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4 **SUPERIOR COURT OF CALIFORNIA**
5 **COUNTY OF MONTEREY**

6 meyer Community Group; Landwatch
7 Monterey County
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Petitioners,

Case No.: M131913
[consolidated with
M131893]

vs.

INTENDED DECISION

County of Monterey; Monterey County Board
of Supervisors

Respondents.

Harper Canyon Realty, LLC; Does 1-25,
inclusive

Real Parties in Interest.

This matter came on for court trial on May 3, 2018. All sides were represented through their respective attorneys. The matter was argued and taken under submission.

This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590(c)(1).)

Background

The proposed project would involve the subdivision of 344 acres into 17 lots upon 164 acres and the creation of one 180-acre remainder parcel (the Project). Real Party in Interest Harper Canyon Realty, LLC (Real Party) would donate approximately 154 acres of the remainder parcel to the Monterey County Parks Department, which would be used to expand Toro Park. The Project site (the Property) is located upon the State Road 68 (SR 68) corridor, just south of SR 68 along San Benancio Road.

1 The initial Project application was filed on November 22, 2002. A Draft Environmental
2 Impact Report (DEIR) was prepared and circulated in October 2008. Subsequently, the
3 Transportation Agency of Monterey County (TAMC) adopted its Regional Development Impact
4 Fee program (RDIF). As a result, the County recirculated the DEIR's traffic chapter for further
5 comment. The review period for the Recirculated DEIR (RDEIR) ended on February 1, 2010.

6
7 The County circulated a Final EIR (FEIR) in June 2010. In the fall of 2010, the Project
8 was put on hold because Highway 68 Coalition filed a formal complaint to the California Public
9 Utilities Commission regarding the Project's proposed water treatment system. By the time the
10 complaint was dismissed, conditions had changed. Consequently, in December 2013, the
11 County issued a revised FEIR, which updated several of the County's previous responses to
12 comments. The County opined that the modification did not trigger recirculation.

13 Because the FEIR made many changes to its Groundwater Resources and
14 Hydrogeology chapter, it included a revised version of that chapter in strike-out format. The
15 FEIR concluded that these changes "do not result in or document any new significant
16 environmental impacts; do not increase or document the severity of an environment impact; nor
17 do the changes result in project alternatives or mitigation measures that are considerably
18 different than those previously analyzed in the DEIR. The revisions and information in the FEIR
19 serve to clarify, amplify or otherwise result in insignificant modifications to the DEIR. For these
20 reasons, recirculation is not required . . ."

21
22 On February 12, 2014, the Planning Commission denied Real Party's application. The
23 Commission found that the Project was inconsistent with 1982 General Plan Goal 53 ["to
24 promote adequate water service for all county needs"]; Objective 53.1 ["[a]chieve a sustained
25 level of adequate water services"]; Policy 53.1.3 ["[t]he County shall not allow water consuming
26 development in areas which do not have proven adequate water supplies"]; and Toro Area Plan
27 Policy 26.1.4.3 [requirement that an applicant for a subdivision provide evidence of a "assured
28

1 long-term water supply in terms of yield in quality”]. As to the 1982 General Plan, the Planning
2 Commission found:

3 “The new homes will use water and therefore are considered to be ‘water consuming
4 development’ under Policy 53.1.3. The new well proposed for the project is located in Zone 2C,
5 a benefit assessment zone for the Salinas Valley Water Project; however, public testimony . . .
6 raised questions based on the *Salinas Valley Historical Benefits Analysis* (Montgomery Watson,
7 1998) about whether the subarea where the proposed project’s new well is located receives
8 hydrologic benefits from the Salinas Valley Water Project”

9
10 As to Toro Area Plan Policy 26.1.4, the Commission found:

11 “Although the new well proposed for the project is located in Zone 2C, a benefit
12 assessment zone for the Salinas Valley Water Project, public testimony . . . raised questions
13 based on the *Salinas Valley Historical Benefits Analysis* (Montgomery Watson, 1998) about
14 whether the subarea where the proposed project’s new well is located receives hydrologic
15 benefits from the Salinas Valley Water Project. Accordingly, the Planning Commission finds that
16 the project does not have an assured long term water supply and is therefore inconsistent with
17 Policy 26.1.4.3.”

18
19 The Commission did not address CEQA. Instead, it found that CEQA did not apply
20 because the Project had been denied as inconsistent with the County’s General Plan.

21 On February 24, 2014, Real Party appealed to the Board of Supervisors (the Board).
22 The Board took up the matter on May 13, 2014. Following a public hearing, the Board directed
23 staff to return with a draft resolution to deny the appeal and the Project, requested that Real
24 Party provide updated water quality and quantity testing data on Real Party’s wells, and
25 continued the hearing. On October 20, 2014, Environmental Health Bureau staff provided the
26 Board with an update as to the progress of the well testing. Real Party reported it had decided
27 to test both wells, but that only one test had occurred. The Board continued the hearing.
28

1 Test results were presented in a February 7, 2015 report by Bierman Hydrogeologic.
2 The Bierman Report concluded that: (1) the Oaks Well and New Well could each provide
3 sufficient water to supply the 17-unit Project and the 9-unit Oaks subdivision, e.g., 25 gallons
4 per minute (GPM); and (2) monitoring of nearby wells indicated no adverse drawdowns, with
5 one well actually experiencing *increased* groundwater levels.
6

7 On March 13, 2015, the Board took up the matter again, considering both the Bierman
8 Report and additional public testimony. The Board voted to adopt a motion of intent to approve
9 the Project. On April 7, 2015, the Board of Supervisors adopted Resolution No. 15-084, 1)
10 certifying the FEIR; 2) adopting findings and a Statement of Overriding Considerations; 3)
11 upholding Real Party's appeal from the Planning Commission's denial of their application; 4)
12 approving a Combined Development Permit consisting of a Vesting Tentative Map and several
13 Use Permits; and 5) adopting a mitigation Monitoring and Reporting Plan. The Resolution was
14 subject to 110 conditions of approval. The County filed a Notice of Determination on April 9,
15 2015.
16

17 Petitioners Meyer Community Group (Meyer) and Landwatch Monterey County
18 (Landwatch) filed separate actions within weeks of each other.¹ On June 23, 2015, all parties
19 stipulated to consolidate these cases for purposes of trial.

20 Additional facts relevant to each substantive area at issue follow under the appropriate
21 heading.

22 ***Administrative Record***

23 The court admitted the administrative record into evidence.

24 ***Requests for Judicial Notice***

25 The parties seek judicial notice of numerous documents and propositions. "[A]
26 precondition to the taking of judicial notice in either its mandatory or permissive form—any
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28 ¹ The Landwatch action is case number M131893.

1 matter to be judicially noticed must be relevant to a material issue.” (*People ex rel. Lockyer v.*
2 *Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2; *Mangini v. R. J. Reynolds Tobacco*
3 *Co.* (1994) 7 Cal.4th 1057, 1063 [“only relevant material may be noticed”], overruled on other
4 grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1265–1266.) Although all parties
5 explain the legal basis for why their requests are noticeable in the abstract, they do not always
6 articulate the relevance of their requests. The court will infer relevance only when such is clear
7 from the matter for which judicial notice is sought.
8

9 **Landwatch**

10 In support of its opening brief, Landwatch requests that the court take judicial notice of
11 excerpts from the DEIR (Ex. 1) and FEIR (Ex. 2) for the Ferrini Ranch Subdivision project. Both
12 excerpts address potential traffic improvements to SR 68. The FEIR states that a planned 2.3-
13 mile widening of SR 68 “is not currently funded or scheduled for completion.” (Ex. 1, p. 3.) The
14 DEIR states that the County “recognizes that [SR 68] will not be widened to four lanes in its
15 entirety for various reasons” (Ex. 2, p. 2.) Both excerpts are relevant to Landwatch’s
16 challenge to the adequacy of Project mitigation of traffic impacts. Likewise, both excerpts are
17 “official acts” subject to judicial notice under Evidence Code, section 452, subdivision (c). The
18 court therefore takes judicial notice of the existence of Exhibits 1 and 2, but not of the truth of
19 their contents. (*Mangini, supra*, 7 Cal.4th at p. 1063.)
20

21 In support of its reply brief, Landwatch requests judicial notice of an excerpt of Monterey
22 County Resolution 14-371, adopted on December 23, 2014, which approved a Combined
23 Development Permit for the Ferrini Ranch subdivision project. (Ex. 1.) Landwatch contends that
24 the excerpt is relevant because it “admit[s] that additional groundwater management projects,
25 beyond the Salinas Valley Water Project, are in fact needed in order to stabilize declining
26 groundwater levels in the Salinas Valley Groundwater Basin.” Because Real Party has no
27 obligation to stabilize groundwater levels in the entire Groundwater Basin, the excerpt is not
28

1 relevant to any material issue. (See *Cherry Valley Pass Acres and Neighbors v. City of*
2 *Beaumont* (2010) 190 Cal.App.4th 316, 346 [CEQA is not concerned with “the extent to which [a
3 groundwater] [b]asin was in overdraft, but whether and to what extent ... this project ... would
4 impact the [] Basin’s overdraft conditions *beyond existing conditions*”]; *Watsonville Pilots Assn*
5 *v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1094 [an EIR is “not required to resolve [an]
6 overdraft problem, a feat that was far beyond its scope”].) Hence, the court denies Landwatch’s
7 request.
8

9 **Meyer**

10 In support of its opening brief, Meyer requests judicial notice of excerpts of a document it
11 refers to as “Board of Supervisors June 8, 1999 Approval of Monterey County 21st Century
12 Work Program and Authorize Approval of Contracts Not to Exceed \$660,000 and Transfer
13 Funds to Information Technology and Environmental Resource Policy and Exhibit 1 (Monterey
14 County 21st Century).” (Ex 1.) Meyer claims this document is relevant to its General Plan
15 consistency argument. The court grants Meyer’s request under Evidence Code, section 452,
16 subdivision (c), though not for the truth of the document’s contents. (*Mangini, supra*, 7 Cal.4th at
17 p. 1063.)
18

19 In support of its reply brief, Meyer seeks judicial notice of Monterey County Resolution
20 09-360, adopted on July 22, 2009. (Ex. 2.) The Resolution requires that a “staking and flagging”
21 methodology be used “when the project has the potential to create ridgeline development.” (*Id.*,
22 p. 3.) Meyer argues that this methodology was ignored here despite potential ridgeline
23 development. Meyer’s argument was raised for the first time in a declaration in support of its
24 request for judicial notice; it was never raised in briefing. Accordingly, the court declines to take
25 judicial notice of the Resolution. (See *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th
26 1446, 1453.)
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1 Prior to trial, Meyer submitted a third request for judicial notice, this time seeking judicial
2 notice of two pages from an applied hydrogeology text book, which define the terms “hydraulic
3 gradient” (Ex. 1) and “hydrogeology” (Ex. 2). Meyer also seeks judicial notice for a dictionary
4 definition of the term “contiguous.” (Ex 3.) The court takes judicial notice of all three definitions
5 under Evidence Code, section 452, subdivision (h).

6
7 Finally, Meyer’s post-trial request for judicial notice is denied. The case was under
8 submission when Meyer submitted its request; the court authorized no such filing.

9 **Real Party**

10 In support of its opening brief, Real Party seeks judicial notice of seven documents:
11 2010 Monterey County General Plan Policy PS-3.1 and 2010 Toro Area Plan Policy T-1.7 (Ex.
12 A); Revised Supplemental Material to the Monterey County General Plan Final EIR
13 (October 15, 2010), Table 4.3-9a (Ex. B); County of Monterey Code, Chapter 12.90 (Ex. C);
14 excerpts from the County Board of Supervisors’ Resolutions 14-370 and 14-371 (Ex. D);
15 excerpts from the Ferrini Ranch Subdivision project’s DEIR (Ex. E); County of Monterey
16 Ordinance No. 2016-01, enacted on November 8, 2016 (Ex. F); and “Guide for the Preparation
17 of Traffic Impact Studies, Monterey County Resources Management Agency — Public Works
18 Department, March 2014” (Ex G).

19
20 The court takes judicial notice of Exhibits A, C, and D as relevant County legislative
21 enactments. (Evid. Code, § 452, subd. (b); see *City of Monterey v. Carrnshimba* (2013) 215
22 Cal.App.4th 1068, 1077, fn. 5 [taking judicial notice of portions of the Monterey City Code].) The
23 court also takes judicial notice of Exhibits B and D, as relevant official acts of the County. (Evid.
24 Code, § 452, subd. (c).)

25
26 The court declines to take judicial notice of Exhibit F. Real Party seeks judicial notice of
27 that Exhibit to demonstrate the potential availability of future transportation funding in support of
28 the County’s conclusions. The electorate’s decision to approve additional funding for

1 transportation projects came in November 2016, almost 20 months after the County certified the
2 EIR. (See AR 3-115.) The County was not aware that any such decision was forthcoming at the
3 time it certified the EIR. Consequently, that decision is irrelevant to the issues before the court.
4 (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578 [extra-record
5 evidence not admissible when that evidence did not exist “before the agency made its
6 decision”].)

7
8 Likewise, the court declines to take judicial notice of Exhibit G, a County staff document
9 regarding the preparation of traffic impact studies. Landwatch maintains that this document is
10 relevant to show that the County’s prescribed standard for assessing a subdivision’s potential
11 traffic impacts is no longer as conservative as it was when the Project was approved. This
12 contention is immaterial to the issues before the court.

13 In support of supplemental briefing,² Real Party seeks judicial notice of recent property
14 tax bills for the Property, presumably to demonstrate that the Property is both located in the
15 Monterey County Water Resource Agency (MCWRA)’s Zone 2C and that Real Party has been
16 paying its assessments. The court declines to take judicial notice of these documents. The EIR
17 repeatedly stated that the wells that will serve the Property are in Zone 2C. (See, e.g. AR 128,
18 129, 353, 363, 381, 387, 836.) This point is not at issue. Similarly, neither Petitioner has alleged
19 that Real Party has failed to pay Zone 2C assessments. In short, the documents are irrelevant.
20

21 ***Motion to Reopen the Evidence***

22 On May 30, 2018, the County and Real Party (collectively, Movants) jointly moved to
23 reopen the evidence. Movants contend that the court should authorize them to introduce new
24 evidence to address the court’s concerns raised at trial, specifically 1) that the DEIR did not
25 disclose that the Property was in the Corral de Tierra Subbasin of the Salinas Valley
26

27 ² On March 14, 2018, this court requested that the parties provide supplemental briefing prior to trial upon
28 several issues of concern.

1 Groundwater Basin; 2) that two sentences in the FEIR incorrectly claim that a portion of the
2 Property lies within the 180/400-Foot Subbasin rather than the Corral de Tierra Subbasin; and
3 3) whether substantial evidence supports the EIR's conclusion that the Project would result in a
4 less than significant impact to groundwater resources.³ Movants seek to introduce a new
5 declaration of Howard Franklin, Senior MCWRA Hydrologist, and additional argument regarding
6 the aforementioned issues. Movants insists these issues were not "previously identified as
7 issues of concern" to be discussed at trial. Petitioners Meyer Community Group (Meyer) and
8 Landwatch Monterey County (Landwatch) jointly opposed this request on June 22, 2018.
9 Petitioners maintain that Movants were on notice of all three issues and had sufficient
10 opportunity to address them in briefing and oral argument.
11

12 Evidence Code section 320 provides this court with discretion to "regulate the order of
13 proof." Further, the court has the power, under Code of Civil Procedure section 128, subdivision
14 (a)(3), to "provide for the orderly conduct of proceedings before it" The court therefore has
15 authority to determine whether a party should be permitted to reopen the case after submission
16 in order to present additional evidence. (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367,
17 1376-1379; *Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052 & fn. 7.)
18

19 "A motion to reopen a case for further evidence can be granted only on a showing of
20 good cause. [Citation.]" (*Sanchez v. Bay General Hospital* (1981) 116 Cal.App.3d 776, 793.)
21 "A motion to reopen is also subject to a diligence requirement. [Citation.]" (*Broden v. Marin*
22 *Humane Society* (1999) 70 Cal.App.4th 1212, 1222.) "Reopening is not a matter of a right but
23 rests upon the sound discretion of the trial court." (*Sanchez, supra*, 116 Cal.App.3d at p. 793.)
24

25 ³ Movants also contend that substantial evidence supported the Board's decision not to recirculate the
26 EIR. Movants do not identify recirculation as a basis for reopening the evidence, much less propose a
27 basis for relief upon this ground. Recirculation was extensively briefed and argued. Moreover, the specific
28 issue that Movants address, whether recirculation was required under Guidelines, section 15088.5,
subdivision (a)(4), was raised in the court's questions prior to trial and briefed by all parties. Movants are
not entitled to another bite at the apple.

1 Real Party and the County's motion suffers from several defects. First, the bulk of the
2 Motion consists of re-arguments of points addressed at trial. Movants cite the record, not "new
3 evidence" that would warrant reopening the evidence.

4 Second, the declaration that Movants seek to introduce is extra-record evidence. This
5 matter is a writ proceeding brought under Public Resources Code section 21168. Consequently,
6 the court's review must follow the standards set forth in Code of Civil Procedure section 1094.5,
7 subdivision (e). "The general rule in such actions is that judicial review [in such matters] is
8 conducted solely on the record of the proceeding before the administrative agency." (*Sierra*
9 *Club v. California Coastal Com.* (2005) 35 Cal.4th 839, 863, internal citations omitted.) In any
10 such proceeding, a party wishing to submit extra-record evidence must show either that the
11 evidence 1) was improperly excluded at the hearing before the agency; or 2) could not, with the
12 exercise of reasonable diligence, have been produced before the agency. (Code Civ. Proc, §
13 1094.5, subd. (e); *Western States, supra*, 9 Cal.4th at p. 578 [in a CEQA action, these
14 requirements are "very narrowly construed"].) Movants have shown neither that Mr. Franklin's
15 declaration (nor testimony) was improperly excluded below nor that it could not have been
16 produced below. In fact, Mr. Franklin actually testified to the Board concerning the Project. (AR
17 4963-4966.)
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20 Third, Movants provide no authority for their implicit claim that this court was required to
21 advise them of its specific areas of concern prior to trial. Movants claim that, had they "been
22 apprised of the materiality of these issues to the Court prior to the hearing, they would have
23 included the evidence at the hearing." Real Party's counsel stated that Movants "were prepared
24 on multiple issues at the hearing, but not necessarily fully prepared on the precise issues on
25 which the Court expressed such deep concerns." (Declaration of Matthew D. Francois, ¶7.) It is
26 counsel's obligation to prepare for trial; the fact that the court raised certain areas of concern in
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1 questions before trial did not preclude it from raising others at trial.⁴ Put simply, Movants have
2 not satisfied the “diligence requirement.” (*Broden, supra*, 70 Cal.App.4th at p. 1222.)

3 Finally, Movants’ contention that they were unfairly surprised is belied by the facts.
4 Landwatch argued in its briefing that 1) the DEIR did not disclose the Property’s location in the
5 Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin; and 2) revisions to the
6 FEIR to include this information “change[d] the geographic scope of the cumulative impact
7 analysis.” Landwatch further addressed this issue in its response to the court’s questions before
8 trial. Similarly, 1) Landwatch raised the FEIR’s incorrect claim that a portion of the Property is
9 located within the 180/400-Foot Subbasin in its response to the court’s questions before trial;
10 and 2) the question whether substantial evidence supports the EIR’s conclusion that the Project
11 would result in an insignificant impact to groundwater resources was fully briefed and argued.
12

13 The motion is denied.

14 ***Standard of Review***

15 An EIR is presumed legally adequate (*Al Larson Boat Shop, Inc. v. Board of Harbor*
16 *Commissioners* (1993) 18 Cal.App.4th 729, 740; Pub. Resources Code, § 21167.3), and a lead
17 agency’s certification of the EIR is presumed correct (*Sierra Club v. City of Orange* (2008) 163
18 Cal.App.4th 523, 530). A petitioner challenging an EIR bears the burden of proving both that the
19 EIR is legally inadequate and that the agency abused its discretion in certifying it. (*Ibid.*; *Al*
20 *Larson Boat Shop, Inc., supra*, 18 Cal.App.4th at p. 740.)
21

22 Public Resources Code section 21168.5, provides the standard for actions “to attack,
23 review, set aside, void or annul a determination, finding, or decision of a public agency on the
24 grounds of noncompliance with [CEQA].” Under that section, the court must determine “whether
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26 ⁴ As noted *ante*, the court elected to request additional briefing upon particular issues. Had the court not
27 done so — its normal practice — Movants would not be aware of *any* of the court’s concerns prior to
28 trial. Movants would then be responsible for preparing to address, at minimum, any issues raised in
briefing. The court’s request for supplemental briefing did not relieve Movants’ counsel of this
responsibility.

1 there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency
2 has not proceeded in a manner required by law or if the determination or decision is not
3 supported by substantial evidence.” (Pub. Resources Code, § 21168.5.)

4 “The substantial evidence standard is applied to conclusions, findings and
5 determinations. It also applies to challenges to the scope of an EIR’s analysis of a topic, the
6 methodology used for studying an impact and the reliability or accuracy of the data upon which
7 the EIR relied because these types of challenges involve factual questions It also applies
8 to “factual dispute[s] over ‘whether adverse effects have been mitigated or could be better
9 mitigated[.]’” (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898,
10 internal citations omitted; *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th
11 1538, 1546 [“CEQA challenges concerning the amount or type of information contained in the
12 EIR, the scope of the analysis, or the choice of methodology are factual determinations
13 reviewed for substantial evidence”].) For purposes of CEQA, substantial evidence “means
14 enough relevant information and reasonable inferences from this information that a fair
15 argument can be made to support a conclusion, even though other conclusions might also be
16 reached.” (Cal. Code of Regs., tit. 14 [the Guidelines], § 15384, subd. (a).) “Argument,
17 speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or
18 inaccurate . . . does not constitute substantial evidence.” (*Ibid.*)

21 “We must also bear in mind that we do not ‘pass upon the correctness’ of the EIR’s
22 environmental conclusions, but only its sufficiency as an informative document. [Citation] ‘We
23 may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion
24 would have been equally or more reasonable We may not, in sum, substitute our judgment
25 for that of the people and their local representatives.’ [Citations.]” (*Cherry Valley, supra*, 190
26 Cal.App.4th at pp. 328-329.)
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1 By contrast, questions concerning the proper interpretation or application of CEQA's
2 requirements are matters of law. (See *Save our Peninsula Committee v. Monterey County Bd.*
3 *of Supervisors* (2001) 87 Cal.App.4th 99, 118.) CEQA requires that an EIR include detailed
4 information concerning, inter alia, the significant environmental effects of the project under
5 consideration. (Pub. Resources Code §§ 21100, 21100.1.) When an EIR does not fulfill CEQA's
6 informational requirements, the lead agency has failed to proceed in a manner required by law
7 and abused its discretion. (*Save our Peninsula, supra*, 87 Cal.App.4th at pp. 117–118.) “The
8 EIR is the heart of CEQA’ and the integrity of the process is dependent on the adequacy of the
9 EIR. [Citations.]” (*Ibid.*) Hence, “[t]he ultimate decision of whether to approve a project, be that
10 decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-
11 makers, and the public, with the information about the project that is required by CEQA.’
12 [Citation.] The error is prejudicial ‘if the failure to include relevant information precludes informed
13 decisionmaking and informed public participation, thereby thwarting the statutory goals of the
14 EIR process.’ [Citation.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*
15 (1994) 27 Cal.App.4th 713, 721–722.)

18 **Discussion**

19 Petitioners challenge the adequacy of the EIR’s water supply and traffic, aesthetic,
20 cumulative noise, and biological impact analyses. Additionally, Petitioners challenge the EIR’s
21 project description and alternatives analysis. Finally, Petitioners raise non-CEQA challenges
22 under the Subdivision Map Act, claiming that the Project is inconsistent with the County’s 1982
23 General Plan.

24 **1. Groundwater Resources and Hydrogeology**

25 **1.1 Factual Background**

26 **1.1.1 The DEIR**

27 Relevant portions of the DEIR’s groundwater and hydrogeology analysis follow.
28

1.1.1.1 Basic Facts

“The majority of the project site is located in the El Toro Groundwater Basin, with a small portion of the project site is [sic] located in the Salinas Valley Groundwater Basin. The El Toro Groundwater Basin is a much smaller basin than the three major basins in Monterey County (Salinas Valley, Carmel River, and North County). Groundwater flow within the aquifers is driven by the elevation of water levels with respect to sea level. Faults and dipping beds commonly impede the horizontal flow of groundwater thus creating boundaries of groundwater basins. Groundwater flow generally follows the topography and exits the *Toro Area Plan* planning area to the northeast. The Salinas Valley Groundwater Basin primarily flows to the Salinas River.

“Groundwater basins are often broken up into several subareas. Subareas often have aquifers that are interconnected and laterally continuous within their respective geologic units. Therefore, water levels in subareas can influence nearby well water levels in other subareas. In the vicinity of the project site, groundwater is pumped from three waterbearing geologic units: the Aromas-Paso Robles Formation (also referred to as the Paso Robles Formation), the Santa Margarita Formation, and alluvium in local drainages.

“El Toro Groundwater Basin

The five subareas of the El Toro Groundwater Basin include the El Toro Creek, San Benancio Gulch, Corral de Tierra, Watson Creek, and Calera Canyon. The El Toro Creek, Corral de Tierra, San Benancio Gulch subareas and the northern portion of Watson Creek subarea are hydraulically contiguous and hydro-geologically bound on three sides. The area is bound by the Laguna Seca Anticline to the north, by the Chupines fault to the south and by the Harper Fault to the east.

“The El Toro Creek subarea of the El Toro Groundwater Basin includes approximately 408 acres with an estimated total recharge of approximately 74 acre-feet per year (AFY). The two water-bearing aquifers in the El Toro Creek subarea are the alluvial deposits flanking the creek and the Paso Robles Aquifer. A majority of the proposed residential units are located within the El Toro Creek subarea. The San Benancio Gulch subarea of the El Toro Groundwater Basin encompasses approximately 2,676 acres has an annual recharge of approximately 486 AFY. The underlying aquifers in the western portion of the San Benancio Gulch subarea are alluvial deposits, the Paso Robles Aquifer, and the Santa Margarita Aquifer. A portion of the 180-acre remainder parcel and both wells are located within the San Benancio Gulch subarea.

“Salinas Valley Groundwater Basin

“The five subareas of the Salinas Valley Groundwater Basin are the: Forebay, Pressure (180 and 400 [sic] Aquifer), East Side, Arroyo Seco, and Upper Valley. The northern portion of the project site and a portion of the 180-acre ‘Remainder parcel’ along the eastern boundary lie within the Pressure subarea of the Salinas Valley Groundwater Basin. The Pressure subarea . . . is comprised of approximately 114,000 acres between Gonzales and the Monterey Bay. This subarea is composed mostly of confined and semi-confined aquifers separated by clay layers (aquicludes) that limit the amount of vertical recharge. The three primary water-bearing aquifers in the Pressure subarea are the 180-foot aquifer, the 400-foot aquifer, and the Deep aquifer.” (AR 825-826.)

“GROUNDWATER RESOURCES

“Water Quantity

“The proposed project would procure water from two existing wells within the San Benancio Gulch subarea of the El Toro Groundwater Basin, as shown in **Figure 3.6-1, Groundwater Basin and Well Locations**. The San Benancio Gulch subarea overlies two principal aquifers, the Paso Robles Aquifer and the Santa Margarita Aquifer. One of the wells was drilled within the approved Oaks Subdivision along San Benancio Road (hereinafter referred to as the ‘Oaks Well’) and more recently a well was drilled near Harper Canyon Road (Assessor’s Parcel Number 416-621-001-000) (hereinafter referred to as the ‘New Well’). In the vicinity of the Oaks Well, the Paso Robles Aquifer is approximately 400 feet thick and the Santa Margarita Aquifer is approximately 250 feet thick

“Moratorium

On November 24, 1992, the Monterey County Board of Supervisors adopted Ordinance No. 03647, which added the ‘B-8’ Overlay Zoning District to a portion of the El Toro Groundwater Basin as show on **Figure 3.6-2, MCWRA Water Zones and Well Locations** due to water constraints identified and documented in the *Hydrogeologic Update: El Toro Area, Monterey County, California* (MCWRA 1991). The purpose of the B-8 Zoning District was to ‘restrict development and/or intensification of land use in areas where due to water supply, water quality, sewage disposal capabilities, traffic impacts or similar measurable public-facility type constraints, additional development and/or intensification of land use is found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole...’

“An *Additional Hydrogeologic Update, El Toro Area Monterey County, California* (MCWRA 1996) was prepared, which evaluated the overall water supply in the B-8 zoning district and concluded, among other things, that a ‘Revision of the subareas would correct the “paper deficits” that occur in subareas that are hydraulically connected. As a starting point, it is suggested that the subareas north of the trace of the Chupines fault be aggregated into a single unit. This would combine the majority of the subareas of Corral de Tierra, Watson Creek, San Benancio Gulch, and El Toro Creek into a single Hydrogeologic unit’ The [Board] accepted the report [sic] April 1996 but has not lifted the B-8 zoning designation from certain portions of the El Toro Groundwater Basin. Although the proposed project would procure water from within the San Benancio Gulch subarea of the El Toro Groundwater Basin, neither the wells for the proposed project nor the project site are located within a B-8 zoning designation.

“The El Toro Groundwater Study, prepared by Geosyntec Consultants in July 2007 for [MCWRA] determined that water bearing formations in this area dip in a northeasterly direction into the Salinas Valley. The geologic maps and crosssections indicate that there are no barriers restricting groundwater flow from this portion of the El Toro Basin into the Salinas Valley. According to MCWRA, this portion of the El Toro Planning area, including the project site, receive benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and will receive benefits of the [SVWP] upon completion

“Seawater Intrusion

“Monterey County relies almost entirely on groundwater resources to meet water demands. Some of the County’s aquifers experience localized over drafting, a condition where more water is pumped out of an aquifer than is recharged on an average yearly basis. This over drafting condition also causes a decline in the water level thus requiring deeper wells. Over drafting causes seawater intrusion in those aquifers in the northern end of Salinas Valley. When this occurs the aquifers must either be deepened, abandoned or water must be treated to dilute the salt concentration. Sufficient water resources exist within the County but the economic problems of storage and distribution make these resources unattainable.

“Although seawater intrusion is not currently occurring [*sic*] the El Toro Groundwater Basin, the proposed project will procure water from within a special assessment zone ‘Zone 2C’ established for the Salinas Valley Water Project. To help manage and protect groundwater resources, [MCWRA] has developed the SVWP. The [SVWP] addresses the water resources management issues within the Salinas Valley. It 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. A special assessment zone (Zone 2C) has been established to obtain funding for the [SVWP] . . . Customers with [*sic*] Zone 2C are levied special assessment fees in exchange for availability of water. Portions of the El Toro Groundwater Basin are considered to be [in SVWP] Zone 2C. The proposed project would procure water from the Oaks Well and New Well, which are both located within Zone 2C” (AR 829-831, bold and italics in original.)

1.1.1.2 Thresholds

“. . . . For the purposes of this EIR, impacts are considered significant if the following could result from implementation of the proposed project: . . .

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

4) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed.” (AR 833.)

1.1.1.3 Impacts

1.1.1.3.1 Impact 3.6-1 (“Long Term Impact to Groundwater Resources” [Direct Impact])

“Implementation of the proposed project would result in an increase [*sic*] demand of approximately 12.75 acre feet per year, which would result in a long-term water demand increase on the El Toro Groundwater Basin. However, given [*sic*] project’s groundwater recharge capability and the fact that water would be procured through wells located within the Salinas

Valley Water Project Assessment Zone 2C, this increase in demand would be considered a **less than significant impact**.

“According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision* (MCHD 2002, 2003), the proposed project would have a water demand of approximately 12.75 AFY based on a demand value of 0.75 AFY per residence. The proposed project would be served by two existing wells: the Oaks Well and the New Well Both wells procure water from the Paso Robles Aquifer within the San Benancio Gulch subarea of the El Toro Groundwater Basin. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision*, the San Benancio Gulch subarea is recharged by approximately 486 AFY through stormwater generation and precipitation. With buildout of approximately 542 units within the San Benancio Gulch subarea, the water demand is less than the annual recharge rate, providing a water surplus of approximately 29.9 AFY for the San Benancio Gulch subarea. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision*, this water surplus would be able to accommodate the proposed project’s water demand of approximately 12.75 AFY

“Water Supply

“The Oaks Well would supply water to the proposed project and the approved Oaks subdivision, a nine-unit subdivision located along San Benancio Road. The Oaks Well and the New Well would be combined into one water system, which shall be operated by [Cal-Am]. The wells will procure water directly from the San Benancio Gulch subarea of the El Toro Groundwater Basin. Both the Oaks Well and New Well are located within the [SVWP] Assessment Zone 2C and will not exacerbate the deficient water conditions within the El Toro Groundwater Basin

“Water Balance

The El Toro Creek subarea, San Benancio Gulch subarea, Corral de Tierra subarea, and the northern portion of Watson Creek subarea of the El Toro Groundwater Basin are located north of the Chupines fault and are considered to be interconnected. The predicted water demand for these four subareas upon buildout of 1,288 units is less than the recharge rate, providing a water surplus of approximately 320.7 AFY in this area of the El Toro Groundwater Basin, as shown in **Table 3.6-2** The proposed project’s water demand of approximately 12.75 AFY would be met by the 29.9 AFY water surplus within the San Benancio subarea. According to Monterey County Health Department, Environmental Division, there is adequate source capacity for the proposed project and the proposed project should have a negligible effect on the aquifer and nearby existing wells (MCHD 2002a). Therefore, the proposed project would have a long-term water supply and the impact on regional groundwater resources would be considered **less than significant**. No mitigation measures are necessary.” (AR 836-837, bold and italics in original.)

1.1.1.3.2 Impact 3.6-4 (“Cumulative Adversely [*sic*] Affect [*sic*] on the Surrounding Subareas”)

“Implementation of the proposed project (without septic tank systems and minimal landscaping) would reduce the amount of return flow to the El Toro Groundwater Basin by approximately 5.88 AFY. However, the four individual subareas of the Basin are considered interconnected, and combined would have net surplus of approximately 314.82 AFY. Therefore, the loss of 5.88 AFY

would be considered minimal and according to Monterey County Health Department, Environmental Health Division, the proposed project would have negligible effects on the aquifer in this region. This would be considered a **less than significant cumulative impact**.

“The proposed project will include minimal landscaping and will dispose of wastewater at a wastewater treatment plant and will not include septic tanks at the project site. This is not consistent with the assumptions made for the predicted water demand upon buildout of the El Toro Groundwater Basin. The water demand upon buildout of the El Toro Groundwater Basin assumed that approximately 57.6 percent of the total residential demand would be for interior water uses and 42.4 percent for exterior water use. Approximately 80 percent of the interior water demand was assumed to return to the groundwater basin through septic tank systems and 20 percent of the exterior water demand was assumed to be return [sic] to the groundwater basin through percolation. Since wastewater disposal for the proposed project will be conveyed to a wastewater treatment plant and the proposed project would have minimal landscaping, the loss of return flow to the El Toro Groundwater Basin is estimated to be approximately 5.88 AFY (12.75 AFY total water demand x 57.60 percent interior usage x 80 percent interior usage return via septic system). This reduction in water . . . may affect cumulative development within some of the four interconnected subareas located north of the Chupines fault within the El Toro Groundwater Basin.

“As shown in **Table 3.6-4, El Toro Groundwater Basin Water Surplus Upon Buildout Minus Loss of Return Flow**, the loss [sic] 5.88 AFY of return flow lost due to the proposed project is greater than the 4.7 AFY water surplus for the El Toro Creek subarea. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision* the water balance for the El Toro Creek subarea should be recalculated if future developments are proposed within that subarea. Upon buildout of the El Toro Groundwater Basin, the Corral de Tierra subarea would not meet the estimated water demands by approximately 174.4 AFY, with or without the proposed project. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision* development should be extremely rationed in the Corral de Tierra subarea

“Although the loss of return flow associated with the proposed project may have an adverse impact on some of the individual subareas, the four subareas are considered to be interconnected and will maintain an overall water surplus of approximately 314.82 AFY. Since four interconnected areas would have [sic] net surplus of approximately 314.82 AFY, the loss of 5.88 AFY would be considered minimal. According to Monterey County Health Department, Environmental Health Division, the proposed project would have negligible effects on the aquifer in this region (MCDH 2002a). Therefore, this would be considered a **less than significant cumulative impact**.” (AR 842-843, bold and italics in original.)

1.1.2 The FEIR

The FEIR contained comment responses and a revised Groundwater Resources section. The comment responses primarily consisted of a “Master Response.”

1.1.2.1 Master Response 1

"El Toro Groundwater Study"

"The *El Toro Groundwater Study* prepared by Geosyntec in 2007, which was supplemented in January 2010 with *Accompanying Documentation - Geologic Map and Cross-Sections from El Toro to Salinas Valley* (Geosyntec 2010), was reviewed and referenced within the DEIR, as stated on page 3.6-6. The report was reviewed and considered, despite this document not being available until the DEIR was in its final stages of completion. The *El Toro Groundwater Study* has been added to the list of referenced documents for the DEIR.

"The primary objective of the Geosyntec study was to evaluate groundwater resource capacity in a portion of the Salinas Valley Groundwater Basin and to make recommendations regarding the extent of the B-8 zoning overlay, which with some exceptions, restricts development and/or intensification of land use where, due to various infrastructure constraints, the development or intensification is found to be detrimental to the health, safety and welfare (Monterey County Code Section 21.42.030). Although this report was prepared for MCWRA, it used a topography/watershed-based methodology to define its limits of study and did not take into account MCWRA's Zone 2C boundaries or the recognized Corral de Tierra Area subbasin of the Salinas Valley Groundwater Basin. The relationship of the 'Geosyntec Study Area' to the proposed project is illustrated in **Figure MR1-1**.

"According to the Geosyntec study, the primary aquifer system of the study area is in overdraft; however, current and increasing rates of pumping could be sustained for decades in areas with large saturated thicknesses of the El Toro Primary Aquifer System because of the large volume of groundwater in storage. Expansion of the B-8 zoning was recommended for areas with negligible and poor potential for groundwater production.

"According to the Geosyntec study (Figure 7-1), the wells for the proposed project are located in an area noted as have [sic] good potential for groundwater production. Water-bearing formations in the northeastern portion of the subbasin dip in a northeasterly direction toward the Salinas Valley According to the supplemental geologic map and cross sections (MCWRA 2010), the Plio-Pleistocene Continental Deposits (QTc) (Paso Robles Formation) of the study area show that the hydraulic gradient under the El Toro Creek Valley/State Route 68 corridor is generally northeastward and contiguous with the Salinas Valley Groundwater Basin The Geosyntec study is relevant as it provides continuing information and research about local groundwater dynamics. The study area overlaps with a portion of the project site and demonstrates hydraulic connectivity between the larger Salinas Valley Groundwater Basin and the Corral de Tierra Area Subbasin. Section 3.6, Groundwater and Hydrogeology has been revised to clarify the relationship of the Geosyntec study with the proposed project

"The project site lies within the Salinas Valley Groundwater Basin, which is divided into eight subbasins The project site lies within two subbasins: the Corral de Tierra Area subbasin and 180/400-Foot Aquifer (Pressure) subbasin; however, wells that would serve the proposed project are located within the Corral de Tierra Area subbasin. These subbasins are defined and recognized by both MCWRA and California Department of Water Resources and are based on hydrogeologic features. These basins are not contiguous with the Geosyntec Study area referenced above, which is based on topographic and watershed features.

