IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LANDWATCH MONTEREY COUNTY, et al., *Petitioners, Respondents, and Cross-Appellants*, v. **COUNTY OF MONTEREY** et al., *Respondent, Appellant, and Cross-Respondent*; **HARPER CANYON REALTY, LLC** et al., *Real Parties In Interest, Appellant, and Cross-Respondent*.	**Case No. H046932** Appeal from Monterey County Superior Court Cases No. M131913 and M131893, consolidated for trial only Hon. Thomas Wills, Judge of the Superior Court

JOINT ANSWER BY RESPONDENTS AND CROSS-APPELLANTS LANDWATCH MONTEREY COUNTY AND MEYER COMMUNITY GROUP TO AMICI BRIEFS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

Statutes

Regulations

Treatises

TABLE OF ACRONYMS

AFY	acre-feet per year
AR	Administrative Record
CBIA	California Building Industry Association, California Business Properties Association, Building Industry Association of the Bay Area, and Building Industry Legal Defense Fund [Amici]
CDT	Corral de Tierra [Subbasin of SVGB]
CEQA	California Environmental Quality Act
CSAC	California State Association of Counties and League of California Cities [Amici]
DEIR	Draft Environmental Impact Report
EIR	Environmental Impact Report
FEIR	Final Environmental Impact Report
JA	Joint Appendix
POB	Petitioners' Opening and Opposition Brief
PRB	Petitioners' Reply Brief
ROB	Respondents' Opening Brief
RROP	Respondents' Reply and Opposition Brief
SVGB	Salinas Valley Groundwater Basin
SVWP	Salinas Valley Water Project

INTRODUCTION

The Trial Court properly held that the County erred in failing to recirculate the final EIR. Amici's challenge to the Trial Court consistently mischaracterizes the law and entirely fails to come to terms with the facts.

The California Supreme Court recognized the grounds for recirculation as codified in Guidelines Section 15088.5, Subdivision (a)(4) in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112 ("*Laurel Heights II*"). *Laurel Heights II* recognizes that this "fourth category" of recirculation applies when significant new information shows that the draft EIR was "so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless." (*Id*. at 1130.)

Amici mischaracterize the law in two ways. First, Amici argue erroneously that recirculation under Subdivision (a)(4) is only required when the draft EIR *entirely omits* required information or analysis. In effect, Amici argue that no matter how much the final EIR changes the discussion in the draft EIR, Subdivision (a)(4) cannot apply if the draft EIR contains *any* analysis at all. This argument ignores the precedent recognized by *Laurel Heights II,* and subsequent cases, in which recirculation was required, *despite* the inclusion of significant analysis in the draft EIR, because the new information substantially changed the analysis in the final EIR.

Thus, a fundamentally inadequate draft EIR can be shown where, for example, the final EIR substantially changes or contradicts the setting description, the rationale for significance conclusions, or the proposed mitigation set out in draft EIR, all of which the Trial Court found here. Amici ignore the record and fail to address the actual basis of the Trial Court's decision: the six ways in which the

final EIR's substantial changes to, and material inconsistencies with, the draft EIR showed that the draft EIR was so inadequate that meaningful comment was precluded.

The record shows that the FEIR fundamentally changed the DEIR's groundwater basin descriptions; relied on a new, superseding technical study that rejects the claim of surplus groundwater in the prior technical studies; acknowledged the Project area has an overdraft condition rather than the purported surplus on which the draft EIR relies; abandoned the draft EIR's claim that groundwater levels have been sustained by prior groundwater projects; changed the geographic scope of analysis to include the entire Salinas Valley Groundwater Basin rather than the purportedly distinct "El Toro Groundwater Basin; " and completely changed the rationale for the cumulative impact analysis. Without discussing the record, Amici argue that "substantial changes" to the draft EIR can never be relevant to a recirculation decision as long as the significance conclusion does not vary. This is not the law.

Second, Amici argue erroneously that recirculation under Subdivision (a)(4) cannot be required unless the agency or the Court finds that the new information demonstrates that there would be a significant impact, or a more severe significant impact, that was not disclosed in the draft EIR. This argument is inconsistent with the Subdivision (a)(4) cases in which neither the agency nor the Court found that new information disclosed a new or more severe significant impact, but recirculation was nonetheless required because the new information showed that a fundamentally inadequate draft EIR precluded meaningful comment. Amici's argument would render Subdivision (a)(4) irrelevant surplusage by collapsing it into Subdivisions (a)(1) and (a)(2), which are the recirculation categories that require only that there be a new or more severe significant impact. *Laurel Heights II* would not have bothered to recognize the distinct "fourth category" for

recirculation claims if that category did not identify distinct situations not captured by the other three categories. (*Id.*) And Amici's interpretation would also run counter to the stated purpose of Subdivision (a)(4), which is to prevent the agency from hedging on a serious environmental issue by postponing the disclosure of its actual analysis to the final EIR in order to avoid public scrutiny via comments and mandated agency responses. The facts here show that the County did postpone disclosure of the substantive conclusions of a key hydrogeological report, the 2007 Geosyntec Report, even though it was available a year before the draft EIR. (Petitioner's Reply Brief ("PRB") at 13-14.)

Amici also argue that the Trial Court erroneously applied a non-deferential independent judgement standard of review. Not so. The Trial Court acknowledged the deference due to the agency's factual findings and accepted *all* of the factual findings in the final EIR. The Trial Court necessarily and carefully compared the final EIR to the draft EIR to identify substantial changes and inconsistencies, and, applying relevant Subdivision (a)(4) precedent, determined that the substantial changes and inconsistencies here amounted to significant new information that precluded meaningful comment and response.

Amici cannot and do not point to any factual determinations in the record the Trial Court rejected, other than the County's implicit and unexplained decision not to recirculate under Subdivision (a)(4). There was no finding to which the Trial Court *could* defer because County did not make express findings that addressed Petitioners' detailed objections that the County's failure to recirculate under Subdivision (a)(4) was error.

Amici also argue in the alternative that failure to recirculate was not prejudicial. To the contrary, prejudice occurred here because the County failed to respond to the comments Petitioners and hydrogeologist Timothy Parker made

challenging the fundamentally new analysis in the final EIR, a changed analysis that the public had no way to anticipate.

The purpose of recirculation is not just to permit comments *but to require the agency to respond to those comments*. Here, comments challenged the final EIR's new analysis as inconsistent with the draft EIR, internally contradictory, inconsistent with and unsupported by the newly cited technical report (Geosyntec 2007), and unsupported by any other evidence or modeling. Failure to respond to comments such as these, which are not repetitive, irrelevant, or supportive of the agency action, is presumptively prejudicial. Prejudice does not depend on a different outcome. So it is irrelevant that the Trial Court found that substantial evidence supported the final EIR's conclusion that impacts would be less than significant. Furthermore, it is not the role of a court to speculate about what comment responses the agency might have made or how those possible responses would have affected the agency decision.

