CEQA. [Citations.] The CEQA Guidelines also recognize that when an impact is not unique to a single project, but is instead the result of cumulative conditions, the only feasible mitigation may involve adoption of ordinances or other regulations designed to address the cumulative impact. (Guidelines, § 15130, subd. (c).) Section 15130 of the Guidelines now specifically provides that an EIR may determine that a project’s contribution to a cumulative impact may be mitigated by requiring the project ‘to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.’ (Guidelines, § 15130, subd. (a)(3).)” (*Save Our Peninsula Committee v. Monterey County Bd. Supervisors* (2001) 87 Cal.App.4th 99, 140 (*Save Our Peninsula*)).

Here, the DEIR indicates that the property owner of the Ferrini Ranch project contributes financially towards the Salinas Valley Water Project, which constitutes a mitigation measure designed to alleviate the impact of the Ferrini Ranch project and other water users with the objective of protecting groundwater resources by stopping seawater intrusion. Although “a commitment to pay fees without any evidence that mitigation will actually occur is inadequate,” Landwatch has not shown that the Salinas Valley Water Project would not mitigate the Ferrini Ranch project’s impact on groundwater resources. (See *Save Our Peninsula, supra*, 87 Cal.App.4th at p. 140.)

Landwatch’s argument is based on the proposition that a financial contribution to the Salinas Valley Water Project does not constitute mitigation because the Salinas Valley Water Project has not eliminated all seawater intrusion in the Salinas Valley groundwater basin. However, mitigation under CEQA is not defined as elimination of an

adverse environmental effect. “CEQA requires that an EIR indicate the ways in which a project’s significant effects can be mitigated, by setting forth ‘[m]itigation measures proposed to minimize significant effects on the environment.’” ([§§] 21100, subd. (b)(3), 21002.1, subd. (a), 21061.) The discussion should identify mitigation measures which ‘could reasonably be expected to reduce adverse impacts if required as conditions of approving the project.’ (Guidelines, former § 15126, subd. (c), now § 15126.4, subd. (a)(1)(A).)” (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 139.)

Therefore, we are not convinced by Landwatch’s argument that the EIR is inadequate because the fee-based mitigation measure of the Salinas Valley Water Project is inadequate.

5. Conclusion

For these reasons, we find no merit in Landwatch’s contentions that the EIR is inadequate with regard to the Ferrini Ranch project’s water demand and supply analysis because (1) the cumulative impact analysis does not explain or provide water demand assumptions, fails to disclose the need for additional groundwater management projects, improperly uses a ratio theory, and post-EIR disclosures did not cure the defects; (2) the FEIR does not supply the demand and supply data requested in the comments, (3) recirculation of the EIR is required because new information shows the EIR is inadequate; and (4) there is no substantial evidence to support the finding that payment of fees is adequate mitigation. We will therefore affirm the August 16, 2017 judgment denying and dismissing Landwatch’s writ petition.

III. DISPOSITION

The August 16, 2017 judgment denying and dismissing Highway 68’s petition for writ of mandate is affirmed. The August 16, 2017 judgment denying and dismissing Landwatch’s petition for writ of mandate is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

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