1 “Clarifications Regarding the Groundwater Basin Setting

2 “The Geosyntec Study area is divided into five subareas The project site lies within two
3 subareas: the El Toro Creek subarea and San Benancio Gulch subarea; however, the wells lies
4 [sic] that would serve the proposed project are located within the San Benancio Gulch subarea .
5

6 “Portions of the San Benancio Gulch subarea are within the B-8 Zoning District. As described
7 [in] . . . the DEIR, the purpose of the B-8 Zoning District is to restrict development and/or
8 intensification of land use in areas where due to water supply, water quality, or other
9 constraints, additional development and/or intensification of land use is found to be detrimental
10 to the residents of the area, or the County as a whole. The project site, including the wells that
11 would serve the proposed project, is not located within [sic] B-8 Zoning District [T]he wells
12 for the proposed project are located in an area that has good potential for groundwater
13 production and is not recommended for expansion of the B-8 Zoning District. In addition, the
14 project site and the wells that would serve the proposed project are located within MCWRA
15 Zone 2C The Environmental Setting of Section 3.6, Groundwater and Hydrogeology has
16 been revised to clarify the groundwater basin setting” (AR 128-130, bold and italics in
17 original.)

12 **1.1.2.2 The FEIR’s “Revised: [Chapter] 3.6 Groundwater Resources and**
13 **Hydrogeology”**

14 **1.1.2.2.1 Background**

15 “Since the project specific report was prepared, the *El Toro Groundwater Study* was prepared
16 for MCWRA by Geosyntec in July 2007, and supplemented in June 2010. This report provided
17 additional hydrogeologic information on the region, which has been incorporated herein where
18 appropriate

18 **“GROUNDWATER BASIN**

19 “According to the Department of Water Resources (DWR), the project site lies within the
20 boundaries of the Salinas Valley Groundwater Basin . . . as shown in **Figure 3.6-1**. The basin is
21 one of the largest coastal groundwater basins in California and lies within the southern Coast
22 Ranges between the San Joaquin Valley and the Pacific Ocean. The basin consists of sand,
23 gravel, and clay that have been deposited over millions of years. The basin is drained by the
24 Salinas River, which extends approximately 150 miles from the headwaters near San Luis
25 Obispo County to the mouth of the river at Monterey Bay near Moss Landing. The total drainage
26 area of the basin is about 5,000 square miles within the Salinas Valley. The Salinas Valley
27 ranges from 10 miles wide in the north to 30 miles wide in the south and is about 120 miles
28 long.

25 “Over the years, the Salinas Valley Groundwater Basin has experienced overdraft, a condition
26 where more water is pumped out of an aquifer than is recharged on an average yearly basis.
27 This overdraft condition causes a decline in the water level, which allows seawater intrusion to
28 occur or streams and rivers to go dry. When this occurs, the wells in the affected aquifers must
either be deepened or abandoned, or water must be treated to dilute the salt concentration.
Sufficient water resources exist in the county’s reservoirs, aquifers, and watersheds, but the

1 economic problems of storage and distribution prevent these resources from being fully
2 available.

3 **“Groundwater Subbasins**

4 “Groundwater basins are often broken up into several subbasins. The Salinas Valley
5 Groundwater Basin (Basin Identification #3-4) is divisible into eight area subbasins: 180/400-
6 Foot Aquifer (3-4.01); Eastside Aquifer (3-4.02); Forebay Aquifer (3-4.04); Upper Valley Aquifer
7 (3-4.05); Paso Robles Area (3-4.06); Seaside Area (3-4.08); Langley Area (3-4.09); and Corral
8 de Tierra Area (3-4.10), as shown in **Figure 3.6-1** (DWR 2004). According to DWR basin maps,
9 the project site is located in the northeast portion of the Corral de Tierra Area Subbasin (DWR
10 2010) of the Salinas Valley Groundwater Basin.

11 “Groundwater flow within the aquifers is driven by the elevation of water levels with respect to
12 sea level. Faults and dipping beds commonly impede the horizontal flow of groundwater thus
13 creating boundaries of groundwater basins. Groundwater flow in the vicinity of the project site
14 generally follows the topography and exits to the northeast. Recent reports prepared for
15 MCWRA by Geosyntec Consultants have identified connectivity between the northeastern
16 portion of the Corral de Tierra Subbasin and the 180/400-Foot Aquifer Subbasins (Geosyntec
17 2010); therefore, both of these subbasins are described below.

13 **“Previous Study Areas**

14 “A *Project Specific Hydrogeologic Report - Harper Canyon Realty, LLC Subdivision* was
15 prepared for the Monterey County Health Department, Environmental Health Bureau by Todd
16 Engineers in September 2002 and updated [*sic*] July 2003. This report summarized available
17 hydrogeologic data available at the time, which included *the Hydrogeologic Update - El Toro*
18 *Area* (MCWRA 1991); and *Additional Hydrogeologic Update - El Toro Area* (MCWRA 1996).
19 Both of these reports have since been superseded by the *El Toro Groundwater Study* prepared
20 for MCWRA by Geosyntec in July 2007, and supplemented in June 2010. The Geosyntec study
21 evaluated groundwater resource capacity in a portion of the Salinas Valley Groundwater Basin
22 in order to make recommendations regarding the extent of the B-8 zoning overlay, which
23 restricts further subdivision of property. All of these reports were prepared for MCWRA but used
24 a topography/watershed-based methodology to define the limits of the study area and did not
25 take into account MCWRA’s Zone 2C boundaries nor [*sic*] the groundwater basins/subbasins
26 recognized by MCWRA and the California Department of Water Resources (DWR). To prevent
27 confusion, the limits of [*sic*] area addressed in this report shall be referenced herein as the
28 ‘Geosyntec Study Area.’

23 “The Geosyntec Study Area is divided into five subareas based on topographic divides that
24 control the movement of surface water and groundwater throughout the basins. As shown in
25 **Figure 3.6-12, Geosyntec Study Area Subareas and Well Locations**, the project site lies in
26 the El Toro Creek and San Benancio Gulch subareas of the Salinas Valley Groundwater Basin.
27 Within this subbasin, groundwater is pumped from three water-bearing geologic units: the
28 Aromas-Paso Robles Formation (also referred to as the Paso Robles Formation), the Santa
Margarita Formation, and alluvium in local drainages as described in more detail below.

1 **“Corral de Tierra Area Subbasin**

2 “The project site lies within the Corral de Tierra Subbasin. As defined in *Salinas Valley*
3 *Groundwater Basin, 180/400-Foot Aquifer Subbasin Bulletin 118* (Bulletin 118), the Corral de
4 Tierra Area Subbasin includes outcrops of Plio-Pleistocene nonmarine units, including the
5 Aromas Sands, the Paso Robles Formation, the Santa Margarita Formation, and the Monterey
6 Formation (DWR 2004). The subbasin is bounded by the Seaside Area Subbasin to the
7 northwest and the 180/400-Foot Aquifer Subbasin to the northeast. The primary water-bearing
8 units of the subbasin are the Miocene/Pliocene Santa Margarita Formation, the Pliocene Paso
9 Robles Formation, and the Pleistocene Aromas Sands. The Santa Margarita Formation is poorly
10 consolidated marine sandstone with a maximum thickness of 225 feet and is an important
11 water-bearing formation. It underlies the Paso Robles Formation, which consists of sand
12 (approximately 200 feet thick), gravel, and clay interbedded with some minor calcareous beds
13 and is the major water-bearing unit (DWR 2004).

14 **“180/400 Foot Aquifer Subbasin**

15 “The northern portion of the project site and a portion of the 180-acre ‘Remainder parcel’ along
16 the eastern boundary lie within the 180/400 Foot Aquifer Subbasin of the Salinas Valley
17 Groundwater Basin. The 180/400 Foot Aquifer Subbasin of the Salinas Valley Groundwater
18 Basin is comprised of approximately 114,000 acres between Gonzales and the Monterey Bay.
19 This subarea is composed mostly of confined and semi-confined aquifers separated by clay
20 layers (aquicludes) that limit the amount of vertical recharge. The three primary water-bearing
21 aquifers in the 180/400 Foot Aquifer are the 180-foot aquifer, the 400-foot aquifer, and the Deep
22 aquifer. The 180/400 Foot Aquifer Subbasin has an estimated total storage capacity of
23 approximately 7,240,000 acre feet of groundwater.

24 **“Groundwater Resources**

25 **“Water Quantity**

26 “The proposed project would procure water from two existing wells within the San Benancio
27 Gulch subarea of the Geosyntec Study Area . . . which are also located within the Corral de
28 Tierra Subbasin of the Salinas Valley Groundwater Basin. The Corral de Tierra Subbasin
overlies two principal aquifers, the Paso Robles Aquifer and the Santa Margarita formations.
One of the wells that will serve as the primary well for the proposed project was drilled within the
approved Oaks Subdivision along San Benancio Road (hereinafter referred to as the ‘Oaks
Well’ or ‘Well B.’) A second well was drilled on the project applicant’s land near Meyer Road . . .
(hereinafter referred to as the ‘New Well’ or ‘Well C’). (Well A is located near the Ambler Park
Treatment facility, which is owned and operated by (Cal-Am)).

“In the vicinity of the Oaks Well, the Paso Robles Aquifer is approximately 400 feet thick and the
Santa Margarita Aquifer is approximately 250 feet thick”

“B-8 Zoning District

“On November 24, 1992, the Monterey County Board of Supervisors adopted Ordinance No.
03647 (Monterey County Code 21.42.030.H), which added the ‘B-8’ Overlay Zoning District to a
portion of the El Toro Groundwater Basin, which includes portions of the Corral de Tierra

Subbasin . . . due to water constraints identified and documented in the *Hydrogeologic Update: El Toro Area, Monterey County, California* (MCWRA 1991). The purpose of the B-8 Zoning District is to 'restrict development and/or intensification of land use in areas where due to water supply, water quality, sewage disposal capabilities, traffic impacts or similar measurable public-facility type constraints, additional development and/or intensification of land use is found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole...'

"An *Additional Hydrogeologic Update, El Toro Area Monterey County, California* (MCWRA 1996) was prepared, which evaluated the overall water supply in the B-8 zoning district and concluded, among other things, that a 'Revision of the subareas would correct the "paper deficits" that occur in subareas that are hydraulically connected. As a starting point, it is suggested that the subareas north of the trace of the Chupines fault be aggregated into a single unit. This would combine the majority of the subareas of Corral de Tierra, Watson Creek, San Benancio Gulch, and El Toro Creek into a single Hydrogeologic unit....' The County Board of Supervisors accepted the report [sic] April 1996 but did not lift the B-8 zoning designation from certain portions of the 'El Toro Area.'

"The Geosyntec Study determined that there is an overdraft condition within the Geosyntec Study area. Although the Oaks Well and New Well would procure water from within the Geosyntec Study area, neither of the wells nor the project site are located within a B-8 zoning district. In fact, the project site, Oaks Well and New well are located within a special assessment zone, 'Zone 2C,' that was established for the [SVWP], which is discussed in more detailed below under Seawater Intrusion. The purpose of the SVWP is to provide for the long-term management and protection of groundwater resources in the Salinas Valley Groundwater Basin by meeting the following objectives: stopping seawater intrusion, and providing adequate water supplies and flexibility to meet current and future needs.

"The water bearing formations in the vicinity of the Oaks Well and New Well dip in a northeasterly direction towards the Salinas Valley. The geologic maps and cross-sections indicate that there are no barriers restricting groundwater flow from this portion of the Geosyntec Study area into the Salinas Valley. This means the Geosyntec Study area and the Salinas Valley Groundwater Basin are hydrologically connected.

"According to MCWRA, this portion of the Corral de Tierra Area subbasin, including the project site, Oaks Well site, and New Well site, indirectly receive benefits of sustained groundwater levels within the Basin attributed to the [SVWP]

"Seawater Intrusion

"Monterey County relies almost entirely on groundwater resources to meet water demands. Some of the County's aquifers experience localized over drafting, a condition where more water is pumped out of an aquifer than is recharged on an average yearly basis. This over drafting condition also causes a decline in the water level thus requiring deeper wells. Over drafting causes seawater intrusion in those aquifers in the northern end of Salinas Valley. When this occurs the aquifers must either be deepened, abandoned or water must be treated to dilute the salt concentration. Sufficient water resources exist within the County but the economic problems of storage and distribution make these resources unattainable.

1 “Although seawater intrusion is not currently occurring within the Corral de Tierra Area
2 Subbasin, the project site, Oaks Well and New Well are located within a special assessment
3 zone ‘Zone 2C’ established for the [SVWP]. To help manage and protect groundwater
4 resources, [MCWRA] has developed the [SVWP]. The [SVWP] addresses the water resources
5 management issues within the Salinas Valley. It provides for the long-term management and
6 protection of groundwater resources in the basin by meeting the following objectives: stopping
7 seawater intrusion, and providing adequate water supplies and flexibility to meet current and
8 future (year 2030) needs. A special assessment zone (Zone 2C) has been established to obtain
9 funding for the [SVWP] Customers with [sic] Zone 2C are levied special assessment fees
10 to fund the SVWP in exchange for availability of water. Portions of the Corral de Tierra Area
11 Subbasin are considered to be in . . . Zone 2C. The Oaks Well and New Well would procure
12 water within Zone 2C

13 “The SVWP went into operation in 2009-2010. Between 2009 and 2011, monitoring data
14 indicate that the groundwater levels (relative to sea level) have increased and the rate of
15 seawater intrusion has decreased. Although it is too soon to draw hard conclusions, a scientific
16 study is currently underway to evaluate the results of Zone 2C and the SVWP. This study will
17 evaluate seawater intrusion, groundwater levels, total water demand for all existing and future
18 uses designated in the General Plan for the year 2030, and assess and provide conclusions
19 regarding the degree to which the total water demand for all uses are likely to be reached or
20 exceeded. If the study concludes that the total water demand for all uses is likely to be
21 exceeded; groundwater elevations are going to decline by 2030; or that the seawater intrusion
22 boundary will advance inland by 2030, the study will make recommendations on additional
23 measures the County could take to address any or all of those conditions. These measures may
24 include, but are not limited to, conservation measures or another phase of the SVWP. This
25 study is anticipated to be completed no later than March 2018.” (AR 352-368, bold and italics in
26 original.)

27 **1.1.2.2.2 Thresholds of the FEIR**

28 The thresholds in the FEIR are identical to those employed in the DEIR. (AR 371.)

1.1.2.2.3 Impacts

1.1.2.2.3.1 Impact 3.6-1 (“Long Term Impact to Groundwater Resources” [Direct Impact])

“Implementation of the proposed project would result in an increase [sic] demand of approximately 12.75 acre feet per year, which would result in a long-term water demand increase on the Salinas Valley Groundwater Basin. However, given the fact that water would be procured through wells located within the [SVWP] Assessment Zone 2C, this increase in demand would be considered a **less than significant impact**.

“According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision* (MCHDEHB 2002, 2003), the proposed project would have a water demand of approximately 12.75 AFY based on a demand value of 0.75 AFY per residence. The proposed project would be served by two existing wells: the Oaks Well and the New Well Both wells

procure water from the Paso Robles Aquifer within the Corral de Tierra Area Subbasin of the Salinas Valley Groundwater Basin.

“According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision*, the wells would procure water from a subarea that is recharged by approximately 486 AFY through stormwater generation and precipitation. With buildout of the subarea (approximately 542) units, the water demand would be less than the annual recharge rate, providing a water surplus of approximately 29.9 AFY. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision*, this water surplus would be able to accommodate the proposed project’s water demand of approximately 12.75 AFY.

“Water Supply

“The Oaks Well and New Well would supply water to the proposed project and the previously approved Oaks subdivision, a nine-unit subdivision located along San Benancio Road adjacent to the project site. The Oaks Well and the New Well would be owned by [Cal-Am]. The wells are located and procure water from the portion of the Corral de Tierra Subbasin that lies with [sic] MCWRA’s Zone 2C

“Previous Studies

“Project Specific Analysis

“A *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision*, was prepared by Todd Engineering in 2002, which was updated in 2003 (**Appendix F**). This analysis identified the project site being located in an area that was referenced as the El Toro Creek subarea, San Benancio Gulch subarea, Corral de Tierra subarea, and the northern portion of Watson Creek subarea of the El Toro Groundwater Basin. These areas referenced are pursuant to the *Hydrogeologic Update - El Toro Area* and *Additional Hydrogeologic Update - El Toro Area* prepared by Fugro for MCWRA in 1991 and 1996, respectively (MCWRA 1991, 1996) and are not consistent with the terms used by MCWRA or DWR to describe the groundwater basins. “According to Todd Engineering, the proposed project’s water demand of approximately 12.75 AFY would be met by the water surplus in the area. However, the assumptions for the water demand were not consistent with those used to estimated [sic] water demand/surplus upon buildout of the areas analyzed in the *Hydrogeologic Update - El Toro Area* and *Additional Hydrogeologic Update - El Toro Area*, which assumed high volume of recharge for landscaping and septic systems throughout the area. Since the proposed project will convey wastewater to a public treatment facility and have minimal landscaping, the loss of return flow anticipated in the buildout projects was estimated for the proposed project, which was determined to be approximately 5.88 AFY (12.75 AFY total water demand x 57.60 percent interior usage x 80 percent interior usage return via septic system). The loss of 5.88 AFY of return flow lost due to the proposed project was determined to be greater than the water surplus for the referenced El Toro Creek subarea. According to the *Project Specific Hydrogeology Report – Harper Canyon Realty LLC Subdivision* some areas within the referenced Corral de Tierra subarea would not meet the estimated water demand upon buildout and development should be extremely rationed in the area. It was determined that although the loss of return flow associated with the proposed project may have an adverse impact on some of the individual subareas, the four subareas are interconnected and will maintain an overall water surplus of approximately 314.82 AFY.

1 “The water balance findings of the *Project Specific Hydrogeology Report – Harper Canyon*
2 *Realty LLC Subdivision* are based on many of the same reports and similar topographic divide
3 as the *El Toro Groundwater Study* prepared by Geosyntec in 2007, supplemented in January
4 2010, also referred to as the ‘Geosyntec Study.’

4 **“Geosyntec Study Analysis**

5 “According to the Geosyntec Study subareas, the project site lies in the El Toro Creek and San
6 Benancio Gulch subareas . . . which differs slightly from the *Project Specific Hydrogeology*
7 *Report – Harper Canyon Realty LLC Subdivision* (Todd Engineering 2002, 2003) and also
8 conflicts with terms used by MCWRA and DWR to describe the groundwater basin. According to
9 the Geosyntec Study, the primary aquifer is in overdraft but current and increased groundwater
10 pumping could be sustained for decades in areas where large saturated thicknesses of the
11 primary aquifer stored large volumes of groundwater. The project site overlies a portion of the
12 primary aquifer that has a large saturated thickness and groundwater production is considered
13 good (Figure 7-1 of the Geosyntec Study). Although, it was identified that with continued
14 overdraft conditions, groundwater production would likely decrease relatively quickly in
15 hydrogeologically contiguous areas of less saturated thickness, it was also determined in the
16 Geosyntec Study update that the aquifer in the vicinity of the project site is hydrogeologically
17 contiguous with the aquifers located to the east in the Salinas Valley rather than the less
18 productive areas within the Geosyntec Study area. Therefore, groundwater pumping in this area
19 would not likely affect the less saturated thickness areas of the primary aquifer with the
20 Geosyntec Study area.

14 **“Water Balance Analysis**

15 “MCWRA requested that the water balance be prepared to analyze the proposed project’s
16 demand on existing conditions. Based on the water demand estimated in the *Project Specific*
17 *Hydrogeology Report – Harper Canyon Realty LLC Subdivision* (Todd Engineering 2002, 2003)
18 and the *Preliminary Drainage Report of Harper Canyon (Encina Hills) Subdivision* (Whitson
19 Engineers, Inc., 2007), the proposed project would result in an increased gross water demand
20 of approximately 12.75 AFY and loss of approximately 0.38 AFY recharge. When compared to
21 existing conditions, the proposed project would result in a net negative change of approximately
22 -13.1 AFY

23 “As discussed previously, the MCWRA constructed the SVWP to provide the surface water
24 supply necessary to attain a hydrologically balanced groundwater basin. Recent data (2011)
25 indicates that since SVWP went online, the groundwater levels within the Salinas Valley
26 Groundwater Basin are increasing and that the rate of seawater intrusion in the Salinas Valley is
27 decreasing, which is encouraging for the groundwater basin as a whole. A study is currently
28 underway to thoroughly evaluate the effects of the SVWP.

29 “The project site, Oaks Well and New Well are located in Zone 2C and the property owner
30 contributes financially to the SVWP and its groundwater management strategies through an
31 assessment on the property. The project’s impact on the groundwater basin is therefore
32 mitigated by this contribution, as the SVWP provides a regional mitigation strategy for the
33 groundwater basin and its subbasins. Furthermore, both the MCWRA and the Monterey County
34 Health Department, Environmental Health Bureau has determined that the proposed project
35 would have negligible effects on the aquifer in this region (MCHD-EHB 2002a) and that there is

a long term [sic] water supply for the 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**. No mitigation measures are necessary.” (AR 372-377, bold and italics in original.)

1.1.2.2.3.2 Impact 3.6-4 (“Cumulative Adverse Affect [sic] on the Groundwater Basin”)

“Implementation of the proposed project, when combined with other development in the vicinity, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin. Groundwater pumping has the potential to cumulatively influence groundwater supplies within in [sic] the adjacent subbasins and the basin as a whole. However, the potable water for the project would be procured within [MCWRA]’s Zone 2C, which funds the Salinas Valley Water Project. Therefore this would be considered a **less than significant cumulative impact**.

“The project specific analysis prepared by Todd Engineering included an analysis of how the proposed project would affect groundwater supply upon ‘buildout’ of lots located the El Toro Groundwater Basin. That report made certain assumptions regarding buildout, water usage and demand, landscaping, use of septic systems, and other inputs, building on previous groundwater reports prepared by Fugro. Specifically, the report estimated changes in groundwater conditions assuming that the Harper Canyon subdivision would connect to a sanitary sewer system, and thus would not contribute ‘return flows’ – recharge – from septic systems. The Todd Engineering report concluded that although the proposed project may contribute to an adverse cumulative impact on some of the individual subareas that are currently stressed, the four subareas are ultimately interconnected and will maintain an overall water surplus where recharge exceeds extraction. The project’s contribution would be considered minimal. This conclusion was similar to the conclusions of the subsequent *El Toro Groundwater Study* prepared by Geosyntec.

“According to the Geosyntec Study, the primary aquifer is currently (2007) in overdraft but groundwater production is considered good and pumping could be sustained for decades in the vicinity of the project site (as well as other areas) because it was located in an area with a large saturated thicknesses of the primary aquifer. In addition, the Geosyntec Study update (2010) determined that the aquifer in the immediate vicinity of the project site is hydrogeologically contiguous with the aquifers to the east in the Salinas Valley, rather than the less productive and stressed areas within the Geosyntec Study area.

“As discussed in this section, the proposed project is located within [MCWRA]’s Zone 2C, which benefits from additional water resources from the Nacimiento and San Antonio Reservoirs via the Salinas River and the [SVWP]. The project applicant contributes financially to the SVWP and its groundwater management strategies through an assessment on the property. The project’s impact on the groundwater basin is therefore mitigated by this contribution, as the SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins.

“According to DWR basin maps, the project site and wells the [sic] would procure water for the proposed project are located in the northeastern portion of the Corral de Tierra Subbasin (DWR 2010) of the Salinas Valley Groundwater Basin. Since the SVWP went into operation in 2009, the entire basin appears to be becoming more hydrologically balanced, as a noticeable

1 decrease in the rate of seawater intrusion has occurred as well as an increase [sic] groundwater
2 levels has been observed in most subbasins.

3 “Although the SVWP will not deliver potable water to the project site, it was developed to meet
4 projected water demands based on development and population forecasts. The proposed
5 project has been deemed consistent with AMBAG’s 2008 population forecasts, which was used
6 for forecasting demands for the SVWP. For all of these reasons, the cumulative effect of the
7 project on water demand is considered **less than significant**.” (AR 384-387, bold and italics in
8 original.)

9 **1.1.3 Findings**

10 The FEIR found no significant direct or cumulative impacts to water supply. (AR 377,
11 387.) Consequently, the Board’s relevant CEQA findings consisted only of its conclusion that
12 the FEIR did not contain “significant new information” sufficient to trigger recirculation:

13 “. . . In addition, several modifications were made to the environmental setting to clarify the
14 hydrogeologic setting and relationship with the Geosyntec Report. See FEIR pages 3.6-1
15 through 3.6-13. Subsequently impact discussions were updated accordingly. The Water
16 Balance was updated to include analysis based on MCWRA’s standard format and existing
17 conditions. *The cumulative analysis was updated to reflect cumulative conditions of the*
18 *groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro*
19 *Groundwater Basin.* The findings remained less than significant.” (AR 37 [Finding 11, Evidence
20 e], italics added.)⁵

21 Nevertheless, the Subdivision Map approval findings address water supply in Findings 3
22 and 7. The water supply issue is also addressed in Finding 18, in which the Board ruled upon
23 Real Party’s appeal of the Planning Commission’s denial of its subdivision application.

24 **1.1.3.1 Subdivision Map Act Findings**

25 **1.1.3.1.1 Finding 3 (“Consistency”), Evidence h)**

26 “1. **Goal 53 (Water Service) - To promote adequate water service for all county needs.**

27 “2. **Objective 53.1- Achieve a sustained level of adequate water services.**

28 “3. **Policy 53.1.3 -The County shall not allow water consuming development in areas
which do not have proven adequate water supplies.**

⁵ The Findings also addressed issues related to the creation of a water system to serve the project. Several mitigation measures were created to address this issue, discussed in the EIR’s analysis of Impact 3.6-2. (See MM 3.6-2a through 3.6-2c at AR 380-383.) These issues are not relevant to the present petition.

1 “Adequate water service is available at the site consistent with Goal 53. The new homes will use
2 water and therefore are considered to be ‘water consuming development’ under this policy.
3 According to the project hydrogeology reports, the proposed project would have a water
4 demand of approximately 12.75 AFY based on a demand value of 0.75 AFY per residence.
5 Based on [MCWRA]’s water balance worksheet, which takes into account water demand and
6 loss of recharge, the proposed project will result in net negative change of -13.1 AFY. The water
7 supply for the project is two wells, the ‘Oaks well’ and ‘New well.’ Neither the Oaks well, New
8 well nor the project site are located within a B-8 zoning district. According to MCWRA and the *El
9 Toro Ground Water Study* (2007) and the Geosyntec 2010 Supplement, the wells and project
10 site are located within [MCWRA]’s benefit assessment Zone 2C, and receive benefits of
11 sustained groundwater levels attributed to the operation of both the Nacimiento and San
12 Antonio Reservoirs and the Salinas Valley Water Project

13 “In addition, the Monterey County Health Department, Environmental Health Bureau has
14 recommended finding that there is an assured long-term water supply for the project.
15 Accordingly, the project is consistent with Goal 53, Objective 53.1 and the related policies.

16 **“4. Policy 53.1.5 - Proliferation of wells, serving residential, commercial, and institutional
17 uses, into common water tables shall be discouraged.**

18 “No new wells are needed to serve the project because the project will be served by two existing
19 wells. Therefore the project is consistent with Policy 53.1.5.

20 **“5. Policy 26.1.4.3 -A standard tentative subdivision map and/or vesting tentative and/or
21 Preliminary Project Review Subdivision map application for either a standard or minor
22 subdivision shall not be approved until:**

23 **“1) an applicant provides evidence of an assured long term water supply in terms of yield
24 and quality for all lots which are to be created through subdivision. A recommendation
25 on the water supply shall be made to the decision making body by the County’s Health
26 Officer and the General Manager of the Water Resources Agency, or their respective
27 designees.**

28 **“2) the applicant provides proof that the water supply to serve the lots meets both the
water quality and quantity standards as set forth in Title 22 of the California Code of
Regulations, and Chapters 15.04 and 15.08 of the Monterey County Code subject to the
review and recommendation by the County’s Health Officer to the decision making body.**

“The Board finds that the project has an assured long term water supply. The project wells are
located in Zone 2C, [MCWRA]’s benefit assessment zone for projects that are addressing
overdraft in the Salinas River Groundwater Basin, and Applicant has been paying Zone 2C
charges. Members of the public contended that the Corral de Tierra subbasin where the wells
are located does not benefit from the SVWP; however, there is substantial evidence that the
suite of MCWRA projects that address the Salinas River Groundwater Basin provide benefit to
the area where the project wells are located. According to the [MCWRA], hydrologic modeling
performed for the [SVWP] indicated that, under 1995 Baseline conditions, groundwater levels in
the basin would increase and seawater intrusion would be halted. Higher groundwater levels in
the Salinas River Groundwater Basin (SRGB) will result in a reduction in the hydraulic gradient
between the SRGB and the Corral de Tierra subbasin retarding outflow from Corral de Tierra to

the SRGB. The modeling for the SVWP identified that an additional reduction in pumping near the coast would need to be achieved in order to halt seawater intrusion under 2030 conditions. Analysis of groundwater level and water quality data have shown [sic] since the SVWP began operations in 2010, groundwater levels near the coast have increased and the annual rate of seawater intrusion has continued to decrease. Additionally, data analysis has shown that between 2011 and 2013 there was no indication of advancement of the seawater intrusion front in either the Pressure 180-Foot or Pressure 400-Foot aquifers.

“The ‘State of the Salinas River Groundwater Basin Report’ (Brown and Caldwell, 2015) provided a ‘snapshot’ of current conditions of the SRGB, occurring during the third year of an extended drought. The water balance presented in the report is a summary of historic data, prior to the construction and operation of the SVWP. One of the report’s conclusions is that the SRGB is in overdraft. This was not a new or unexpected conclusion. The SVWP was designed to achieve a balanced basin over a modeling period of about fifty years. Extended periods of droughts occur in the modeling, but the impacts of those droughts are mitigated over time. The primary analysis and conclusions of the Brown and Caldwell, 2015 report are that although the basin is currently estimated to be out of balance by 17,000 to 24,000 acre-feet per year, that offset can be mitigated by an estimated 16 million acre-feet of available groundwater in storage. The impact of the SVWP on basin balance was not within the scope of the Brown and Caldwell, 2015 investigation.

“As a result of the request of the Board of Supervisors, the Applicant updated the testing of the Oaks well and New well. A report on the 72-Hour Constant Rate Well Pumping and Aquifer Recovery Tests for the Ambler Oaks (Oaks) and Encina Hills (New) wells was prepared by Bierman Hydrogeologic and submitted to County staff on February 10, 2015 for review (**Attachment A** of the March 3, 2015 staff report). Based on the information in the Bierman Report, [MCWRA] staff performed a well impact threshold analysis to determine if an existing or proposed well has the potential to cause significant adverse impact to an existing domestic or other water supply well. Under this analysis ‘potentially significant adverse impact’ is defined as the impacted well exceeding drawdown equal to five (5) feet or more, or draw down equal to 5% of the impacted wells saturated thickness, after one year of pumping. Utilizing a modified Theis equation and a range of aquifer parameters from previous investigations in the Corral de Tierra subbasin, results indicate that the sphere of influence under which either the Oaks or New wells would have the potential to cause significant adverse impact would theoretically range from 25 to 195 feet. The Bierman report did not identify wells within this radius. After reviewing the Bierman Report, Monterey County Water Resources Agency staff determined that[]:

- The consultant’s assumptions were reasonable and within boundaries of known hydrologic parameters for the area.
- The consultant’s test methodologies conformed to industry standards.
- The consultant’s findings and conclusions with respect to impacts on neighboring wells were supported by the data presented.

“The Health Department’s Environmental Health Bureau (EHB) staff also reviewed the Bierman Report. The Bierman Report assumptions are based on a 25-connection water system because the proposed water system includes a stand-alone water treatment facility for the 16 new lots

created by the proposed Harper Canyon subdivision and the already-approved 9 lots of the Oaks subdivision. After reviewing results of the 2000 Oaks well pump testing report and the Bierman Report, EHB has concluded that the Oaks well with a larger pump (i.e. a 5 hp pump) can provide a sufficient water supply for the 25-connection water system. Also, EHB has concluded that the New well can provide a sufficient water supply . . . for the proposed 25-connection water system.

"Members of the public contended that the well testing did not meet EHB procedures; however, EHB has determined that the testing procedures were adequate and did not violate their procedures. EHB's Source Capacity Testing Procedures serve as guidance and allow for change in procedures. In this case, the well is constructed in alluvial material. EHB requested that the [MCWRA] as EHB's consultant review the well log for the New Well and render an opinion as to whether the well is an alluvial well or a fractured rock well. The well log is available to staff but is exempt from public disclosure per Water Code Section 13752. The Agency, after reviewing the well log, opined that the New Well is an alluvial well. The applicant was required to perform a 72-hour continuous source capacity test in conformance to the Policy 6.1.4 of the 1982 Toro Area Plan and Section 64554(f)(1-7) [i.e. alluvial soils] of the California Code of Regulations. The Source Capacity Testing Procedures require source capacity testing of wells in the months of August, September, and October for non-alluvial wells and alluvial wells in known water shortage problem areas. These months are typically the driest part of normal rainfall years and will show the performance of the well during a period of the year when the aquifer is under the greatest stress. However, in multiple years of drought EHB has permitted source capacity testing to be performed outside of these months when no significant rainfall has occurred"

(AR 7-11, bold in original.)

1.1.3.1.2 Finding 7 [Gov. Code, § 66474], Evidence f)

"Water Supply. MCC Section 19.10.070 requires provision shall be made for domestic water supply as may be necessary to protect public health, safety, or welfare, and that the source of supply is adequate and potable. MCC Sections 19.03.015.L and 19.07.020.K require Water Supply and Nitrate Loading Information in order to assess these conditions and proof that there is a long term water supply with the project. An Initial Water Use/Nitrate Impact Questionnaire, dated May 30, 2001, was submitted and is found in the project file. The project has an assured long term water supply" (AR 16-17.)

1.1.3.2 Appeal Findings

1.1.3.2.1 Finding 18 [Appeal], Evidence, County's Response b)

"The Appellant contends that in its resolution purporting to deny the project, the Planning Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. The County begins with one correction: the Toro Area Plan Policy 26.1.4.3 identified is also General Plan Policy 26.1.4.3 which requires evidence of an assured long term water supply. The provision of a long term water supply was the central issue of concern in the Planning Commission's reasoning and decision to deny. The Planning Commission also determined as a policy matter that the goal of promoting adequate water service for all county needs was better served by not approving new lots. County staff, in recommending approval of the project, considered evidence within several reports related to

1 local groundwater conditions in the immediate area where the project's primary and backup well
2 are located. These reports include a project specific hydrogeologic report by Todd Engineers
3 (2002 and 2003) (DEIR Appendix F in **Attachment B-1** in the April 7, 2015 staff report) and a
4 more recent, comprehensive regional study - the *El Toro Groundwater Study* - prepared in July
5 2007 by Geosyntec and supplemented in June 2010. This study is referred to as the 'Geosyntec
6 Study' (**Attachment H** in the May 13, 2014 staff report). The County agrees with the Appellant's
7 contention that these studies, as well as the analysis provided by [MCWRA] . . . provide
8 substantial evidence that the projects' [sic] wells benefit from the [SVWP] and that the Planning
9 Commission's decision was incorrect to the extent it concluded otherwise. These studies
10 demonstrate that the project has an assured long term water supply and support the County's
11 approval and are summarized below:

12 "Groundwater Basins and Well Locations

13 "The project site lies within the Salinas Valley Groundwater Basin, which is divided into eight
14 subbasins (Final EIR Figure 3.6-1 in **Attachment B-3** in the April 7, 2015 staff report). The
15 project site lies within two subbasins: the Corral de Tierra Area subbasin and 180/400-Foot
16 Aquifer (Pressure) subbasin. The wells that would serve the proposed project are located within
17 the Corral de Tierra Area subbasin. These subbasins are defined and recognized by both the
18 [MCWRA] and California Department of Water Resources, and are based on hydrogeologic
19 features below the surface.

20 "These recognized subbasin boundaries do not match the Geosyntec Study area boundary,
21 which is based on surface topographic and watershed features Geosyntec defined their
22 own boundaries (again, based on watersheds), identified as the 'El Toro Planning Area' in their
23 study, in order to evaluate groundwater resource capacity within a specific geographic area and
24 to make recommendations to the County regarding potential changes to the B-8 zoning overlay.
25 The Geosyntec Study was prepared for MCWRA, used a topography/watershed-based
26 methodology to define its limits of study, and did not take into account MCWRA's Zone 2C
27 boundaries or the recognized Corral de Tierra Area subbasin of the Salinas Valley Groundwater
28 Basin. The relationship of the 'Geosyntec Study Area' to the proposed project is illustrated in
Exhibit MR1-1 (**Attachment B-3** in the April 7, 2015 staff report).

"According to both MCWRA and Geosyntec, it is the underlying groundwater aquifers, not
watershed topographic boundaries that are of greater importance with respect to long term
groundwater management. In fact, Geosyntec makes the following specific recommendation
within their own report:

*"Eliminate the designated planning subareas for water resource management
that are based on watershed topographic boundaries because they are not
relevant to the groundwater aquifers, which are the sole source water supply in
the El Toro Planning Area." (Geosyntec, page ES-6).*

"Despite arguments to the contrary made in the record, the project's two wells are indeed
located within subbasins of the Salinas Valley Groundwater Basin. The wells are also located
within the El Toro Planning Area as defined by Geosyntec.

1 "Findings of the Geosyntec Study Related to the Project's Groundwater Needs

2 ". . . [T]he primary objective of the Geosyntec Study was to evaluate groundwater resource
3 capacity in a specific portion of the Salinas Valley Groundwater Basin and to make
4 recommendations regarding the extent of the B-8 zoning overlay. The B-8 zoning overlay, with
5 some exceptions, restricts development and/or intensification of land use where, due to various
6 infrastructure constraints, the development or intensification is found to be detrimental to the
7 health, safety and welfare (Monterey County Code Section 21.42.030.H.1).

8 "According to the Geosyntec Study, the 'primary aquifer system' of the El Toro Planning Area-
9 which includes both the Santa Margarita sandstone and Paso Robles formations - is in
10 overdraft. Long term trends predict lower groundwater levels in the study area as a whole into
11 the future (Geosyntec, page ES-3). However, according to the Geosyntec Study (Geosyntec,
12 Figure ES-4), the wells for the proposed project are located in an area noted as have [sic] good
13 potential for groundwater production due to a saturated thickness of over 600 feet. The Final
14 EIR for the project acknowledges the overdraft of the condition of the El Toro Primary Aquifer
15 System as defined by Geosyntec, but also acknowledges that specific areas within the study
16 area - including the area where the project's wells are located - are in an area of good
17 groundwater production.

18 "The El Toro Planning Area is not homogenous in terms of groundwater production capacity,
19 and varies greatly depending upon the underlying geology and saturated thickness. Estimated
20 annual rates of change in groundwater elevations also vary within the El Toro Planning Area,
21 with some areas near Highway 68 and San Benancio Road estimated to see a rise in
22 groundwater elevations (Geosyntec, Figure ES-5). Expansion of the B-8 zoning was
23 recommended for areas with negligible and poor potential for groundwater production.
24 Expansion of the B-8 zoning was not recommended in the area of the project's wells.

25 "Water-bearing formations in the northeastern portion of the subbasin dip in a northeasterly
26 direction toward the Salinas Valley as shown in Final EIR Exhibit MR1-2 (**Attachment B-3** in the
27 April 7, 2015 staff report). As shown in Final EIR Exhibit MR1-3 (**Attachment B-3** in the April 7,
28 2015 staff report), granite rocks uplifted along the Harper Fault likely limit hydraulic connection
to the northeast from the El Toro Planning Area to the Salinas Valley. However, the continuous
presence of the Paso Robles Formation beneath the El Toro Creek, the Highway 68 corridor,
and former Fort Ord lands to the northwest provides hydraulic connection between the El Toro
Planning Area and the Salinas Valley (Geosyntec 2010 Supplement, page 1- **Attachment H** in
the May 13, 2014 staff report).