Amici argue that this Court should not uphold the Trial Court based on various "policy implications." These policy implications are neither grounded in the law nor relevant here. Upholding the Trial Court will not create legal uncertainty because the Trial Court applied existing precedent. Upholding the Trial Court will not inhibit future applicants from changing their projects in response to comments because this case does not involve project changes, only changes to the EIR. Upholding the Trial Court on the extraordinary facts of this case will not result in a rash of recirculation decisions that delay housing projects, because, as Amici and the Trial Court agree, recirculation under existing Subdivision (a)(4) precedent is very rare.

Finally, contrary to Amici, the information triggering recirculation here was in fact available before the draft EIR was released. More than a year before the County released the draft EIR, the Geosyntec Report disclosed that, contrary to the

analysis in the draft EIR, the Project area was in overdraft, there *was* no groundwater surplus, and groundwater levels had been declining for decades due to cumulative pumping. And even though the DEIR preparer and County staff were aware of the obvious inconsistencies between Geosyntec and the draft EIR five months before releasing the draft EIR, they chose to omit the conflicting information that Geosyntec disclosed from the draft EIR. (PRB at 13-14.)

When the public and the local water agency challenged the draft EIR as inconsistent with the Geosyntec Report, the County was forced to acknowledge Geosyntec's significant contradictory conclusions and that Geosyntec superseded the hydrology reports on which the draft EIR relied. The County then fundamentally revised the EIR analysis to reach the same "no impact" conclusion the draft EIR came to, but for entirely different reasons and based on entirely different facts. The public was entitled to test the final EIR's new information and analysis through comments and responses under CEQA's provision for recirculation. The significant new setting information from the Geosyntec report and the new analysis and impact rationales showed that the draft EIR was fundamentally inadequate.

I. THE TRIAL COURT DID NOT SUBSTITUTE A "SUBSTANTIAL CHANGES" TEST FOR THE "SIGNIFICANT NEW INFORMATION" TEST; THE TRIAL COURT FOUND THE SUBSTANTIAL CHANGES *WERE* SIGNIFICANT NEW INFORMATION UNDER THE SPECIFIC FACTS OF THIS CASE.

Contrary to Amici, the Trial Court did not depart from precedent in considering whether substantial changes required recirculation here. The Trial Court applied existing precedent to the extraordinary facts of this case to find correctly that the final EIR's substantial changes to the analysis in the draft EIR constituted significant new information requiring recirculation under Guidelines Section 15088.5, Subdivision (a)(4).

A. The Trial Court did not depart from precedent in considering whether "substantial changes" in the final EIR could constitute significant new information requiring recirculation.

After laying out twenty pages of facts related to the groundwater impact analyses in the draft and final EIRs, the Trial Court provided sixteen pages of careful analysis to explain why the new information in the final EIR was significant and therefore warranted recirculation under existing precedent. (JA1384-1404, 1413-1429.) Accepting the information in the final EIR as the basis of the County's decision, the Trial Court compared the final EIR to the draft EIR to determine what information in the FEIR was both new and significant. The Trial Court found that the substantial changes in the FEIR constituted "significant new information" and that "[g]iven the breadth and scope of the revision," "the Board's decision not to recirculate the DEIR was not supported by substantial evidence." (JA1429.)

Because the facts here so dramatically support recirculation, Amici argue that the Trial Court got the law wrong. Amici's primary argument is that recirculation under Section 15088.5, Subdivision (a)(4) is warranted only when a draft EIR entirely *omits* the required analysis and that analysis is supplied only in the final EIR.

Amici ignore or misrepresent the cases in which recirculation was required even though the draft EIR did *not* omit any substantive analysis but subsequent *changes* to that analysis showed that the draft EIR's analysis was so "fundamentally and basically inadequate" that meaningful comment was precluded. (Guidelines, § 15088.5(a)(4).) Ignoring these precedents, Amici then argue that substantial changes to a draft EIR's analysis should never trigger recirculation.

For example, Amici California Building Industry Association et al. ("CBIA") argues that the Trial Court applied "an unprecedented new test for recirculation that is based on whether a court concludes there are 'substantial' differences between a draft and final EIR." (CBIA at 10-11.) Echoing briefing by the County and Real Party ("Respondents"), CBIA then argues that ". . . the test is not whether there are substantial revisions made between a draft EIR and a final EIR, but rather whether a draft EIR *wholly omits or includes only a conclusory analysis* of impacts such that it precludes meaningful public review and comment." (CBIA at 24, emphasis added; *see* ROB at 42-46).)

Amici California State Association of Counties and League of California Cities ("CSAC") similarly argues that recirculation under Section 15088.5(a)(4) "applies only in the narrowest of circumstances, when an EIR is fundamentally conclusory or devoid of *any* base analysis of such conclusions." (CSAC at 9-10, emphasis added.)

Amici focus only on those cases in which recirculation was ordered because the draft EIR was found to be devoid of analysis and the agency tried to correct the omission with post-DEIR information. (CBIA at 20-21 and CSAC at 14, *citing Mountain Lion Coalition v. California Fish and Game Commission* (1989) 214 Cal.App.3d 1043, 1050 [draft EIR on remand fails to include content specifically mandated by first Trial Court] and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264 [draft EIR omits CEQA's mandatory energy analysis].)

However, Amici ignore or mischaracterize three directly applicable cases, relied on by the Trial Court and Petitioners, in which recirculation was required because subsequent information showed that the substantive discussion that the draft EIR *did* include was fundamentally inadequate. (JA1413-1414, 1415, 1428; Petitioners' Opening Brief ("POB") at 52-69.)

First, in *Sutter Sensible Planning, Inc. v. Board of Supervisors* ("*Sutter*") (1981) 122 Cal.App.3d 813, recirculation was required not because the draft EIR omitted *any* discussion, but because the final EIR substantially revised this discussion by "adding information," providing a "fundamental reorganization of the material previously presented," and by providing new data to replace "repudiated" data. (*Id.* at 817-818.)

Second, in *Save Our Peninsula Committee v. Monterey County Board of Supervisors* ("*Save Our Peninsula*") (2001) 87 Cal.App.4th 99, even though the draft EIR did provide a substantive discussion of water impacts (*id.* at 109-110), this Court ordered recirculation because the agency ultimately relied on new, inconsistent environmental setting information regarding existing pumping (*id.* at 124-128), new mitigation in the form of specific offsite pumping offsets (*id.* at 128-131), and new information about the water source via riparian rights (*id.* at 131-134).