"The Geosyntec Study area overlaps with a portion of the project site, and the Study
demonstrates hydraulic connectivity between the larger Salinas Valley Groundwater Basin and
the Corral de Tierra Area Subbasin.

"Project Relationship to the Salinas Valley Water Project (SVWP)

"The Appellant contends that the Planning Commission purported to base its finding of denial on
the unsubstantiated testimony of project opponents that the subarea where the proposed
project's wells are located does not receive hydrological benefits from the Salinas Valley Water
project. To the extent the Planning Commission based its denial on this testimony, the
Appellant's contention has merit. Information submitted by the public to the Planning

Commission on January 8, 2014 challenging the project's location within an area of benefit was based on the *Salinas Valley Historic Benefits Analysis* (HBA) prepared for the County by Montgomery Watson in 1998 (**Attachment I** in the May 13, 2014 staff report). The public presented Figure 1-50 (between pages 1-22 and 1-23 in **Attachment I** in the May 13, 2014 staff report); the Figure shows the results of the modeling used to quantify the hydrologic benefits associated with the operation of the Nacimiento and San Antonio reservoirs. The public testimony asserted that the Figure showed that the area where the Harper Canyon Subdivision's wells are located (within the Fort Ord/Toro Subarea) does not demonstrate a benefit from the SVWP—that there was no increase in water levels within the Fort Ord/Toro Subarea with the reservoirs. County staff did not dispute the information at the Planning Commission hearing. However, staff thereafter researched the question further and sought advice from the MCWRA after the hearing and reached a different conclusion. Although the Fort Ord/Toro areas were within Zones 2/2A (predecessor to Zone 2C), the HBA did not analyze the Fort Ord/Toro Subarea—in fact, the area was specifically excluded from the analysis 'because Fort Ord and Toro areas are not believed to be part of the main ground water basin.' (Page ES-4 in **Attachment I** in the May 13, 2014 staff report). Simply put, the HBA was silent on the benefits (or lack of benefits) to the Fort Ord/Toro Subarea. In the years since the HBA was prepared, more current data by Geosyntec has been analyzed and documents the connectivity between the Salinas Valley Groundwater Basin's subbasins (Geosyntec 2010 Supplement **Attachment H** in the May 13, 2014 staff report).

"The project site, the Oaks Well (the project's primary well) and New Well (project's [sic] backup well) are located in the Zone 2C area of benefit and the property owner contributes financially to the SVWP and its groundwater management strategies through an assessment on the property (Final EIR, revised Section 3.6 page 3.6-26- **Attachment B-3** in the April 7, 2015 staff report). The SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins, and the Zone 2C boundary and associated areas of benefit have been modeled based upon the predicted long term effect of the SVWP. The MCWRA constructed the SVWP to provide the surface water supply necessary to attain a hydrologically-balanced groundwater basin. Recent data compiled by MCWRA in 2011 (**Attachment J** in the May 13, 2014 staff report) indicates that since SVWP went online, the groundwater levels within the Salinas Valley Groundwater Basin are up and that the rate of seawater intrusion in the Salinas Valley is decreasing. Additionally, data analysis has shown that between 2011 and 2013 there was no indication of advancement of the seawater intrusion front in either the Pressure 180-Foot or Pressure 400-Foot aquifers. A study is currently underway to thoroughly evaluate the effects of the SVWP, pursuant to Policy PS-3.1 of the 2010 General Plan

"Assured Long Term Water Supply

"The proposed project has an assured long term water supply and is consistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as General Plan Policy 26.1.4.3 for the following reasons:

"• The project's wells are located within a subbasin of the Salinas Valley Groundwater Basin. In this area, the alluvial geology beneath El Toro Creek and Highway 68 (QTc deposits) provide a hydraulic connection between the El Toro Planning Area and the Salinas Valley (Geosyntec 2010 Supplement, page 1 - **Attachment H** in the May 13, 2014 staff report).

1 “• Groundwater level data indicate that the hydraulic gradient under the El Toro Creek Valley
2 and [SR] 68 corridor is generally northeastward toward the Salinas Valley, further demonstrating
3 a relationship between the location of the project’s wells and the Salinas Valley Groundwater
4 Basin (Geosyntec Figure 4-5- **Attachment H** in the May 13, 2014 staff report and Final EIR
5 Exhibit MRI-2 -**Attachment B-3** in the April 7, 2015 staff report). See also **Finding 3(h)**.

6 “• The project and project’s wells are located on parcels in Zone 2C. The Zone 2C area is the
7 benefit assessment zone for the [SVWP]. As identified by Geosyntec, the extent and location of
8 the underlying hydrogeology (groundwater) is not defined by surface topography or watershed
9 basins (Geosyntec page ES-6). Geosyntec therefore provides further evidence of hydraulic
10 connectivity and therefore the potential for benefit from the SVWP in this location.

11 “• With the SVWP, initial data compiled by the MCWRA suggests that groundwater levels are up
12 and the rate of seawater intrusion is decreasing; however, more detailed studies have not been
13 completed (**Attachment J** in the May 13, 2014 staff report).

14 “• The County considers participation in the Zone 2C assessment as contributing to a long term,
15 regional solution to help mitigate groundwater issues well beyond the project’s boundaries.

16 “• In November 2002, pursuant to Monterey County Code Title 19, EHB staff reviewed the
17 project-specific hydrogeological report for the project. The report indicates that there is
18 adequate source capacity for the proposed project and that the project in and of itself should
19 have negligible effects on the aquifer in this area and on nearby existing wells.

20 “• In February 2015, staff reviewed the report on the 72-Hour Constant Rate Well Pumping and
21 Aquifer Recovery Tests for the Ambler Oaks (Oaks) and Encina Hills (New) wells (**Attachment**
22 **A** of the March 3, 2015 staff report) prepared by Bierman Hydrogeologic. Based on the
23 information in the report, the County has concluded that:

- 24 - The consultant’s assumptions were reasonable and within boundaries of known hydrologic
25 parameters for the area.
- 26 - The consultant’s test methodologies conformed to industry standards.
- 27 - The consultant’s findings and conclusions with respect to impacts on neighboring wells were
28 supported by the data presented.
- The Oaks well with a larger pump (i.e. a 5 hp pump) can provide a sufficient water supply for the
25-connection water system.
- The New well can provide a sufficient water supply (quantity) for the proposed 25-connection
water system.
- The Oaks well and the New well provide sufficient water quality, with treatment, from each well
to supply the 25-connection water system” (AR 47-51, bold, underline, and italics in
original.)

1.2 Introduction to the court's ruling

The fundamental purpose of a DEIR is to provide meaningful information regarding a proposed project so that the public can not only be informed, but also respond and comment. Without an accurate description and definition of the environmental setting and geographic scope of a given project, the public cannot know to what it is responding. That basic information cannot be presented for the first time in an FEIR; it must be presented to the public for comment before an EIR is presented in final form to the legislative body — here, the Board of Supervisors — for approval.

The DEIR in this case misdesignated the Project's actual water source. The FEIR pointed out the error and supplied more accurate information. The price of this correction was an exhaustive revision of the EIR's groundwater impact analysis, which bore little if any resemblance to that in the DEIR. The revised version was never recirculated for public comment before it was submitted to the Board. As a consequence, neither the designation of the geographic scope and setting of the actual water supply area affected (by the combined effects of the Project, other current projects, and probable future projects in toto), let alone an explanation why that particular geographic area was chosen, was ever held to the light of public scrutiny and comment before being approved by the Board.

Monterey County relies almost entirely upon groundwater resources to meet its water demands. Here, the proposed 17-unit Project would draw all its water directly from the Corral de Tierra (CDT) Subbasin of the Salinas Valley Groundwater Basin (SVGB). The SVGB is and was in a state of overdraft, and experiences seawater intrusion into its water supply as a result. Nonetheless, the CDT Subbasin was neither mentioned in the DEIR as the Project's water source nor acknowledged to exist.

1 Instead, the DEIR presented a water resource study which described the majority of the
2 Project site as being located in the “El Toro Groundwater Basin.” (AR 825.)⁶ There in fact was
3 — and is — no area known by that name. The parties can point to no prior project,
4 governmental designation, or map of any sort which contained such a designation. Maps
5 appended to, but not mentioned in the body of, the DEIR depicted a region topographically
6 broken down into five named subareas⁷ as part of a zoning study of the Project’s geographic
7 region, which are congruent with what the DEIR designates the “El Toro Groundwater Basin.”
8 (AR 1448, 1449.) However, although one such map depicted the Project’s wells as being
9 located in the “San Benancio Gulch Subarea” (AR 1449), neither map referenced the “El Toro
10 Groundwater Basin.”⁸

12 Many parts of the DEIR painted the picture that most of the Project — and in particular
13 the residences and the two wells that would supply its water — was located in the “El Toro
14 Groundwater Basin” and was *not* situated in the SVGB (or any of its sub-basins). As the FEIR
15 demonstrated, the latter representation is simply not true.

17 The DEIR described the SVGB and the El Toro Groundwater Basin separately, implying
18 that each was distinct from the other. (AR 826.) It provided no map or diagram showing the
19 relative locations of the newly coined “El Toro Groundwater Basin” and the SVGB. It described
20 the “majority of [this] project” as being within the “El Toro Groundwater Basin” and only “a small

21 ⁶ The DEIR stated that a “small portion of the project site is within the Pressure sub-basin of the Salinas
22 Valley Groundwater Basin: the 180 acre ‘remainder parcel’ which is not being developed and 154 acres of
23 which are to be donated to the Monterey County Parks Department, as well as the northern portion of the
24 project site.” (AR 825, 826.) By contrast, the FEIR located the Project entirely within the CDT Subbasin
of the SVGB. (AR 358.)

25 ⁷ One of these subareas was referred to as the Corral de Tierra subarea. This designation is not equivalent
26 to the CDT Subbasin of the SVGB, as that designation is used by MCWRA.

27 ⁸ The DEIR recited that “[a]s shown in Figure 3.6-1, Groundwater Basin and Well Locations, the project
28 site lies in the El Toro Creek and San Benancio Gulch subareas of the El Toro Groundwater Basin and the
Pressure subarea of the Salinas Valley Groundwater Basin” (AR 826.) The DEIR presented a blank
page where Figure 3.6-1 was apparently intended to appear. (AR 827.)

1 portion” as being within the SVGB. (AR 825.) It stated that the El Toro Groundwater Basin is “a
2 much smaller basin than the three major basins in Monterey County” — including the SVGB.
3 (*Ibid.*) The DEIR named five subareas of the “El Toro Groundwater Basin” (El Toro Creek, San
4 Benancio Gulch, Corral de Tierra, Watson Creek, and Calera Canyon). (AR 826.) It stated —
5 incorrectly — that there are five “subareas” of the SVGB and,⁹ significantly, omitted the CDT
6 Subbasin of the SVGB, from which the wells supplying the Project in fact draw water. (*Ibid.*)
7 Instead of correctly describing the wells as drawing from the CDT Subbasin of the SVGB, the
8 DEIR located the wells for the Project “within the San Benancio Gulch subarea of the El Toro
9 Groundwater Basin.” (AR 830.)

11 The DEIR’s analysis of the cumulative environmental impacts of the Project was
12 couched only in terms of reduction of return water flow from the Project area to the “El Toro
13 Groundwater Basin” and an asserted net water surplus from the four interconnected subareas.
14 (AR 842-843.) No mention was made of the CDT Subbasin of the SVGB, let alone of the
15 Project’s impact upon it or upon the SVGB as a whole. The DEIR stated that there are “no
16 barriers restricting groundwater flow from this portion of the El Toro Groundwater Basin into the
17 Salinas Valley” (AR 830); but the mere statement that groundwater conditions are a potential
18 tributary to the SVGB is not the equivalent of a discussion of the effects of the Project upon the
19 groundwater basin from which the Project directly draws its water.
20

21 Real Party attempts to explain the admittedly incorrect “El Toro Groundwater Basin”
22 designation used by the DEIR as a misnomer for the “Toro Aquifer” — another designation that
23 appeared nowhere in the DEIR or the FEIR. The DEIR referred to the Paso Robles Aquifer and
24 the Santa Margarita Aquifer as sources for the Project’s water. (AR 829, 830.) The Geosyntec
25 Study, which the DEIR referenced (AR 830), referred to the Aromas and Paso Robles
26 Formations as the “El Toro Primary Aquifer System.” (AR 3930).
27

28 ⁹ The DEIR used the terms “subarea” and “subbasin” interchangeably.

1 Consequently, the descriptions advanced by Real Party of exactly which area the DEIR
2 addressed in its cumulative impacts analysis has varied.¹⁰ In its opening brief, Real Party
3 contended, “. . . the geographic scope of the area directly affected by cumulative groundwater
4 resources is the Toro Aquifer. For instance, the DEIR correctly identifies the Project wells as
5 overlying the Toro Aquifer The FEIR likewise locates the Project wells as within the Toro
6 Aquifer.” Again, neither the DEIR nor FEIR employ the term “Toro Aquifer.” Even had they done
7 so, the DEIR analyzes return flow to the “El Toro Groundwater Basin,” which does not exist
8 either. (AR 842-843.) The FEIR’s cumulative impact analysis, however, included — for the first
9 time — the entire SVGB. It stated “. . . the proposed project, when combined with other
10 development in the vicinity, will increase the demand on groundwater resources within the
11 [CDT] Subbasin of the [SVGB]. Groundwater pumping has the potential to cumulatively
12 influence groundwater supplies within in [sic] the adjacent subbasins and the basin as a whole.”
13 (AR 384.)

14
15 Additionally, the DEIR failed to mention that the Project area — whether termed the “El
16 Toro Groundwater Basin” or the CDT Subbasin of the SVGB — is in overdraft. (AR 128, 363,
17 375.) The DEIR acknowledged that “[s]ome of Monterey County’s aquifers are experiencing
18 localized over drafting,” and noted that overdrafting “has caused seawater intrusion in [] aquifers
19 in the *northern end of Salinas Valley*.” (AR 825, 830, italics added.) Nevertheless, the DEIR
20 never clarified to which of the County’s aquifers it referred. And, because the DEIR stated that
21 the Project’s wells are in the “El Toro Groundwater Basin,” not the SVGB (AR 826), it does not
22 appear the DEIR referenced the Project’s actual water supply.
23

24 The FEIR effectively conceded these points by engaging in a considerable revision of
25 the DEIR’s Chapter 3.6 “Groundwater Resources and Hydrology.” That revision 1) “clarifie[d]”
26

27 ¹⁰ While the County has discretion to apply its expertise in *selecting* an appropriate assessment area for
28 examining cumulative impacts of a project, it must *define* the scope of that geographic area and justify its
choice. (Guidelines, § 15103, subd. (b)(3).)

1 that the Project is, in fact, in the CDT Subbasin of the SVGB; 2) deleted all references to the “El
2 Toro Groundwater Basin”; 3) noted that the data cited in the Todd Report has been
3 “superseded” by a 2007 Geosyntec Study (itself cited, albeit briefly, in the DEIR); 4)
4 acknowledged that the Project area and the SVGB are in overdraft; 5) did not rely upon a
5 groundwater surplus, a key rationale in support of the DEIR’s direct impact analysis and the only
6 rationale offered in support of the DEIR’s cumulative impact analysis; and 6) completely re-
7 wrote the DEIR’s cumulative impact analysis, offering new rationales and a markedly expanded
8 geographic scope. (See AR 350-388.) The significant amendment of the FEIR underscores a
9 critical point: the DEIR was so defective that meaningful public review and comment were
10 effectively precluded.
11

12 **1.3 The Parties’ contentions**

13 Petitioners challenge the EIR’s groundwater supply analysis upon multiple grounds.
14 Petitioners contend that the County violated CEQA because 1) accurate baseline information
15 was not presented in the DEIR; 2) untimely baseline information rendered the DEIR’s
16 cumulative impact analysis inadequate; 3) cumulative impact analysis was untimely and
17 equivocal; 4) the County improperly relied upon the “ratio theory” of cumulative analysis; 5)
18 recirculation of the DEIR was required; 6) the FEIR did not adequately explain its cumulative
19 impact conclusions; and 7) no substantial evidence supports the FEIR’s cumulative impact
20 findings.
21

22 Real Party responds that 1) with the exception of minor errors in terminology, baseline
23 information in the DEIR was accurate; 2) the EIR’s cumulative impact analysis satisfied CEQA;
24 3) the County did not rely upon the “ratio theory”; 4) recirculation was not required; and 5)
25 substantial evidence supports the FEIR’s cumulative impact findings.
26
27
28

1.4 The DEIR's inadequacies and recirculation

Petitioners claim that the DEIR lacked required information, such as an "adequate" cumulative impact analysis and an "adequate" description of the environmental setting. Petitioners insist that this information was "tardy" and "untimely" because it was not presented until the FEIR. Petitioners argue that these claims are independent of their recirculation claim. The court disagrees. These claims, together with other claims Petitioners raise as to the purported inadequacy of the DEIR are, in essence, recirculation claims. Hence, the court will treat all such claims as objections to the Board's failure to recirculate the DEIR's Groundwater Resources and Hydrogeology chapter.

Petitioners assert that the County was required to recirculate the DEIR's water analysis because 1) "significant new information" arose subsequent to the DEIR; and 2) the DEIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. [Citation.]" (Guidelines, § 15088.5, subd. (a).)

1.4.1 "Significant New Information"

When "significant new information" is added to an EIR after the DEIR process is complete but before certification, the agency is required to recirculate the EIR for additional public comment and response. (Pub. Resources Code, § 21092.1.) Recirculation is "intended to encourage meaningful public comment." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 [*Laurel Heights II*].) "The purpose of requiring public review is ""to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."" . . . Public review permits accountability and "informed self-government[.]" . . . ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise' 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

1 experts and sources. [Citation.]” (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 133.) New
2 information not subject to the comment and response process deprives the public of
3 “meaningful participation” in the EIR process. (*Mira Monte Homeowners Assn. v. County of*
4 *Ventura* (1985) 165 Cal.App.3d 357, 365.)

5 Nevertheless, “recirculation is not required simply because new information is added.”
6 (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316,
7 328.) Indeed, “the final EIR will almost always contain information not included in the draft EIR’
8 given the CEQA statutory requirements of circulation of the draft EIR, public comment, and
9 response to these comments prior to certification of the final EIR. [Citation.]” (*Ibid.*) Recirculation
10 is required only “when significant new information is added to the EIR after public notice is given
11 of the availability of the draft EIR for public review . . . but before certification.” (Guidelines, §
12 15088.5 subd. (a); Pub. Resources Code, § 21092.1.)

13 “‘Significant new information’ requiring recirculation *includes, for example*, a disclosure
14 showing that: [¶] (1) A new significant environmental impact would result from the project or
15 from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in
16 the severity of an environmental impact would result unless mitigation measures are adopted
17 that reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or
18 mitigation measure considerably different from others previously analyzed would clearly lessen
19 the significant environmental impacts of the project, but the project’s proponents decline to
20 adopt it.” (Guidelines, § 15088.5, subs. (a)(1)-(3), italics added)

21 “Recirculation was intended to be an exception, rather than the general rule.” (*Laurel*
22 *Heights II, supra*, 6 Cal.4th at p. 1132.) The court must “‘resolve reasonable doubts in favor of
23 the administrative finding and decision.’ [Citation.]” (*Spring Valley Lake Association v. City of*
24 *Victorville* (2016) 248 Cal.App.4th 91, 107.) “An agency’s determination not to recirculate an EIR
25 is given substantial deference and is presumed to be correct. A party challenging the
26
27
28

determination bears the burden of showing that substantial evidence does not support the agency's decision not to recirculate. [Citation.]” (*Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661; Guidelines, § 15088.5, subd. (e).)

1.4.1.1 Recirculation for a “new significant impact”

Petitioners claim the FEIR acknowledged the SVGB was in overdraft while the DEIR did not. Petitioners further claim that the FEIR’s acknowledgment of overdraft revealed a “new significant impact” of the Project upon the CDT Subbasin, “based on aquifer depletion and declining ground water levels,” triggering recirculation. (Guidelines, § 15088.5, subd. (a)(1).)

Petitioners are correct that overdraft was not acknowledged until the FEIR. The DEIR acknowledged that “[s]ome of the County’s aquifers experience localized over drafting” (AR 830.) Likewise, the DEIR referenced the “deficient water conditions within the El Toro Groundwater Basin.” (AR 837.) But these comments were insufficiently specific to alert the public either that the *SVGB* is in overdraft or that the aquifer upon which the Project relies is in overdraft. By contrast, the FEIR disclosed both that the SVGB recently “experienced overdraft” (AR 353), and that the Geosyntec Study area (AR 363) and “primary aquifer” are in overdraft (AR 375, 385).

Nevertheless, Petitioners’ argument that the FEIR’s disclosure of overdraft constituted a “new significant impact” necessitating recirculation is without merit. As discussed *ante*, the Guidelines define “significant new information” as, in part, “[a] new significant environmental impact . . . *from the project* or from a new mitigation measure proposed to be implemented.” (Guidelines, § 15088.5(a)(1), italics added.) Purportedly new information concerning overdraft in the CDT Subbasin would not constitute a significant impact *from the Project*. Similarly, the FEIR’s relevant threshold provided that “impacts are considered significant if the following could result from *implementation of the proposed project*. . . . (2) Substantially deplete groundwater

1 supplies or interfere substantially with groundwater recharge such that there would be a net
2 deficit in aquifer volume or a lowering of the local groundwater table level” (AR 371, italics
3 added.) An existing overdraft condition cannot satisfy this standard of significance as it is, by
4 definition, not the result of the Project’s implementation.¹¹

5 **1.4.1.2 Recirculation to address the SVWP as a new mitigation measure**

6 Petitioners contend that the FEIR’s cumulative impact analysis relied upon new
7 mitigation not analyzed in the DEIR, namely the SVWP.
8

9 It is not clear the FEIR intended to imply that the SVWP was a mitigation measure for
10 *the Project’s* cumulative impacts. The FEIR referred to the SVWP as a “*regional* mitigation
11 strategy.” (AR 387, italics added.) It never proposed a mitigation measure requiring payment of
12 Zone 2C fees. Further, the FEIR did not conclude that the Project would result in a cumulative
13 impact that is rendered insignificant by mitigation. (See Guidelines, § 15130, subd. (a)(3).)
14 Instead, it concluded that there *was no* cumulative impact. (AR 387.)

15 Regardless, even if the SVWP were construed as a mitigation measure, recirculation
16 based upon a new mitigation measure is required only if either “the project’s proponents decline
17 to adopt it” (Guidelines, § 15088.5, subd. (a)(3)), or if the mitigation measure itself would cause
18 a new significant environmental impact and/or exacerbate existing impacts (Guidelines, §§
19 15088.5, subds. (a)(1)-(2), 15126.4, subd. (a)(1)(D); *River Valley Preservation Project v.*
20 *Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 169). None of these
21 conditions exist here. Real Party has not declined to adopt a mitigation measure requiring
22 payment of Zone 2C fees. Similarly, Petitioners have not shown that, as a mitigation measure,
23 the SVWP would either cause a new significant impact or exacerbate an existing impact.
24
25

26
27 ¹¹ Nonetheless, as discussed *ante*, the DEIR’s failure to disclose the overdraft was one of many factors
28 affecting the court’s inquiry into whether the DEIR “was so fundamentally and basically inadequate and
conclusory in nature that meaningful public review and comment were precluded. [Citation.]”
(Guidelines, § 15088.5, subd. (a)(4).)

1.4.1.3 Recirculation to address the “Ratio” Theory

Petitioners argue that after the EIR was final, staff and the applicant offered a new rationale for the conclusion that the Project would not have a significant cumulative impact: that Project demand would be a relatively small fraction of the total pumping from the SVGB. Petitioners note that, although they objected that this “ratio” theory was legally erroneous, the County did not recirculate the FEIR to address the issue.

As noted *ante*, CEQA’s recirculation provisions apply when an agency adds “significant new information” to an EIR prior to certification. (Pub. Resources Code, § 21092.1.) The court evaluates new information or project changes not added to the EIR under the same standard. (*Western Placer Citizens for an Agr. and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 899; *Save our Peninsula, supra*, 87 Cal.App.4th at p. 131.)

Here, the County’s rationale — which Petitioners claim constitutes an improper “ratio theory” (see *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718-721) — does not trigger recirculation for two reasons. First, the theory does not fall within any recognized recirculation category. It neither discloses a new significant impact, describes exacerbation of an existing impact, nor constitutes a mitigation measure the County declined to implement. (Guidelines, § 15088.5, subds. (a)(1)-(3).) Likewise, the ratio theory argument does not establish that the DEIR was “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (Guidelines, § 15088.5, subd. (a)(4).) At most, a new, additional supporting rationale for the FEIR’s cumulative impact analysis would merely amplify the FEIR’s conclusions. (Guidelines, § 15088.5, subd. (b) [“[r]ecirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR”].)

Second, the fact that the applicant and County staff suggested a new rationale post-FEIR matters only if the Board actually relied upon this theory in making their decision. The

Board's findings do not address the theory, so there is no basis in the evidence from which the court could infer the Board's decision was based upon the "ratio" theory, even in part.

1.4.2 Whether the DEIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded"

Finally, Petitioners maintain that issues with the DEIR's environmental setting, baseline, and the extensive nature of the FEIR's revised cumulative analysis evince that the DEIR's water supply analysis was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (Guidelines, § 15088.5, subd. (a)(4).)

The relevant Guideline cites *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043. *Mountain Lion* addressed the state Fish and Game Commission's promulgation of regulations governing sport hunting of mountain lions. The court concluded that the Commission's DEIR was "woefully inadequate." (*Id.* at p. 1050.) The DEIR there did not meaningfully address the impact of the proposed hunt upon adjacent national parks, research being conducted in an adjoining forest, or the effect of recent wildfires, offering only brief, conclusory analysis. (*Ibid.*) Similarly, the DEIR's cumulative analysis determined that the project would have had no significant cumulative impact upon the environment "without explain[ing] in even minimum detail how it arrived at this conclusion." (*Ibid.*) The court stated that this approach "simply swept . . . serious criticisms of the project under the rug," rendering it impossible for the public to meaningfully participate in the environmental review process. (*Id.* at p. 1051; *Laurel Heights II, supra*, 6 Cal.4th at p. 1130 ["section 21092.1 was intended to encourage meaningful public comment Therefore, new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1"].)

Reliance upon this ground for recirculation is relatively uncommon. Nevertheless, several courts have invoked it when either the DEIR was fundamentally inadequate on its face

1 or when subsequent revisions revealed a DEIR's substantial defects. (See, e.g. *Pesticide Action*
2 *Network North America v. California Department of Pesticide Regulation* (2017) 16 Cal.App.5th
3 224, 252 (*PANM*) [Department's initial public reports "were both so inadequate and conclusory
4 that public comment on the draft was effectively meaningless"]; *Spring Valley, supra*, 248
5 Cal.App.4th at pp. 108-109 [major revisions to an EIR's hydrology and water quality impacts
6 analysis "deprived the public of a meaningful opportunity to comment"]; *Ukiah Citizens for*
7 *Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266; *Save our Peninsula, supra*, 87
8 Cal.App.4th at p. 123; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122
9 Cal.App.3d 813, 823 [recirculation required, in part, because the DEIR was fundamentally
10 inadequate].)

12 **1.4.2.1 Standard of Review**

13 The Guidelines provide, "[a] decision not to recirculate an EIR must be supported by
14 substantial evidence in the administrative record." (Guidelines, § 15088.5, subd. (e).) Further,
15 the substantial evidence standard has been consistently applied to the questions whether a
16 project would cause a "new significant environmental impact," "[a] substantial increase in the
17 severity of an environmental impact," and whether a "feasible project alternative or mitigation
18 measure" exists that the project's proponents have declined to adopt. (Guidelines, § 15088.5,
19 subd. (a)(1)-(3); see, e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of*
20 *Rancho Cordova* (2007) 40 Cal.4th 412, 447-448 [new substantial impact]; *South County*
21 *Citizens for Smart Growth, supra*, 221 Cal.App.4th at p. 330 [new feasible alternative claimed].)

23 Regardless, Petitioners claim the substantial evidence standard "should not apply" to the
24 determination whether recirculation is triggered because "[t]he draft EIR was so fundamentally
25 and basically inadequate and conclusory in nature that meaningful public review and comment
26 were precluded." (Guidelines, § 15088.5, subd. (a)(4).) Petitioners reason that the inquiry is a
27 legal one, and is therefore properly analyzed under the "failure to proceed" standard of review.
28

1 The application of the substantial evidence standard to recirculation stems from the
2 California Supreme Court's decision in *Laurel Heights II*, *supra*, 6 Cal.4th at page 1133. There,
3 the petitioner argued that, "if a procedural violation of CEQA is shown, the substantial evidence
4 prong of the statutory standard of review does not come into play." (*Ibid.*) The Court noted that,
5 although this argument "may have merit in the abstract, it does not apply to the facts of the
6 present case." (*Ibid.*) The petitioner contended that there was a failure to proceed because the
7 findings did not contain an express statement that the EIR should not be recirculated. The Court
8 concluded there was no such requirement. (*Id.* at pp. 1133-1134.) The petitioner further
9 contended that the failure to recirculate was itself a "separate procedural violation of CEQA." (*Id.*
10 at p. 1134.) The court concluded that this claim begged the question. (*Ibid.*)

12 The language of *Laurel Heights II*, *supra*, 6 Cal.4th at page 1133, including its
13 determination on recirculation, was expressly incorporated into the Guidelines. (Guidelines, §
14 15088.5.) But as noted *ante*, the *Laurel Heights II* Court did not address proper claims of CEQA
15 procedural violations. (*Laurel Heights II*, *supra*, 6 Cal.4th at page 1133.) Instead, the Court
16 noted that the argument that recirculation based upon the fundamental inadequacy of the DEIR
17 is appropriately reviewed under the "failure to proceed" standard "may have merit" (*Id.* at p.
18 1133.) No subsequent decision has addressed this issue, which is thus one of first impression.

20 In general, the claim that an EIR is deficient because it lacks information that CEQA
21 requires is not reviewed for substantial evidence; "[t]he relevant question is whether the lead
22 agency failed to proceed as required by law. [Citation.]" (*Bakersfield Citizens for Local Control v.*
23 *City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1208.) "[A]lthough the agency's factual
24 determinations are subject to deferential review, questions of interpretation or application of the
25 requirements of CEQA are matters of law. [Citations.] While we may not substitute our judgment
26 for that of the decision makers, we must ensure strict compliance with the procedures and
27 mandates of the statute." (*Save our Peninsula*, *supra*, 87 Cal.App.4th at p. 118.) Recirculation
28

1 challenges claiming that a DEIR “was so fundamentally and basically inadequate and
2 conclusory in nature that meaningful public review and comment were precluded” relate to
3 violations of CEQA’s informational requirements rather than the weight of the evidence.
4 (Guidelines, § 15088.5, subd. (a)(4).) Consequently, challenges to a failure to recirculate based
5 upon this ground are properly reviewed under the failure to proceed standard.¹²

6
7 **1.4.2.2 The DEIR was so fundamentally inadequate that recirculation was required**

8 Petitioners contend that the DEIR’s Groundwater Resources and Hydrogeology analysis
9 “was so fundamentally and basically inadequate and conclusory in nature that meaningful public
10 review and comment were precluded.” (Guidelines, § 15088.5, subd. (a)(4).) The court agrees
11 for several reasons.

12 First, the DEIR did not adequately disclose the environmental setting. The DEIR claimed
13 that the Project is located in a non-existent groundwater basin, the “El Toro Groundwater
14 Basin,” obscuring the potential impacts of the Project upon its actual setting, the SVGB. (AR
15 825-826.) Additionally, the DEIR failed to acknowledge the existence of the CDT Subbasin of
16 the SVGB, in which the Project’s wells are located. (AR 358, 362.) Finally, the DEIR did not
17 disclose that the aquifer upon which the Project will depend is in overdraft. (AR 363, 375.) All of
18 these defects rendered meaningful public comment “effectively meaningless.” (*PANN, supra*, 16
19 Cal.App.5th at p. 252.)

20
21 Second, the DEIR’s analysis itself was fundamentally inadequate. This is demonstrated
22 by the FEIR’s wholesale revision of the Groundwater Resources and Hydrology section of the
23 DEIR, requiring that a strike-out copy be provided. The County insists that its changes merely
24 “serve to clarify, amplify or otherwise result in insignificant modifications to the DEIR.” (AR 124.)

25
26 ¹² The fact that Guidelines, section 15088.5, subdivision (e), prescribes the substantial evidence standard
27 of review for recirculation claims does not alter the court’s conclusion. The court must “afford the
28 Guidelines ‘great weight’ *unless* a provision is ‘clearly unauthorized or erroneous under the statute.’
[Citation.]” (*Friends of the College of San Mateo Gardens v. San Mateo County Community College*
District (2016) 1 Cal.5th 937, 954, italics added.)

1 The court disagrees. The extent of the FEIR's revisions, which included a greatly modified
2 environmental setting, reliance upon a new technical study, and a complete re-write of the
3 DEIR's cumulative impact analysis, was so substantial that it deprived the public of an
4 opportunity to meaningfully participate in the EIR process.

5 Third, the DEIR's cumulative analysis was wholly deficient. This is evidenced by the
6 FEIR's cumulative analysis, which contained entirely new reasoning in support of its conclusion,
7 and further, is based upon an expanded geographic scope of analysis. The FEIR's cumulative
8 analysis "must be subjected to the same critical evaluation that occurs in the draft stage, so that
9 the public is not denied an opportunity to test, assess, and evaluate the data and make an
10 informed judgment as to the validity of the conclusions to be drawn therefrom." (*Save our*
11 *Peninsula, supra*, 87 Cal.App.4th at p. 131, internal citations omitted.) Here, this did not occur.

12 **1.4.2.2.1 Environmental Setting**

13 "The fundamental goal of an EIR is to inform decision makers and the public of any
14 significant adverse effects a project is likely to have on the physical environment. [Citations.]"
15 (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 447.)
16 To make this determination, "the agency must use some measure of the environment's state
17 absent the project, a measure sometimes referred to as the 'baseline' for environmental
18 analysis." (*Communities for a Better Environment v. South Coast Air Quality Management*
19 *Dist.* (2010) 48 Cal.4th 310, 315.) Accordingly, the EIR must describe "the physical
20 environmental conditions in the vicinity of the project, as they exist at the time the notice of
21 preparation is published . . . from both a local and regional perspective." (Guidelines, § 15125,
22 subd. (a).) These existing physical conditions "will normally constitute the baseline physical
23 conditions by which a lead agency determines whether an impact is significant." (*Ibid.*;
24 Guidelines, § 15126.2, subd. (a).)

1 An EIR's description of the environmental setting should be sufficiently thorough to allow
2 the Project's significant impacts "to be considered in the full environmental context." (Guidelines,
3 § 15125, subd. (c).) An incomplete or inaccurate description of the environmental setting "fails to
4 set the stage" for an adequate impacts analysis, and renders the EIR "an inadequate
5 informational document." (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108
6 Cal.App.4th 859, 875, 881; *San Joaquin Raptor, supra*, 27 Cal.App.4th at p. 729 ["[w]ithout
7 accurate and complete information pertaining to the setting of the project and surrounding uses,
8 it cannot be found that the FEIR adequately investigated and as discussed the environmental
9 impacts of the development project"]; *Galante Vineyards v. Monterey Peninsula Water*
10 *Management Dist.* (1997) 60 Cal.App.4th 1109, 1122 ["[d]ue to the inadequate description of the
11 environmental setting for the project, a proper analysis of project impacts was impossible"].)

13 **1.4.2.2.1.1 El Toro Groundwater Basin**

14 According to the DEIR, "[t]he majority of the project site is located in the El Toro
15 Groundwater Basin, with a small portion of the project site is [*sic*] located in the Salinas Valley
16 Groundwater Basin. The El Toro Groundwater Basin is a much smaller basin than the three
17 major basins in Monterey County (Salinas Valley, Carmel River, and North County)." (AR 825.)
18 The El Toro Groundwater Basin purportedly contains five subareas, entitled El Toro Creek, San
19 Benancio Gulch, Corral de Tierra, Watson Creek, and Calera Canyon. (AR 826.) The DEIR
20 stated that most residential units are located in the El Toro Creek subarea, but that the Project's
21 wells are located in the San Benancio Gulch subarea. (*Ibid.*)

23 "The El Toro Creek, Corral de Tierra, San Benancio Gulch subareas and the northern
24 portion of Watson Creek subarea are hydraulically contiguous and hydro-geologically bound on
25 three sides." (AR 826.) The Project's wells, located in the San Benancio Gulch subarea, are
26 therefore connected to four of the five subareas. (AR 837.) The DEIR's cumulative impact
27 analysis was based upon this interconnection. (AR 843.) The analysis noted that the Project
28

1 would cause a reduction in return flow to the “El Toro Groundwater Basin,” but that this loss of
2 water “would be considered minimal” because “the four individual subareas of the Basin are
3 considered interconnected, and combined would have [a] net surplus of approximately 314.82
4 AFY.” (AR 842.) The scope of the DEIR’s cumulative analysis was hence these four
5 “[s]urrounding [s]ubareas.” (*Ibid.*)

6
7 The “El Toro Groundwater Basin” is not recognized by either MCWRA or the California
8 Department of Water Resources (DWR). The DEIR’s analysis, and presumably the term in
9 question, stemmed from a “*Project Specific Hydrogeological Report – Harper Canyon Realty,*
10 *LLC Subdivision*” prepared by Todd Engineers at the behest of the County Health Department,
11 Environmental Health Division, in September 2002, and subsequently updated in July 2003 (the
12 Todd Report). (AR 825, 844, italics in original.)¹³ Neither version of the Todd Report used the
13 term “El Toro Groundwater Basin.” Instead, the Todd Report stated that the Property “is located
14 in the Pressure subarea of the [SVGB]. [Citation.]” (AR 1451, 1493.) The Todd Report explained
15 that the Property is also located “in two subareas of the El Toro planning area of Monterey
16 County.” (*Ibid.*) The El Toro subareas that the Todd Report identified are identical to those the
17 DEIR described as subareas of the “El Toro Groundwater Basin.” (See AR 1448-1449.)

18
19 It is possible to infer that the DEIR inadvertently used the term “Groundwater Basin”
20 when it meant “planning area.” Nevertheless, this inference is problematic for a few reasons.
21 First, the Todd Report’s terminology was based upon topographic, surface water drainage
22 divides. (AR 1451.) MCWRA and the DWR’s basin designations are based upon hydrogeologic
23 features. (AR 129.) Yet the DEIR, in its “Hydrogeology” section, explained that the majority of
24 the site is in the “El Toro Groundwater Basin” which it characterized as “*a much smaller basin*
25 *than the three major basins in Monterey County (Salinas Valley, Carmel River, and North*
26

27
28 ¹³ Both versions of the Todd Report were included in the DEIR, at its Appendix “F.” (AR 1443-1503.)

County)." (AR 825, italics added.) Thus, the DEIR affirmatively distinguished between the "El Toro Groundwater Basin" and the "SVGB," as distinct *groundwater basins*. Additionally, the DEIR compared the two "basins" directly, describing their respective subareas. (AR 826.)¹⁴ The DEIR even stated that the aquifers that would supply the Project are in the El Toro Groundwater Basin, while only the "northern portion of the project site and a portion of the 180-acre 'Remainder parcel' . . . lie within the Pressure subarea of the Salinas Valley Groundwater Basin." (*Ibid.*, italics added.)

Second, irrespective of whether the DEIR's terminology was intentional, its choice significantly misled the public as to Project impacts. The clear implication of how the DEIR framed its analysis is that neither the Project nor its wells are located in the SVGB. In fact, as the FEIR subsequently "clarif[ied]," the Project site is actually located in the northeast portion of CDT Subbasin of the SVGB. (AR 128, 353.) The CDT Subbasin, a designation recognized by both MCWRA and California Department of Water Resources, is one of eight area subbasins, including the 180/400-Foot Aquifer, or "Pressure" Subbasin. (AR 129.) But the DEIR did not acknowledge the existence of the CDT Subbasin of the SVGB; it stated that the SVGB has only five "subareas." (AR 826.)