Third, in *Spring Valley Lake Assn. v. City of Victorville* ("*Spring Valley*") (2016) 248 Cal.App.4th 91, 108-109, recirculation of the hydrology section was required because the final EIR revised the substantive hydrology discussion in the draft EIR's by redesigning stormwater mitigation, relying on new technical reports, and replacing 26 pages of draft EIR text.

As discussed in more detail in Section I.C below these cases are precedent for requiring recirculation under Guidelines Section 15088.5, Subdivision (a)(4) when significant new information shows that that the draft EIR's analysis was "was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

B. Under the specific facts of this case, the Trial Court properly found that the substantial changes in the final EIR were significant new information.

The Trial Court found that recirculation is required here, under this record, because the final EIR made substantial changes to the draft EIR. The Trial Court summarized six changes the FEIR made to the DEIR's analysis that constituted significant new information:

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

(JA1422.)

The changes the Trial Court documented were analogous to the changes made to the draft EIRs in *Sutter*, *Save Our Peninsula,* and *Spring Valley* as described below. We summarize why the Trial Court found these six substantial changes to be significant new information.

1. Groundwater basin setting changed.

The FEIR locates the project wells in the Corral De Tierra ("CDT") Subbasin of the Salinas Valley Groundwater Basin ("SVGB"); but, according to the DEIR "neither the Project nor its wells are located in the SVGB." (JA1417.) The DEIR's impact analyses are "limited to the El Toro Groundwater Basin," i.e., its "four interconnected sub-areas." (JA1418.) The DEIR does not even acknowledge the *existence* of the CDT Subbasin as a *subbasin* of the SVGB because it identifies the area in which the Project wells are located (the "El Toro Groundwater Basin") as a distinct and separate basin. (JA1416, 1418-1419.)

The new description of groundwater basins was significant new information because the DEIR failed to notify the public of any potential impacts to the greater SVGB. (JA1418, POB at 61-63.) Setting description changes like this warrant recirculation. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at 111, 114, 122-128 [changes to baseline water use], 112, 131-134 [recharacterization of water source as riparian]; *Sutter*, *supra*, 122 CalApp.3d at 817-818 [FEIR included "a more elaborate discussion of groundwater availability and the projected impact of the plant on the water table" and substituted new "estimates of evapo-transpiration potentials"].)

2. Studies superseded.

Second, the "FEIR explained that its analysis was based upon the Geosyntec Study, which 'superseded' the two studies and accompanying hydrogeologic data upon which the Todd Report relied." (JA1423.) This was significant new information because the prior studies found a groundwater surplus, whereas Geosyntec specifically rejects that conclusion and finds an overdraft. (AR22910 [Fugro], AR1459-1460 [Todd], AR20155-20156 [Geosyntec].)

New technical reports warrant recirculation when they are inconsistent with prior reports. (*Sutter*, *supra*, 122 Cal.App.3d at 817-818 [new evapo-transpiration estimates substituted for "figures used in the previous EIR which were *repudiated* by their purported author," emphasis added]; *Spring Valley*, *supra*, 248 Cal.App.4th at 108 [new technical reports]; *Save Our Peninsula*, *supra*, 87 Cal.App.4th at 111-114, 122-124 [new reports of different baseline water use and recharge]; *see* POB at 59.)

3. Overdraft acknowledged.

The "DEIR failed to acknowledge that the area from which the Project wells draw water is in overdraft," "a fact that is "critical to . . . a valid determination whether a project's incremental effect is cumulatively considerable." (JA1419-1420; *see also* POB at 105-109 [fact and magnitude of falling groundwater levels critical to cumulative analysis]; PRB at 44-48 [same].)

The DEIR "implied the relevant area is *not* in overdraft when it stated that the Property 'receive[s] benefits of sustained groundwater levels'" from existing Zone 2C groundwater management projects. (JA1421, emphasis added, *quoting* AR830.) But the FEIR contradicts the DEIR by acknowledging that area *is* in

overdraft. (JA1421; *see* POB at 59-60.) Such an about-face is significant new information that warrants recirculation.

For example, the California Supreme Court explains that "[d]iscovery that a project encroached upon wetlands, when the text of the draft EIR indicated that the wetlands area would remain undeveloped, was a substantial change in circumstances requiring revision and recirculation of the EIR" because it "deprived the public, who relied upon the EIR's representations, of meaningful participation . . .." (*Laurel Heights II*, *supra*, 6 Cal.4th at 1131-1132, *citing Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365; *see Save Our Peninsula*, *supra*, 87 Cal.App.4th at 127-128 ["elastic" description of baseline conditions warrants recirculation]; *see also San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus* (1994) 27 Cal. App. 4th 713, 726-728 [FEIR's contradiction of DEIR regarding riparian and wetland areas renders EIR inadequate]; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 89 [baseline description required "at the beginning of the CEQA process" so EIR inadequate]; *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal. App. 4th 1109, 1124 [tardy baseline disclosure not cured by later analysis].)

Furthermore, if, as Respondents claim, the DEIR *did* acknowledge an overdraft in the vicinity of the Project wells (ROB at 52), then the fact that the DEIR *also* claims a surplus (AR836, 837-838, 842-843) renders the DEIR internally inconsistent and therefore "fundamentally inadequate and misleading." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656-657 [claim of both an increased and a decrease in mining operations]; *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 439 [setting aside EIR for "factual inconsistencies and lack of clarity" regarding water supply and demand data]; *Preserve Wild*

Santee v. City of Santee (2012) 210 Cal.App.4th 260, 284 ["the EIR does not adequately analyze the project's water supply impacts" in light of "unexplained discrepancy"].)

Respondents cannot claim that the DEIR is adequate and not misleading if it claims *both* a surplus *and* an overdraft condition. [1]

4. Sustained groundwater level claim abandoned.

The FEIR's retraction of the DEIR's claim that existing reservoir projects have sustained groundwater levels at the Project well site was significant new information. As the Trial Court found, the DEIR's claim of sustained groundwater levels "implied the relevant area is *not* in overdraft." (JA1421, emphasis added.)

The DEIR's misleading claim was also significant new information because both the DEIR and FEIR define significant impacts to include aquifer depletion that results in "lowering of the local groundwater table level;" therefore, the fact that groundwater levels are not being sustained is material. (AR371, 833.) Again, the about-face on a material setting description warrants recirculation.

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[1] In their cross-appeal, Petitioners make the same objection to the FEIR, which claims and relies on a surplus even while admitting an overdraft. (POB at 99-102; PRB at 32-44.) The Trial Court found that, unlike the DEIR, the FEIR did not *rely* on the surplus claim (JA1424), even though the FEIR repeats the DEIR's precise surplus claims and cites them in its impact analyses. (AR331, 372, 373, 374, 385.) However, the fact that Petitioners' cross-appeal disagrees with the Trial Court with respect to the adequacy of the *final* EIR does not affect the validity of Petitioners recirculation claim that the *draf*t EIR was inadequate. The Trial Court agrees that the surplus claim is inconsistent with the overdraft admission (JA1421, 1424, 1425), so, if the DEIR did claim both a surplus and an overdraft, then the DEIR would be internally inconsistent and therefore inadequate.