Third, the DEIR's analysis of direct and cumulative Project impacts was limited to the El Toro Groundwater Basin. (AR 836-837, 842-843.) Although the DEIR cursorily observed that "there are no barriers restricting groundwater flow from this portion of the El Toro Basin into the Salinas Valley," this isolated statement cannot fairly be characterized as an analysis of the Project's impacts upon the SVGB. (AR 830.) Finally, the DEIR contained no maps of the

¹⁴ Real Party acknowledges this issue, but characterizes it as a "relatively minor point," which it argues the FEIR corrected. Real Party contends that the DEIR "mistakenly" referred to the "Toro Aquifer" as the "Toro Groundwater Basin." Real Party uses this term, "Toro Aquifer," throughout its brief. However, although the Geosyntec Report used the term "El Toro Primary Aquifer system," the term "Toro Aquifer" itself did not appear in the DEIR, FEIR, or any other portion of the record. Real Party further insists that the "Toro Aquifer" is equivalent to the CDT Subbasin of the SVGB. Real Party provides no citation to the record in support of this claim.

1 relevant areas, which might otherwise alleviate some of the confusion. Considering all of the
2 above, a reasonable reader of the DEIR could only conclude that the Project would impact the
3 four interconnected sub-areas of the El Toro Groundwater Basin, and — at best — *may* have a
4 small, unquantified impact upon the SVGB. In fact, as the FEIR revealed, the Project would only
5 impact groundwater in the SVGB. (See, e.g., AR 352, 358, 362, 372, 384.)

6 **1.4.2.2.1.2 The existence of the CDT Subbasin**

7
8 As noted *ante*, the DEIR not only invented a new groundwater basin, but also failed to
9 acknowledge that the CDT Subbasin exists. The DEIR listed five subbasins of the SVGB, none
10 of which are the CDT Subbasin. (AR 826.) By contrast, the FEIR stated that the SVGB contains
11 “*eight* area subbasins,” including the CDT Subbasin. (AR 353, italics added.)

12 At trial, Real Party argued that the fact that the Project is located in the CDT Subbasin
13 was not discovered until 2010. Real Party cited a map in the FEIR, at Figure 3-6.1, which
14 described its source as “CASIL, 2010; Bing Maps, 2010.” (AR 356.) Real Party also cited a map
15 from the 2003 SVWP Engineer’s Report, which appeared to include the Project area in the
16 “Pressure” Subbasin (AR 7712), and a similar map from MCWRA’s 2015 “State of the Salinas
17 River Groundwater Basin” report (AR 6047). Real Party suggested that these maps prove that,
18 at the time of the DEIR, “no mapping had been done to demonstrate that the property was
19 within the [CDT] Subbasin.”
20

21 There are several problems with this claim. First, Real Party did not make this argument
22 until trial, depriving Petitioners of a fair opportunity to respond. (See *American Drug Stores, Inc.*,
23 *supra*, 10 Cal.App.4th at p. 1453.) Second, the mere fact that the FEIR’s map was based upon
24 2010 sources does not prove that information concerning the boundaries of the CDT Subbasin
25 did not exist until 2010; it shows only that the map was based upon 2010 data. Even if, as Real
26 Party contends, the 2003 map demonstrates that MCWRA considered the Property to be in the
27 “Pressure” Subbasin *in 2003*, that does not necessarily mean that MCWRA still held this belief
28

1 in October 2008, when the DEIR was released. (AR 641.) Further, Real Party has made no
2 showing as to what, if any, new information was presented by the 2010 data, much less what
3 portion of that information was specific to the CDT Subbasin.

4 Third, neither the 2003 map nor the 2015 map referenced Project boundaries,¹⁵ so Real
5 Party's entire argument is mere conjecture. Fourth, even that conjecture leads to unanswered
6 questions. Assuming *arguendo* that Real Party's conjecture is correct, maps created in 2003
7 and 2015, respectively, appear to place the Project wholly in the "Pressure" Subbasin. If, as
8 Real Party claims, the Project's true location in the CDT Subbasin was not discerned until 2010,
9 why was that information subsequently abandoned in 2015? Is the Project area *not* actually in
10 the CDT Subbasin, despite the FEIR's claim? If this is in fact the case, Real Party has
11 presented yet another potential ground for recirculation. Neither the EIR nor the record answers
12 any of these questions. Finally, none of Real Party's arguments explain why the DEIR did not
13 acknowledge the existence of the CDT Subbasin, which Real Party conceded was a known
14 MCWRA designation at the time the DEIR was released in 2008.

15 **1.4.2.2.1.3 Overdraft**

16 The DEIR's description of the environmental setting was deficient in another key respect.
17 As noted *ante*, the DEIR failed to acknowledge that the area from which the Project's wells draw
18 water is in overdraft, a condition in which the amount of water extracted exceeds recharge.
19 (See, e.g., AR 353, 363.) This fact is critical to an adequate water supply impact analysis, and in
20 particular, to a valid determination whether a project's incremental effect is cumulatively
21 considerable. (See Guidelines, § 15130, subd. (a).)

22 In 2007, MCWRA commissioned Geosyntec to update its data for the "El Toro Planning
23 Area," which includes the Project's wells, and to evaluate potential changes to the B-8 zoning
24

25
26
27 ¹⁵ Real Party referenced a "finger-like protrusion" as representing the area in which the Property is
28 located. The fact that it was necessary, both to use this language, and to suggest that the area referenced
included the Property, underscores the fundamental inadequacy of the EIR as an informational document.

1 overlay. (AR 20072, 132.) The B-8 zoning overlay delineates areas in which subdivision is
2 barred due to, inter alia, scarce groundwater resources. (AR 362-363.) The Project's wells are
3 located just outside of that overlay. (AR 364.)

4 Geosyntec examined the same area as the Todd Report, including the same
5 geographical subareas. (Compare AR 20071, 20076 with AR 1448, 1451.)¹⁶ Geosyntec
6 reviewed well hydrographs in these areas tracking actual groundwater levels from 1963 to 2007.
7 (AR 20095-20096, 20113-20115.) Geosyntec also calculated a water balance based upon
8 groundwater pumping, recharge from precipitation, and inflows and outflow to adjacent basins
9 (AR 20151-20157). Based upon this work, Geosyntec concluded that the “the primary aquifer
10 system in the El Toro Planning Area is in overdraft” and “the rate of groundwater pumping . . .
11 exceeds the rate of groundwater replenishment.” (AR 20163, 20062.) Groundwater level
12 declines averaged 0.6 feet per year since the 1960s, worsening to 1.8 feet per year since 1999.
13 (AR 20113-20115, 20131-20132.)

14
15 The Geosyntec Study was published in July 2007 (AR 3928), fifteen months before the
16 DEIR's release (AR 641). Nevertheless, the DEIR cited that Study only once, and then only for
17 the proposition that “water bearing formations in this area dip in a northeasterly direction into the
18 Salinas Valley.” (AR 830.) Similarly, the DEIR scarcely mentioned overdraft. The term is
19 referenced expressly only in two virtually identical passages, in which the DEIR explained that
20 “[s]ome of Monterey County's aquifers are experiencing localized over drafting,” and notes that
21 over drafting “has caused seawater intrusion in those aquifers in the *northern end of Salinas*
22 *Valley.*” (AR 825, 830, italics added.) The DEIR never explained to which of the County's
23 aquifers it refers. However, because the DEIR stated that the Project's wells are in the “El Toro
24 Groundwater Basin,” not the SVGB (AR 826), there is no basis to infer that the DEIR was
25
26

27
28 ¹⁶ Geosyntec refers to the “Calera Canyon” subarea as the “Calera Creek” subarea. Nonetheless, the
boundaries appear to be identical. (Compare AR 20076 with AR 1448.)

1 referring to the Project area. The DEIR generally referred to “the deficient water conditions
2 within the El Toro Groundwater Basin.” (AR 837.) But, as Real Party conceded in its briefing, the
3 DEIR never disclosed that the area from which the Project will draw water is in overdraft.
4 Moreover, the DEIR simultaneously implied that the relevant area is not in overdraft when it
5 stated that the Property “receive[s] benefits of sustained groundwater levels attributed to the
6 operation of both the Nacimiento and San Antonio Reservoirs and will receive benefits of the
7 Salinas Valley Water Project upon completion.” (AR 830.)

8
9 The DEIR’s omission was exacerbated by its cumulative impact analysis. Based upon
10 the Todd Report, the DEIR projected a 320.7 afy *surplus* in the four hydrologically
11 interconnected subareas that include the San Benancio Gulch subarea (AR 837-838) and
12 therefore concluded that Project demand “would be considered a less than significant
13 cumulative impact.” (AR 842-843.) This conclusion is possible only because the DEIR carefully
14 restricted the scope of its cumulative analysis to these interconnected subareas. (AR 842.)

15
16 By contrast, the FEIR acknowledged — based upon the Geosyntec Study — that both
17 the SVGB and “the primary aquifer system . . . [are] in overdraft.” (AR 128, 353, 363, 375, 385.)
18 The FEIR further acknowledged that the Project’s wells are in the CDT Subbasin of the SVGB.
19 (AR 353.)

20 **1.4.2.2.2 Strike-out**

21 Commenters pointed out significant defects in the DEIR’s water supply analysis. (See,
22 e.g., AR 156, 161-162, 185.) The County provided a Master Response upon the subject,
23 incorporating the Geosyntec Study. (AR 128.)¹⁷ There, the County offered “Clarifications
24 Regarding the Groundwater Basin Setting,” namely that the Project site lies *completely* within
25

26
27 ¹⁷ The FEIR did not expressly explain why the Geosyntec Study was not relied upon in the DEIR.
28 Regardless, the FEIR implied the Geosyntec Study was prepared too late to impact the DEIR’s
substantive analysis, noting that it “was reviewed and considered, despite this document not being
available until the DEIR was in its final stages of completion.” (AR 128.)

1 the SVGB, which contains *eight* subbasins, including the CDT Subbasin, in which the Project's
2 wells lie. (AR 129.) The County explained that the SVGB's subbasins "are based on
3 hydrogeologic features" and "are not contiguous" with the "Geosyntec Study Area" subareas,
4 which are based upon "topographic and watershed features." (*Ibid.*) The County noted,
5 however, that the Study Area "overlaps with a portion of the project site and demonstrates
6 hydraulic connectivity between the larger Salinas Valley Groundwater Basin and the Corral de
7 Tierra Area Subbasin," and hence, that the Geosyntec Study offered relevant information
8 concerning "local groundwater dynamics." (*Ibid.*)
9

10 The County explained that the EIR's groundwater resources and hydrogeology analysis
11 was amended to "clarify" both "the relationship of the Geosyntec study with the proposed
12 project" and the "groundwater basin setting." (AR 129-130.) Nevertheless, the County concluded
13 that it was unnecessary to recirculate its analysis because the revisions 1) did not reveal a new
14 significant impact, document the increased severity of an environmental impact, or result in
15 Project alternatives or mitigation "considerably different" from those analyzed in the DEIR; and
16 because 2) they "serve[d] to clarify, amplify or otherwise result[ed] in insignificant modifications
17 to the DEIR." (AR 124.) The FEIR presented these revisions in a strike-out, track changes
18 format, in what it termed the "Revised" Chapter 3.6.
19

20 **1.4.2.2.2.1 Revised Chapter 3.6**

21 Contrary to the County's suggestion, the FEIR's edits were far from cosmetic. The
22 FEIR's Revised Chapter 3.6, inter alia, 1) presented a new environmental setting; 2) relied upon
23 the Geosyntec Study, not the data cited in the Todd Report; 3) expressly acknowledged
24 overdraft; 4) deleted the DEIR's references to prior groundwater management projects; 5)
25 removed the purported groundwater surplus as a rationale in support of both its direct and
26 cumulative impact conclusions; and 6) substantially changed the cumulative impact analysis,
27 greatly enlarging its scope and wholly revising its rationale.
28

1 The FEIR noted both that the Project is in the SVGB, not the “El Toro Groundwater
2 Basin,” and that the Project site’s water supply is specifically located in the CDT Subbasin of the
3 SVGB. (AR 352-353, 358, 362.) The FEIR expunged all references to the “El Toro Groundwater
4 Basin.” (See e.g., AR 353, 358-359.) Additionally, the DEIR contained no maps of the relevant
5 area. By contrast, the FEIR provided maps of the Project area in relation to both the CDT
6 Subbasin and the Geosyntec Study Area. (AR 356, 360, 364.)¹⁸

7
8 The FEIR explained that its analysis was based upon the Geosyntec Study, which
9 “superseded” the two studies and accompanying hydrogeologic data upon which the Todd
10 Report relied. (AR 353.)¹⁹ The FEIR further explained that the Geosyntec Study “determined
11 that there is an overdraft condition within the Geosyntec Area,” and that the Project’s wells
12 would procure water from within this area. (AR 363.) Given the overdraft, the FEIR removed the
13 DEIR’s statement that the relevant area “receive[s] benefits of sustained groundwater levels
14 attributed to the operation of both the Nacimiento and San Antonio Reservoirs,” prior
15 groundwater management projects. (AR 830.) Instead, the FEIR stated only that the Project
16 area “indirectly receive[s] benefits of sustained groundwater levels within the Basin attributed to
17 the Salinas Valley Water Project.” (AR 363.)

18
19 Similarly, the FEIR no longer relied upon a water surplus as a rationale in support of its
20 conclusions that the Project would have no direct or cumulative significant impact. Both
21 analyses’ discussions described the Todd Report and its findings as historical background for
22 the FEIR’s analysis, which expressly relied upon the Geosyntec Study. The FEIR’s direct impact
23 analysis discussed the Todd Report under a section heading entitled “Previous Studies.” (AR
24 374.) The FEIR’s conclusion that the Project would cause no significant direct impacts upon

25
26 ¹⁸ Regardless, the FEIR presented no map showing the relationship between the CDT Subbasin and the Geosyntec
Study Area, which it conceded “are not contiguous.” (AR 129.)

27
28 ¹⁹ The FEIR still represented that its analysis was based upon the Todd Report, noting that the Geosyntec
Study “provided additional hydrogeologic information on the region, which has been incorporated herein
where appropriate.” (AR 352.)

1 groundwater resources relied not upon a purported surplus, but rather, upon 1) the SVWP; 2)
2 the Project's "negligible" effect upon the local aquifer; 3) Geosyntec's conclusion that the Project
3 "overlies a portion of the primary aquifer that has a large saturated thickness and groundwater
4 production is considered good"; and 4) Geosyntec's conclusion that the relevant aquifer is
5 "hydrogeologically contiguous with the aquifers located to the east in the Salinas Valley rather
6 than the less productive areas within the Geosyntec Study area" and hence, that "groundwater
7 pumping . . . would not likely affect the less saturated thickness areas of the primary aquifer with
8 the Geosyntec Study area." (AR 375-376.)

9
10 Likewise, the FEIR's cumulative impact analysis discussed the Todd Report's
11 conclusions for context, noting that its conclusion of a surplus "was *similar* to the conclusions of
12 the subsequent" Geosyntec Study. (AR 385, italics added.) The FEIR did not explain this
13 similarity; however it is clear that its reasoning in support of its conclusion that the Project will
14 have no significant cumulative impact was not based upon any such surplus. (See AR 385-387.)
15 This is so notwithstanding that the DEIR's cumulative analysis was based *solely* upon the Todd
16 Report's surplus conclusion. The FEIR also significantly expanded the geographic scope of the
17 DEIR's cumulative analysis. (AR 843.) The court discusses the FEIR's revised cumulative
18 analysis in the next section of this decision.

19 20 **1.4.2.3 The FEIR's Cumulative Analysis**

21 Perhaps the most thorough revisions the FEIR made were to the Groundwater
22 Resources and Hydrology chapter's cumulative impact analysis. Although the FEIR's conclusion
23 mirrored that of the DEIR, the FEIR's rationale was entirely different. Moreover, the FEIR
24 significantly expanded the geographic scope of the cumulative impact analysis.

25 26 **1.4.2.3.1 Reasoning**

27 The DEIR based its cumulative impact conclusion upon a single factor: the purported
28 water surplus of 314.82 AFY that resulted from considering four individual subareas of the "EI

1 Toro Groundwater Basin” to be interconnected. (AR 842-843.) As discussed *ante*, the FEIR’s
2 cumulative impact section presented the Todd Report’s surplus as background information. (AR
3 385.) The Todd Report concluded that the Project’s incremental contribution to a cumulative
4 impact was “minimal”; the FEIR stated that this conclusion was “similar” to the Geosyntec
5 Report’s conclusions. (*Ibid.*) The FEIR nonetheless relied upon the Geosyntec Report, not the
6 Todd Report, in reaching its own conclusion as to cumulative impacts. (AR 385-386.)
7

8 The FEIR offered three new rationales in support of its cumulative impact conclusion.
9 First, the FEIR referenced the Geosyntec Study’s finding that, although the “primary aquifer is
10 currently . . . in overdraft . . .[,] groundwater production is considered good and pumping could
11 be sustained for decades in the vicinity of the project site (as well as other areas) because it
12 was located in an area with a large saturated thicknesses of the primary aquifer.” (AR 385.)
13 Second, the FEIR cited the 2010 Geosyntec Study Update’s determination that the relevant
14 aquifer was “hydrogeologically contiguous with the aquifers to the east in the Salinas Valley,
15 rather than the less productive and stressed areas within the Geosyntec Study area.” (*Ibid.*) The
16 implication of this statement is that pumping in the Project area would not meaningfully affect
17 aquifers in the “less productive and stressed areas” referenced. Third, the FEIR cited the
18 Project’s location in Zone 2C and resulting financial contribution to the SVWP. (AR 387.)
19

20 None of these rationales appear in the DEIR’s cumulative impact section. The first
21 rationale is arguably similar to the DEIR, in that both analyses were predicated upon ample
22 supply and minimal impact to “stressed areas.” Any similarity, however, is undermined by the
23 fact that the DEIR’s conclusion was based upon a surplus, while the FEIR’s rationale was that
24 groundwater pumping is possible for decades notwithstanding overdraft. (AR 385.)
25

26 Additionally, the FEIR’s second rationale directly contradicted the core underpinning of
27 the DEIR’s conclusion. The DEIR’s determination of a surplus was predicated upon the Project’s
28 wells being located in the San Benancio Gulch subarea, one of four hydrologically

1 interconnected subareas of the El Tora Groundwater Basin. (AR 826, 837, 843.) By contrast,
2 the FEIR concluded that the Project area is *not* connected to “the less productive and stressed
3 areas within the Geosyntec Study Area.” (AR 385.)²⁰

4 Finally, Real Party notes that the FEIR was not the first time the SVWP was referenced.
5 Indeed, the DEIR discussed the then-incomplete SVWP as a project in development that would
6 help to manage and protect groundwater resources, and provide benefits to the Property upon
7 completion. (AR 830.) Further, the DEIR observed that the Project was in Zone 2C, and hence
8 would pay fees towards the SVWP. (AR 831.) The DEIR explained that payment of these fees
9 meant the Project “will not exacerbate the deficient water conditions within the El Toro
10 Groundwater Basin.” (AR 837.) Regardless, the latter explanation appeared only in the DEIR’s
11 *direct impact analysis*. Even if the court were to infer that the DEIR intended the SVWP as a
12 basis for its cumulative impact conclusion, the rationale would still differ from the FEIR because
13 the FEIR greatly expanded the geographic scope of the cumulative impact analysis. Put simply,
14 the DEIR’s determination that the SVWP would mitigate Project impacts to the four
15 interconnected subareas is not equivalent to the FEIR’s conclusion that the SVWP would
16 mitigate such impacts to *the entire SVGB*.

19 **1.4.2.3.2 Geographic Scope**

20 Finally, the FEIR changed the geographic scope of the cumulative impact analysis from
21 the surrounding four subareas discussed in the Todd Report to the entire SVGB.

22 “Lead agencies should define the geographic scope of the area affected by the
23 cumulative effect and provide a reasonable explanation for the geographic limitation used.”
24

25 ²⁰ Contrary to the FEIR, the Geosyntec Study Update contained no such conclusion. (AR 4140-4144.) The
26 Update recognized a “hydraulic connection between the El Toro Planning Area and the Salinas Valley,”
27 and that the hydraulic gradient “is generally northeastward toward the Salinas Valley.” (AR 4141.) But
28 Geosyntec’s finding that the Project area’s primary aquifer is connected with the Salinas Valley is not the
equivalent of a conclusion that the Project area’s primary aquifer is *disconnected from its surrounding
subareas*.

(Guidelines, § 15130, subd. (b)(3).) No fixed standards apply; the agency has discretion to apply its expertise in selecting an appropriate assessment area. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 907.) “Absent a showing of arbitrary action, we must assume that the agencies have exercised this discretion appropriately. [Citation.]” (*Ebbetts Pass Forest Watch v. Department of Forestry and Fire Protection* (2004) 123 Cal.App.4th 1331, 1351.)

The DEIR’s cumulative impact section was entitled “**Cumulatively Adversely** [*sic*] **Affect** [*sic*] **on the Surrounding Subareas.**” (AR 842, bold in original.) The section analyzed the Project’s impact upon “the four interconnected subareas located north of the Chupines fault within the El Toro Groundwater Basin,” namely the El Toro Creek, San Benancio Gulch, Corral de Tierra, and Watson Creek subareas. (AR 842-843.) As discussed *ante*, the DEIR’s cumulative impact determination assumed that these “interconnected” subareas would, in the aggregate, have a “net surplus of approximately 314.82 AFY,” and that hence, “the loss of 5.88 AFY would be considered minimal.” (AR 843.) The scope of the DEIR’s cumulative impact analysis then, was the El Toro Creek, San Benancio Gulch, Corral de Tierra, and Watson Creek subareas of the El Toro Groundwater Basin.

The FEIR’s cumulative impact section was entitled “**Cumulative Adverse Affect** [*sic*] **on the Groundwater Basin.**” (AR 384, bold in original.) The header to the section stated, “[i]mplementation of the proposed project, when combined with other development in the vicinity, will increase the demand on groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin. Groundwater pumping has the potential to cumulatively influence groundwater supplies within in [*sic*] *the adjacent subbasins and the basin as a whole.*” (*Ibid.*, italics added.) The FEIR’s substantive analysis relied primarily upon the SVWP, which it noted would mitigate the Project’s impact “on the groundwater basin.” (AR 837.) The FEIR observed that, since the SVWP became operational, “the entire basin appears to be

1 becoming more hydrologically balanced” (*Ibid.*) It appears then, that the scope of the
2 FEIR’s cumulative impact analysis was the entire SVWP. This conclusion is unclear.²¹

3 Nonetheless, Real Party conceded at trial that the geographic scope of the FEIR’s cumulative
4 analysis “expanded” to include — *at minimum* — adjacent portions of the SVWP.

5
6 Nevertheless, Real Party argues the County’s decision not to recirculate based upon the
7 FEIR’s “expanded” scope of cumulative analysis was appropriate, citing *Spring Valley, supra*,
8 248 Cal.App.4th at p. 108. In *Spring Valley*, the Fourth District Court of Appeal held that
9 substantial evidence supported the City’s decision not to recirculate an EIR’s biological impact
10 analysis. The court noted that revisions to the analysis “updated the size of the streambed area
11 potentially impacted by the project” (*Ibid.*) The court reasoned that, because the revisions
12 “did not change the nature of the potential impacts, their likelihood to occur, or the mitigation for
13 them, we cannot conclude the revisions deprived the public of a meaningful opportunity to
14

15
16 ²¹ Real Party’s attempt to address this issue in its initial brief was opaque. Real Party stated that “the
17 geographic scope of the area *directly affected* by cumulative groundwater resources is the Toro Aquifer.”
18 (Italics added.) Real Party further stated that both the DEIR and FEIR “correctly identified the Project
19 wells as” overlying the “Toro Aquifer.” This implies that the geographic scope of the FEIR’s cumulative
20 impact analysis was limited to the “Toro Aquifer,” a term never used in either the DEIR or FEIR.

21 However, Real Party also observed that “portions of the Toro Aquifer where the Project wells are located
22 are connected to other aquifers in the SVGB that could *be indirectly impacted* by Project pumping,” and
23 hence, “those aquifers and the SVGB were also discussed in both the DEIR and FEIR.” This observation
24 suggests that the scope of the cumulative analysis — in both the DEIR and FEIR — included both the
25 “Toro Aquifers” and “other [unspecified] aquifers” in the SVGB.

26 Then, in supplemental briefing, Real Party stated that “[t]he geographic scope of the cumulative
27 groundwater analysis in the [FEIR] is the [SVGB].” Real Party next sought to “clarify” its point by
28 stating that the “FEIR’s cumulative impact discussion include[d] the Toro Aquifer/CDT Subbasin as well
as the *adjacent aquifers and subbasin* of the SVGB.” (Italics added.) This implies that the scope of the
FEIR’s cumulative analysis was not the entire SVGB, but instead, was limited to the CDT Subbasin,
adjacent aquifers, and the 180/400 Subbasin.

Finally, at trial, Real Party conceded that the geographic scope of the DEIR’s cumulative analysis was
limited to the “El Toro Planning area,” but that the FEIR’s analysis “was expanded to include not only this
area . . . , but also . . . [the] connected area downstream in the Salinas Valley Groundwater Basin.”

comment on a substantial adverse environment effect.” (*Ibid.*) Real Party contends that this portion of *Spring Valley* is directly on point. The court disagrees for several reasons.

First, *Spring Valley* did not address whether the FEIR’s update of the size of the streambed area suggested that the DEIR’s biological resources analysis was fundamentally flawed; that issue was never before the court. Second, the change to the size of the affected streambed area was relatively small; the area examined expanded from 0.33 acres to 0.79 acres. (*Id.* at pp. 106-107.) Here, the FEIR expanded the scope of its cumulative analysis from, effectively, a single subbasin, to the entire SVGB. Third, *Spring Valley* did not deal with the scope of cumulative analysis, but rather addressed revisions to the *direct impact* analysis. In the context of cumulative impacts, CEQA requires the County to “define the geographic scope of the area affected . . . and provide a reasonable explanation for the geographic limitation used.” (Guidelines, § 15130, subd. (b)(3).) Fourth, in *Spring Valley*, the mitigation prescribed in the DEIR did not change because it was sufficient to mitigate impacts to the larger area. (*Spring Valley, supra*, 248 Cal.App.4th at p. 106.) Finally, *Spring Valley* addressed, inter alia, a few minor revisions to an EIR’s biological resources analysis. Here, recirculation was required not merely because the FEIR expanded the scope of the geographical analysis, but because the DEIR contained a slew of serious defects in the DEIR, *including* the change in analytical scope, which resulted in a wholesale revision of the Groundwater Resources and Hydrology chapter. In this respect, this case is more akin to *Spring Valley*’s finding that “a complete redesign of the project’s stormwater management” triggered recirculation of the FEIR’s hydrology and water quality analysis. (*Id.* at pp. 108-109.)

Real Party also argues that *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 267, and *Beverly Hills, supra*, 241 Cal.App.4th at page 663, stand for the proposition that the FEIR need not have been recirculated. The court disagrees.

1 Preliminarily, neither case addressed whether the DEIR “was so fundamentally and
2 basically inadequate and conclusory in nature that meaningful public review and comment were
3 precluded. [Citation.]” (Guidelines, § 15088.5, subd. (a)(4).) Further, in *California Oak*
4 *Foundation, supra*, 188 Cal.App.4th at pages 266-267, the court found that recirculation was not
5 required in order to address either a new seismic study or two letters responding to that study
6 because both the report and letters “merely confirmed . . . what had already been disclosed to
7 the public in the DEIR,” i.e. that “there was no evidence of active faults underlying the . . .
8 project site.” (*Id.* at p. 267.) Likewise, in *Beverly Hills, supra*, 241 Cal.App.4th at page 663, a
9 subsequent study confirmed the DEIR’s conclusion that a potential subway station was not
10 viable. The public had had a full opportunity to address the environmental impacts of both the
11 nonviable station and the other station option under consideration by submitting comments upon
12 the DEIR. (*Ibid.*) Here, by contrast, substantial defects in the DEIR necessitated a complete
13 revision of the relevant chapter of the FEIR, depriving the public of a meaningful opportunity to
14 comment on, inter alia, an analysis based upon the correct environmental setting, the overdraft
15 condition, and wholly new rationales underlying the FEIR’s cumulative analysis.

18 **1.5 Whether the FEIR is adequate**

19 The court’s conclusion that the DEIR “was so fundamentally and basically inadequate
20 and conclusory in nature that meaningful public review and comment were precluded”
21 (Guidelines, § 15088.5, subd. (a)) renders it unnecessary to reach either Petitioners’
22 informational and substantive challenges to the FEIR or Real Party’s claim that one such
23 challenge is barred for failure to exhaust.

24 **2. Traffic**

25 The RDEIR’s project-specific Traffic Impact Analysis explained:

26 “The proposed project site is located in Monterey County, approximately twelve miles
27 east of the City of Monterey, ten miles west of Salinas and south of State Route 68. The project
28

1 site of approximately 164 acres would be developed as 17 market-rate single family homes and
2 one remainder parcel, approximately 180 acres in size that will be open space. State Route 68
3 would provide regional access to the project site. More specifically, the project site for the
4 proposed Harper Canyon/Encina Hills Subdivision is located off San Benancio Road to the
5 south of State Route 68 via Meyer Road.” (AR 469.)

6 **2.1 Factual Background**

7
8 The EIR studied six intersections and five roadway segments along Highway 68
9 between State Route 218 and San Benancio Road. (AR 902.)

10 **2.1.1 DEIR**

11 The DEIR concluded that the Project would cause 1) significant and unavoidable direct,
12 project-level impacts to four of six intersections and four of five roadway segments (AR 917,
13 919-921); and 2) significant and unavoidable cumulative impacts to five of six intersections and
14 all five roadway segments (AR 927, 930).

15 **2.1.2 RDEIR**

16
17 In December 2009, the County recirculated the traffic section of the EIR. (AR 410-639.)
18 The County found that significant new information, including inter alia, the Transportation
19 Agency for Monterey County (TAMC)’s adoption of a new Regional Development Impact Fee
20 (RDIF), triggered recirculation. (AR 412.)

21 The RDEIR²² assessed the significance of traffic impacts with reference to levels of
22 service (LOS), ranging from LOS A (no congestion) to LOS F (highly congested traffic with
23

24
25
26
27 ²² With the exception of minor changes made by the FEIR, the RDEIR is the relevant analysis.
28 Consequently, the court will summarize its findings as modified by the FEIR, and will discuss the FEIR
only insofar as it responded to public comment.

unacceptable delay to vehicles at intersections).²³ (AR 418-419.) State Route 68 is highly congested. Under existing conditions, five of six study intersections during the A.M. peak hour and four of six study intersections during the P.M. peak hour operate below applicable LOS standards. (AR 423.) Similarly, under existing conditions, all of the roadway segments operate below applicable LOS standards during both the A.M. peak hour and the eastbound P.M. peak hour commute. (AR 423-424.) During the westbound P.M. peak hour commute, three roadway segments operate at unacceptable LOS. (AR 424.)

The RDEIR identified a number of “Recommended Improvements” under Existing Conditions:

“Widening State Route 68

“As shown in **Table 3.10-4, Roadway Segment Level of Service for Existing Conditions**, certain segments along [SR 68] currently operate below the LOS C/D standard established by Caltrans. In order to achieve acceptable levels of service for all of the [SR 68] study intersections and road segments under Existing Conditions (and maintain this level of service through the cumulative scenario), the roadway would require widening to four lanes between Toro Park and State Route 1. The widening of [SR 68] has been discussed and debated for several years.

“Alternatively, a four-lane freeway parallel to the [SR 68] corridor was considered as part of the Fort Ord Reuse Plan. The County of Monterey and Caltrans have considered this ‘South Fort Ord Bypass’ along an alignment approximately one-half mile north of the existing [SR 68] roadway. However, there are no short or long-term funding sources available for either one of these alternatives.

“Furthermore, there are no feasible interim improvements that could be implemented along the corridor that would achieve and maintain the acceptable level of service standards, and widening the entire corridor to a four-lane facility is not feasible at this time.

“State Route 68 Improvement Advisory Committee

“In 2001, the State Route 68 Improvement Advisory Committee . . . identified and prioritized a list of improvements for existing and future traffic conditions that would facilitate a slight reduction in the travel time along the corridor. These improvements included several projects that are either completed, or contained in the [TAMC RDIF] program. Subsequent to the 2001 State Route 68 Improvement Advisory Committee recommendations, [TAMC] prepared a *Nexus*

²³ Highway 68 falls under Caltrans’ jurisdiction. Caltrans’ LOS standard is the transition between LOS C and LOS D. Hence, “LOS C was used as the acceptable level of service standard for State Route 68.” (AR 419.)

1 *Study for a Regional Development Impact Fee* (RDIF) dated May 14, 2004. Most of the Advisory
2 Committee's recommendations for State Route 68 were identified within the project list used to
3 establish the TAMC RDIF." (AR 426, bold and italics in original.)

4 *"Regional Impact Fee Nexus Study Update*

5 "In March 2008, TAMC updated the *Nexus Study for a Regional Development Impact Fee*. The
6 project list in the *Regional Impact Fee Nexus Study Update* includes two improvement projects
7 recommended for Existing Conditions. These projects include the Marina-Salinas Corridor and
8 the State Route 68 Commuter Improvements" (AR 328, italics in original)

9 As to project-level impacts, the RDEIR analyzed traffic conditions under "Background
10 plus Project Conditions." (AR 439.) "Background plus Project Conditions" referred to "Existing
11 Conditions" traffic, Project traffic, and "traffic generated from approved, but not yet constructed
12 developments in the area" within five years from the date of the preparation of the traffic study
13 upon which the RDEIR relied. (AR 420, 428-429.) "Background plus Project Conditions" also
14 assumed that certain planned traffic improvements, including those recommended by the SR 68
15 Improvements Advisory Committee, would be fully funded and implemented. (AR 429.)

16 For cumulative impacts, the RDEIR analyzed traffic conditions under "Cumulative
17 Conditions." (AR 451-459.) "Cumulative Conditions" referred to "Existing Conditions" traffic,
18 Project traffic, and "the estimated traffic generated by all approved and cumulative projects in
19 the vicinity of the project site Cumulative projects include developments that are in the
20 review process but have not yet been approved." (AR 420.)

21 In general, the RDEIR considered the Project's traffic impact significant if it would, inter
22 alia, 1) "cause an increase in traffic which is substantial in relation to the existing traffic load and
23 capacity of the street system (i.e. result in a substantial increase in either the number of vehicle
24 trips, the volume to capacity ratio on roads, or congestion at intersections)"; or 2) "[e]xceed
25 either individually or cumulatively, a level of service standard established by the county
26 congestion management agency for designated roads or highways." (AR 436.)

1 The RDEIR also established specific impact criteria for signalized and unsignalized
2 intersections and roadway segments. For signalized intersections and roadway segments, the
3 Project would cause a significant impact if the traffic it generates would (1) cause intersection or
4 segment service to deteriorate from acceptable to unacceptable; (2) increase the volume-to-
5 capacity ratio by 0.01 at intersections operating at LOS D or E; or (3) add any traffic to an
6 intersection or segment operating at LOS F. (AR 436.) For unsignalized intersections, Project
7 traffic would cause a significant impact if it "causes any traffic movement to operate at LOS F, or
8 any traffic signal warrant to be met." (AR 437.) Notwithstanding these thresholds of significance,
9 the RDEIR noted that:

11 ". . . Caltrans uses a Corridor Management System Approach to develop the best solutions(s)
12 that address congestion issues on State Route 68 and regional network facilities in general.
13 Caltrans,

14 TAMC, and Monterey County are currently exploring more meaningful methods by which to
15 analyze regional corridors such as State Route 68, and to evaluate them in the context of
16 corridor-wide effects rather than a series of impacts to individual roadway segments and
17 intersections. Using this methodology, TAMC established a Regional Development Impact
18 Fee (RDIF) for their 2005 Regional Transportation Plan (and 2010 update).

19 "Monterey County recognizes that State Route 68 from Salinas to Monterey operates as a
20 roadway corridor that is part of the larger regional transportation system. In addition,
21 Monterey County recognizes that State Route 68 will not be widened to four lanes in its entirety
22 for various reasons; and therefore, is not likely to fully operate at acceptable levels of service at
23 all locations into the future. For this reason, this analysis includes a study of travel time, delay
24 and recommendations to reduce travel delay along the corridor. Although conventional
25 thresholds of significance are recognized and used in this report, the County considers the
26 delay study to be an important discussion with respect to understanding corridor operations, and
27 the relative net effect of the Harper Canyon/Encina Hills project on those operations." (AR 437.)

22 **2.1.2.1 Project Impacts (Impact 3.10-1a, b)**

23 Under "Background plus Project Conditions," the RDEIR concluded that the Project
24 would contribute at least one traffic trip to four of six intersections and four of five study
25 segments already operating at LOS F, which would constitute a significant impact. (AR 439,
26 442.) Four-laning the entire SR 68 corridor or constructing a new four-lane road parallel to SR
27

68 would mitigate these impacts, but no funding is available for these improvements and hence, they were “not considered feasible mitigation under CEQA.” (AR 441, 444.)

The RDEIR adopted Mitigation Measure (MM) 3.10-1 to mitigate some of these impacts. (AR 446.) As modified in the FEIR, the Measure provided, “Prior to issuance of building permits within the subdivision, the project applicant(s) shall contribute their proportionate fair share, as calculated by the County, towards the ‘State Route 68 Commuter Improvements’ through payment of the [RDIF] in effect at that time, as required under mitigation measure **MM 3.10-6.**” (AR 328, bold in original.)

As modified in the FEIR, MM 3.10-6 provided “The Monterey County Resource Management Agency shall require the project applicant to pay the project’s fair share of traffic impact fees in effect at the time of building permit applications for future development on the project site. Such fees may include, but are not necessarily limited to, and [sic] the [RDIF] and Monterey County ad hoc mitigation fees. Payment of the [] RDIF may be done as part of compliance with mitigation measure **MM 3.10-1.**” (AR 329, bold in original.)

Implementation of these mitigation measures “would require contribution towards the ‘State Route 68 Commuter Improvements,’ which would widen 2.3-miles of State Route 68 to four lanes from the existing 4-lane section (adjacent to Toro Park) to Corral de Tierra Road.” (AR 441.) Noting the benefits of the widening, the RDEIR cited the Traffic Study’s analysis of a smaller 1.1-mile widening of part of the same stretch of SR 68. (AR 444-445.) The Study concluded that that extension would reduce the combined eastbound and westbound travel time through the SR 68 corridor by 4.7 minutes during both the weekday A.M. and P.M. peak hours. (AR 445.) The Project would increase that travel time by approximately 32 seconds and thus, the RDEIR explained that the 1.1-mile freeway extension would “more than offset the increase in travel time caused by the proposed project.” (*Ibid.*) By extension, the RDEIR concluded that a full, 2.3-mile four-lane extension would further reduce travel time. (*Ibid.*)

1 The RDEIR identified other benefits to the implementation of the SR 68 Commuter
2 Improvements Project. The RDEIR predicted the improvement would “reduce the length of the
3 queue on westbound State Route 68 east of San Benancio Road during the weekday A.M. peak
4 hour, which is currently up to 2.5 miles long”; improve safety; and eliminate cut-through traffic
5 through an existing residential area and school zone during the AM peak hour. (AR 445.)

6
7 As to LOS, the RDEIR found that these measures would mitigate impacts to two
8 intersections and one roadway segment. Project-level impacts to the remaining two intersection
9 and three roadway segments, however, would remain significant and unavoidable. (AR 447.)

10 **2.1.2.2 Cumulative Impacts (Impact 3.10-6)**

11 Under Cumulative Conditions, the RDEIR determined that LOS would be unacceptable
12 at all six intersections and five roadway segments, a significant cumulative impact. (AR 452,
13 454-455.) The RDEIR found that all of these impacts would be mitigated by fair-share payments
14 to the RDIF and Monterey County ad hoc mitigation fees, concluding that “[p]ayment of the
15 RDIF is considered appropriate and sufficient mitigation for cumulative traffic impacts”; and
16 “Implementation of the above mitigation measure would require the proposed project to
17 contribute their fair share towards all regional traffic impact fees in effect at the time of issuance
18 of building permit . . . including but not limited to the TAMC RDIF. Through the payment of the
19 regional traffic impact fees, the proposed project would directly contribute to future
20 improvements, which would help off-set any cumulative traffic impacts on regional roadways
21 caused by increased trip volume associated with the proposed project. Payment of all regional
22 impact fees will mitigate the proposed project’s cumulative traffic impacts to the regional
23 roadway network. Therefore, the proposed project’s cumulative impact on traffic operations
24 under Cumulative Conditions would be reduced to a **less than significant** level.” (AR 459, bold
25 in original.)²⁴

26 **2.1.2.3 Additional Mitigation**

27 The RDEIR found potentially significant impacts from 1) increased trips on Meyer Road,
28 leading to potential safety hazards (Impact 3.10-3) (AR 448); and 2) Project access and sight
distance at the Meyer Road/San Benancio Road Intersection (Impact 3.10-4) (AR 449). To

²⁴ This analysis assumes that, following the SR 68 widening, Real Party would convert the northbound right turn to right-turn overlap phasing. (AR 457-458.)

mitigate these impacts, the RDEIR required Real Party to 1) widen and resurface Meyer Road to conform with County standards for cul-de-sac private roads (AR 449); 2) hire an engineer to prepare a sight distance improvement plan at the Meyer Road/San Benancio Road Intersection; 3) complete any improvements the engineer recommends, which may include grading, embankment, and installing right turn tapers; and 4) design and construct a southbound San Benancio Road left-turn lane at the Meyer Road/San Benancio Road intersection (AR 450).

2.1.3 FEIR

Relevant portions of the FEIR provided:

“Response to Comment 23-1

“Comment asks how the Highway 68 Commuter Improvements Project Study Report would mitigate project impacts.

“The Harper Canyon/Encina Hills project contributes 17 PM peak hour trips to the Highway 68 corridor, which consists of several roadway segments and intersections that already operate at deficient LOS conditions. As described in mitigation measures MM 3.10-1 and MM 3.10-6, the applicant would be required to pay their proportionate fair share, as calculated by the County, towards the “State Route 68 Commuter Improvements” through payment of the TAMC [RDIF] in effect at that time. Construction of the ‘State Route 68 Commuter Improvements’ would widen a 2.3 mile [sic] section of State Route 68, which would shorten the travel time on State Route 68 in both directions; improve intersection operations at two locations from unacceptable to acceptable levels; reduce the length of the queue on westbound State Route 68 east of San Benancio Road during the weekday A.M. peak hour; improve safety along State Route 68; and eliminate the observed trend of drivers cutting through Toro Park Estates to re-enter State Route 68 at Torero Drive during the weekday A.M. peak hour. However, even with construction of the improvements the project will have significant and unavoidable impacts as noted under Impact 3.10-1.” (AR 271.)

“Response to Comment 23-2

“Comment asks how payment of regional transportation impact fees mitigate for cumulative impacts.

“The comment is correct that the project would have impacts on several intersections and roadway segments west of the Highway 68 Commuter Improvement project. Those impacts are identified and disclosed on page 3.10-31 of the RDEIR as a direct implication of the project.

“The treatment of cumulative impacts and application of regional mitigation works a little differently than project-specific impacts and project-level responsibility. Mitigation Measure 3.10-6, the payment of the TAMC [RDIF], is recognized by the County of Monterey, TAMC and Caltrans as the appropriate mechanism for mitigating cumulative, regional traffic throughout the regional roadway system in Monterey County. The regional roadway network is vast, and the

1 projects contributing to trips and vehicle miles traveled (VTM) on that network originate from a
2 very large geographic area. The payment of regional impact fees is a recognized and
3 acceptable mitigation strategy under CEQA to address cumulative impacts, as those fees are
4 applied to a wide range of projects and improvements over time. As noted above, several
5 impacts along the Highway 68 corridor are recognized at the project level as remaining
6 significant and unavoidable, since the Highway 68 Commuter Improvements Project would not
7 extend to these segments and intersections.” (AR 271.)

2.1.4 Findings

8 “9. FINDING: EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN
9 SIGNIFICANT - Changes or alterations have been required in, or
10 incorporated into, the project which avoid or substantially lessen the
11 significant environmental effects identified in the Final EIR. As further
12 described below, potentially significant impacts are mitigated to a less
13 than significant level due to incorporation of mitigation measures from the
14 Final EIR into the conditions of project approval

15 “EVIDENCE: i) CERTAIN IMPACTS TO TRANSPORTATION AND CIRCULATION
16 WILL BE MITIGATED TO LESS THAN SIGNIFICANT. Mitigation
17 Measures MM 3.10-1 through 3.10-6 will reduce certain impacts to
18 transportation and circulation to a less than significant level and are
19 required as conditions of approval. The addition of up to 30 vehicle trips
20 to SR 68 during the weekday A.M. and P.M. peak traffic hours (13 trips
21 during the A.M. peak hour and 17 trips during the P.M. peak hour),
22 however, will result in the further degradation of the operation under
23 Background Plus Project conditions of four intersections (as noted in
24 Impact 3.10-1a of the Final EIR) and four roadway segments (as noted in
25 Impact 3.10-1b of the Final EIR) along SR 68 that currently operate below
26 an acceptable level of service C (see Finding 10 - EIR-Environmental
27 Impacts Not Mitigated To Less Than Significant). **This is considered to**
28 **be a significant and unavoidable impact.** All other transportation and
circulation impacts will be mitigated to a less than significant level.

1. Mitigation Measure MM 3.10-1. Prior to issuance of building permits
within the subdivision, the project applicant(s) shall contribute their
proportionate fair share, as calculated by the County, towards the
'State Route 68 Commuter Improvements' through payment of the
TAMC Regional Development Impact Fee (RDIF) in effect at that time
as required under mitigation measure MM 3.10-6

5. Mitigation Measure MM 3.10-6. The Monterey County Resource
Management Agency shall require the project applicant to pay the
project's fair share of traffic impact fees in effect at the time of building
permit applications for future development on the project site. Such
fees may include, but are not necessarily limited to, the [RDIF], and
Monterey County ad hoc mitigation fees. Payment of the [] RDIF may
be done as part of compliance with mitigation measure MM 3.10-1.”
(AR 20, 33-34, underline in original, bold added.)

1 "10. FINDING: EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO
2 LESS THAN SIGNIFICANT - Specific economic, legal, social,
3 technological, or other considerations, make infeasible mitigation
4 measures that would avoid significant unavoidable impacts. The project
5 would result in significant and unavoidable impacts that would not be
6 mitigated to a less than significant level even with incorporation of
7 mitigation measures from the Final EIR into the conditions of project
8 approval, as further described in this finding.

9 "EVIDENCE: CERTAIN IMPACTS TO TRANSPORTATION AND
10 CIRCULATION WILL BE MITIGATED SIGNIFICANT AND
11 UNAVOIDABLE. The addition of up to 30 vehicle trips to State Route
12 68 (SR 68) during the weekday A.M. and P.M. peak traffic hours (13 trips
13 during the A.M. peak hour and 17 trips during the P.M. peak hour) will
14 result in the further degradation of the operation of intersections and
15 roadway segments, under Background Plus Project Conditions, along SR
16 68 that currently operate below an acceptable level of service C. The
17 impacted intersections are: York Road/SR 68; Laureles Grade Road/SR
18 68; Corral de Tierra Road/SR 68; and San Benancio Road/SR 68 (Impact
19 3.10-1a). The impacted roadway segments are SR 68 between: York
20 Road and Pasadera Drive/Boots Road; Pasadera Drive/Boots Road and
21 Laureles Grade Road; Laureles Grade Road and Corral de Tierra Road;
22 and Corral de Tierra Road and San Benancio Road (Impact 3.10-1b).
23 Improvements to the intersections and roadway segments would improve
24 the operating conditions at the study intersections to acceptable levels of
25 service. However, no funding is available for the implementation of these
26 major improvements. **Therefore, there is no feasible mitigation to**
27 **reduce the impact to a level of insignificance and this impact is**
28 **considered to be a significant and unavoidable impact.**" (AR 35,
underline in original, bold added.)

19 "17. FINDING: EIR- STATEMENT OF OVERRIDING CONSIDERATIONS - In
20 accordance with Public Resources Code section 21081 and CEQA
21 Guidelines Section 15093, the County has balanced the economic, legal,
22 social, technological, or other benefits, including region-wide or statewide
23 benefits, of the project against its unavoidable environmental risks in
24 determining whether to approve the project, and has determined that **the**
25 **specific economic, legal, social, technological or other benefits of**
26 **the project outweigh its unavoidable, adverse environmental**
27 **impacts so that the identified significant unavoidable impact may be**
28 **considered acceptable.**

"The only unavoidable adverse environmental effect identified by the Final
EIR are Impacts 3.10-1a and 3.10-1b which are impacts to traffic
circulation as a result of the up to 30 additional vehicle trips on SR 68
attributable to the project during peak traffic hours (13 during the weekday
A.M. and 17 during the weekday P.M.) with the worst increase [sic] traffic
delay being 2.1 seconds. The impacted intersections are: York

Road/SR 68; Laureles Grade Road/SR 68; Corral de Tierra Road/SR 68; and San Benancio Road/SR 68 (Impact 3.10-1a). The impacted roadway segments are SR 68 between: York Road and Pasadera Drive/Boots Road; Pasadera Drive/Boots Road and Laureles Grade Road; Laureles Grade Road and Corral de Tierra Road; and Corral de Tierra Road and San Benancio Road (Impact 3.10-1b). The Board of Supervisors finds, based on substantial evidence in the record, that the project's unavoidable impact associated with the additional vehicle traffic is acceptable in light of the project's benefits.

"EVIDENCE:

a) The proposed project will result in benefits described herein to the surrounding community and the County has [sic] a whole.

b) The project includes the donation of 154 acres of land to the [sic] Monterey County for the enlargement of Toro Park. The donation of 154 acres far exceeds the requirements under the Quimby Act and County ordinance, which would require either land dedication of approximately .153 of one acre or an in-lieu fee. Applicant will also make certain fencing improvements that will improve public use. (See Condition 31.) The donation will result in a significant addition to the size of the park, and enhance its value as an open space and recreational resource for residents and visitors to the county.

c) The proposed project will contribute its fair share traffic impact fee to the [RDIF] program, which includes the "State Route 68 Commuter Improvements" project. That project would widen a 2.3-mile section of SR 68 to four lanes between the existing 4-lane section adjacent to Toro Park and Corral de Tierra Road. That project would shorten the travel time on SR 68 in both directions; improve intersection operations at two locations from unacceptable to acceptable levels; and reduce the length of the queue on westbound SR 68 east of San Benancio Road during the weekday A.M. peak hour. Mitigation measures are included in the Final EIR requiring the project to contribute its fair share costs of Highway 68 improvement projects through payment of the TAMC Regional Development Impact Fee (RDIF). The contribution of the Harper Canyon project toward these improvements will ultimately result in substantial improvements to the operation of SR 68 as a vital transportation corridor between Salinas Valley and the Monterey Peninsula area" (AR 43-44, bold added.)

Conditions 105-109 would implement MM 3.10-1, 3.10-3, 3.10-4a, 3.10-4b, and 3.10-6, respectively. (AR 112-114.)

2.2 Analysis

Meyer maintains that the EIR's use of a "Background Conditions" baseline to analyze direct impacts violated CEQA.

1 Landwatch argues that 1) the EIR's conclusion that cumulative impacts would be
2 mitigated by Real Party's payment of RDIF fees was not supported by substantial evidence; 2)
3 the EIR's conclusion that certain direct impacts would be mitigated by RDIF fees was not
4 supported by substantial evidence; and 3) the Board's Findings revealed new, substantial
5 impacts requiring the County to recirculate the EIR.

6 **2.2.1 Baseline**

7
8 Meyer contends that the "Background Conditions" baseline — existing traffic "plus traffic
9 generated from approved, but not yet constructed developments in the area" (AR 420) — was
10 an inappropriate and speculative baseline because it minimized the effect of Project traffic upon
11 existing conditions. Meyer further contends that the EIR did not contain the analysis necessary
12 to justify use of a future conditions baseline. The County counters that it did not use a "future
13 conditions" baseline, but rather used a "date-of-implementation" baseline, a standard approved
14 by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Const.*
15 *Authority* (2013) 57 Cal.4th 439.

16
17 *Neighbors for Smart Rail* concerned a light-rail-line project. (*Id.* at p. 445.) That project's
18 EIR exclusively employed a 2030 baseline. (*Ibid.*) The petitioners insisted reliance upon that
19 baseline was improper because conditions at the time the notice of preparation is published
20 "will normally constitute the baseline physical conditions by which a lead agency determines
21 whether an impact is significant." (*Id.* at p. 448, quoting Guidelines § 15125, subd. (a).) The
22 Court acknowledged that reliance upon an "existing conditions" baseline was the norm.
23 However, it noted that a "future conditions" baseline may sometimes be used "as the sole
24 baseline for impacts analysis if their use in place of measured existing conditions . . . is justified
25 by unusual aspects of the project or the surrounding conditions." (*Id.* at p. 451.) Thus, an
26 agency may omit an "existing conditions" baseline "when inclusion of such an analysis would
27 detract from an EIR's effectiveness as an informational document, either because an analysis
28

1 based upon existing conditions would be uninformative or because it would be misleading to
2 decision makers and the public.” (*Id.* at p. 452.)

3 The Court clarified that, by “future conditions,” it meant a “more distant future . . . well
4 beyond the date the project is expected to begin operation” (*Id.* at p. 453.) The Court
5 distinguished a distant future baseline from a “date-of-implementation” baseline, i.e., “a baseline
6 of conditions expected to obtain at the time the proposed project would go into operation,” which
7 it characterized as, essentially, an “existing conditions analysis.” (*Id.* at p. 452.) “In so adjusting
8 its existing conditions baseline, an agency exercises its discretion on how best to define such a
9 baseline under the circumstance of rapidly changing environmental conditions. [Citation.] . . .
10 CEQA imposes no ‘uniform, inflexible rule for determination of the existing conditions baseline,’
11 instead leaving to a sound exercise of agency discretion the exact method of measuring the
12 existing environmental conditions upon which the project will operate.” (*Id.* at pp. 452-453.)
13 An agency may use a “date-of-implementation” baseline in “appropriate circumstances . . . to
14 account for a major change in environmental conditions that is expected to occur before project
15 implementation [S]uch a date-of-implementation baseline does not share the principal
16 problem presented by a baseline of conditions expected to prevail in the more distant future
17 following years of project operation—it does not omit impacts expected to occur during the
18 project’s early period of operation.” (*Id.* at pp. 452-453.)

19 Here, the County properly used a “date-of-implementation” baseline. The “Background
20 Conditions” baseline did not apply to a date in the “distant future.” (*Id.* at p. 453.) Rather, it
21 encompassed “traffic generated from approved, but not yet constructed developments in the
22 area.” (AR 420.) The RDEIR justified the use of the baseline by explaining, “It is anticipated that
23 the trips generated by the approved projects will affect the surrounding roadway network prior to
24 impacts experienced by the proposed project.” (AR 429.)

Under these “factual circumstances,” use of a “date-of-implementation” baseline is appropriate. (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 453.) Indeed, use of a “date-of-implementation” baseline here served CEQA’s informational purpose by ensuring that the EIR’s analysis “employ[ed] a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project’s likely impacts. [Citation.]” (*Id.* at p. 449.)

2.2.2 Cumulative Impacts

Landwatch insists that the EIR’s conclusion that cumulative impacts would be mitigated by Real Party’s “fair-share” impact fees to TAMC is incorrect. Landwatch contends that impact fee mitigation is not permissible because there is no presently funded, scheduled plan to construct the specific improvements upon which the Project relies. Landwatch further contends that the use of “fair-share” impact fees is improper here, because those fees would not remedy *all* level-of-service deficiencies to which the Project would contribute. Real Party responds that 1) contributions to TAMC’s RDIF program would satisfy CEQA’s mitigation requirements; and 2) the RDEIR properly treated mitigation of cumulative impacts as a regional problem, rather than employing an intersection-by-intersection approach.

2.2.2.1 Legal Standard

Challenges to the adequacy of mitigation measures are analyzed under the substantial evidence rule. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 407 [*Laurel Heights I*]; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027 [“where substantial evidence supports the approving agency’s conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy”].)²⁵ “The substantial evidence rule does not require

²⁵ Landwatch insists that the County’s conclusion that RDIF fees would be adequate to mitigate the Project’s cumulative impacts was an error of law and hence, a failure to proceed as required by law. Landwatch cites *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 365-366, in support of this conclusion. But *City of Marina* is distinguishable. There, the question

certainty; substantial evidence is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.]" (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 139.) A court may not set aside an EIR because "an opposite conclusion would have been equally or more reasonable. [Citation.] A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so." (*Laurel Heights I, supra*, 47 Cal.3d at p. 393.)

2.2.2.2 Merits

Landwatch argues that the Project's fair-share mitigation payments would be inadequate because funding and the timing of the completion of the relevant improvements are uncertain.

"Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under CEQA. [Citations.]" (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 140.) Such mitigation "can be particularly useful where, as here, traffic congestion results from cumulative conditions, and not solely from the development of a single project. [Citation.]" (*Napa Citizens for Honest Government, supra*, 91 Cal.App.4th at p. 363; Guidelines, § 15130, subd. (a)(3) [fee-based mitigation programs may be used to mitigate cumulative impacts].) Fee-based mitigation programs are adequate if they are "part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188.) However, "[a] commitment to pay fees without

was whether an EIR should be set aside because certain findings "depend[ed] on an erroneous legal assumption, namely, that the California Constitution precludes them from contributing to FORA, even for the purpose of mitigating the environmental effects identified in the EIR" (*Id.* at p. 355.) No such "erroneous legal assumption" is at issue here; Landwatch simply claims that the Project's contribution to the RDIF would be insufficient to mitigate Project impacts. This question is reviewed under the substantial evidence standard. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 392-393.)

1 any evidence that mitigation will actually occur is inadequate. [Citation.]" (*Save our Peninsula*,
2 *supra*, 87 Cal.App.4th at p. 140.) When a fee-based mitigation program is relied upon, an
3 agency must "identify facts and analysis supporting its conclusion that the [Project's]
4 contribution will be rendered less than cumulatively considerable." (Guidelines, § 15130, subd.
5 (a)(3).)

6
7 Nevertheless, CEQA does not require an EIR to "set forth a time-specific schedule for
8 the County to complete specified road improvements. All that is required by CEQA is that there
9 be a reasonable plan for mitigation. Furthermore, we must presume and expect that the County
10 will comply with its own ordinances, and spend the fees it collects on the appropriate
11 improvements to the affected road segments." (*Save our Peninsula, supra*, 87 Cal.App.4th at p.
12 141, internal citations omitted; *City of Marina, supra*, 39 Cal.4th at p. 365.)

13 **2.2.2.2.1 TAMC's RDIF Program**

14 Under Mitigation Measure 3.10-6 — adopted by the Board in Condition 109 (AR 114) —
15 the applicant would be required to pay "the project's fair share of traffic impact fees in effect at
16 the time of building permit applications for future development on the project site," including the
17 RDIF and "Monterey County ad hoc mitigation fees." (AR 458-459).

18
19 The RDIF is collected by local agencies on a project-by-project basis and then remitted
20 to AMC. (AR 6904.) Payment of RDIF fees supports certain transportation improvement projects
21 identified in TAMC's regional transportation plan (RTP). (AR 19411.) The RTP allocates funds
22 from many sources, including the RDIF, to transportation projects over a 25-year horizon. (AR
23 6841, 19408 [purpose of 2010 RTP is to "provide a basis for the planning and programming of
24 local, state, and federal transportation funds to transportation projects in Monterey County . . . in
25 accordance with state and federal requirements"]; Gov. Code, § 65080, subd. (d).) The RDIF is
26 supported by a regularly updated Nexus Study, which examines projected future traffic needs,
27
28

1 potential funding sources, and identifies projects to be funded by the RDIF. (AR 6846.) The
2 most recent Study Update occurred in 2013. (AR 6843-6897.)

3 Collected RDIF revenues must be programmed for specific projects. (AR 6888.) Within
4 the RTP, TAMC identifies “constrained” and “unconstrained” projects. Constrained projects
5 denote “new facilities and services that could be constructed and/or implemented based on
6 projected levels of anticipated funds.” (AR 19411, 19573.) Unconstrained projects are
7 “improvements and services that are needed and could be provided should new funding
8 sources become available in the future.” (AR 19411.) Here, Real Party’s RDIF fees are
9 earmarked to contribute toward the “State Route 68 Commuter Improvements” project (SR 68
10 CIP), which would widen a 2.3-mile stretch of Highway 68 in the immediate Project area. (AR
11 441-442, 446, 458, 112, 114.) That Project was specifically included in both TAMC’s 2010 RTP
12 and 2014 RTP as financially constrained, i.e. funded. (AR 6867, 6870, 6960, 19573, 22717,
13 22628.)²⁶

14
15 The RDIF was not intended to cover the full costs of each identified project. (AR 6846-
16 6847.) Instead, it was designed to require new projects to pay their fair share of the costs for
17 these improvements. (AR 6846-6847.) For the SR 68 CIP, the RDIF will pay 16.5% of
18 necessary costs. (AR 6880.) TAMC projects that the remainder of costs will be covered by other
19 sources, including, inter alia, sales taxes, City and County General Funds, the State
20 Transportation Improvement Program, and federal highway funds. (AR 19555-19559.) These
21 funding sources were described in detail in the 2010 RTP and 2014 RTP. (AR 19412 [2010 RTP
22 projected that \$3.9 billion will be available over the next 25 years for the County’s transportation
23 needs], 19554-19586 [2010 RTP Financial and Action Element], 22612-22619 [2014 RTP
24
25

26
27 ²⁶ Landwatch claims that the SR 68 CIP is unconstrained, citing a page from TAMC’s 2014 RTP. (AR
28 22720.) However, the page cited did not refer to the SR 68 CIP; instead, it addressed a *different* project
that would widen a much longer stretch of SR 68. (*Ibid.*) The SR 68 CIP was identified as financially
constrained in both TAMC’s 2010 and 2014 RTPs. (AR 19411, 19573, 22717, 22628.)

1 Financial Element, 22708-22714 [Appendix B to 2014 RTP, Regional Transportation Plan Fund
2 Estimate].)

3 **2.2.2.2.2 Whether impact fees are adequate mitigation for the Project's cumulative**
4 **impacts**

5 Notwithstanding the above, Landwatch argues that the proposed payment of impact fees
6 would be insufficient mitigation because the needed improvements are not included in a
7 "reasonable, enforceable plan or program that the relevant agency commits itself to
8 implementing." (*Anderson First, supra*, 130 Cal.App.4th at p. 1188.) Landwatch claims that this
9 is so because some improvements the RDEIR identified as necessary to remediate deficient
10 LOS are neither included in the RTP nor considered feasible.

11
12 Landwatch also claims that the assumption that the RDIF will be appropriately updated
13 is speculative. Landwatch acknowledges that the County may intend to update fee programs,
14 but asserts that this intention is belied by 1) the EIR's statement that the *entirety* of SR 68 will
15 not be widened to four lanes; and 2) past failures of the County to maintain LOS standards.
16 Finally, Landwatch insists that the possible funding sources identified in the Nexus Study are
17 too uncertain to materialize to support a conclusion that mitigation will actually occur.
18
19
20

21 **2.2.2.2.2.1 Necessary improvements**

22 Landwatch complains that there is no plan to fund certain necessary improvements to
23 remediate LOS at some segments and intersections. Landwatch suggests that this lack of a
24 plan, together with the necessary improvements not being identified as unconstrained by the
25 RTP, means that payment of RDIF fees is not "tied to a functioning mitigation program."
26 (*California Native Plant Society, supra*, 170 Cal.App.4th at 1055.) Relatedly, Landwatch argues
27
28

1 that it is improper to mitigate intersection- and segment-level LOS impacts by making payments
2 into a regional system that does not address individual impacts.

3 These arguments conflate the concepts of thresholds of significance and adequacy of
4 mitigation. "A threshold of significance is an identifiable quantitative, qualitative or performance
5 level of a particular environmental effect, non-compliance with which means the effect will
6 normally be determined to be significant by the agency and compliance with which means the
7 effect normally will be determined to be less than significant." (Guidelines, § 15064.7, subd. (a).)
8 "CEQA grants agencies discretion to develop their own thresholds of significance." (*Save*
9 *Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068, citing
10 Guidelines, § 15064, subd. (d).) By contrast, the adequacy of mitigation inquiry examines
11 whether substantial evidence supports an agency's conclusion that proposed mitigation
12 measures will ameliorate Project impacts to a less-than-significant level. (*Laurel Heights I*,
13 *supra*, 47 Cal.3d at p. 407; Guidelines, § 15126.4.)
14

15 The RDEIR analyzed the significance of both direct and cumulative impacts based upon
16 reference to levels of service, ranging from LOS A (no congestion) to LOS F (highly congested
17 traffic with unacceptable delay to vehicles at intersections.) (AR 419-420.) The RDEIR
18 examined whether the Project's contribution to 2015 (direct impact) and 2030 (cumulative
19 impact) traffic conditions would constitute a significant impact, either by contributing to the
20 reduction of conditions to a less than acceptable LOS or by exacerbating existing deficient LOS.
21 The thresholds used were conservative; the addition of a single vehicle trip to an intersection or
22 segment already operating at LOS F constituted a significant impact. (AR 436-437.)
23

24 As to direct impacts, the RDEIR concluded that the Project would significantly impact
25 four of six intersections and four of five roadway segments. (AR 439-440, 442-444.) To address
26 these impacts, the RDEIR prescribed measures that it predicted would mitigate Project impacts
27 by reducing impacts to two intersections and one roadway segment to a less than significant
28

1 level. (AR 446-447.) Nevertheless, because those measures would not directly improve the
2 remaining intersections and roadway segments, the RDEIR concluded these impacts were
3 significant and unavoidable. (AR 447.)

4 The RDEIR approached cumulative impacts differently. Although the RDEIR also
5 analyzed cumulative impacts in terms of LOS, concluding that the Project would contribute to
6 impacts to all study intersections and segments (AR 452, 454-455), it did not approach
7 mitigation from an intersection-by-intersection LOS perspective. Instead, the RDIER framed the
8 analysis thusly: "Implementation of the proposed project would contribute to a cumulative
9 increase in traffic volumes that would indirectly result in or exacerbate unacceptable levels of
10 service on the *regional roadway network*." (AR 451, italics added.) The RDEIR required the
11 Project applicant to "contribute [its] fair share towards all regional traffic impact fees in effect at
12 the time of issuance of building permit . . . including but not limited to the TAMC RDIF." (AR
13 459.) The RDEIR stated that payment of these fees would mitigate cumulative traffic impacts to
14 "regional roadways" and "the regional roadway network." (*Ibid.*; see Guidelines, § 15370, subd.
15 (e) [mitigation may include "[c]ompensating for the impact by replacing or providing substitute
16 resources or environments"].)

17
18
19 Landwatch argues that the impact fees were insufficient mitigation because they would
20 not adequately mitigate *all* intersection and roadway segment LOS deficiencies. It claims CEQA
21 does not authorize use of a "different threshold to determine mitigation efficacy and impact
22 significance." To support this claim, Landwatch cites to several provisions of the Guidelines.

23 Landwatch first cites to Guidelines, section 15064.7, subdivision (a), which provides that,
24 non-compliance with thresholds of significance "will normally be determined to be significant by
25 the agency and compliance . . . means the effect normally will be determined to be less than
26 significant." Nevertheless, "[t]hresholds of significance are not used to determine automatically
27 whether given effect will or will not be significant. Instead, thresholds of significance are
28

1 indicative only that an environmental effect that crosses the threshold ““will *normally* be
2 determined to be significant,”“ while effects not crossing the threshold ““*normally* will be
3 determined to be less-than-significant”“ by the agency. [Citations.]” (*Jensen v. City of Santa*
4 *Rosa* (2018) 23 Cal.App.5th 877, italics in original.)

5 Landwatch also cites to the Guidelines for the proposition that mitigation “must address
6 the significant impact that is ‘identified in the EIR,’ and ‘as identified’ in the EIR. (Guidelines, §§
7 15126.4, subd. (a)(1)(A), 15091, subd. (a)(1).)” But these Guidelines contemplate only that
8 mitigation should be directed at the identified, significant environmental effect. They do not
9 address thresholds. Here, the County identified harm to the *regional network* as the significant
10 effect and hence, the proposed mitigation is properly directed toward that harm. As the County
11 explained in responding to a Landwatch comment:

12
13 “The treatment of cumulative impacts and application of regional mitigation works
14 a little differently than project-specific impacts and project-level responsibility.
15 Mitigation Measure 3.10-6, the payment of the TAMC Regional Development
16 Impact Fee, is recognized by the County of Monterey, TAMC and Caltrans as the
17 appropriate mechanism for mitigating cumulative, regional traffic throughout the
18 regional roadway system in Monterey County. The regional roadway network is
19 vast, and the projects contributing to trips and vehicle miles traveled (VTM) on
20 that network originate from a very large geographic area. The payment of
21 regional impact fees is a recognized and acceptable mitigation strategy under
22 CEQA to address cumulative impacts, as those fees are applied to a wide range
23 of projects and improvements over time. As noted above, several impacts along
24 the Highway 68 corridor are recognized at the project level as remaining
25 significant and unavoidable, since the [SR 68 CIP] would not extend to these
26 segments and intersections.” (AR 271.)

27 The County’s point is supported by the Guidelines. A project-level (direct) impact is a
28 “physical change in the environment which is” either “caused by and immediately related to the
“project” or a reasonably foreseeable impact “not immediately related to the project, but which is
caused indirectly by the project.” (Guidelines, § 15064, subds. (d)(1), (2).) Direct impacts are
micro-level impacts that necessitate micro-level mitigation. (See Guidelines, § 15370, subds.
(a)-(d).) In the context of *cumulative* impacts however, mitigation addresses the sum of many

1 impacts caused by many projects, frequently over a broader geographical area. (Guidelines, §§
2 15065, subd. (a)(3), 15355, subd. (b).) Consequently, mitigation of cumulative impacts often
3 requires bigger-picture solutions, such as fair-share mitigation. (See Guidelines, §§ 15370,
4 subd. (d), 15130, subds. (a)(3) & (b)(5).)

5 In short, it is irrelevant whether TAMC has planned or funded projects intended to
6 address every LOS deficiency in the area. The proposed fair-share mitigation would mitigate
7 cumulative traffic impacts to “regional roadways” and “the regional roadway network.” (AR 459;
8 see Guidelines, § 15370, subd. (e).) Accordingly, the proposed mitigation would satisfy CEQA.²⁷

9 **2.2.2.2.2 Updating Impact Fee Programs**

10 Landwatch acknowledges that the County may intend to update fee programs, but
11 insists that this intention is belied by 1) the EIR’s statement that the *entirety* of SR 68 will not be
12 widened to four lanes; 2) the fact that traffic conditions are projected to worsen by 2030, even if
13 proposed improvements are implemented; and 3) past failures of the County to maintain LOS
14 standards. None of these contentions has merit.

15 Landwatch argues that payment of impact fees is inadequate mitigation for the
16 Project’s cumulative traffic impact because necessary improvements to fix traffic problems along
17 *the entire corridor* are not included in a committed, funded plan. Landwatch cites several
18 statements in the EIR that explain that there is no identified program to widen SR 68 in its
19 entirety or to achieve and maintain acceptable LOS at all potentially impacted segments and
20 intersections. (See, e.g., AR 426, 433-434, 441.) Landwatch assumes Real Party is responsible
21 for fixing all traffic problems along the corridor. In fact, Real Party is responsible only for
22 mitigating its own impacts, not for resolving the traffic problem in its entirety. (*Napa Citizens for*
23 *Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 364
24 [“[m]itigation measures must be roughly proportional to the impacts of a project”]; Guidelines, §§
25
26
27

28 ²⁷ TAMC and Caltrans specifically approved this approach. (AR 201, 273.)

1 15126.4, subd. (a)(4)(B), 15130 subd. (a)(3); *Koontz v. St. Johns River Water Management*
2 *Dist.* (2013) 570 U.S. 595, 606 [government “may not leverage its legitimate interest in
3 mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to
4 those impacts”].) Hence, this argument fails.

5 Landwatch further notes that the RDEIR projected progressively worsening conditions
6 through 2030, even assuming construction of planned improvements. (AR 423-424 [existing
7 conditions], 432-433 [2015 conditions], 452-454 [2030 conditions].) This is logical; the traffic
8 study assumes many additional projects will be constructed in that time. (AR 488, 581.) As with
9 the other impacts stemming from unrelated development, Real Party is not responsible for
10 mitigating these conditions. (*Napa Citizens for Honest Government, supra*, 91 Cal.App.4th at p.
11 364; Guidelines, §§ 15126.4, subd. (a)(4)(B), 15130 subd. (a)(3).)

12 Finally, Landwatch suggests that the County’s past failure to maintain acceptable LOS
13 means the County is unlikely to implement necessary improvements. This ignores that TAMC
14 has a statutory duty “to assist in the development of adequate funding sources to develop,
15 construct, and support transportation projects that it determines essential.” (Gov. Code, §
16 66530). Further, the court “must presume and expect that the County will comply with its own
17 ordinances, and spend the fees it collects on the appropriate improvements to the affected road
18 segments. [Citation.]” (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 141; *City of Marina,*
19 *supra*, 39 Cal.4th at p. 365.)

22 **2.2.2.2.3 Certainty of funding and timing**

23 Landwatch contends that payment of RDIF fees is inadequate mitigation because the
24 County cannot guarantee 1) that all RDIF funding will materialize; that 2) even if it does, the
25 remainder of the necessary funding will materialize; and, even if the SR 68 CIP is fully funded,
26 3) that the SR 68 CIP will be completed timely, i.e. by 2030.

1 The County determined that the proposed mitigation would be effective. As discussed
2 *ante*, that determination is reviewed for substantial evidence. “The substantial evidence rule
3 does not require certainty; substantial evidence is ‘enough relevant information and reasonable
4 inferences from this information that a fair argument can be made to support a conclusion, even
5 though other conclusions might also be reached.’ [Citation.]” (*Save our Peninsula, supra*, 87
6 Cal.App.4th at p. 139.)

7
8 Landwatch notes that fee-based mitigation programs are adequate only if they are “part
9 of a reasonable plan of actual mitigation that the relevant agency commits itself to
10 implementing.” (*Anderson First, supra*, 130 Cal.App.4th at p. 1188.) Landwatch argues that the
11 RDIF program is not such a plan. The court disagrees for several reasons.

12 First, the program is enforceable. The County expressly adopted the fee program in
13 June 2008, adding Chapter 12.90 to the County Code. (Real Party’s Request for Judicial Notice,
14 Ex. C.) The RDIF was also adopted by at least two-thirds of other County TAMC member
15 agencies, which approved the fee program and authorized TAMC to administer it. (AR 6888.)
16 Moreover, TAMC *has* committed to implementing the fee program. (See AR 6888-6890, 6924.)

17
18 Second, there is ample evidence mitigation will occur here. The SR 68 CIP was
19 described as financially constrained in both TAMC’s 2010 RTP and 2014 RTP. (AR 6960, 6867,
20 6870, 19573, 22717, 22628.) By so describing the SR 68 CIP, TAMC has committed to
21 implementing that project when the necessary funds are available. (*Ibid.*) Additionally, TAMC,
22 Caltrans, and the County have determined that it is reasonable to assume that projects on the
23 list will be built “within the horizon of the current RDIF.” (AR 5373, 22717.) Finally, earmarking
24 RDIF funding toward a particular project, as the County did here, has the effect of “accelerat[ing]
25 that project and bring[ing] it closer to the front of the list.” (AR 5373; accord, AR 221, 5373.)

26
27 Third, the record contains substantial evidence that the SR 68 CIP will actually be
28 implemented. TAMC discussed its potential funding sources in detail in both its 2010 and 2014

1 RTPs. (AR 19412 [2010 RTP projected that \$3.9 billion will be available over the next 25 years
2 for the County's transportation needs], 19554-19586 [2010 RTP Financial and Action Element],
3 22612-22619 [2014 RTP Financial Element, 22708-22714 [Appendix B to 2014 RTP, Regional
4 Transportation Plan Fund Estimate].) And, as discussed *ante*, TAMC has a statutory duty to
5 ensure adequate funding (Gov. Code, § 66530) and is entitled to a presumption that it will fulfill
6 that duty (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 141).

7
8 Landwatch complains that TAMC cannot guarantee full funding for the SR 68 CIP.
9 "CEQA does not require identification of a guaranteed funding source for mitigation measures
10 specified in the EIR. Rather, CEQA requires substantial evidence to conclude that 'feasible
11 mitigation measures will actually be implemented.'" (*Mission Bay Alliance v. Office of*
12 *Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 190-191; *City of Marina,*
13 *supra*, 39 Cal.4th at p. 364 ["identified, unavoidable uncertainties affecting the funding and
14 implementation" of necessary improvements did not render fair-share mitigation infeasible];
15 Guidelines, § 15130, subd. (a)(3).) Similarly, Landwatch notes that full funding of the SR 68 CIP
16 is not currently projected until 2035, well past the 2030 planning horizon. But CEQA does not
17 require an EIR to "set forth a time-specific schedule for the County to complete specified road
18 improvements. All that is required by CEQA is that there be a reasonable plan for mitigation."
19 (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 141, internal citations omitted; *City of Marina,*
20 *supra*, 39 Cal.4th at p. 365.) As discussed *ante*, there is substantial evidence that the TAMC
21 RDIF is a reasonable mitigation plan.
22

23 **2.2.2.2.4 Landwatch's decisional authority**

24 Landwatch cites several cases in support of their arguments. All are distinguishable.

25 In *Anderson First, supra*, 130 Cal.App.4th at pages 1188-1189, the court rejected a
26 traffic fair-share mitigation measure because, inter alia, 1) it was too vague as to which
27 improvements the measure was intended to fund; and 2) the necessary improvements were not
28

1 yet part of an enforceable program. Instead, the City noted it was “preparing an update to the
2 Traffic Impact Fee Program to include” them. (*Ibid.*) The court concluded the fair-share
3 mitigation fee was “too speculative to be considered adequate mitigation” because it was not
4 “part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation
5 of the traffic impacts at issue.” (*Id.* at p. 1194.)

6
7 Similarly, in *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1121, a mitigation
8 measure required fair-share payment for future improvements “if requested” by the County or
9 Caltrans. Respondents explained that, although there was no “specific plan” for improvements,
10 there was a “clear methodology for collecting fees” from the project and “a sufficient
11 commitment to completing the improvements.” (*Id.* at p. 1122.) The court disagreed, finding that
12 a “commitment” without a defined program of mitigation was not a reasonable plan for
13 mitigation. (*Ibid.*)

14
15 Here, the RTP clearly identifies the SR 68 CIP as a project “that could be constructed
16 and/or implemented based on projected levels of anticipated funds.” (AR 19411, 19573, 22717,
17 22628, 6960, 6867, 6870.) Moreover, the RDIF program is a well-defined plan for mitigation.
18 (See, e.g., AR 6843-6897.) Finally, the Project was expressly conditioned upon Real Party’s
19 paying its fair-share towards the SR 68 CIP through the RDIF. (AR 112, 114.) Consequently,
20 Real Party’s payment into the RDIF would be sufficiently “tied to a functioning mitigation
21 program.” (*California Native Plant Society, supra*, 170 Cal.App.4th at p. 1055.)