5. Cumulative analysis rationales changed.

The completely new and inconsistent rationale for the FEIR's cumulative impact significance conclusion was significant new information. The Trial Court found that the "DEIR based its cumulative impact conclusion upon a single factor: the purported water surplus of 314.82 acre-feet per year that resulted from considering four individual subareas of the 'El Toro Groundwater Basin' to be interconnected." (JA1424.)

The Trial Court found that the FEIR's cumulative impact analysis "was not based on any such surplus" but on three *new* rationales: first, the Project wells are located in area that can be pumped for decades notwithstanding the overdraft; second, the Project's aquifer is "hydrogeologically contiguous" only with aquifers to the east in the Salinas Valley and *not* with "the less productive and stressed areas within the Geosyntec Study Area," so its pumping would not affect them; and third the Project pays impact fees for the Salinas Valley Water Project as a form of regional mitigation. (JA1425.) "None of these rationales appeal in the DEIR's cumulative impact section." (JA1425.)

Recirculation is warranted where the agency's ultimate rational for its significance conclusion does not appear in the draft EIR. (*Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 252 [DEIR "provided no analysis or explanation to show how it reached that conclusion"]; *Save Our Peninsula*, *supra*, 87 Cal.App.4th at 128-131 [belated identification of mitigation offset parcel without analysis in DEIR], 131-134 [belated claim of riparian rights as basis for adequacy of water supply].)

Furthermore, the Trial Court found that the FEIR again contradicts the analysis in the DEIR:

> . . . the FEIR's second rationale directly contradicted the core underpinning of the DEIR' s conclusion. The DEIR's determination of a surplus was predicated upon the Project's wells being located in the San Benancio Gulch subarea, one of four hydrologically interconnected subareas of the El Tora Groundwater Basin. (AR 826, 837, 843.) By contrast, the FEIR concluded that the Project area is *not* connected to 'the less productive and stressed areas within the Geosyntec Study Area.' (AR 385.)"

(JA1425, original emphasis.)

Again, the about-face warrants recirculation because it goes directly to the significance rationales in both the DEIR and FEIR. Neither Amici nor Respondents address this fundamental inconsistency between the claims made by the DEIR and FEIR.

6. Geographic scope changed.

The Trial Court found that, whereas the DEIR's cumulative analysis scope was limited to the four interconnected subareas of the "El Toro Groundwater Basin," the FEIR's cumulative analysis includes the entire Salinas Valley Groundwater Basin. (JA1426-1427; *see* POB at 61-63.) The change was significant new information because the DEIR relies on a purported surplus in the four subareas of the purportedly separate and distinct El Toro Groundwater Basin, and its "conclusion is possible only because the DEIR carefully restricted the scope of its cumulative analysis to these interconnected subareas." (JA1421.)

The Trial Court explained that, even if the public was supposed to somehow infer that the DEIR's cumulative analysis was also relying on the Salinas Valley Water Project, even though the DEIR's cumulative analysis does not mention the SVWP, "the DEIR's determination that the SVWP would mitigate Project impacts to the four interconnected subareas is not equivalent to the FEIR's conclusion that the SVWP would mitigate such impacts to *the entire SVGB*." (JA1426; original emphasis.)

At minimum, the DEIR's geographic scope was inadequate because it was under-inclusive compared to the FEIR's: it did not alert the public to potential Project impacts to the greater SVGB.

The Trial Court properly found that the DEIR's reference to a "non-existent" separate groundwater basin, the El Toro Groundwater Basin, instead of the CDT Subbasin of the SVGB, "obscure[se] the potential impacts of the Project upon its actual setting, the SVGB." (JA1414; *see San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus, supra*, 27 Cal.App.4th at 740-741 [DEIR's scope inadequate because less than FEIR's scope]; *see also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 722–723 [truncated scope of cumulative analysis inadequate]; *Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428-431 [same]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1218 [same].)

Furthermore, the FEIR's claim that the Project wells could have no adverse effect on the four subareas because they are not interconnected to them (AR375-376, 385), if true, would indicate that the geographic scope in the DEIR was entirely irrelevant to the Project's actual cumulative impact. There would be no point in evaluating the Project's effects on geographic areas that it cannot affect. Again, Respondents cannot claim that the contradictory bases of the analyses in the DEIR and FEIR are both adequate. (PRB at 57-58.)

C. Amici ignore the record.

Amici fail to come to terms with the actual record here, i.e., the "breadth and scope of the revision" the FEIR makes to the DEIR, on the basis of which the Trial Court held that "the Board's decision not to recirculate the DEIR was not supported by substantial evidence." (JA1429; *see also Spring Valley, supra*, at 108 [the

"breadth, complexity, and purpose" of the revisions "deprived the public of a meaningful opportunity to comment"].)

CBIA trivializes the new information contained in the FEIR, arguing the Trial Court's holding was based only on the fact that "the text changed too much." (CBIA at 17.) Although CBIA acknowledges "additional technical study" and maps that "clarified the Project's groundwater setting," CBIA fails to acknowledge that the new Geosyntec study *rejects* the prior technical studies' claims of surplus water, which was the sole basis of the DEIR's cumulative impact conclusion. (CBIA at 17.)

Neither Amici nor Respondents, in their briefs to this Court, address the FEIR's *abandonment* of the DEIR's claim that previous groundwater projects have sustained groundwater levels at the Project wells or its *reversal* of the DEIR's claim that the Project wells are hydrogeologically connected to the four interconnected subareas sharing the purported surplus.

Echoing Respondents, CSAC trivialize the changes as mere clarification of "basin nomenclature." (CSAC at 16, *citing* ROB at 47-50.) While CSAC admits "a change in the geographic reference of cumulative impacts" and "new rationales for the same conclusions," CSAC also fails to acknowledge the fundamental inconsistency of the FEIR's scope and rationales with the DEIR's. (CSAC at 15.)

For example, CSAC claims this case not analogous to *Spring Valley* or *Save Our Peninsula*, arguing that the FEIR did not introduce new mitigation. (CSAC at 15-17.) This is incorrect. As the Trial Court found, the FEIR's cumulative analysis relies on mitigation that the DEIR's cumulative analysis does not, namely the payment of impact fees for Zone 2C projects, and the FEIR claims that this mitigation would be sufficient to address Project impacts to "the entire SVGB" rather than the limited geographic scope of the DEIR. (JA1425-1426; *see* AR387.)