22
23 Finally, in *Napa Citizens for Honest Government, supra*, 91 Cal.App.4th at pages 363,
24 364, the court rejected a fair-share mitigation measure because 1) the cost of the necessary
25 improvements was 35 times greater than the fee program would raise; and 2) because “it
26 cannot reasonably be argued that the funds that the County already has raised or that it
27 reasonably can expect to raise in the future, will be enough to mitigate the effect on traffic that
28 will result from cumulative conditions.”

1 Here, the RDIF is not the sole source of funding for the SR 68 CIP. TAMC projected that
2 the remainder of the funding will be covered by other sources, including, inter alia, sales taxes,
3 City and County General Funds, the State Transportation Improvement Program, and federal
4 highway funds. (AR 19555-19559.) These projected funding sources were described — in
5 significant detail — in both the 2010 RTP and 2014 RTP. (AR 19412, 19554-19586, 22612-
6 22619, 22708-22714.)

8 **2.2.3 Direct Impact**

9 The RDEIR concluded that Project impacts to two intersections and three roadway
10 segments were significant and unavoidable because no project intended to address these
11 impacts was included in the RDIF. (*Ibid.*) Nevertheless, the County adopted a Statement of
12 Overriding Considerations, finding that these impacts were “acceptable in light of the project’s
13 benefits,” including the Project’s contribution to the RDIF, Real Party’s donation of 154 acres of
14 land to enlarge Toro Park, and the construction of a water treatment plant. (AR 43-44.)

15 The RDEIR also concluded that the Project’s contribution to the SR 68 CIP via the RDIF
16 adequately mitigated project-level impacts to two intersections and one segment. (AR 447.)
17 Landwatch argues that this conclusion was not supported by substantial evidence. Landwatch
18 notes that 1) the SR 68 CIP is not projected to be funded until 2035 (AR 22717); and 2) the
19 traffic study as to project-level impacts was conducted based upon a 2015 background
20 conditions baseline. (AR 482). Accordingly, Landwatch maintains that the RDIF cannot be
21 adequate mitigation. Landwatch further maintains that fair-share mitigation would be inadequate
22 because it would only pay for 16.5% of the cost of the SR 68 CIP, not enough to ensure that the
23 necessary improvements are actually constructed. (AR 13135.)

24 As to timing, CEQA does not require an EIR to “set forth a time-specific schedule for the
25 County to complete specified road improvements. All that is required by CEQA is that there be a
26 reasonable plan for mitigation.” (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 141, internal
27
28

1 citations omitted; *City of Marina, supra*, 39 Cal.4th at p. 365.) As discussed *ante*, the RTP and
2 TAMC's RDIF constitute a reasonable plan for mitigation. The fact that the relevant
3 improvements may not be completed until well after 2015 does not alter this conclusion.

4 It is true that the RDIF will not completely fund the SR 68 CIP.²⁸ But "CEQA does not
5 require identification of a guaranteed funding source for mitigation measures specified in the
6 EIR. Rather, CEQA requires substantial evidence to conclude that 'feasible mitigation measures
7 will actually be implemented.' [Citations.]" (*Mission Bay Alliance, supra*, 6 Cal.App.5th at pp.
8 190–191; *City of Marina, supra*, 39 Cal.4th at p. 364.) As discussed *ante*, substantial evidence
9 exists to support the conclusion that the SR 68 CIP will be implemented. (See, e.g. AR 221,
10 5373, 6960, 6867, 6870, 19412, 19554-19586, 22612-22619, 22708-22714, 22717, 22628.)
11

12 Finally, even assuming *arguendo* this were not the case, the County's error would not be
13 prejudicial because it concluded the Project's direct traffic impacts were significant and
14 unavoidable. (AR 35.) Landwatch disputes this point, arguing that the County "cannot cure an
15 inadequate analysis simply by labeling an impact unavoidably significant," and citing *Berkeley*
16 *Keep Jets Over the Bay Committee v. Board of Port Comrs* (2001) 91 Cal.App.4th 1344, 1371.
17 Indeed, labeling an effect significant "without accompanying analysis of the project's impact"
18 does not satisfy CEQA. (*Id.* at p. 1371.) Such a practice would contravene CEQA's informational
19 goals, allowing an agency to "travel the legally impermissible easy road to CEQA compliance."
20 (*Ibid.*; see Guidelines, § 15201.) Here however, the EIR did not simply label the Project's direct
21 impacts significant and unavoidable. Instead, it contained a lengthy analysis of those impacts.
22 (AR 439-448.) Because the EIR did not deprive the public of significant information, there is no
23 prejudice. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 ["[a]
24
25

26 ²⁸ In fact, the County could not constitutionally require Real Party to pay more than its fair share to
27 support the SR 68 CIP. (See *Koontz, supra*, 570 U.S. at p. 606 [government "may not leverage its
28 legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough
proportionality to those impacts"]; *Napa Citizens for Honest Government, supra*, 91 Cal.App.4th at p.
364.)

1 prejudicial abuse of discretion occurs if the failure to include relevant information precludes
2 informed decisionmaking and informed public participation, thereby thwarting the statutory goals
3 of the EIR process”].)

4 **2.2.4 Recirculation**

5 Landwatch argues that the County’s findings disclose a new, significant impact, which
6 required recirculation. Real Party contends this finding was a “mere scrivener’s error,” which
7 should be disregarded. Real Party further contends that in any event, any error was not
8 prejudicial.
9

10 The DEIR concluded that project-level impacts to all intersections and roadway
11 segments were significant and unavoidable. (AR 918.) Subsequently, the County recirculated
12 the DEIR’s traffic analysis to account for the creation of the TAMC RDIF program. (AR 412.)
13 The RDEIR determined that the Project’s contribution to the RDIF would adequately mitigate
14 project-level impacts to two of six study intersections (Corral de Tierra Road at SR 68 and San
15 Benancio Road at SR 68) and one of five study roadway segments (SR 68 between Corral de
16 Tierra and San Benancio Road). (AR 447.) Nevertheless, the Board, in Finding 10, found that
17 these impacts were significant and unavoidable. (AR 35.) Similarly, in Finding 17, the Board
18 found that these impacts were among those trumped by overriding considerations. (AR 43.)
19

20 The Board’s apparent rejection of the RDEIR’s conclusions is puzzling. Real Party
21 suggests a clerical error was responsible. Real Party points to hearing testimony that it
22 maintains shows staff unsuccessfully attempted to resolve the error. (AR 4928-4929.) A review
23 of that testimony does not support this claim. Landwatch suggests that the County intentionally
24 chose to adopt the conclusion of its DEIR rather than that of its RDEIR. This suggestion is
25 undermined by the Findings, which cite directly to the FEIR’s impact discussions. (AR 33, 35.)
26 Moreover, Landwatch identifies nothing in the record indicating that deliberation in support of
27 this action ever took place. Surely, if the County chose to adopt the DEIR’s conclusions, even
28

1 after recirculating that document, some discussion – either in a staff report, or at a hearing –
2 would have occurred. Yet none has been identified.

3 But even if the Board's finding were intentional, that finding would not trigger
4 recirculation because it would not constitute "significant new information." (Guidelines, §
5 15088.5, subd. (a).) As Landwatch acknowledges, the DEIR concluded that the Project's
6 impacts at issue were significant and unavoidable. (AR 918.) The RDEIR also concluded that
7 these impacts were significant. (AR 440-441, 444.) The only difference was that the RDEIR
8 determined that these significant impacts were mitigable. (AR 447.) There is no evidence that
9 the Board's apparent conclusion that the relevant impacts were unavoidable was based upon
10 any *new* information.

12 Additionally, "[n]ew information is 'significant' only if 'the EIR is changed in a way that
13 deprives the public of a meaningful opportunity to comment upon a *substantial* adverse
14 environmental effect of the project or a feasible way to mitigate or avoid such an effect.'
15 [Citations.]" (*Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th
16 941, 964, italics in original.) Here, the public had several opportunities to comment upon this
17 impact and to suggest ways to mitigate it, through both the DEIR and the RDEIR. Further, the
18 RDEIR already contains a discussion and evaluation of the relevant issues. (AR 439-448.)
19 Accordingly, the Board's decision to diverge from the RDEIR's conclusion did not require
20 recirculation. (See *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 97.)

22 For similar reasons, Landwatch has not shown prejudice. At best, the Findings identify
23 additional, unavoidably significant impacts. The RDEIR included a full analysis of those impacts
24 (AR 439-448), and the County adopted a Statement of Overriding Considerations. (AR 43-44.)
25 Any error, then, was inconsequential. (*Environmental Protection Information Center v. California*
26 *Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 486 [*EPIC*] ["errors in the CEQA . . .
27 process which are insubstantial or de minimis are not prejudicial"].)
28

3. General Plan Consistency

Petitioners contend the County's General plan consistency Findings were both inadequate as a matter of law and unsupported by substantial evidence. Separately, Meyer asserts that the County's approval of use permits for the Project is void because of purported deficiencies in the County's 1982 General Plan.

3.1 Factual Background

The Board made the following Findings concerning the Project's consistency with the County's General Plan:

"3. FINDING: CONSISTENCY- The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

"EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in the:

- 1982 Monterey County General Plan;
- Toro Area Plan;
- Monterey County Zoning Ordinance (Title 21 of the Monterey County Code (MCC));
- Monterey County Subdivision Ordinance (Title 19 of the MCC); and
- Monterey County Code Section 18.50.

"No conflicts were found to exist. Communications were received during the course of review of the project alleging inconsistencies with the text, policies, and regulations in these documents. The Board received and considered the communications submitted. The Board has determined that the project is consistent with the text, policies, and regulations noted above. Pursuant to the Subdivision Map Act (Government Code §66474.2) and 2010 General Plan Policy LU-9.3, subdivision applications deemed complete on or before October 16, 2007 shall be governed by the plans, policies, ordinances, and standards in effect at the time the application was deemed complete. The project application was deemed complete on November 22, 2002. Therefore, the 1982 General Plan and ordinances listed above apply to the project, and the 2010 Monterey County General Plan (adopted 10/26/2010) does not apply to this project application. References in these findings to the General Plan are to the 1982 General Plan" (AR 6.)

"7. FINDING: SUBDIVISION - Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code (MCC) requires that a request for subdivision be denied if any of the following findings are made:

1. The proposed map is not consistent with the general plan, area plan, coastal land use plan, or specific plan.
2. The design or improvements of the proposed subdivision are not consistent with the applicable general plan, area plan, coastal land use plan, Master Plan or specific plan.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

"None of these findings are made.

"EVIDENCE: a) Consistency. The project as designed and conditioned is consistent with the 1982 Monterey County General Plan and Toro Area Plan (See Finding 3 and 18 (b)) . . .

- i) Traffic. The proposed project will be accessed through Meyer Road. Meyer Road is a two-lane privately maintained road owned by the project applicant, Harper Canyon Realty LLC. The project has been mitigated to reduce the impacts to transportation and circulation (See Finding 9)." (AR 16-17.)

3.2 The Adequacy of the Findings as a Matter of Law

Petitioners argue the County abused its discretion by failing to make express findings sufficient to disclose the County's reasoning.

"[I]mplicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [*Topanga I*]) Agencies are required to make express

1 findings as to whether a proposed subdivision is consistent with the relevant general plan.
2 (*Woodland Hills Residents Assn., Inc. v. City Council* (1975) 44 Cal.App.3d 825, 837.) These
3 “findings are to be liberally construed to support rather than defeat the decision under review.”
4 (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348,
5 1356 [*Topanga II*].) The court “must resolve all conflicts in the evidence in favor of the judgment
6 or decision of the tribunal below and indulge in all legitimate and reasonable inferences to
7 support it. [Citation.]” (*Id.* at p. 1357.)

8
9 Nevertheless, an agency’s findings “do not need to be extensive or detailed. ‘[W]here
10 reference to the administrative record informs the parties and reviewing courts of the theory
11 upon which an agency has arrived at its ultimate finding and decision[,] it has long been
12 recognized that the decision should be upheld if the agency ‘in truth found those facts which as
13 a matter of law are essential to sustain its . . . [decision].’” [Citation.] On the other hand, mere
14 conclusory findings without reference to the record are inadequate. [Citation.]” (*EPIC, supra*, 44
15 Cal.4th at pp. 516-517.) And, while the best practice is to cite to specific portions of the
16 administrative record supporting the agency’s conclusions, findings will still be upheld if a court
17 has “no trouble under the circumstances discerning ‘the analytic route the administrative agency
18 traveled from evidence to action.’ [Citations.]” (*Id.* at p. 517.)

19
20 During the EIR process, the public objected that the Project would conflict with General
21 Plan Traffic Policies, including Policies 37.2.1, 38.1.5, and 39.1.4. (AR 1116.) The Board found
22 the Project consistent with the General Plan. (AR 6.) Petitioners object that the Findings are
23 factually inaccurate because they did not specifically address these Policies. However, the
24 Board’s Findings explained that the Project “has been reviewed for consistency with the text,
25 policies, and regulations in: the 1982 Monterey County General Plan No conflicts were
26 found to exist. Communications were received during the course of review of the project alleging
27 inconsistencies with the text, policies, and regulations in these documents. The Board received
28

1 and considered the communications submitted. The Board has determined that the project is
2 consistent with the text, policies, and regulations noted above.” (*Ibid.*)

3 Petitioners object that these findings are perfunctory. The Findings *quoted above* are
4 indeed sparse. Yet they do not exist in isolation. As to traffic, the Board’s written Subdivision
5 Map Act Findings as to consistency, made under Government Code Section 66474, support the
6 Board’s consistency Finding; they concluded that the Project “has been mitigated to reduce the
7 impacts to transportation and circulation (See Finding 9).” (AR 17.) Further, the EIR serves as
8 an extended set of findings. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247,
9 270; *EPIC, supra*, 44 Cal.4th at pp. 516-517.) And, by certifying the EIR, the Board indicated its
10 agreement with its contents. (See *Environmental Council of Sacramento, supra*, 135 Cal.App.3d
11 at p. 438 [“when the decision-making body of a public agency certifies as adequate and
12 complete an EIR prepared by staff[,] . . . it adopt[s] the findings of the preparers”].) Additionally,
13 the RDEIR’s extended discussion as to levels of service, RDIF fees, and physical improvements
14 to the circulation system as mitigation for Project impacts shows that the County considered
15 these issues — all of which bear directly upon the Project’s consistency with the challenged
16 Policies — in reaching its consistency finding. (AR 417-460.)

17
18
19 Finally, the County’s path from evidence to action was illustrated by County staff at an
20 April 7, 2015 hearing, in a response to public comment concerning consistency with the 1982
21 General Plan. There, staff explained that Policy 39.1.4 was satisfied because Real Party would
22 be “required to construct road improvements along San Benancio to accommodate additional
23 traffic generated by the project” and because Real Party must pay the TAMC RDIF. “An agency
24 may . . . rely upon the opinion of its staff in reaching decisions, and the opinion of staff has
25 been recognized as constituting substantial evidence. [Citation.]” (*Browning-Ferris Industries v.*
26 *City Council* (1986) 181 Cal.App.3d 852, 866.)
27
28

1 Thus, based upon the Findings, the EIR, and the requirement that the court liberally
2 construe the findings to support the decision (*Topanga II, supra*, 214 Cal.App.3d at p. 1356), the
3 court has “no trouble . . . discerning ‘the analytic route the administrative agency traveled from
4 evidence to action.’ [Citations.]” (*EPIC, supra*, 44 Cal.4th at p. 517.)

5 **3.3 Whether the Findings are supported by the evidence**

6 Petitioners argue the Project violates three General Plan traffic policies.

7
8 “A project is consistent with the general plan ‘if, considering all its aspects, it will further
9 the objectives and policies of the general plan and not obstruct their attainment.’” [Citation.] A
10 given project need not be in perfect conformity with each and every general plan policy.
11 [Citation.] To be consistent, a subdivision development must be ‘compatible with’ the objectives,
12 policies, general land uses and programs specified in the general plan. [Citation.]” (*Families*
13 *Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th
14 1332, 1336.)

15
16 “A city’s determination that a project is consistent with the city’s general plan ‘carries a
17 strong presumption of regularity. [Citation.] This determination can be overturned only if the
18 [city] abused its discretion—that is, did not proceed legally, or if the determination is not
19 supported by findings, or if the findings are not supported by substantial evidence. [Citation.] As
20 for this substantial evidence prong, it has been said that a determination of general plan
21 consistency will be reversed only if, based on the evidence before the local governing body, “. . .
22 a reasonable person could not have reached the same conclusion” [Citation.]’ [Citation.]”
23 (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238.)

24 **3.3.1 Policy 37.2.1**

25 Policy 37.2.1 provides, “Transportation demands of proposed development shall not
26 exceed an acceptable level of service for existing transportation facilities, unless appropriate
27 increases in capacities are provided for.” (AR 22231.)
28

Petitioners contend that the Project is inconsistent with Policy 37.2.1 for two reasons. First, Petitioners note that the Project would significantly impact intersections and segments under 2015 conditions because “the EIR admits that widening all of SR 68 is infeasible.” Second, Petitioners assert that increases in capacity cannot be provided to ensure acceptable LOS under 2030 conditions because 1) needed improvements are neither planned nor funded; and 2) the EIR’s admission of significant and unavoidable direct (2015) impacts shows that Project demands will exceed an acceptable LOS without a corresponding increase in capacity.

Petitioners erroneously assume no development is possible until the *entire* SR 68 corridor achieves acceptable LOS. In fact, Real Party is not responsible for remediating non-project impacts that have — and will — affect levels of service. (*Napa Citizens for Honest Government, supra*, 91 Cal.App.4th at p. 364; Guidelines, § 15126.4, subd. (a)(4)(B).) Moreover, Petitioners’ interpretation of Policy 37.2.1 would conflict with other General Plan objectives and policies. Specifically, Petitioners’ urged interpretation of Policy 37.2.1 would conflict with 1) Objective 39.1, which recognizes the need to balance available funding with needed transportation improvements; and 2) Policy 39.1.2’s requirement that all property owners that benefit from such improvements share equitably in their funding. (AR 22233.)

Additionally, Policy 37.2.1 does not define an “appropriate increase” in capacity. As the County points out, this language does not necessarily indicate an “appropriate increase” in capacity *must* achieve acceptable LOS. Instead, it requires that roadways not exceed acceptable levels of service “*unless* appropriate increases in capacity are provided for.” (AR 22231, *italics added*.) The determination whether the Project provides for an “appropriate increase” in capacity is a policy decision within the County’s sound discretion. (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 142.) Here, the Board expressly conditioned Project approval upon Real Party’s payment of the TAMC RDIF, which payment is specifically earmarked for the SR 68 CIP. (AR 112, 114.) That program would widen Highway 68 to four

lanes for 2.3 miles in the immediate Project area, increasing the circulation capacity of both SR 68 and the regional network. (AR 427, 441.) The Board impliedly found these improvements constituted an appropriate increase in capacity. The court owes substantial deference to the Board's determination. (*Clover Valley, supra*, 197 Cal.App.4th at p. 238.)

Admittedly, the proposed improvements would not resolve all capacity issues. For example, the RDEIR found that implementation of the 2.3-mile SR 68 CIP would improve operation of only three impacted intersections to acceptable LOS under 2015 conditions. (AR 447.) Nevertheless, the County could still reasonably have concluded that the improvements were an "appropriate increase." (AR 22231; *Clover Valley, supra*, 197 Cal.App.4th at p. 238.)

Finally, Petitioners conflate the issues of mitigation of environmental impacts under CEQA with the General Plan consistency inquiry. These analyses are governed by different standards. As discussed *ante*, the court disagrees with Petitioners' argument that the RDIF would not be an adequate mitigation plan under CEQA. But irrespective of whether the court agrees with Petitioners on this point, the court's inquiry regarding the County's general plan consistency conclusion "is limited to a determination of whether the agency's action was arbitrary, capricious or entirely lacking in evidentiary support" such that "no reasonable person could have reached the same conclusion." (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243, internal citations omitted.) The County's conclusion is not arbitrary and capricious. As discussed *ante*, the SR 68 CIP was identified in TAMC's RTP as a "constrained" program, i.e. one for which adequate funding is anticipated. (AR 6960, 6867, 6870, 19573, 22717, 22628.)

3.3.2 Policy 39.1.4

Policy 39.1.4 provides, "New development shall be located where there is existing road and highway capacity or where adequate road and highway capacity will be provided." (AR 22233.)

1 Petitioners assert both that existing capacity is deficient and that the County will not
2 provide adequate capacity in the future. The definition of “adequate capacity” is, again, in the
3 County’s discretion. (*Save our Peninsula, supra*, 87 Cal.App.4th at p. 142.) The terms
4 “appropriate increase in capacity” and the requirement to provide “adequate . . . capacity” are
5 functionally equivalent. The court therefore incorporates its reasoning on this issue from its
6 analysis of Policy 37.2.1, *ante*.

8 **3.3.3 Policy 26.1.4**

9 Policy 26.1.4 provides, “The County shall designate growth areas only where there is
10 provision for an adequate level of services and facilities such as water, sewerage, fire and
11 police protection, transportation, and schools. Phasing of development shall be required as
12 necessary in growth areas in order to provide a basis for long-range services and facilities
13 planning.” (AR 22208.)

14 By its terms, this Policy applies to the designation of “growth areas” and the need to
15 provide adequate level of services to such areas, not to individual projects. Even if this Policy
16 did apply, Petitioners’ argument is essentially identical to its argument as to Policies 37.2.1 and
17 39.1.4. Consequently, the court incorporates its reasoning on this issue from its analyses of
18 Policies 37.2.1 and 39.1.4, *ante*.

20 **3.4 Purported Defects in the 1982 General Plan**

21 Meyer asserts that the County’s approval of use permits for the Project is void because
22 of purported deficiencies in the County’s 1982 General Plan. Specifically, Meyer claims that 1)
23 the 1982 General Plan is out-of-date; and 2) the land use and circulation elements are
24 inconsistent.

25 “Each county is required to adopt a ‘comprehensive, long-term general plan for . . . [its]
26 physical development’ (§ 65300.) The plan must include, inter alia, a statement of policies
27 and nine specified elements: land use, circulation, housing, conservation, open-space, seismic
28

1 safety, noise, scenic highway, and safety. (§ 65302.) [¶] Under state law, the propriety of
2 virtually any local decision affecting land use and development depends upon consistency with
3 the applicable general plan and its elements [A]bsence of a valid general plan, or valid
4 relevant elements or components thereof, precludes enactment of zoning ordinances and the
5 like. [Citations.]” (*Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800,
6 806.)

7
8 Government Code section 65009, subdivision (c)(1)(A), establishes a 90-day statute of
9 limitations for challenges to an agency’s decision to adopt or amend a general plan. The
10 Legislature intended the statute to “provide local governments with certainty . . . in the validity of
11 their zoning enactments and decisions.” (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757,
12 774.) A petitioner may not circumvent the statute by using a challenge to a land use permit as a
13 vehicle for an untimely collateral attack upon a general plan. (*A Local & Regional Monitor v. City*
14 *of Los Angeles* (1993) 16 Cal.App.4th 630, 648.) To prove a challenge is not facial, a petitioner
15 must show a “nexus of relevancy” between the claimed legal inadequacies in the General Plan
16 and the project. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 289-290 [“only those
17 portions of the general plan which are impacted or influenced by the adoption” of a project are
18 subject to challenge], disapproved on other grounds in *Morehart v. County of Santa Barbara*
19 (1994) 7 Cal.4th 725, 743, fn. 11; *Flavell v. City of Albany* (1993) 19 Cal.App.4th 1846, 1853.)

20
21 Here, the County’s 1982 General Plan, which the County adopted more than 90 days
22 before the filing of this action, applies to the Project. (AR 124.) Accordingly, any facial challenge
23 to the 1982 General Plan is time-barred. (Gov. Code, § 65009, subd. (c)(1)(A).)

24 **3.4.1 The claim the 1982 General Plan is outdated**

25
26 Meyer notes that County documents from 1999 concede that the General Plan is
27 outdated. (AR 5775, 5777, 5808.) Meyer asserts that the outdated nature of the plan has led to
28 LOS deficiencies. But Meyer fails to establish a nexus between these deficiencies and the

1 Plan's purported obsolescence. (See *Flavell, supra*, 19 Cal.App.4th at p. 1853; *Garat, supra*, 2
2 Cal.App.4th at p. 290.) The County's statement concerning Policies 26.1.4, 37.2.1, and 39.1.4
3 occurred in 1999; there is no evidence of any such concession in the present. In fact, the record
4 suggests to the contrary. Moreover, the County adopted the RDIF program in 2008. (AR 6888,
5 6924.) That program exacts proportional fees on new development that go directly towards
6 improving the regional transportation program. (AR 6846.) Hence, the claim is time-barred.
7 (Gov. Code, § 65009, subd. (c)(1)(A).)

8
9 **3.4.2 The claim that the land use and circulation elements are inconsistent**

10 Meyer contends that the General Plan is deficient because its land use and circulation
11 elements are inconsistent. Specifically, Meyer asserts that the County has not adequately
12 applied General Plan Policies 26.1.4, 37.2.1, or 39.1.4, to ensure roadway capacity met
13 demand. The result, Meyer argues, has been a lack of roadway capacity improvements in
14 proportion to the intensification of County land uses upon SR 68 over time.

15 Claims of inconsistency between the land use and circulation elements are direct attacks
16 upon the general plan because "correlation" between these elements is a mandatory component
17 of a general plan. (Gov. Code, § 65302, subd. (b); *A Local & Regional Monitor, supra*, 12
18 Cal.App.4th at p. 1816.) Additionally, Meyer has not shown a "nexus of relevancy" between the
19 purported plan deficiencies and the Project. (*Garat, supra*, 2 Cal.App.4th at p. 290.)
20 Consequently, this claim is time-barred. (Gov. Code, § 65009, subd. (c)(1)(A).)

21
22 Finally, Meyer asserts that Project traffic would "further deteriorate" levels of service
23 without corresponding increases in capacity. Meyer neglects to mention that the Board
24 expressly conditioned Project approval upon Real Party's payment of the RDIF, which payment
25 is specifically earmarked for the SR 68 CIP. (AR 112, 114.) As discussed *ante*, that program
26 would widen SR 68 to four lanes for 2.3 miles in the immediate Project area, increasing the
27 circulation capacity of both SR 68 and the regional network. (AR 427, 441.) The Board impliedly
28

1 found these improvements constituted an “appropriate increase” in capacity. Meyer has not
2 shown grounds to overcome the “strong presumption of regularity” to which the County’s finding
3 is entitled. (*Clover Valley, supra*, 197 Cal.App.4th at p. 238.)

4 **4. Project Description**

5 Meyer argues that the EIR’s project description is deficient because it did not address
6 impacts from 1) a 26-acre “remainder parcel”; and 2) 14 existing lots north of the Property,
7 which will share some supporting infrastructure.
8

9 **4.1 Factual Background**

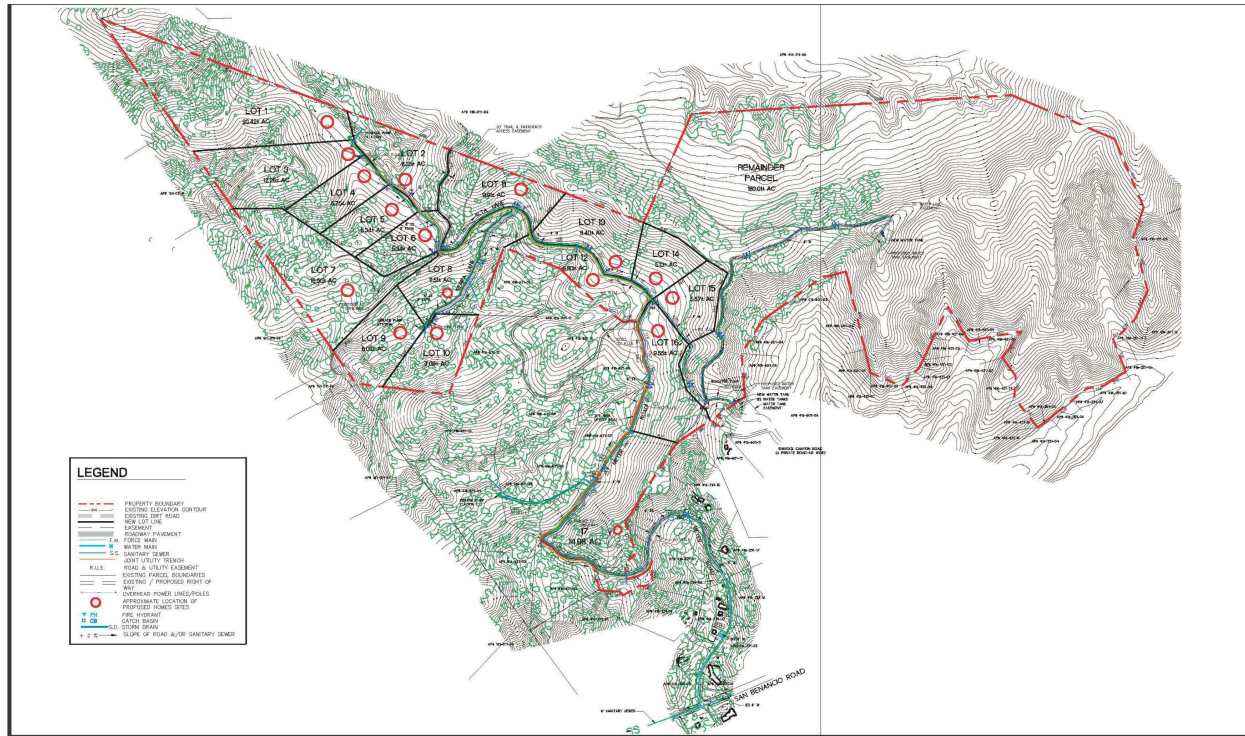
10 **4.1.1 DEIR**

11 The DEIR recited the following:

12 “The proposed project includes the subdivision of 344 acres into 17 lots on 164 acres with one
13 180-acre remainder parcel. The residential lots would have an average density of one dwelling
14 unit per 9.64 acres within the subdivided area, as lots would range in size from 5.13 acres to
23.42 acres.

15 “Improved lots would be sold individually for the construction of homes The project site
16 includes a 180-acre remainder parcel. The project applicant has committed to donating
17 approximately 154-acres [*sic*] of the remainder parcel by deeding the property to the Monterey
18 County Parks Department as an expansion of the adjacent Toro Park pursuant to Section
66428(a)(2) of the Subdivision Map Act. No development is proposed on the remaining 26-acres
[*sic*] of the remainder parcel at this time.” (AR 691.)

19 The DEIR presented the following proposed, vesting tentative map:
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PMC

(AR 1188.)

4.1.2 FEIR

The FEIR addressed this issue via responses to public comment and revised Project maps.

4.1.2.1 Master Response 2

“MASTER RESPONSE 2: EXISTING LEGAL LOTS OF RECORD

“Several comments were received regarding the 14 existing lots of record (‘Broccoli lots or parcels’) that are located adjacent to the project site . . . These 14 lots of record are owned by the project applicant, and were recorded in their current configuration in 1993. Fifteen lots on this property existed prior to 1993, but were adjusted via a major lot line adjustment approved by the County Subdivision and Minor Subdivision Committee. The adjustment resulted in the 14 lots plus one large remainder lot. That remainder lot of 343 acres is the area now proposed for the Harper Canyon/Encina Hills subdivision. The approval of the 1993 lot line adjustment contained several conditions of approval, and the approval was subject to the environmental and planning review procedures per the County’s process in place at the time. A negative declaration was prepared, considered and approved as part of the Committee’s action.

“The common theme of the comments received on the DEIR is that: 1) the 14 lots are assumed to be interdependent on the current (Harper Canyon) subdivision under review, and therefore

INTENDED DECISION
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1 the development of these lots should be analyzed in this EIR; and 2) that the 14 lots should be
2 included in the cumulative analysis of the EIR. Both of these issues are addressed below.

3 “First, the 15 legal lots of record exist already. As such, the lots could be developed at any time
4 if the attached conditions of approval are met and once proposed development (home sites)
5 satisfy the County review and permit process. At any time the property owner could improve and
6 extend Meyer Road and provide utility extensions to the existing 14 lots consistent with the
7 terms of their approval. The development of the Broccoli lots is not dependent upon the
8 approval of the Harper Canyon/Encina Hills Subdivision nor dependent upon access
9 easements, as all lots in question are held in single ownership. The 1993 lot line adjustment
10 was approved with the understanding that the lots would be accessed by an improved Meyer
11 Road. [CEQA] does not require re-analysis of a previously approved project unless ordered by a
12 court of law following a successful challenge of the approval, or substantial changes are made
13 to the project prior to development that triggers such analysis. No such conditions exist, no
14 changes are being considered with respect to the 14 existing lots, and no specific development
15 is proposed on the lots at this time.

16 “While these two groups of lots and the applications submitted for their creation are legally
17 independent of one another, it can certainly be argued that investment in infrastructure for one
18 subdivision – such as the improvement of roads and extension of utility lines – would very likely
19 benefit the other. The economics of constructing roads and other service extensions to serve
20 one subdivision could conceivably accelerate the buildout of the other or make the parcels more
21 marketable. However, the Harper Canyon/Encina Hills Subdivision does not remove any
22 existing barriers to development of the existing 14 lots, nor would the subdivision ‘induce’ new
23 growth since the 14 lots legally exist and could be developed with or without the creation of
24 Harper Canyon’s 17 lots. With respect to the specific issue of water service for the 14 lots, these
25 legal lots are located in Cal-Am’s service area, and the lots pre-date the B-8 zoning restrictions.

26 “Regarding the DEIR’s approach to assessing cumulative effects, the existing 14 lots have been
27 documented, recognized and included under background conditions as an ‘approved project’
28 since the property owner could apply at any time for a building permit on those lots provided the
property owner can meet conditions of approval and building requirements. Please see DEIR
page 5-5, Table 5-1, Cumulative Projects which identifies the 14 lots of record. The existing 14
lots have been included in the analysis assumptions throughout the DEIR document and
Chapter 5.0 Cumulative Impact Summary. The DEIR (and RDEIR dated December 2009)
identified that the project’s contribution to all cumulative effects were either effectively mitigated
by the project’s mitigation measures, or otherwise did not result in a cumulatively considerable
environmental impact.” (AR 150-151.)

23 **“Response to Comment 3-3**

24 “*Commenter cites MM 3.1-2, which places a scenic easement in areas of excess of 30% slope.*
25 *Comments inquire if ‘remaining’ acres are within the viewshed and if the project would have a*
significant adverse visual impact

26 “The project site encompasses approximately 344 acres. However, the 17 proposed residential
27 lots are proposed on approximately 164 acres, with a 180 acre [sic] Remainder Parcel.
28 Approximately 154 acres of the Remainder Parcel (as shown in Exhibit A) would be deeded to

Monterey County Parks Department and no development is proposed on the remaining portion of the Remainder Parcel.” (AR 167, italics and bold in original.)

“Response to Comment 4-5

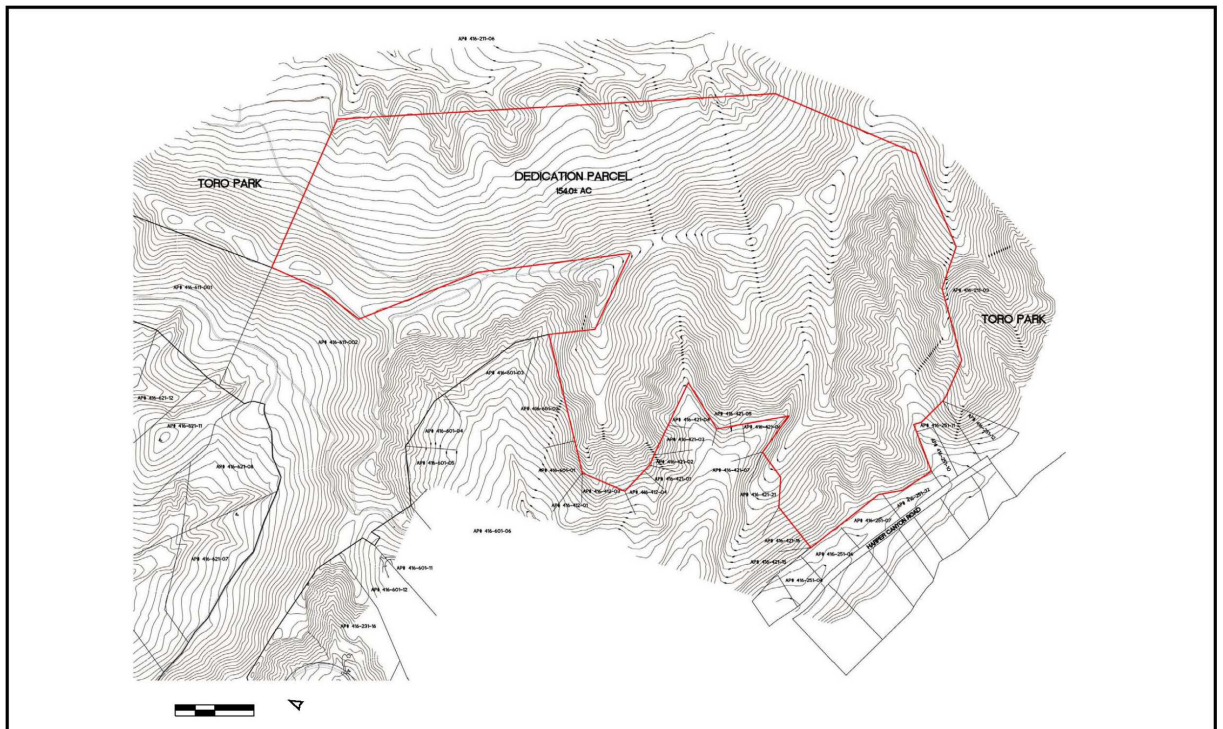
“Commenter states that the DEIR states that the 180-acre Remainder Parcel will be split into two parts but that there are no maps that show the split. Commenter further states that one portion of the Remainder Parcel may become a site for future development, the DEIR needs to clarify the plans for an access route to the remainder parcel and associated environmental impacts.

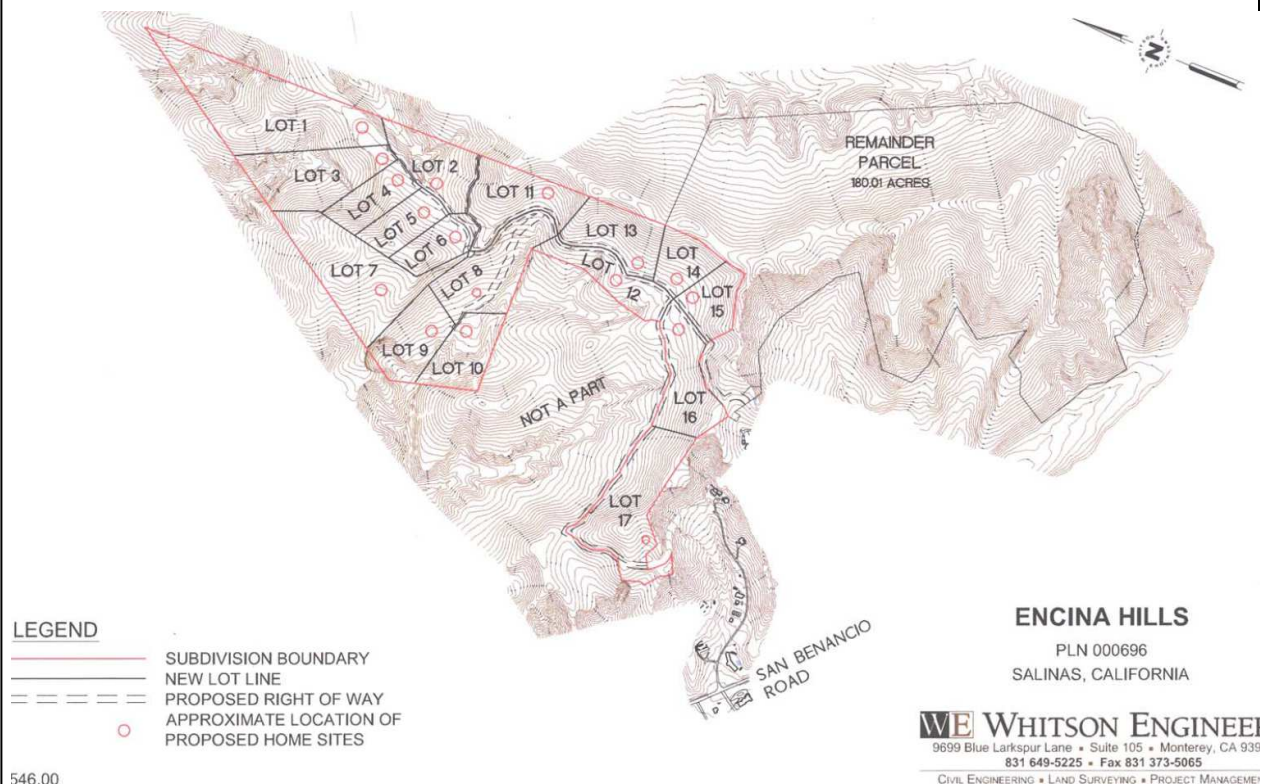
“Approximately 154 acres of the Remainder Parcel will be deeded to Monterey County Parks Department. The final Subdivision Map will identify the area to be deeded.

“There are currently no plans or proposal for development of the land on the Remainder Parcel, and therefore there are no proposals for access. If development is proposed on that parcel in the future it would require processing as a separate project application and be subject to subsequent environmental review.” (AR 182, italics and bold in original.)

4.1.2.2 Maps

The FEIR presented the two following, relevant maps:





(AR 392, 396.)

4.2 Whether the Project Description satisfies CEQA

Meyer argues that the EIR's Project Description was "inaccurate and misleading" because 1) a 26-acre remainder parcel is really an "18th parcel" for which no environmental review has been done; 2) the location of the remainder parcel is unclear; and 3) improvements to Meyer Road, the sewer system, water system, and storm-drainage system are intended to serve both the Project and a nearby, 14-lot property.

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1.) To satisfy this purpose, an EIR must adequately define the project. "[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The

defined project and not some different project must be the EIR's bona fide subject." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199, italics in original.)

"With 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. [Citation.] 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.' [Citation.].)" (*California Oak Foundation, supra*, 188 Cal.App.4th at pp. 269-270, citing Guidelines, § 15124.)

4.2.1 The purported "18th Lot"

Meyer contends that the EIR's Project Description ignored that a 26-acre "remainder parcel" is, in truth, a developable lot. Meyer further contends that failure to consider this "18th lot" rendered the Project Description insufficient.

The Project would subdivide the Property into the Project area and a 180-acre remainder parcel, 154 acres of which would be donated to Toro Park. (AR 43, 182.) "There are currently no plans or proposal for development" upon the remaining 26-acre parcel. (*Ibid.*) If development were subsequently contemplated, the applicant would be required to submit a new application and would potentially be subject to CEQA review. (*Ibid.*; see also AR 167, 691.) Additionally, the Combined Development Permit authorized 17, not 18, residential lots. (AR 53.)

Meyer provides no authority for the proposition that environmental analysis is required for a parcel that is not being developed. In fact, in the three pages of its brief devoted to this topic, Meyer presents *no authority* for its arguments. This omission is fatal. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["[t]o demonstrate error, [a litigant] must present meaningful

1 legal analysis supported by citations to authority and citations to facts in the record that support
2 the claim of error”]; *Golden Drugs Co., Inc. v. Maxwell-Jolly* (2009) 179 Cal.App.4th 1455, 1468
3 [the court is “not required to entertain contentions lacking adequate legal analysis”].)

4 In any event, Meyer’s argument is incorrect as a matter of law. It is true that a project
5 description must address planned future expansion or later phases of a project that would
6 *foreseeably* result from project approval. (*Laurel Heights I, supra*, 47 Cal.3d at p. 396.) It follows
7 that a project description need not address possible future expansion or other action related to a
8 project that is not a reasonably foreseeable consequence of that project. (*Ibid.*; see *Paulek v.*
9 *California Department of Water Resources* (2014) 231 Cal.App.4th 35, 46.) Here, development
10 is neither proposed upon the “18th lot” presently nor planned for the future. (AR 167, 182, 691.)
11 Meyer speculates that “future use of this remainder parcel will actually be the third phase of
12 development of one property” owned by Real Party. But Meyer provides no record support for
13 this claim. CEQA does not require an EIR to analyze an entirely speculative environmental
14 impact. (*Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6
15 Cal.App.5th 160, 186.)
16

17 Moreover, even if development were reasonably foreseeable, CEQA review would not
18 be triggered until meaningful analysis became possible. (*Friends of Sierra R.R. v. Tuolumne*
19 *Park and Recreation Dist.* (2007) 147 Cal.App.4th 643, 657.) Meyer does not
20 elucidate what project it believes Real Party would (or could) develop upon the 26-acre parcel;
21 an EIR need not analyze the potential environmental impacts of an unknown project. (See
22 *Mission Bay Alliance, supra*, 6 Cal.App.5th at p. 186.)
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4.2.2 Remainder Parcel Description

Meyer maintains that the EIR rendered the location of the 26-acre parcel unclear.²⁹ As Real Party points out, this claim is belied by the record. The EIR includes maps that define the boundaries of the 17 lots, the 154-acre dedication parcel, and the adjacent portion of Toro Park, leaving only one area unlabeled. (AR 392, 396.) Logically, this area must be the location of the 26-acre parcel. Further, staff presented slides to the Board depicting the precise boundaries of the 26-acre parcel, which correspond with this area. (AR 14072, 14420, 14285.)

Regardless, the EIR was not required to detail the precise boundaries of the 26-acre parcel, which is not being developed. CEQA requires only a “general description” of the project’s technical characteristics, “rather than details or particulars.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28.) An EIR need not include information that is irrelevant to its analysis of significant impacts. (See *California Oak Foundation, supra*, 188 Cal.App.4th at p. 269; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 227.)

4.2.3 Infrastructure/Broccoli Lots

Meyer argues that the EIR erroneously failed to consider the impacts of 14 existing lots north of the Property (the “Broccoli lots”). Meyer points out that the Project will result in the improvement of certain roads and extension of utility lines, which would benefit both the Project and the Broccoli lots. Once again, Meyer fails to cite authority to support its argument;³⁰ this

²⁹ Meyer also claims that the EIR did not reveal the location of two new water tanks proposed for that parcel. In fact, the DEIR’s vesting tentative map clearly depicts the tanks. (AR 1188.) Likewise, the EIR itself noted, “[o]ne new tank would be located near Rim Rock Canyon Road adjacent to two existing tanks, while the other would be located southeast of the first tank.” (AR 892.)

³⁰ Meyer cited a single case in its reply brief. But this citation was too late; the court cannot fairly consider it. (*American Drug Stores, Inc., supra*, 10 Cal.App.4th at p. 1453 [“Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument”].)

omission is fatal. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*, *supra*, 179 Cal.App.4th at p. 1468.) In any event, Meyer's argument lacks merit.

The County approved the current configuration of the Broccoli lots in 1993, and reviewed that configuration for potential environmental impacts through a negative declaration. (AR 150.) The Broccoli lots are not part of the Project. (AR 293.) Real Party did not propose development upon the Broccoli lots, and even if it did, such development would have to constitute a "substantial change" to the Project or its circumstances to trigger subsequent CEQA review. (Pub. Resources Code, § 21166, subds. (a)-(b); Guidelines, § 15162.) Meyer has made no showing on this point.

Additionally, "[d]evelopment of the Broccoli lots is not dependent upon the approval of the Harper Canyon/Encina Hills Subdivision nor dependent upon access easements, as all lots in question are held in single ownership." (AR 150.) And, although the improvements will benefit both the Property and the Broccoli lots, those improvements do "not remove any existing barriers to development of the existing 14 lots, nor would the subdivision 'induce' new growth since the 14 lots legally exist and could be developed with or without the creation of Harper Canyon's 17 lots." (*Ibid.*) In short, the EIR was not required to analyze the combined direct impact of the Broccoli lots and the Project.

Finally, Meyer does not adequately address the fact that the EIR actually considered the impact of the Broccoli lots in its cumulative analysis as a nearby, approved project. (AR 151, 293, 451, 963, 965, 969-983.) Meyer insists that this analysis is deficient because it did not "contain information directly pertaining to the cumulative impacts from development of 31 home-sites along Meyer Road." As discussed *ante*, no such further assessment was necessary because the Project does not propose development upon the Broccoli lots.

5. Project Alternatives

Meyer contends that the EIR's alternatives analysis was inadequate because it did not analyze whether the 26-acre remainder parcel could serve as an alternative site for the Project. Real Party argues this contention is barred because Meyer has not exhausted its administrative remedies as to this issue. Real Party also disagrees with Meyer on the merits.

5.1 Exhaustion

Meyer maintains that the EIR's alternatives analysis fails to consider whether the 26-acre remainder parcel "would be an alternative site for a portion of the project's housing development." Real Party objects that this issue was never raised below.

"No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (Pub. Resources Code, § 21177, subd. (a).) The exhaustion requirement is jurisdictional. (*Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1199.) "The rationale for exhaustion is that the agency ""is entitled to learn the contentions of interested parties before litigation is instituted. If [plaintiffs] have previously sought administrative relief . . . the [agency] will have had its opportunity to act and to render litigation unnecessary, if it had chosen to do so."" [Citation.]" (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394.) "The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level. [Citation.]" (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.) So long as a party has objected to project approval during the agency proceedings generally, that party may assert any issues timely raised by other parties. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 191.)

1 “To satisfy the exhaustion requirement, comments must be ‘sufficiently specific so as to
2 allow the [a]gency the opportunity to evaluate and respond to them.’ [Citation.]” (*North Coast*
3 *Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614,
4 631.) Some courts hold that this “specific-objection” requirement is satisfied if the issue was
5 raised in some form. (See *Santa Clarita Organization for Planning the Environment v. City of*
6 *Santa Clarita* (2011) 197 Cal.App.4th 1042, 1051.) These courts reason that “less specificity is
7 required to preserve an issue for appeal in an administrative proceeding than in a judicial
8 proceeding. This is because “[i]n administrative proceedings, [parties] generally are not
9 represented by counsel. To hold such parties to knowledge of the technical rules of evidence
10 and to the penalty of waiver for failure to make a timely and specific objection would be unfair to
11 them.’ [Citation.]” (*Citizens Assn. for Sensible Development of Bishop Area v. County of*
12 *Inyo* (1985) 172 Cal.App.3d 151, 163.) Other courts, including the Sixth District Court of Appeal,
13 have determined that the “exact issue” raised in the litigation must be presented to the agency
14 below, so that the agency will have an opportunity to act and render that litigation unnecessary.
15 (*California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1347;
16 *Sierra Club, supra*, 163 Cal.App.4th at p. 535.) The ultimate determination turns upon whether
17 the objection at issue “fairly apprise[s]” the agency of the issue so that it has an opportunity to
18 respond. (*Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180
19 Cal.App.4th 210, 251.)

22 Meyer cites comments from Landwatch and an individual, Mr. David Erickson.
23 Landwatch’s comment contained its claim that certain lots potentially visible from SR 68 should
24 be relocated. (AR 160.) Mr. Erickson speculated that *some* portion of the Remainder Parcel
25 “may become a site for future development,” necessitating that Real Party provide both analysis
26 of potential impacts and information concerning any planned access route. (AR 177.) These
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1 comments neither stated nor suggested that a project alternative that relocates some of the
2 Project's lots to *the 26-acre remainder parcel* should be considered.

3 Meyer also cites a statement by Supervisor Salinas at a Board of Supervisors hearing.
4 Meyer claims that the Supervisor observed "that Alternative 3, which deleted four lots, could
5 have been redesigned to relocate the lots onto Parcel 18 if the parcel had been better defined."
6 In fact, Supervisor Salinas stated:

7
8 "But I guess one of the speakers indicated that an Alternative 3 might be
9 something that we could look at. Somebody mentioned a Parcel 18. Maybe that
10 could have been defined so that we would know what the potential development
11 would be there, and we could -- we could say, This [*sic*] is maybe the and it's
tough, because we're going to limit it some more. I don't know what the right
number would be, but then, for sure, would know. Because the applicant has
followed one of the rules -- the rules that were in place." (AR 5208:24-5209:8.)

12 Supervisor Salinas opined only that defining what "potential development" was possible
13 upon the remainder parcel would be helpful to his decision as to project approval. He did not
14 suggest that lots should be relocated *to the remainder parcel*, much less that the EIR should
15 have considered an alternative plan in which such a relocation would be proposed.

16
17 The County cannot be faulted for failing to consider an alternative that was never
18 suggested. Meyer has failed to exhaust its administrative remedies on this issue. Consequently,
19 its claim is barred. (Pub. Resources Code, § 21177 subd. (a); *Bakersfield Citizens, supra*, 124
20 Cal.App.4th 1184, 1199 ["[e]xhaustion of administrative remedies is a judicial prerequisite to
21 maintenance of a CEQA action"].)

22 **5.2 Onsite Alternatives**

23 Meyer's argument is also unavailing because it is not supported by adequate authority.
24 Meyer cites a single case, *Center for Biological Diversity v. County of San Bernardino* (2010)
25 185 Cal.App.4th 866, 885, apparently for the proposition that the EIR was required to discuss a
26 range of feasible alternatives. Meyer does not attempt to explain the relevance of this case to its
27 argument. This failure to cite relevant legal authority is fatal. (See *In re S.C., supra*, 138
28

1 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*, *supra*, 179 Cal.App.4th at p. 1468.) Regardless,
2 Meyer's argument is unpersuasive on its merits.

3 Although CEQA requires an EIR to discuss alternatives to the project, it does not require
4 that an EIR discuss alternative *locations* for the project. (*Mira Mar Mobile Community v. City of*
5 *Oceanside* (2004) 119 Cal.App.4th 477, 491, citing Pub. Resources Code, §§ 21001, subd. (g),
6 21002.1, subd. (a), 21061.) The Guidelines require an EIR to discuss alternatives "to the
7 project, *or* the location of the project" (Guidelines, § 15126.6, subd. (a), italics added.) The
8 use of the disjunctive implies that an agency may choose to "evaluate on-site alternatives, off-
9 site alternatives, or both "depending on the project's characteristics." (*Mira Mar*, *supra*, 119
10 Cal.App.4th at p. 491.)

11 Meyer contends that the 26-acre remainder parcel would be an appropriate site given
12 "the testimony" in the record as to wildlife corridors, and the "EIR's ambiguity regarding visual
13 impacts" Meyer suggests the 26-acre parcel could mitigate these impacts. Meyer's point is
14 defective in at least two respects.

15 First, Meyer does not explain its statements, relying only upon general citations to the
16 record. Accordingly, Meyer's perfunctory contentions are insufficient to meet its burden to
17 demonstrate error. (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th
18 1, 13; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 [the court "will not
19 independently review the record to make up for [Petitioner's] failure to carry his burden"].)

20 Second, Meyer's contention implies that the selected range of alternatives was
21 inadequate, but Meyer provides no supporting analysis or explanation. "The discussion of
22 alternatives is subject to a rule of reason [citation] and the scope of alternatives to be analyzed
23 must be evaluated on the facts of each case and in light of the statutory purpose." (*Mira Mar*,
24 *supra*, 119 Cal.App.4th at p. 487.) An EIR's selection of alternatives will be upheld unless Meyer
25 shows that the alternatives selected "are manifestly unreasonable and that they do not
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1 contribute to a reasonable range of alternatives.” (*Federation of Hillside and Canyon*
2 *Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.) Meyer’s comments do
3 not meet this burden.

4 **6. Aesthetics**

5 Meyer maintains that the EIR’s aesthetics analysis was defective. Specifically, Meyer
6 insists that the EIR’s direct impact analysis was inadequate as to 1) Project visibility from SR 68;
7 2) the mitigating effect of proposed zoning overlays; and 3) its discussion of ridgeline
8 development. Meyer further insists that the EIR’s cumulative impact analysis was deficient as to
9 1) its baseline; 2) its incorporation of another document’s impact analysis; 3) its use of the
10 vague term “unavoidable scenic impact”; and 4) its reliance upon Project compliance with
11 General Plan policies and zoning ordinances to support its conclusion.

12 **6.1 Factual Background**

13 **6.1.1 The DEIR (and FEIR Revisions)**

14 The DEIR provided, in relevant part, as follows:

15 “Visual impacts were evaluated using a combination of a site reconnaissance, photo
16 documentation, aerial photographs, and review of existing policy documents, including the *Toro*
17 *Area Plan*

18 “**ENVIRONMENTAL SETTING** . . .

19 “**LOCAL VISUAL RESOURCES**

20 “The project site is located approximately twelve miles east of the City of Monterey and five
21 miles west of the City of Salinas within the area known as Encina Hills in the *Toro Area Plan*.
22 The project site consists of rolling land perched on western facing slopes of the Sierra de
23 Salinas Range and consists of approximately 344 acres of annual grasslands, coast live oak
24 woodland/savanna, coastal scrub and central maritime chaparral. The elevation ranges from
25 approximately 340 feet in the southern portion of the project site to slightly over 1,020 feet in the
26 eastern portion. Views from the project site consist of scenic ridgelines of the Santa Lucia
27 Range, serene valleys of Corral de Tierra, and the City of Salinas. Existing views of the project
28 site from the Meyer Road are shown in photographs in **Figures 2-3a, Project Site**
Photographs and **2-3b, Project Site Photographs** in **Section 2.0, Project Description**.

“SENSITIVE VIEWPOINTS

“Areas of visual sensitivity are those areas that may be visible from long distances, for long durations of time, or from public viewing points. They may include particularly distinctive or prominent landforms or vegetation; or they may represent sensitive juxtapositions of line, color, shape, and texture in their composition. Ridgelines, mountain faces, hillsides, open meadows, natural landmarks, and unusual vegetation are visually prominent from various roadways.

“Some of the most critical scenic areas within the planning area of the *Toro Area Plan* are the visually sensitive areas that are viewed by the thousands of motorists who travel the scenic corridors daily. According to the *Toro Area Plan*, there are two scenic roads in the planning area: State Route 68 is a State scenic highway and Laureles Grade Road is an officially designated County scenic highway. The Monterey County Board of Supervisors has also designated Corral de Tierra Road, San Benancio Road, Corral del Cielo Road, and Underwood Road as County scenic routes. The project site is located approximately 2,000 feet southeast of State Route 68, between San Benancio Road and River Road. Laureles Grade Road is located approximately 3.5 miles west of the project site. San Benancio Road, a County designated scenic road, provides project site access to and from State Route 68. In addition, the project site is located adjacent to Toro Regional Park and approximately 3,500 feet from Fort Ord Public Lands that is under the jurisdiction of the Bureau of Land Management (BLM), which are considered public viewing areas in Monterey County” (AR 711-712, bold and italics in original.)

“REGULATORY SETTING

“CALIFORNIA SCENIC HIGHWAY PROGRAM

“Many state highways are located in areas of outstanding natural beauty. California’s Scenic Highway Program was created by the Legislature in 1963. Preservation and protection of scenic highway corridors from change, which would diminish the aesthetic value of lands adjacent to highways, is the primary purpose of the program

“**Monterey County General Plan**

“Scenic Highway Policies

“Monterey County has long been identified as among the nation’s leaders in the development of scenic roadways. The County’s Scenic Highway System is composed of roads and highways that have been designated by the state as State scenic highways or County scenic routes. Although the project site is not within a scenic corridor or a ‘visually sensitive’ area, portions of the project site are potentially visible from State Route 68, a State scenic route” (AR 713-714, bold in original.)

“Ridgeline Development Policy

“Monterey County places high value on maintaining its scenic and rural character and restricting development on ridgelines within the County is one way of doing so. Policies have been developed to avoid development on all ridgelines visible from public viewpoints within the County, unless a special permit is granted. The *Monterey County General Plan* defines ridgeline

development as ‘development on the crest of a hill which has the potential to create a silhouette or other substantially adverse impact when viewed from a common public viewing area.’

“26.1.9 In order to preserve the County’s scenic and rural character, ridgeline development will not be allowed unless a special permit is first obtained. Such a permit shall only be granted upon findings being made that the development, as conditioned by permit, will not create a substantially adverse visual impact when viewed from a common public viewing area. New subdivisions shall avoid lot configurations, which create building sites that will constitute ridgeline development. Siting of new development visible from private viewing areas may be taken into consideration during the subdivision process.” (AR 715, italics in original.)

“STANDARDS OF SIGNIFICANCE

“The following thresholds for measuring a project’s environmental impacts are based on CEQA Guidelines and standards used by the County of Monterey. For the purposes of this EIR, impacts are considered significant if the following could result from implementation of the proposed project:

“1) Have [*sic*] adverse effect on a scenic vista;

“3) Degrade the existing visual character or quality of the site and its surroundings” (AR 718-719.)

6.1.1.1 Impact 3.1-1 (“Substantial Adverse Effect on a Scenic Vista”)

“Implementation of the proposed project would result in permanent alteration of site conditions that may affect scenic vistas from State Scenic Route 68, San Benancio Road, Toro Regional Park and/or Fort Ord public land owned by the Bureau of Land Management (BLM). This would be considered a **potentially significant impact**.

“According to the *Toro Area Plan*, the project site is located outside the area designated as ‘area of visual sensitivity’ [*sic*] and the ‘critical viewshed’ However, the project site is zoned ‘Rural Density Residential’ within a ‘Design Control District’ (RDR [5.1-D]), which regulates the location, size, configuration, materials and colors of structures and fences through a design approval process. In addition, the project site is located approximately 2,000 feet southeast of State Route 68, a state scenic highway; approximately 1,200 feet from San Benancio Road, a County designated scenic route; adjacent to Toro Regional Park; and Fort Ord Public Land owned by the Bureau of Land Management (BLM). Due to the steep terrain, dense vegetation, and distance from the roadway, the project site would not be visible from San Benancio Road. However, portions of the project site may be visible from State Route 68, Toro Regional Park and/or Fort Ord BLM land, which are considered public viewing areas.

“State Route 68

“The proposed home sites located on Lots #7, #11, and #17 are potentially visible from State Route 68. However, the steep and rolling terrain adjacent to the State Route 68 provides a natural screen which limits visibility of the project site from the highway and limits the visibility to

the project site in the foreground. In addition, portions of [sic] project site are zoned within a 'Design Control District'. The purpose of the 'Design Control' zoning district is to protect the public viewshed, neighborhood character, and assure the visual integrity of the development in scenic areas. The intent of the 'Design Control District' is to guide development while preserving the scenic qualities of the ridgeline area, views from State Route 68, and the scenic and rural quality of the project vicinity. The 'Design Control District' would be applicable [sic] the entire area of both parcels. Therefore, all 17 residential lots would be subject to the requirements of Section 21.44.010 of the *Monterey County Zoning Ordinance*. Section 21.44.010 of the *Monterey County Zoning Ordinance* applies specific design standards and additional design review prior to approval of new development, including regulation of the location, size, configuration, materials and colors of proposed structures in order to guide development. The design review process would ensure that the scenic quality of the project site and vicinity is not diminished with implementation of the proposed project per Section 21.44.030 of the *Monterey County Zoning Ordinance* (Title 21). Therefore, the impact to views from State Route 68 would be considered **less than significant**.

"Toro Regional Park

Toro Regional Park lies adjacent to the project site along the majority of the eastern boundary. The project applicant has committed to donating approximately 154-acres [sic] of the remainder parcel by deeding the property to the Monterey County Parks Department as an expansion of the adjacent Toro Park pursuant to Section 66428(a)(2) of the Subdivision Map Act. No development is proposed on the remaining 26-acres [sic] of the remainder parcel at this time. The approximate locations of home-sites have been sited to comply with the 30 percent [sic] slope and ridgeline regulations of the Zoning Ordinance (Title 21), minimize the amount of tree removal, and limit the construction of new roadways Most development is proposed downslope from Toro Regional Park trails and therefore would not be significantly visible from Toro Regional Park. However, if development were allowed on the higher elevation knoll adjacent to Toro Regional Park, the proposed project may have a substantially adverse affect [sic] on the scenic vista as viewed from Toro Regional Park. This would be considered a **potentially significant impact.**" (AR 719-720, bold and italics in original.)

To mitigate this impact, the DEIR proposed MM 3.1-1, which would require Real Party to designate the knoll located along the eastern boundary of Lot #1 as a "scenic easement." (AR 720.)

"Fort Ord Public Land (BLM)

"The Bureau of Land Management's (BLM) Fort Ord public land is located approximately 3,500 feet north of the project site. Although the project site has rolling terrain and is heavily wooded in areas, there is the potential for portions of project site to be visible from Fort Ord public land. Due to the elevation and distance between the project site and the Fort Ord public land, Lots #1 through #4 and Lots #12 through #16, to a lesser extent, may be visible from the trails. However, this development would not be considered ridgeline development. Due to the elevation of the trails, a significant amount of development within the valley is visible from portions of the trails. The project site is located within a 'Design Control District' and is subject to the requirements of Section 21.44.010 of the *Monterey County Zoning Ordinance* (Title 21),

1 which [sic] specific design standards and additional design review prior to approval of new
2 development, including regulation of the location, size, configuration, materials and colors of
3 proposed structures in order to guide development. The architectural review process would
4 ensure that the scenic quality of the project site and vicinity is not diminished with
5 implementation of the proposed project per Section 21.44.030 of the *Monterey County Zoning*
6 *Ordinance* (Title 21). Therefore, the impact to views from Fort Ord public lands would be
7 considered **less than significant.**” (AR 720, 725, bold and italics in original.)

6.1.1.2 Impact 3.1-2 (“Substantial Adverse Effect on a Scenic Resource”)

8 “Implementation of the proposed project would result in permanent alteration of site conditions
9 that may damage scenic resources. This would be considered a **potentially significant**
10 **impact.**

11 “The project site consists of 344 acres of rolling land perched on western facing slopes of the
12 Sierra de Salinas Range and is comprised of annual grasslands, coast live oak
13 woodland/savanna, coastal scrub and central maritime chaparral. The proposed project would
14 change the character of the project site from undeveloped land currently used for grazing to
15 rural residential uses with the development of 17 residential lots ranging in size from 5.13 acres
16 to 23.42 acres and a 180-acre remainder parcel; construction of roadways and infrastructure;
17 and removal of approximately 79 oak trees. The construction of 17 residential units on lots
18 averaging approximately ten acres in size is consistent with the surrounding rural residential
19 uses in the project vicinity and is less dense than one unit per 5.1 acres, which is the zoning
20 designation for the project site. **Figure 2-5, Vesting Tentative Map** shows the approximate
21 locations of home sites, which have been sited to minimize the amount of tree removal and limit
22 construction of new roadways. The project applicant has committed to donating approximately
23 154-acres [sic] of the 180-acre remainder parcel by deeding the property to the Monterey
24 County Parks Department as an extension of the adjacent Toro Park

25 “The portion of the project site that is to be subdivided includes approximately 97 acres of land
26 that exceeds [sic] 30 percent slope and is subject to Policy 26.1.10 of the *Monterey County*
27 *General Plan*. Policy 26.1.10 . . . prohibits development on slopes greater than 30 percent.
28 Monterey County Planning Department requires dedication of a scenic easement on slopes of
30 percent or greater. There is no nexus to exact scenic easements on the Remainder Parcel
pursuant to the Subdivision Map Act” (AR 725, bold and italics in original.)

31 To ensure consistency with this policy, the DEIR proposed MM 3.1-2, which would
32 require Real Party to designate all land that exceeds slopes of 30 percent as “scenic
33 easements’ . . . except where roadway improvements have no alternative.” (AR 725-726.) The
34 DEIR concluded that MM 3.1-2, together with application of the Design Control Zoning District
35 standards, would mitigate the impact to a less than significant level. (AR 726.)

36 The FEIR added the following mitigation measures:

1 **“MM 3.1-2b** To further reduce the potential visibility of proposed development from common
2 viewing areas, Toro Park, BLM public lands and State Route 68, prior to
3 recording the Final Subdivision Map, the project applicant shall designate
4 building envelopes on each proposed lot and clearly identify the location of all
5 utility and infrastructure improvements (including water tank(s)) to define the
6 building areas. The building envelopes, utilities and infrastructure improvement
locations shall be selected to minimize grading, avoid vistas that have a direct
line of site [sic] to State Route 68 to the maximum extent feasible and preserve
existing screening vegetation. These shall be subject to review and approval by
the RMA-Planning Department.

7 **“MM 3.1-2c** In order to preserve the visual character of the project site and surrounding area,
8 the project applicant shall prepare design standards that shall be recorded on the
9 titles for all of the parcels. These shall apply to all site development, architectural
design and landscape plans. These shall include the following elements:

- 10 a) use of natural materials, simulated natural materials, texturing and/or coloring that
11 will be used for all walkways, patios, and buildings.
- 12 b) Use of rolled curbs for areas where curbs may be required;
- 13 c) Substantial use of vegetative screening using a native drought tolerant plant palette to
14 obscure off-site view;
- 15 d) Re-planting with native grasses and vegetation of any roadways serving the
subdivision and individual parcels; and
- 16 e) A planting plan shall be submitted to the RMA-Planning Department for review and
17 approval prior to the approval of grading plans for creation of subdivision roadways.
18 A planting plan shall be submitted as part of the Design Review approval process for
each residential lot.” (AR 298, bold in original.)

19 **6.1.1.3 Impact 3.1-3 (“Ridgeline Development”)**

20 “Implementation of the proposed project would result in alteration of site conditions that may be
21 visible when viewed from common viewing areas, such as Toro Regional Park, BLM public land
22 and State Route 68. However, the proposed residential units are sited at the lowest elevation or
23 are located in the foreground of hillsides of higher elevation; therefore, they shall not create a
24 silhouette. Other regulations such as ridgeline development and/or development on slopes
25 greater than 30 percent will be triggered depending on the design of the subsequent
26 development proposals for the proposed lots on the project site. In addition, the Design Control
27 District zoning designation requires that future residential development on the project meet
28 specific design standards and is subject to additional design review prior to . . . approval to
ensure protection of the public viewshed. Therefore, this would be considered a **less than
significant impact**.

“According to Section 21.66.010.D of the *Monterey County Zoning Ordinance*, a use permit for
ridgeline development may be approved only if the development will not create a substantially
adverse visual impact when viewed from a common public viewing area. Ridgeline development

is considered development on the crest of a hill, which has the potential to create a silhouette or other substantially adverse impact when viewed from a common public view area. In the vicinity of the project site, many existing large residential single-family homes are visible near the ridgeline when traveling either eastbound or westbound on [SR 68]. Monterey County may grant a use permit for ridgeline development on existing residential lots of record, not for proposed residential lots. Therefore, no new residential development is permitted along the ridgeline.

“The approximate locations of the proposed residential units are sited at the lowest elevations of each parcel or are located in the foreground of hillsides higher elevations, as shown in **Figure 2-5, Vesting Tentative Map**. A majority of the project site is located at lower elevation than Toro Regional Park, at a similar elevation as the BLM public land and at a higher elevation than State Route 68. Due to the higher elevation of Toro Regional Park and BLM public land being located approximately 3,500 feet north at a similar elevation it is not likely that the proposed residential units would create a silhouette or other substantially adverse impact when viewed from recreation trails located [*sic*] Toro Regional Park or BLM public land, which would be considered ridgeline development. Due to the siting of the residential units, the steep hillsides, and dense vegetation surrounding the project site, the proposed project would not create a silhouette. In addition, the Design Control District zoning designation requires future residential designs to meet specific design standards and is subject to additional design review prior to development approval that ensures protection of the public viewshed. Therefore, the proposed project would not be considered ridgeline development and the impact would be considered **less than significant.**” (AR 726-727, bold and italics in original.)

6.1.1.4 Impact 3.1-5 (“Cumulative Degradation of Visual Character”)

“The proposed project in combination with cumulative development would add to the urbanization of the project site, resulting in a visual change within a rural setting. However, policies in the *Monterey County General Plan* and *Toro Area Plan* would address cumulative visual effects and subsequent design review of proposed development on the project site would ensure a limited impact on the visual character of the area. Therefore, the cumulative visual impacts would be considered a **less than significant cumulative impact**.

“The proposed project in combination with cumulative development, including the 14 existing lots of record adjacent to the project site, would continue to urbanize the area around Corral de Tierra/San Benancio Road. The *Monterey County General Plan* anticipates the minimal development in Corral de Tierra/San Benancio Road area. The overall change in the visual character of the project site from primarily undeveloped grazing land to approximately 17 residential units on 164 acres would result in a permanent change. Although the proposed subdivision will increase the residential development in a rural community, the project is consistent with the rural density residential zoning requirement of a minimum of 5.1 acres, with an average density of 9.64 acres per residential unit. The project site is adjacent to Toro Regional Park, which will remain permanently undeveloped. The project applicant has committed to donating approximately 154-acres [*sic*] of the 180-acre remainder parcel by deeding it to the Monterey County Parks Department as an extension of the adjacent Toro Park. Policies in the *Monterey County General Plan* and *Toro Area Plan* that emphasize preservation of the rural environment, implemented over time, would address cumulative visual effects. In addition, the entire project site is subject to additional design review in order to ensure limited impact of visual character. Therefore, the proposed project’s contribution to the cumulative

degradation of visual character in the region would be considered **less than significant**. No mitigation measures are necessary.” (AR 728, bold and italics in original.)

6.1.2 FEIR Comment Responses

6.1.2.1 Response to Landwatch Comment 3-1

“*Commenter states that design review alone for the three lots potentially visible from State Route 68 would not assure that these lots would not be visible from public viewing places and that alternative locations should be identified.*”

“The standard for review with respect to visual impacts is not whether the project is visible from a common public viewing area, but whether there is a ‘substantial adverse visual impact.’ The DEIR reviewed the project from the perspective of the degree to which project elements might be visible including distance from the viewing point, interruptions in the landscape that would naturally screen project elements and timeframe during which a project element might be seen e.g. a driver traveling at 45 miles [per hour] through a common viewing area.

“The ‘Design Control District’ will be applicable to the entire area of the project site. Therefore, all 17 residential lots will be subject to the requirements of Section 21.44.010 of the *Monterey County Zoning Ordinance*. Section 21.44.010 of the *Monterey County Zoning Ordinance* applies specific design standards and additional design review prior to approval of new development, including regulation of the location, size, configuration, materials and colors of the proposed structures in order to guide development. The Design Review approval process ensures that the scenic quality of the project site and vicinity is not diminished with implementation of the proposed project per section 21.44.030 of the *Monterey County Zoning Ordinance* (Title 21). This includes review of elevations, color samples, topography, and landscaping. These design review requirements would ensure that the proposed project would not have a substantial adverse impact from a scenic vista or public viewing place. During this review process alternate building envelope locations may be recommended depending on the design of the proposed development. Furthermore, this review will ensure that the proposed project would not have a significant adverse impact on the scenic quality of the project site.

“In response to comments regarding potential impacts to visual resources, mitigation measure **MM 3.1-2** has been modified to add a part (b) and (c) as follows [see § 6.1.1.2, *supra*]

“Depending on the design of subsequent development on the project site, other zoning regulations associated with ridgeline development and slopes greater than 30 percent may be triggered. According to Section 21.66.010.D of the *Monterey County Zoning Ordinance*, a use permit for ridgeline development may be approved only if the development will not create a substantially adverse visual impact when viewed from a common public viewing area. In addition, implementation of mitigation measure MM 3.1- 2 will require that all land exceeding slopes of 30 percent be designated as ‘scenic easements’ in accordance with Policy 26.1.10 of the *Monterey County General Plan*, *except where roadways improvement [sic] have no other alternative*. The Final Subdivision Map shall identify the areas within a ‘scenic easement’ and note that no development shall occur within the areas designated as ‘scenic easement.’

“Accordingly, mitigation measure **MM 3.1-2** as revised, in combination with the design review process, and other zoning regulations, and the fact that development on the approximately 300

acre [sic] project site is limited and dispersed, would effectively address potentially significant visual impacts, as described on pages 3.1-10 through 3.1-17 of the DEIR to a level that is less than significant.” (AR 165-166, bold and italics in original.)

6.1.2.2 Response to Landwatch Comment 3-2

“Commenter is concerned that the design review alone will not hide development from public viewing places, such as BLM land on the former Fort Ord.

“Portions of the project site may be visible from public land that the Bureau of Land Management (BLM) owns on the northern side of Route 68 on former Fort Ord lands. As discussed on page 3.1-10 of the DEIR, design review requirements will ensure that location, size, configuration, materials and colors of the structures will be taken into account prior to construction, which would ensure that the scenic quality of the project site and vicinity is not diminished with implementation of the proposed project per Section 21.44.030 . . . as noted in [the County’s] response to comment #3-1. Project visibility is not itself a significant impact, and projects are not required to be invisible. In addition, given the rugged terrain and effort required to access the BLM public lands and trails, and the absence of a designated vista point, the more remote portions of these public lands are not considered a ‘common public viewing area’ as recognized by the County, and as defined by Title 21. Visibility of development on specific lots as viewed from this location would be considered a less than significant impact with application of existing zoning regulations.” (AR 166-167, italics in original.)

6.1.2.3 Response to Landwatch Comment 3-3

“Commenter cites MM 3.1-2, which places a scenic easement in areas of excess of 30% slope. Comments inquire if ‘remaining’ acres are within the viewshed and if the project would have a significant adverse visual impact.

“DEIR page 3.1-15 addresses impacts on individual scenic resources. Scenic resources include, but are not limited to, trees, rock outcroppings and historic buildings within a state scenic highway. The proposed project’s potential impact to the vistas, viewsheds and scenic corridors (including State Route 68, a state designated scenic highway) is addressed . . . under Impact 3.1-1. As stated on page 3.1-9 and shown in Figures 3.1-1A and 3.1-1B, the project site is located outside the area designated as ‘area of visual sensitivity’ and the ‘critical viewshed.’

“The project site encompasses approximately 344 acres. However, the 17 proposed residential lots are proposed on approximately 164 acres, with a 180 acre [sic] Remainder Parcel. Approximately 154 acres of the Remainder Parcel (as shown in **Exhibit A**) would be deeded to Monterey County Parks Department and no development is proposed on the remaining portion of the Remainder Parcel. According to the Slope Density Map prepared by Whitson Engineers in August 2011, of the 164 acres proposed for development, approximately 97 acres contain slopes in excess of 30%, which would be dedicated as scenic easements; approximately 40 acres have slopes ranging from 20 to 30%; and approximately 27 acres have slopes ranging from 0 to 20% slopes

“According to Whitson Engineers, the slope conditions on the project site can support the development of a maximum of 47 units. However, other limitations (i.e. habitat) would further reduce the area available for development. Development of less than 67 acres (land with slopes

equal or less than 30 percent) out of 344 acres is not considered to significantly affect the scenic and rural quality of the project vicinity.

“Furthermore, the project site is located within a ‘Design Control District’. The ‘Design Control District’ will guide development on the project site while preserving the scenic qualities of the ridgeline area, views from State Route 68, and the scenic and rural quality of the project vicinity. Therefore, implementation of the proposed project would not have a substantial adverse impact on the scenic resources within the viewshed of State Route 68. The commenter is also referred to [the County’s] response to comment 3-1.” (AR 167-168, bold and italics in original.)

6.1.2.4 Response to Landwatch Comment 3-4

“Commenter states that on [sic] the cumulative degradation of visual character cannot be avoided and that the DEIR does not identify the applicable General Plan policies but instead, it references policies that emphasize preservation of the rural environment.