In sum, the record matters here, but Amici ignore it.

D. Contrary to Amici, *Sutter*, *Save Our Peninsula*, and *Spring Valley* are relevant precedent for Guidelines Section 15088.5, Subdivision (a)(4) recirculation claims.

As summarized in Section I.A above, Amici seek to limit the applicability of Subdivision (a)(4) to just those instances in which the draft EIR entirely *omits* any analysis. Accordingly, Amici ignore or mischaracterize the cases in which the DEIR *did* provide substantive analysis, but subsequent information showed that the DEIR was fundamentally inadequate. CBIA does not even *mention Save Our Peninsula* or *Spring Valley* even though the Trial Court and Petitioners relied on these cases. (JA1413-1415, 1427, 1428; *see* Petitioners' Opening Brief ("POB") at 52-69.) Similarly, CSAC does not mention *Sutter*, also relied on by the Trial Court and Petitioners.

Where they do mention these cases, Amici mischaracterize them. CBIA erroneously argues that *Sutter* does not reflect the test subsequently codified in Guidelines Section 15088.5, Subdivision (a)(4). (CBIA at 27-28.) Not so. The California Supreme Court explained that in *Sutter* "the court and the agency viewed the draft EIR as *fundamentally and basically inadequate* in many respects," which is the very language of the test codified in Subdivision (a)(4).[2] (*Laurel Heights II, supra*, 6 Cal.4th at 1131, *citing Sutter*, *supra,* 122 Cal.App.3d at 821, 823; *see* Guidelines, § 15088.5(a)(4) [recirculation required when significant new information shows the "draft EIR was so *fundamentally and basically inadequate* and conclusory in nature that meaningful public review and comment were precluded"].)

[2] Although *Sutter* predates the Section 15088.5 regulations, the *Laurel Heights II* Court had seen the Section 15088.5 Guidelines. (*Id.* at 1126, n. 10.)

Despite the California Supreme Court characterization of *Sutter* in the language of Section 15088.5, Subdivision (a)(4), CBIA argues that *Sutter* is somehow inapplicable, because, CBIA argues, the Resources Agency identified *Sutter* as a case requiring recirculation under Subdivision (a)(2), applicable when new information shows a "substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." (CBIA at 27-28, *citing* Cal. Natural Resources Agency, Rule Making File, Amendments to the Guidelines for Implementation of the California Environmental Quality Act (1994), § 14 at 7.) CBIA's argument is unconvincing because it implies that *Laurel Heights II* erred in its statutory interpretation of CEQA Section 21092.1 by characterizing *Sutter* in the very language codified in Subdivision (a)(4).

Presumably the Rule Making File is entitled to no more deference than the Guidelines themselves, and no deference is due to the Guidelines if they are "clearly unauthorized or erroneous under the statute." (*California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 381.)

Furthermore, the Resources Agency did not state that *Sutter* is not *also* an exemplar of Subdivision (a)(4) to the extent that the draft EIR was demonstrated to be "fundamentally and basically inadequate," as *Laurel Heights II* concludes. (*Laurel Heights II*, *supra*, 6 Cal.4th at 1131.)

Finally, *Sutter*'s recirculation holding does *not* rely on a finding by either the agency or the Court that the FEIR shows substantially more severe significant impacts, as required for recirculation under Section 15088.5, Subdivision (a)(2). *Sutter* summarizes the substantial revisions made by the final EIR without concluding that significant impacts were more severe than the draft EIR disclosed.

(*Sutter*, *supra*, 122 Cal.App.3d at 817-818.) *Laurel Heights II* explains that what is salient in *Sutter* is the extent of the changes, not a new or more severe impact:

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

(*Id.* at 1127-1128.) (POB at 52-54.) Thus, in applying the language codified at Subdivision (a)(4) to *Sutter*, *Laurel Heights II* references "changes made between the draft EIR and final EIR," not a finding of a more severe significant impact:

> Although the *Sutter* opinion does not clearly explain the extent of the changes made between the draft EIR and the final EIR at issue in that case, it is apparent that the court and the agency viewed the draft EIR as *fundamentally and basically inadequate* in many respects.

(*Laurel Heights II*, *supra*, 6 Cal.4th at 1131, emphasis added.) And *Sutter* is directly analogous here with respect to provision of new groundwater information, repudiation of the draft EIR's technical reports, changes in reasoning for a significance conclusion, and the complete rewrite of the analysis. (POB at 52-54, 58-59, 64, 67.)

CSAC similarly mischaracterizes *Save Our Peninsula* and *Spring Valley*, arguing that neither case involved claims under Section 15088.5, Subdivision (a)(4), but were decided only under Subdivisions (a)(1) through (a)(3). (CSAC at 15-16.) Not so. While neither case specifies the applicable subdivision of Guidelines Section 15088.5, it is clear that both cases effectively found that significant new information showed that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

In *Save Our Peninsula*, the agency itself found water supply impacts less than significant with mitigation through reduced water use and/or offsite water use reductions *in both the draft EIR and in its final decision*, so the agency itself did not acknowledge a new or more significant impact from the project itself. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 110, 115.) CSAC argues that recirculation was required because "information was uncovered of a new mitigation measure with potentially significant impacts that had not been analyzed." (CSAC at 16.) However, Subdivisions (a)(1) and (a)(2) did not apply because neither the agency nor this Court made the findings required for those subdivisions, i.e., that substantial evidence showed a "new significant environmental impact *would* result from the project or from a new mitigation measure" or that a "substantial increase in the severity of an environmental impact *would* result." (CEQA Guidelines, § 15088.5(a)(1), (2), emphasis added.) In *Save Our Peninsula*, this Court did not object to the fact of a new or more severe impact from the offset mitigation, and made no finding to that effect. Instead, this Court objected to the identification of the specific mitigation parcel "late in the environmental review process" and the failure to afford the public the "opportunity to test, assess, and evaluate the data and make an informed judgement as to the validity of the conclusions to be drawn therefrom." (*Id.* at 131, *quoting Sutter, supra*, 122 Cal.App.3d at 822.)

Furthermore, in citing only this Court's discussion of the offset mitigation issue in *Save Our Peninsula*, CSAC simply ignore the other two areas of significant new information that this Court found to require recirculation: the changes to the DEIR's baseline information for existing pumping (*id.* at 119-128) and the "late introduction" of a riparian rights theory as the water source after comments objected to the lack of appropriative rights (*id.* at 112, 131-134). This Court found that all *three* areas of changes to the draft EIR – baseline, offset

mitigation, and riparian rights – warranted recirculation because they had denied meaningful comment opportunity, i.e., met the test for recirculation under Subdivision (a)(4). (*Id.* 127-128 ["elastic" baseline modified after DEIR "without benefit of analysis or public participation" denies "opportunity for public review"]; 131 [identification of offset parcel "late in the environmental review" precluded "opportunity for public response" and was not "subjected to the test of public scrutiny"]; 134 [new riparian rights claim "changes the EIR 'in a way that deprived the public of an meaningful opportunity to comment'"].)