“The existing visual character of the land within the vicinity of the project site is considered to be a rural community, which consists of schools, golf courses, rural residential development, a market, a church, etc. Policies in the *Monterey County General Plan* and *Toro Area Plan* that emphasize preservation of the rural environment, implemented over time, would address cumulative visual effects. Policies that would emphasize the preservation of the rural environment include 26.1.6.1, 26.1.7.1, 26.1.9.1, and 26.1.20.1. . . . Policy 26.1.6.1 requires that development in those areas of Toro identified as having high visual sensitivity be accompanied by landscaping and design review plans. Policy 26.1.7.1 states that the County shall encourage the use of optional design and improvement standards as described in Article VI of Title 19 of the County Code. Policy 26.1.9.1 states that development on ridgelines and hilltops or development protruding above ridgelines shall be prohibited. Policy 26.1.20.1 requires that lighting of outdoor areas shall be minimized and carefully controlled to preserve the quality of darkness. Implementation of these policies and the design review process would minimize the proposed project’s individual impact on the visual character.

“According to the Toro Area Plan EIR, buildout of concentrated development in the Toro Area Plan would result in an unavoidable visual impact. According to the Monterey County General Plan, the project site is designated for rural residential and low density development. The proposed project would meet the rural density requirement of a minimum of 5.1 acres per residential unit and the low density requirement of a minimum of one acre per residential unit. Therefore, the cumulative visual impact associated with implementation of the proposed project, in conjunction with the buildout of the *Toro Area Plan*, was also analyzed and disclosed as part of the *Toro Area Plan* environmental review process. Since implementation of the above policies, design review process and proposed mitigation measures would reduce the proposed project’s individual contribution toward degrading the visual character of the area and would not increase the density of development as identified and previously analyzed as part of the General Plan, the proposed project’s cumulative contribution toward the degradation of visual character would be considered less than significant.” (AR 168-169, italics in original.)

1 **6.1.2.5 Response to Comment 10-1**

2 *“Commenter is concerned about ridge line development and the impact that ridge top*
3 *development would have on Toro Regional Park. Commenter suggests that stronger restrictions*
4 *be placed on new parcel to better protect this resource.*

5 “Please refer to Impact 3.1-3 on page 3.1-16 of the DEIR. According to Section 21.66.010.D of
6 the Monterey County Zoning Ordinance, a use permit for ridgeline development may be
7 approved only if the development will not create a substantially adverse visual impact. A
8 majority of the project site is located at lower elevation than Toro Regional Park and at a similar
9 elevation as the BLM public land. Due to the siting of the residential units, the steep hillsides,
10 and dense vegetation surrounding the project site, the proposed project would not create a
11 silhouette or have an adverse impact when viewed from a common public view area, including
12 Toro Regional Park. In addition, all areas that exceed 30 percent slopes shall be dedicated as
13 ‘scenic easements’, except where there is no alternative for a roadway. Additionally, the Design
14 Control District zoning would require specific design standards and would be subject to
15 additional design review prior to development approval in order to assure protection of the
16 viewshed. Because, [sic] there will be no adverse effect to the viewshed, stronger restrictions
17 are not needed” (AR 197, italics in original.)

18 **6.1.3 Findings**

19 In its Finding 9, the Board explained that impacts to aesthetics and visual resources
20 would be mitigated to less than significant levels by MM 3.1-1 to MM 3.1-4. (AR 20-21.) The
21 Board implemented these mitigation measures by adopting Conditions of Approval 75-79. (AR
22 87-89.)

23 **6.2 Direct Impact**

24 Meyer argues that the EIR’s direct impact analysis was inadequate because 1) the EIR
25 was insufficiently clear as to whether potential “home-sites” will be visible from SR 68; 2) the
26 EIR assumed without evidence that the application of “D” zoning to the entire Property would
27 mitigate any potential significant impacts; and 3) the EIR’s discussion of ridgeline development
28 neither satisfied General Plan requirements nor contained a line-of-sight analysis.

6.2.1 Analysis of the Project’s impact upon SR 68

 Meyer complains that the EIR failed to clarify which, if any, lots would be visible from SR
68. Meyer notes that the EIR provided that certain lots would be “potentially visible.” Meyer
claims that a line-of-sight analysis is “the only way to determine” whether these lots would

1 actually be visible from SR 68. Meyer suggests that the “actual proposed home-sites [have not
2 been] investigated for their scenic impacts.” Meyer’s claims are deficient in at least two
3 respects.

4 First, Meyer’s claim that “home-sites” have not been investigated for aesthetic impacts to
5 SR 68 is spurious. The EIR expressly engaged in this inquiry. (AR 165, 714, 719-720.) Second,
6 Meyer erroneously assumes that the EIR was required to show that Project lots would not be
7 visible from SR 68. Meyer cites no authority for this assumption; it is therefore “without
8 foundation and requires no discussion [Citation.]” (*Atchley v. City of Fresno* (1984) 151
9 Cal.App.3d 635, 647; see *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*,
10 *supra*, 179 Cal.App.4th at p. 1468.) In fact, the visual impacts chapter of the EIR need only have
11 assessed whether the Project would have “significant environmental effects,” upon existing
12 aesthetics. (Pub. Resources Code, §§ 21001, subd. (b), 21100, subd. (b)(1).) The mere fact that
13 lot sites may be visible from SR 68 does not necessarily mean that the Project would cause a
14 significant adverse impact to area visual resources. This point is reflected in the EIR’s
15 thresholds, which stated that an impact would be considered significant if it could “[h]ave [an]
16 adverse effect on a scenic vista” or “[d]egrade the existing visual character or quality of the site
17 and its surroundings” (AR 718.) Further, even were the standard as Meyer suggests,
18 Meyer fails to cite authority or evidence for the claim that a line-of-sight analysis is necessary.
19 “CEQA does not require a lead agency to conduct every test or perform all research, study, and
20 experimentation recommended or demanded by commentors.” (Guidelines, § 15204, subd. (a).)
21

22 **6.2.2 Design Guidelines**

23 Meyer next objects to the EIR’s reliance upon zoning design standards to mitigate
24 aesthetic impacts. Meyer complains that reliance upon these standards was “conclusory,”
25 because it was “unsupported by any specific references, examples, or application to the project
26 site.” Meyer’s argument fails.
27
28

1 Meyer states that the EIR found no significant visual impacts based upon the application
2 of zoning design standards *alone*, a finding which Meyer contends was inadequate. The record
3 is to the contrary. The EIR's conclusion was also based upon 1) screening provided by the
4 natural topography of the land; 2) the fact that development upon the large site "is limited and
5 dispersed"; and 3) Mitigation Measures 3.1-2b and 3.1-2c. (AR 165, 719.) Mitigation Measure 3-
6 1.2b would require the applicant to designate building envelopes to, inter alia, "avoid vistas that
7 have a direct line of site [*sic*] to State Route 68 to the maximum extent feasible" (AR 165.)
8 Mitigation Measure 3-1.2c would supplement County zoning design standards by requiring the
9 applicant to prepare additional design standards to be recorded onto title for all newly-created
10 parcels. (AR 166.) These design standards would include five minimum requirements
11 addressing, inter alia, the use of natural materials, vegetative screening, and rolled curbs to
12 minimize visual impacts. (*Ibid.*) Meyer mentions *none* of these obviously pertinent features.

14 "As with all substantial evidence challenges, an appellant challenging an EIR for
15 insufficient evidence must lay out the evidence favorable to the other side and show why it is
16 lacking. Failure to do so is fatal. A reviewing court will not independently review the record to
17 make up for appellant's failure to carry his burden. [Citation.]" (*Defend the Bay, supra*, 119
18 Cal.App.4th at pp. 1265–1266.) Meyer has failed to carry its burden to accurately represent the
19 record to the court. (*California Native Plant Soc., supra*, 172 Cal.App.4th at p. 626.)
20 Consequently, Meyer's argument regarding the purported inadequacy of the use of design
21 guidelines is forfeit. (See *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-935.)³¹
22
23
24
25
26

27 ³¹ Even had the County relied only upon design guidelines, its analysis would not necessarily have been
28 problematic. "Where a project must undergo design review under local law that process itself can be
found to mitigate purely aesthetic impacts to insignificance, even if some people are dissatisfied with the
outcome." (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 594.)

6.2.3 Ridgeline Development

Finally, Meyer argues that the EIR's analysis of potential ridgeline development was defective because 1) the DEIR mentioned only one of two elements necessary to satisfy the General Plan's definition of "ridgeline development"; and 2) there was no "line-of-sight" analysis.

County General Plan Policy 26.1.9 defines "ridgeline development" as "development on the crest of a hill which has the potential to create a silhouette or other substantially adverse impact when viewed from a common public viewing area." (AR 715, 22209.) Meyer suggests that the EIR addressed only the Project's potential to create a silhouette and "there [was] not one mention of the potential for [*sic*] 'other substantially adverse impact.'" Meyer errs:

"Due to the higher elevation of Toro Regional Park and BLM public land being located approximately 3,500 feet north at a similar elevation it is not likely that the proposed residential units would create a silhouette *or other substantially adverse impact* when viewed from recreation trails located Toro Regional Park or BLM public land, which would be considered ridgeline development." (AR 727, italics added.)

The EIR provided additional support for this conclusion, citing as further protections, 1) the aforementioned Design Control District zoning designation; and 2) the fact that areas with slopes exceeding 30 percent must be designated as 'scenic easements' (in which no development may occur "except where roadway improvements have no other alternative"). (AR 167, 197, 726-727.) This is substantial evidence that the Project will not include "ridgeline development."

As to line-of-sight analysis, the court incorporates its discussion *ante*. Meyer has presented no evidence such an analysis is required; this omission is fatal. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*, *supra*, 179 Cal.App.4th at p. 1468.)³²

³² Meyer also claims that the EIR should have addressed the potential for ridgeline development from water tank siting. The court declines to reach this claim because Meyer raised it for the first time in its reply brief. (*American Drug Stores, Inc.*, *supra*, 10 Cal.App.4th at p. 1453.)

6.3 Cumulative Impact

Meyer contends that 1) the EIR used an improper baseline because it compared the impacts of the Project with the Toro Area Plan and not the “current environment”; 2) the EIR incorporated an impact analysis from an unspecified document; 3) the term “unavoidable scenic impact” is too imprecise to accurately inform the public as to impacts; and 4) the EIR improperly relied upon Project compliance with General Plan policies and zoning ordinances to support its cumulative impact conclusion.

6.3.1 Exhaustion

Real Party maintains that Meyer failed to exhaust all four of its cumulative impact arguments. Meyer responds that a comment by Landwatch preserved these arguments. The comment stated:

“The DEIR (p. 3.1-18) states that cumulative development would continue to urbanize the area around Corral de Tierra/San Benancio Road, but concludes that design review and other policies in the County General Plan would prevent significant cumulative degradation of the visual character of the area. The DEIR does not identify the General Plan policies; it simply references policies that ‘emphasize preservation of the rural environment.’ The cumulative impact of the project on the visual character of the community cannot be avoided as identified in the DEIR, and the impact should be found to be significant and unavoidable.” (AR 160.)

Landwatch’s objections then, are that 1) the DEIR did not identify the General Plan policies upon which its analysis was based; and 2) that the Project’s cumulative impact should have been found to be significant and unavoidable. There is no reasonable reading of this comment that would justify the conclusion that this comment addresses 1) an improper baseline; 2) improper incorporation by reference of another environmental analysis; or 3) the objection that the term “unavoidable scenic impact” is too imprecise to satisfy CEQA.

Further, it would be a stretch to read Landwatch’s comment as addressing Meyer’s fourth argument. Failure to identify a specific policy is a qualitatively different argument than a claim that the analysis upon which the policy relies is inadequately justified. Landwatch’s

comment goes to an informational omission. Meyer’s argument goes to a purportedly inadequate analysis. The court cannot reasonably conclude that Landwatch’s comment offered the County an “opportunity to receive and respond to articulated factual issues and legal theories *before* its actions are subjected to judicial review.” (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198, italics in original.) Meyer’s cumulative visual impact arguments are hence barred for failure to exhaust its administrative remedies. (Pub. Resources Code, § 21177, subd. (a); *Bakersfield Citizens, supra*, 124 Cal.App.4th 1184, 1199.)

6.3.2 Merits

Meyer argues that 1) the EIR employed an improper baseline because it compared the impacts of the Project with the Toro Area Plan and not the Property; 2) the EIR incorporated an impact analysis from an unspecified document; 3) the term “unavoidable scenic impact” is too imprecise to inform the public as to impacts; and 4) the EIR improperly relied upon Project compliance with General Plan policies and zoning ordinances to support its cumulative impact conclusion. As discussed *ante*, these claims are barred because they were not raised in the administrative proceedings below. Nevertheless, even were this not the case, they lack merit.

Meyer’s baseline claim is not clearly explained. The court assumes that Meyer refers to the EIR’s statement that “[p]olicies in the *Monterey County General Plan* and *Toro Area Plan* that emphasize preservation of the rural environment, implemented over time, would address cumulative visual effects.” (AR 728.) It is unclear how this statement affects the relevant baseline. The statement suggests that the relevant policies would *functionally mitigate cumulative impacts* as applied to the Project. Moreover, Meyer does not explain what document or analysis it believes the EIR incorporated.

Moreover, the EIR never used the term “unavoidable scenic impact”; Meyer presents no record citation to the contrary. Finally, Meyer’s contention that the cumulative impact analysis relies solely upon the Project’s compliance with General Plan policies and zoning ordinances is

1 inaccurate. The analysis also relied upon 1) the low density of proposed development; 2) the
2 Project's proposed dedication of 154 acres of land to the adjacent Toro Park to remain
3 permanently undeveloped; and 3) the fact that other cumulative development would be subject
4 to the same General Plan policies. (AR 728.)

5 **7. Cumulative Noise Impact**

6 Meyer insists that the cumulative noise impact analysis was deficient because the EIR
7 did not address noise impacts upon Meyer Road and surrounding neighborhoods, and because
8 it purportedly failed to assess the combined impact of the Project, Broccoli lots, and "potential
9 development" upon the 26-acre remainder parcel. Real Party responds that Meyer's claim as to
10 the EIR's analysis of cumulative noise impacts upon Meyer Road 1) was not adequately raised
11 below; and 2) lacks merit.

12 **7.1 Exhaustion**

13 Meyer insists the relevant issue "was raised in various formats throughout the history of
14 this project," citing numerous pages in the record. (AR 150-151, 224-230, 4688, 5395-5396.
15 18158, 18744-18745.) Meyer claims it informed the County that the EIR piecemealed its
16 analysis by not considering the effect of the Broccoli 14 lots upon Meyer Road.

17 However, with only one exception, none of the pages cited *even mention noise*, much
18 less cumulative noise impacts upon Meyer Road. The exception is a Meyer comment upon the
19 RDEIR:

20 "Impact 3.11-1

21 The number of trips will be well over 200/day and the traffic noise on
22 Meyer Rd will be significantly increased from basically no traffic noise to
23 whatever noise is generated by 163-200 trips per day" (AR 227.)

24 Although this objection involved the impact of traffic noise upon Meyer Road, it was specifically
25 directed towards the EIR's *direct* not *cumulative* analysis. (Compare AR 943-944 [**Impact 3.11-**
26 **1: "Long-Term Operational Noise Impacts – Increase in Traffic Noise"**] with AR 946-947
27
28

1 **[Impact 3.11-4: “Cumulative Increase in Traffic Noise Levels”].**) Additionally, while this
2 comment went to the effect of the *Project* upon Meyer Road, it did not mention either the
3 Broccoli 14 lots or their impact upon Meyer Road when considered *together with the Project*.
4 Hence, Meyer’s comment was not “sufficiently specific so as to allow the [County] the
5 opportunity to evaluate and respond to [it]. [Citation.]” (*Evans v. City of San Jose* (2005) 128
6 Cal.App.4th 1123, 1138; *Planning and Conservation League, supra*, 180 Cal.App.4th at p. 251;
7 *Sierra Club, supra*, 163 Cal.App.4th at p. 536 [“relatively . . . bland and general references to
8 environmental matters” or “isolated and unelaborated comment[s]” are insufficient to exhaust
9 administrative remedies under CEQA].) Accordingly, the claim is barred.

11 **7.2 Merits**

12 Meyer contends that the cumulative noise impact analysis was inadequate because 1)
13 the RDEIR did not discuss noise impacts upon neighborhoods on Meyer Road; 2) the EIR did
14 not assess the cumulative noise impacts from the Project, the Broccoli lots, and “potential
15 development” upon the 26-acre remainder parcel; and 3) the EIR did not discuss the cumulative
16 noise impact upon Meyer Road.

17 Meyer is correct that the RDEIR did not discuss noise impacts upon Meyer Road. But
18 this is only because the RDEIR did not discuss noise impacts *at all*. The DEIR was recirculated
19 as to traffic impacts only, not noise impacts. (AR 412.) Nevertheless, the DEIR *expressly*
20 addressed direct, project-level noise impacts to Meyer Road. (AR 943-944.)

21 Meyer’s arguments concerning the Broccoli lots and “potential development” on the 26-
22 acre remainder parcel fail for the same reasons discussed *ante*. Put simply, the Broccoli lots are
23 not part of the Project; *no development* was proposed upon those lots, which were already
24 subject to environmental review in 1993. (AR 150, 293.) In any event, the EIR actually
25 considered the impact of the Broccoli lots in its cumulative analysis as a nearby, approved
26 project. (AR 151, 293, 451, 963, 965, 969-983.) As to “potential development,” none is either
27
28

1 proposed or planned for the future. (AR 167, 182, 691.) CEQA does not require an EIR to
2 consider an entirely speculative environmental impact. (*Mission Bay Alliance, supra*, 6
3 Cal.App.5th at p. 186.)

4 Finally, Meyer fails to cite authority to show that the EIR was required to assess
5 cumulative noise impacts upon Meyer Road, so the court need not consider the argument. (See
6 *In re S.C., supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc., supra*, 179 Cal.App.4th at
7 p. 1468.) Notwithstanding this issue, Meyer's argument is meritless. Distilled to its core, Meyer
8 argues not that a required analysis was missing, but rather that the geographic scope of the
9 EIR's cumulative analysis was improper. "Lead agencies should define the geographic scope of
10 the area affected by the cumulative effect and provide a reasonable explanation for the
11 geographic limitation used." (Guidelines, § 15130, subd. (b)(3).) The selection of a geographic
12 scope for cumulative analysis is within the County's discretion. (*City of Long Beach, supra*, 176
13 Cal.App.4th at p. 907.) Courts will defer to the agency's definition of an appropriate area for
14 assessing cumulative impacts if the record shows a reasonable basis for it. (*Ebbetts Pass,*
15 *supra*, 123 Cal.App.4th at p. 1352.)

16
17
18 The EIR focused upon Project impacts to SR 68, a major commuter highway that will be
19 most impacted by the cumulative projects included in the analysis. (AR 417, 451-459, 946-947.)
20 By contrast, Meyer Road is a two-lane "tertiary" private road that provides access to the Project
21 site. (AR 448, 861.) This fact alone is a reasonable justification for the County's chosen
22 geographic scope of cumulative analysis.

23 **8. Biological Resources**

24 Meyer argues that the EIR's analysis of the Project's impacts upon wildlife corridors was
25 inadequate. Specifically, Meyer insists that the DEIR contained no analysis, while the FEIR
26 added a few conclusory paragraphs that were insufficient to satisfy CEQA. Real Party responds
27 with citations to studies upon which the DEIR and FEIR purportedly relied, staff opinion, and
28

1 Condition 21, which would require Real Party to prepare a wildlife corridor plan prior to
2 development of the Property. (AR 65.) Meyer contends that Condition 21 would be a form of
3 impermissibly deferred mitigation. Real Party claims that Condition 21 would not be mitigation
4 and that, in any event, Meyer has not exhausted its administrative remedies on this issue.

5 **8.1 Factual Background**

6 In describing the environmental setting, the DEIR's biological resources chapter noted:

7 "WILDLIFE CORRIDORS

8
9 "Wildlife corridors refer to established migration routes commonly used by resident and
10 migratory species for passage from one geographic location to another. Corridors are present in
11 a variety of habitats and link otherwise fragmented acres of undisturbed area. Maintaining the
12 continuity of established wildlife corridors is important to: a) sustain species with specific
13 foraging requirements; b) preserve a species' distribution potential; and c) retain diversity
14 among many wildlife populations. Therefore, resource agencies consider wildlife corridors to be
15 a sensitive resource." (AR 768-769.)

16
17 Given that wildlife corridors are considered a "sensitive resource," the DEIR's biological
18 resources chapter logically included wildlife corridors in defining one of its six standards of
19 significance. Thus, impacts would be considered significant if the proposed Project would
20 "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife
21 species or with established native resident or migratory wildlife corridors, or impede the use of
22 native wildlife nursery sites" (AR 773.) The DEIR described specific wildlife corridors
23 through drainage channels which it noted, "provide movement corridors for amphibians when
24 water is present and for other animals throughout the year." (AR 761.) The "other animals" were
25 not described in the DEIR. However, the study upon which the DEIR's analysis was based
26 described this wildlife as including "[s]mall mammals which in turn serve as prey for a variety of
27 other animals, including snakes, raptors, . . . coyotes," and "the California quail (*Lophortyx*
28 *californicus*), western gray squirrel (*Sciurus Griseus*), and black-tailed deer (*Odocoileus*
hemionus). Other representative animal species . . . include arboreal salamander (*Aneides*

1 *lugubris*), western screech owl (*Otus kennicottiz*), scrub jay (*Aphelocoma corulescens*), and
2 Virginia opossum (*Didelphis virginianus*).” (AR 1238-1239, italics in original.)

3 In discussing “**Impact 3.3-2 (Potential Disturbance of Sensitive Habitat)**,” the DEIR
4 determined that the Project would cause a potentially significant impact to biological resources
5 by causing sensitive species to lose habitat. (AR 776.) In its analysis, the DEIR noted that the
6 aforementioned “stream channels throughout the project site provide habitat corridors, as well
7 as, a natural system for carrying seasonal flows during the winter months.” (AR 777.) To prevent
8 impacts to these channels, the DEIR recommended MM 3.3-2, which would require
9 development to be located “a minimum of 75 feet to 100 feet from the active drainage channels
10 to avoid filling or disturbing natural drainage courses.” (AR 778.) The DEIR concluded that
11 implementation of this and three other, unrelated mitigation measures would reduce the
12 Project’s impact to sensitive habitats to a less than significant level. (*Ibid.*) The DEIR’s analysis
13 and recommended mitigation measure pertaining to stream channels stemmed directly from a
14 2001 survey of the Project site, updated in 2005. (AR 1237, 1255, 1275, 1279, 1282-1283.)

15
16
17 The FEIR inserted the following paragraph after the description of wildlife corridors
18 provided in the environmental setting section:

19 “According to a Technical Memorandum prepared by WRA, Inc. in December
20 2008 for the proposed Ferrini Ranch Subdivision, a wide range of terrestrial
21 wildlife species are known to occur on Fort Ord land including: American Badger,
22 Mountain Lion, Bobcat (*Lynx rufus*), Black-tailed Deer (*Odocoileus hemionus*),
23 and Coyote (*Canis latrans*). Current corridors for wildlife to move between Fort
24 Ord and the Sierra de Salinas or Santa Lucia ranges are limited to El Toro Creek,
the Portola Drive overpass and possible culvert running beneath State Route 68.
The El Toro Creek undercrossing is located 0.75 miles northwest of the project
site near the intersection of San Benancio Road and State Route 68.

25 “The Big Sur Land Trust and The Nature Conservancy have partnered with public
26 agencies in an effort to protect the corridor between Fort Ord and the Santa
Lucia Range.” (AR 307, italics in original.)

27 Staff subsequently verified the FEIR’s conclusions. In January 2014, staff acknowledged
28 that a Big Sur Land Trust (BSLT) study showed wildlife moved through the El Toro Creek

1 undercrossing. “[H]owever, due to the distance from the project site and limited development
2 proposed, the proposed project would not result in [*sic*] substantial adverse effect on this wildlife
3 corridor.” (AR 4367.) At the Board’s May 13, 2014 hearing, staff explained further that the
4 Project would not cause a significant environmental impact upon the wildlife corridor “because
5 of the sparsity of the development, and due to the distance from the project site [.75 miles] and
6 limited development proposed” (AR 5159:20-25.)

7
8 The BSLT challenged this conclusion, noting that the development is “right in the middle
9 of a critically-important wildlife corridor,” an area “recognized” as “essential” by the State. (AR
10 5178:9-13; see also AR 5272:11-18 [the corridor is “prime habitat” for large wildlife, including
11 mountain lions].) The BSLT acknowledged that the El Toro Creek underpass was *one* safe
12 passage for wildlife, but disputed the County’s implication that the underpass was a complete
13 corridor. (AR 5179:8-12.) In fact, the BSLT noted, “[t]he corridor consists of that underpass *plus*
14 the habitat on either side of the road. And this, taken together, is an important corridor.” (AR
15 5179:12-14, italics added.) And, although the BSLT conceded that the Project area was .75
16 miles away, it also explained that state experts “have identified the standard width for a corridor
17 to be 1.2 miles,” meaning that the Project would actually be located *within* the corridor. (AR
18 5179:15-20.) A wildlife ecologist from Pathway for Wildlife, another advocacy group, affirmed
19 the BSLT’s conclusions, referencing data showing that bobcats, deer, badgers, and gray foxes
20 also use the corridor. (AR 5281:4-11.) These conclusions were further supported by maps of the
21 area presented by both BSLT and Pathway for Wildlife. (AR 14253-14254.)

22
23 Based upon these concerns, staff recommended that the Planning Commission add a
24 new condition of approval requiring Real Party to commission a Wildlife Corridor Plan, which
25 would include specific limitations upon fencing and lighting. (AR 4367, 4468-4469.)

26
27 In its consistency findings, the Board concluded that the Project would not cause
28 damage to “wildlife habitat,” in part because of the Wildlife Corridor Plan requirement. (AR 16.)

1 The Board affirmed this conclusion in its CEQA findings, finding that mitigation measures
2 proposed in the FEIR would mitigate all Project impacts to biological resources. (AR 23-27.) The
3 Board also approved the Wildlife Corridor Plan as Condition of Approval 21. (AR 65.)

4 **8.2 Exhaustion**

5 Meyer claims that Condition 21, would require Real Party to prepare a Wildlife Corridor
6 Plan (AR 65), would constitute improperly deferred mitigation. Real Party responds that this
7 claim was not raised below, and that it is therefore precluded. Meyer further claims that
8 opposition to Condition 21 was raised by counsel for the Open Monterey Project at the January
9 8, 2014 Planning Commission hearing. Meyer does not provide the relevant line numbers, but
10 the court infers that Meyer must be referring to the following passage:
11

12 “We join in the comments and the concerns in opposition of the earlier speakers,
13 including those of the Big Sur Land Trust with concern about the wildlife
14 corridors.

15 “The proposed mitigation that has been added at the last minute today is not in
16 the EIR and has not been circulated for public comment. It is inadequate to
17 address the potentially-significant impacts.” (AR 5283:22-5284:4.)

18 This expression of disapproval with Condition 21 is too general to exhaust Meyer’s remedies.
19 Ms. Erickson stated that the mitigation would be tardy and had not been reviewed by the public.
20 However, she did not state that the mitigation would be deficient because the specifics of the
21 mitigation were to be “deferred until some future time.” (Guidelines, § 15126.4, subd. (a)(1)(B).)
22 Ms. Erickson generally opined that the mitigation would inadequate, but did not provide a
23 rationale for this opinion. “To satisfy the exhaustion requirement, comments must be ‘sufficiently
24 specific so as to allow the [a]gency the opportunity to evaluate and respond to them.’
25 [Citation.]” (*North Coast Rivers Alliance, supra*, 216 Cal.App.4th at p. 631.) It was Meyer’s
26 burden to show this issue was first raised below. (*Porterville Citizens, supra*, 157 Cal.App.4th at
27 p. 909.) It has not met this burden. Hence, Meyer’s claim that Condition 21 is deferred mitigation
28 is barred.

8.3 Cumulative Impact

Meyer contends that the cumulative analysis is deficient because it 1) was brief; 2) did not address impacts from adjacent projects; and 3) did not define a geographic scope of review. These contentions fail for a number of reasons. First, Meyer presents this argument entirely in a footnote. A footnote is not a proper place to raise an argument; the court need not address any such contentions. (*Gonzalez v. Mathis* (2018) 20 Cal.App.5th 257, 274, fn. 4; *Building Maintenance Service Co. v. ALL Systems, Inc.* (1997) 55 Cal.App.4th 1014, 1028 [“[w]e . . . need not address . . . contention[s] made only in a footnote”]; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 71 [“[w]e may decline to address arguments made perfunctorily and exclusively in a footnote”].) Second, Meyer cites no supporting authority. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408; *Golden Drugs Co., Inc.*, *supra*, 179 Cal.App.4th at p. 1468.) Regardless, the argument lacks merit.

The Guidelines require an EIR to describe and assess cumulative impacts *only* if the project’s incremental effect is cumulatively considerable. (Guidelines, § 15130(a).) “If the lead agency determines that a project’s incremental effect is not cumulatively considerable, the EIR need only briefly describe the basis for its findings. [Citation.]” (*City of Long Beach*, *supra*, 176 Cal.App.4th at p. 909; Guidelines, § 15130, subd. (a).) Moreover, when an EIR concludes that a project’s potential contribution to a cumulative impact will be fully mitigated, a separate cumulative impact analysis is not required. (Guidelines, § 15130, subd. (a)(3); *Environmental Protection Information Center*, *supra*, 44 Cal.4th at p. 526.)

The EIR concluded that buildout of the Project together with other reasonably foreseeable development would “result in disturbance to special status species and sensitive habitats throughout the region.” (AR 970.) But the EIR also concluded that implementation of six

mitigation measures would reduce this disturbance to a less than significant level. (*Ibid.*)

Consequently, no further analysis was required.³³

8.4 Direct Impact

Meyer argues that the EIR lacked 1) analysis of the Project's impacts upon wildlife corridors; 2) a statement regarding wildlife corridors from a "qualified wildlife biologist"; or 3) an assessment of "wildlife movement []or the wildlife corridor" in the Project area.

CEQA was intended, in part, to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities." (Pub. Resources Code, § 21001, subd. (c).) Nevertheless, to the extent a lead agency concludes — as the County did here — that the Project's effects upon wildlife corridors would be insignificant, CEQA requires only that the lead agency provide a brief statement indicating its reasoning. (Pub. Resources Code, § 21100, subd. (c); Guidelines, § 15128.)

Real Party is correct that the record includes a study and study update containing expert analysis concerning drainage channels, which provide "movement corridors" for amphibians and certain other animals. (AR 1240, 1279, 1281-1282.) The DEIR relied upon this analysis in assessing the Project's impacts upon biological resources. (AR 761, 773, 777-778.) The DEIR also adopted several mitigation measures, including some that were drawn from recommendations provided by the relevant study. (AR 778.) The Board adopted those measures as conditions of approval for the Project. (AR 23-27, 92-101.) Additionally, the DEIR provided a general definition of the term "wildlife corridors." (AR 768-769.) However, the DEIR failed to discuss specific "wildlife corridors" other than the aforementioned "movement corridors." Although some animals, including amphibians use drainage channels as "movement

³³ The court expresses no opinion as to the separate question whether the EIR's conclusions as to the Project's cumulative impact upon wildlife corridors were supported by substantial evidence.

1 corridors,” the DEIR’s discussion did not reach larger wildlife that would not cross via drainage
2 tunnel. (AR 761; see also AR 1238-1239.) Indeed, the DEIR did not acknowledge that such
3 wildlife traverse the relevant area, much less that a wildlife corridor other than the drainage
4 channels exists.

5 The FEIR supplemented the DEIR’s analysis, referencing (but not incorporating) a new
6 memorandum. (AR 307.) That memorandum acknowledged, “a wide range of terrestrial wildlife
7 species are known to occur on Fort Ord land including: American Badger, Mountain Lion,
8 Bobcat (*Lynx rufus*), Black-tailed Deer (*Odocoileus hemionus*), and Coyote (*Canis latrans*).
9 Current corridors for wildlife to move between Fort Ord and the Sierra de Salinas or Santa Lucia
10 ranges are limited to El Toro Creek, the Portola Drive overpass and possible culvert running
11 beneath State Route 68. The El Toro Creek undercrossing is located 0.75 miles northwest of
12 the project site near the intersection of San Benancio Road and State Route 68.” (*Ibid.*, italics in
13 original.)³⁴ The FEIR’s discussion is deficient for several reasons.

14
15 First, although it conceded the existence of larger wildlife that cross the wildlife corridor,
16 the FEIR contained no analysis of the Project’s potential effect upon that corridor. Instead, the
17 reader must infer that the EIR concluded that the Project’s distance from the El Toro Creek
18 undercrossing would limit any impact to that wildlife corridor to a less-than-significant level. It is
19 not clear that this inference satisfied the County’s obligation to provide a “statement” indicating
20 the EIR’s reasons for determining that the Project’s impacts were insignificant. (Pub. Resources
21 Code, § 21100, subd. (c); Guidelines, § 15128.) But even assuming arguendo that the EIR’s
22 inferred “statement” is adequate, the EIR did not support that “statement” with evidence. The
23 EIR did not even incorporate the Technical Memorandum it referenced, and the Memorandum is
24
25

26
27 ³⁴ It could be argued that this new information was sufficiently “significant” to trigger recirculation of the
28 biological resources analysis. (Guidelines, § 15088.5, subd. (a).) Yet Meyer has not made this argument,
so the court will not address it.

1 not provided elsewhere in the administrative record. An EIR must both explain its conclusions
2 and support those conclusions with substantial evidence. (*East Sacramento Partnership for a*
3 *Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302-303.) Here, the EIR did
4 neither.

5 Second, the FEIR implied that the relevant “wildlife corridor” is the El Toro Creek
6 undercrossing. But the FEIR ignored that a “corridor,” as defined in the EIR, must have both a
7 starting point and a terminus. (AR 768 [“Wildlife corridors refer to established migration routes
8 commonly used by resident and migratory species for passage *from one geographic location to*
9 *another*”].) Indeed, the FEIR did not address *how far the corridor continues in the direction of*
10 *the Project site*. Similarly, the FEIR failed to address the width of the wildlife corridor. Instead,
11 the FEIR assumed — without evidentiary support — that the corridor was restricted to the
12 limited portion of land at which wildlife crosses SR 68 at a specific undercrossing.

13 Third, even accepting the FEIR’s constricted definition of the “wildlife corridor,” the FEIR
14 contained neither analysis nor evidentiary support for its conclusion that this “corridor” was
15 sufficiently far from the Project site to mitigate any possible Project impacts to that corridor.

16 Real Party counters that the post-EIR statements of County staff³⁵ discussed *ante*, are
17 substantial evidence in support of the County’s conclusion that the Project would have an
18 insignificant impact upon wildlife corridors. Real Party notes that the County was entitled to rely
19 upon its staff’s opinion as substantial evidence. (*Browning-Ferris, supra*, 181 Cal.App.3d at p.
20 866 [“An agency may also rely upon the opinion of its staff in reaching decisions, and the
21 opinion of staff has been recognized as constituting substantial evidence”].) This is correct, but
22 staff opinion, like any expert opinion, is not substantial evidence if it is conclusory. (See *City of*
23
24
25

26 ³⁵ Meyer contends that any such post-EIR statements cannot be considered. Meyer is incorrect. “[W]hen
27 an EIR contains a brief statement of reasons for concluding an impact is less than significant, then the
28 petitioner has the burden of demonstrating ‘the conclusion was not supported by substantial evidence *in*
the administrative record.’ [Citation.]” (*North Coast Rivers Alliance, supra*, 216 Cal.App.4th at p. 638,
italics in original.)

1 *Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region* (2006) 135
2 Cal.App.4th 1377, 1387; *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 663-664; Pub.
3 Resources Code, § 21082.2, subd. (c) ["unsubstantiated opinion or narrative . . . is not
4 substantial evidence. Substantial evidence shall include facts, reasonable assumptions
5 predicated upon facts, and expert opinion supported by facts"].)

6
7 Here, staff's conclusion is unsubstantiated. Staff opined that, "because of the sparsity of
8 the development, and due to the distance from the project site [.75 miles] and limited
9 development proposed, the proposed project would not result in substantial adverse effect on
10 this wildlife corridor." (AR 5159:20-25.) Staff's conclusion that the Project location is outside the
11 wildlife corridor is not supported by evidence in the record. Neither Staff nor the FEIR have
12 defined the boundaries of the wildlife corridor. Moreover, there is ample, uncontroverted
13 evidence in the record to suggest the wildlife corridor in question extends into the Project site.
14 (AR 5178-5179, 5271-5272, 5281-5282, 14251-14255, 14333, 18139-18141.) Additionally,
15 although staff's conclusion that limited development would lessen the potential impact upon the
16 wildlife corridor is logical, staff offers no explanation or evidence to explain the *extent* to which
17 this is the case. Absent that information, it is impossible for a reader to accurately determine the
18 degree of the Project's impact upon the wildlife corridor. In short, there is no substantial
19 evidence in the record to support either the EIR's conclusion or the Board's finding that the
20 Project would have no significant impact upon wildlife corridors.

21
22 Real Party suggests that any such error was non-prejudicial. The court disagrees. "[T]he
23 ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if
24 based upon an EIR that does not provide the decision-makers, and the public, with the
25 information about the project that is required by CEQA.' [Citation.] The error is prejudicial 'if the
26 failure to include relevant information precludes informed decisionmaking and informed public
27 participation, thereby thwarting the statutory goals of the EIR process.' [Citation.]" (*San Joaquin*
28

1 *Raptor/Wildlife Rescue Center, supra*, 27 Cal.App.4th at pp. 721–722; *Save Our Peninsula*,
2 *supra*, 87 Cal.App.4th at p. 118.) Here, the DEIR failed to include *any* analysis of the Project's
3 impact upon significant portions of the wildlife corridor. The public thus had no opportunity to
4 comment; informed public participation was entirely precluded. Further, the FEIR's discussion
5 implied, but did not contain, analysis. Staff's reasoning post-FEIR was similarly conclusory,
6 providing neither the public nor the Board with adequate information. These defects were a
7 paradigmatic example of prejudicial error. (Pub. Resources Code, § 21005, subd. (a); *California*
8 *Native Plant Soc., supra*, 177 Cal.App.4th at p. 987 ["the omission of required information
9 constitutes a failure to proceed in the manner required by law where it precludes informed
10 decision-making by the agency or informed participation by the public"].)

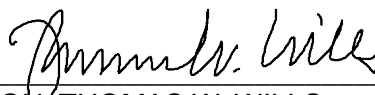
12 ***Disposition***

13 Meyer and Landwatch's petitions for writ of mandate are partially granted.

14 The DEIR's Groundwater Resources and Hydrogeology was "so fundamentally and
15 basically inadequate and conclusory in nature that meaningful public review and comment were
16 precluded. [Citation.]" (Guidelines, § 15088.5, subd. (a).) Accordingly, the Board's decision not
17 to recirculate that analysis violated CEQA. Additionally, the EIR's analysis of direct Project
18 impacts to wildlife corridors was deficient, and hence, the Board's decision to certify that
19 analysis violated CEQA. The remainder of Petitioners' challenges are without merit.
20

21 The court directs Petitioners' counsel to prepare appropriate judgments and writs
22 consistent with this decision, present them to opposing counsel for the County and Real Party
23 for approval as to form, and return them to this court for signature.
24

25
26 Dated: 8/31/18

27 
28 HON. THOMAS W. WILLIS
Judge of the Superior Court

CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I caused to be served true copies of the original of the attached **INTENDED DECISION** on the parties in said action as follows:

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Dated: 08/31/2018

Clerk of the Court

By: P. Conder
P Conder, Deputy Clerk

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