The changes to the environmental setting and the introduction of new cumulative impact mitigation here are analogous to the changes in *Save Our Peninsula*. (POB at 58 [new setting information], 59 [new technical data], 64 [new significance conclusion rationale], 66 [new mitigation].)

CBIA does not even mention the *Save Our Peninsula* precedent even though CBIA's counsel is co-author of a leading CEQA treatise that identifies *Save Our Peninsula* as a Subdivision (a)(4) case. (Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2019 Update), § 16.5E.)

Contrary to CSAC (CSAC at 15-16), Petitioners and the Trial Court *did not* rely on or consider the air quality holding in *Spring Valley*, in which the Court did find recirculation was required due to a new significant impact. (*Spring Valley*, *supra*, 248.Cal.App. 4th at 108.) Instead, Petitioners and the Trial Court expressly relied on Spring Valley's *hydrology* holding.

The Trial Court found that the FEIR's ""wholesale revision of the Groundwater Resources and Hydrology chapter" was "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." (JA1428, *quoting Spring Valley*, *supra*, 248 Cal.App.4th at 108-109; JA1413.) *Spring Valley* is analogous here for several reasons. (POB at 57 [Court must

consider the "breadth, complexity, and purpose" of all of the changes collectively, *quoting Spring Valley* at 108]; 50 [new technical reports]; 64, 66 [new mitigation]; 67-68 [complete rewrite of hydrology section without adequate redlining].) And like *Sutter* and *Save Our Peninsula*, *Spring Valley*'s hydrology holding is based on denial of "a meaningful opportunity to comment," which is the hallmark of a Subdivision (a)(4) claim. (*Spring Valley* at 108.)

E. Contrary to Amici, neither the Court nor the agency must find a new or more significant impact to trigger recirculation under Section 15088.5, Subdivision (a)(4).

Guidelines Section 15088.5 identifies four categories of recirculation cases, the first three of which require a new significant impact, a substantially more severe significant impact, or a refusal to implement feasible mitigation for a significant impact. (Guidelines, § 15088.5(a)(1), (2), (3).) The fourth category, Subdivision (a)(4) does not require that either the agency or the Court have found that the impact at issue is significant.

Nonetheless, Amici imply incorrectly that recirculation under Subdivision (a)(4) *requires* a finding that there would be a new or more severe significant impact.

CSAC argues "[b]y applying *Save Our Peninsula* and *Spring Valley Lake* to the case at bar, but then relieving Petitioners of the obligation to show new or more severe environmental impacts broadens the scope of Section 15088.5(a)(4) well beyond its original confines." (CSAC at 16-17.)

CBIA argues that "no significant new information was added to the Final EIR . . .." simply because "no new or substantially more severe impacts were identified." (CBIA at 25.) CBIA further argues that, because the Trial Court found that substantial evidence supported the County's ultimate finding of no significant

impacts, "Petitioners' failed to meet their burden of showing that substantial evidence does not support the agency's decision." (CBIA at 25.) CBIA finally argues that a Court may not apply Subdivision (a)(4) when there are "no changes to the impact conclusions." (CBIA at 27-28.)

Amici misread the law by arguing that Subdivision (a)(4) requires this Court to find that the hydrogeology impact was significant in order to order recirculation. This misreading conflates the requirements for recirculation under Subdivisions (a)(1), (a)(2), and (a)(3) with the requirements for recirculation under Subdivision (a)(4).

As *Laurel Heights II* held, the "fourth category" of recirculation claims, now codified at Subdivision (a)(4), are distinct from the first three recirculation categories, which derive from the analogous CEQA Section 21166 provisions for requiring a subsequent EIR after certification of an initial EIR when there is significant new information. (*Laurel Heights II*, *supra*, 6 Cal.4th at 1130.) Section 21166's three categories requiring a subsequent EIR do require either a new or more severe significant impact or new feasible mitigation to address a significant impact. (*Id*.) However, *Laurel Heights II* holds that the fourth category is different:

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

(*Id*.) *Laurel Heights II* explains these "different circumstances:" under CEQA Section 21166, the interests in finality predominate after an EIR is certified, but CEQA's recirculation provision in Section 21092.1, applicable before certification, "was intended to encourage meaningful public comment." (*Id.*) *Laurel Heights*

then cites *Mountain Lion* as one example a case in which new information shows that a draft EIR "was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless." (*Id*.) In the next paragraph, *Laurel Heights* also identifies *Sutter* as a case in which "it is apparent that the court and the agency viewed the draft EIR as fundamentally and basically inadequate." (*Id*. at 1131.) Thus, *Laurel Heights II* expressly holds that Section 21166, which is only triggered when there *is* a new or more significant impact or newly feasible mitigation for a significant impact, does *not* provide an analog for what it calls the "fourth category" of recirculation claims. (*Id*. at 1130.)

And indeed, as argued in Section I.C above, the recirculation holdings in *Sutter*, *Save Our Peninsula*, and *Spring Valley* that are applicable here do not depend on a finding by either the agency or the Court that post-EIR information disclosed a new or more severe significant impact. Nor do other Subdivision (a)(4) cases require such a finding. For example, in *Mountain Lion*, there is no indication that the agency found new or more severe impacts in the first or second draft EIR or the final EIR. (*Mountain Lion*, *supra*, 214 Cal.App.3d at 1046, 1048.) Neither the second Trial Court nor the Court of Appeal even *addressed* the validity of the agency's significance finding, because they held that it was error not to circulate the final EIR for public review. (*Id*. at 1052; *see also Ukiah Citizens for Safety First*, *supra*, 248 Cal.App.4th at 265-266 [recirculation required under 15088.5(a)(4) for inadequate discussion of energy impacts even though in addendum not circulated for public comment the agency found that impacts would be mitigated]; *Pesticide Action Network North America*, *supra*, 16 Cal.App.5th at 236-237, 252 [recirculation required because discussion in draft CEQA-equivalent documents were inadequate for failure to explain rationale for decision, even though analyses in draft and final reviews both found impacts less than significant].)

A requirement that a petitioner show a new or more severe significant impact would be inconsistent with the structure of the Guidelines and the purpose of the Subdivision (a)(4) claim. If a petitioner were required to show that significant new information not only revealed that the draft EIR was "fundamentally and basically inadequate and conclusory in nature" *and also* that there were a new or more severe significant impact, then Subdivision (a)(4) would collapse into Subdivisions (a)(1) and (a)(2), and the fourth category would be mere surplusage. *Laurel Heights II* would not have bothered to recognize the "fourth category" of recirculation claims if such claims were subsumed in the first three categories. (*Laurel Heights II*, *supra,* 6 Cal.4th at 1130.)

Furthermore, interpreting Subdivision (a)(4) to require proof that the agency ignored substantial evidence of a significant impact would defeat the purpose of Subdivision (a)(4), which is to foster comments and response in order to prevent agencies from ignoring impacts through inadequate analysis in a draft EIR. Thus, the Subdivision (a)(4) cases stress its role in preventing "stubborn problems or serious criticism from being swept under the rug." (*Sutter*, *supra,* 122 Cal.App.4th at 820; *see also Mountain Lion*, *supra,* 214 Cal.App.3d at 1051 [review "simply swept the serious criticisms of this project under the rug"].) Here, the serious and long-term groundwater overdraft and falling groundwater levels in the vicinity of the Project's wells, revealed by Geosyntec, but ignored by the DEIR, is one of those "stubborn problems" that was "swept under the rug."

Unless Subdivision (a)(4) applies even when the agency does not acknowledge substantial evidence of a significant impact, the agency would be able to "subvert[] the important public purposes of CEQA" by "releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final EID that is insulated from public review." (*Mountain Lion*, *supra,* 214 Cal.App.3d at 1052; *cf., Kings County Farm*

Bureau, *supra*, 221 Cal.App.3d at 724 [agency should not be permitted "to avoid an attack on the adequacy of the information contained in the report simply by excluding such information"].)

F. Amici's cases finding recirculation was not warranted are inapposite here.

CBIA argues that the "clarification and amplification at issue here results from the same type of new information other courts have held do not trigger recirculation," citing four cases. (CBIA at 25-26.) But CBIA's four cases are inapposite. None are recirculation cases under Section 15088.5, Subdivision (a)(4) alleging that significant new information showed that the DEIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." In each of the four cases, the court considered only whether the new information established a new or more severe impact, or identified mitigation the applicant declined to implement, i.e., claims under Guidelines Section 15088.5, Subdivisions (a)(1) through (a)(3).

In *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1148–1151, all of the Court's analysis is directed at whether the new information established a new or more severe impact, claims under Subdivision (a)(1) or (a)(2), not (a)(4). The Court rejected Petitioner's claim that additional mapping data "established the impact of the project" (*id.* at 1148); held that a species listing and new rules "have no bearing on the impact of the project," which "was fully discussed in the PEIR" (*id.* at 1149), and that the new draft regulations did not establish "a new or more severe environmental impact" (*id.* at 1150). *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 221 was not an Subdivision (a)(4) case either: "[n]or is it claimed the DEIR

was 'so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.'" The Court held only that the new noise studies did not establish a new or more severe impact, or rejection of a feasible mitigation measure, i.e., the new study did not establish claims under Subdivisions (a)(1) through (a)(3). (*Id*.) Similarly, *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 966 is not a Subdivision (a)(4) case. It held that changes to the project did not result in new or more severe impacts. (*Id.* at 966-968.)

California Oak Foundation v. Regents of University of California (2010) 188 Cal.App.4th 227, 267 also holds only that the new information does not "provide evidence of any previously undisclosed significant environmental impact, a substantial increase in the severity of a previously disclosed impact, or a new feasible alternative or mitigation measure for the project." As CSAC admits, *California Oak Foundation* does *not* consider a claim under Subdivision (a)(4). (CSAC at 17; JA1429.) So the case is not relevant here, because, as CSAC admits, a case is not authority for what it does not consider. (CSAC at 12, *citing May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1335.) Furthermore, in *California Oak Foundation*, the Court found that post-DEIR studies were "wholly consistent" with the DEIR and that the agency letters did not contradict it. (*California Oak Foundation*, *supra*, 188 Cal.App.4th at 267.) Here, however, the FEIR's overdraft conclusion is not consistent with the DEIR's surplus conclusion, and, as the Trial Court found, the FEIR's claim that the Project wells were connected only to the SVGB to the east and *not* connected to the stressed areas in the four interconnected subareas "directly contradicted" the DEIR's conclusion. (JA1425.)

Elsewhere, CBIA also cites *Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 663 and *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th

200, 222, to argue that recirculation is not required for information that "merely clarifies, amplifies, or makes insignificant modifications" to the DEIR. (CBIA at 21-22.) However, as the Trial Court found, *Beverly Hills* is not a Subdivision (a)(4) case. (JA1429.) *Beverly Hills* holds only that a post-EIR study was not significant new information because it merely reconfirmed the DEIR's conclusion that one of two subway location alternatives was not viable, a topic on which the public had opportunity to comment based on the DEIR's discussion. (*Beverly Hills*, *supra*, 241 Cal.App.4th at 663.) Unlike in this case, *Beverly Hills* expressly rejected petitioners' claim that the analysis in DEIR "was reversed in several ways." (*Id.* at 661.) Thus, the Trial Court here distinguished *Beverly Hills*:

> Here, by contrast considerable defects in the DEIR necessitated a complete revision of the relevant chapter of the FEIR, depriving the public of a meaningful opportunity to comment on, inter alia, an analysis based upon the correct environmental setting, the overdraft condition, and wholly new rationales underlying the FEIR's cumulative analysis. (JA1429.)

These revisions included: reversing the DEIR's conclusions that prior Zone 2C projects have sustained groundwater elevations at the Project wells (JA1423), that there is a water surplus (JA1421), and that the Project wells are interconnected to the four interconnected subareas that share a purported surplus (JA1425.)

Finally, while petitioners in *Clover Valley Foundation* do make a Subdivision (a)(4) claim, the facts are distinguishable. (*Clover Valley Foundation*, *supra*, 197 Cal.App.4th at 222.) There, after an adequate discussion of cultural resource impacts in the DEIR, Petitioners comments sought disclosure of the identity and specific location of the eight cultural artifacts that would be disturbed by the project, despite the statutory prohibition on disclosure of that information. (*Id.* at 222.) In response to those comments, the FEIR provided some additional "narrative detail" about the eight resources, consistent with the statutory disclosure

prohibition. (*Id.* at 223.) The Court held that this was not significant new information because the DEIR's disclosure adequately informed the public of the "existence of confidential archaeological resources on the site, the potential adverse impacts the project would impose on those resources, and the effectiveness of the specified mitigation measures." (*Id.* at 222.) By contrast, here the FEIR's fundamental changes and reversals to the DEIR's setting description and to its impact rationales, and its identification of new cumulative impact mitigation, bear no resemblance to the mere provision of additional narrative detail about cultural resources in the *Clover Valley* FEIR.

II. THE TRIAL COURT APPLIED THE SUBSTANTIAL EVIDENCE STANDARD OF REVIEW.

The Trial Court acknowledged that under the substantial evidence standard of review, an agency decision is given substantial deference and is presumed to be correct. (JA1410.) However, by examining the record here, the Trial Court found that Petitioners here had overcome that presumption, and expressly held that the County's "decision not to recirculate the DEIR was not supported by substantial evidence." (JA1429.) Despite this, Amici argue that the Trial Court failed to apply the substantial evidence standard of review. (CSAC at 9, 12; 19-20; CBIA at 27.) Amici are incorrect.

Critically, in the recirculation holding, the Trial Court did not make or challenge *any* factual determination other than the County's unexplained decision not to recirculate the EIR under Subdivision (a)(4), despite Petitioners' repeated and detailed objections that recirculation was required because the changes in the DEIR's setting description and analysis showed that it was inadequate and

precluded an opportunity for meaningful comment and response. (AR14148-14153, 13124-13125, 13331, 6790-6791, 5824 [LandWatch].)

Amici can point to no express finding on recirculation under Subdivision (a)(4) to which the Trial Court *could have* deferred. While a decision not to recirculate "does not require an express order or finding," such "express findings are preferable for the reason that they make the task of the reviewing court easier." (*Laurel Heights II, supra,* 6 Cal.App.4th at 1133, 1134). Here, however, the County's express recirculation findings address provide no guidance to the Court.

The County's findings explained why recirculation was not required under Subdivisions (a)(1), (a)(2), and (a)(3) but provide no response to Petitioners objection that recirculation was required under Subdivision (a)(4). (AR35-36 [reciting criteria for Subdivisions (a)(1), (a)(2), and (a)(3), without acknowledging the criteria for (a)(4) claims].) The findings regarding changes to the water supply analysis do not address Petitioners' detailed grounds for recirculation under Subdivision (a)(4):

> In addition, several modifications were made to the environmental setting to clarify the hydrogeologic setting and relationship with the Geosyntec Report. See FEIR pages 3.6-1 through 3.6-13. Subsequently impact discussions were updated accordingly. The Water Balance was updated to include analysis based on MCWRA' s standard format and existing conditions. The cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project [sic], as opposed to the El Toro Groundwater Basin. The *findings remained less than significant*.

(AR37, emphasis added.) The conclusion that the "findings remained less than significant," absent any discussion of the validity of Petitioners' detailed objections that the DEIR had been revealed as so inadequate as to deny meaningful comment opportunity, confirms that the only express findings in the record related to

recirculation of the water supply analysis focus on the Subdivision (a)(1) criteria, a new significant impact, and simply do not address Petitioners' Subdivision (a)(4) claim.

Case law holds that the lack of substantial evidence can be shown by agency failure to ground its findings with facts or to disclose the analytic route between facts and conclusions. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* ("*Laurel Heights I*") (1988) 47 Cal.3d 376, 404; *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Because the record lacks an express finding rejecting the Subdivision (a)(4) claim, neither Amici nor Respondents can point to any express consideration by the County rejecting the grounds for recirculation identified by Petitioners and the Trial Court.

For example, the bland finding that "several modifications were made to the environmental setting to *clarify* the hydrogeologic setting and relationship with the Geosyntec Report" (AR37, emphasis added) does not acknowledge the material *inconsistencies* in the DEIR's and FEIR's setting descriptions or explain why these inconsistencies did not preclude meaningful comment. As the Trial Court found, these inconsistencies included the FEIR's acknowledgement of an overdraft despite the DEIR's claim of a surplus; the FEIR's retraction of the DEIR's claim that existing groundwater management projects have sustained groundwater levels in the vicinity of the project; and the FEIR's claim that the Project wells are not hydrogeologically contiguous with the stressed areas in the four interconnected subareas despite the DEIR's reliance on the interconnection of the Project wells to those four subareas and their purported surplus.

Nor does the finding that "cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project [sic], as opposed to the El Toro Groundwater Basin" acknowledge

Petitioner's objection that the FEIR completely changed the DEIR's geographic scope of analysis and abandoned its rationale for its cumulative analysis, which the Trial Court found precluded comment and response on the *new* geographic scope and *new* rationales in the FEIRs.

Contrary to CSAC, the Trial Court did not conduct an "independent assessment of the technical adequacy of the Draft EIR's setting, scope, and analysis of cumulative groundwater impacts."[3] (CSAC at 12.) The trial Court faithfully adhered to the record by *accepting* the FEIR's conclusions regarding the environmental setting and impact significance rationales as reflected in the FEIR (JA1432-1440) and then comparing the DEIR to the FEIR to identify significant new information in the form of substantial changes and inconsistencies between the DEIR and FEIR that precluded meaningful comment opportunity. (JA1413-1429.)

Nowhere does the Trial Court reject *any* of the factual information in the FEIR. In determining if the FEIR's setting description, significance rationales, and cumulative impact mitigation were significant new information, the Trial Court was properly guided by directly analogous case law in determining that the public was denied a meaningful comment opportunity. As in *Sutter*, *Save Our Peninsula*, and *Spring Valley*, and in the absence of express findings regarding Subdivision

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[3] Contrary to CSAC (CSAC at 12), this case is not analogous to *North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 656 where the issue was a claim under Subdivision (a)(3), not (a)(4), and where the trial court improperly held that substantial evidence did not support the agency's rejection of a feasible alternative. Nothing the Trial Court did here amounted to "conducting its own water supply calculation and analysis." (*Id.* at 654; CSAC at 12.) The Trial Court here *accepted* all of the FEIR's factual findings and analysis, on the basis of which it found that the fundamentally *different* information in the DEIR rendered it so inadequate as to preclude meaningful comment.

(a)(4), this Court too must examine the nature of the FEIR's new information, what it reveals about the continuing adequacy of the analysis in the DEIR, and whether its untimely disclosure deprived the public of a meaningful comment opportunity.

The first time the County explained why it rejected Petitioners' Subdivision (a)(4) claim was in this litigation. But Amici's objection that the Trial Court failed to show deference cannot be based on the Trial Court's failure to accept Respondents' *litigation* arguments that recirculation was not warranted under Subdivision (a)(4). This briefing was not part of the agency's express or implicit factual findings in the record to which this Court must defer. (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* ("*EPIC*") (2008) 44 Cal.4th 459, 487 [Court "may not accept post hoc declarations of the agencies themselves" regarding information omitted from the record]; *Vineyard, supra*, 40 Cal.4th at 442-443 [briefing irrelevant to explanation of agency action because not available at time of decision]; *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("presentation of evidence to the trial court" not a substitute for explanation of the basis of agency action in the record].)

Amici imply that the Trial Court's finding that substantial evidence supported the County's ultimate findings regarding impact significance somehow dictates that the Trial Court *also* find that substantial evidence support the County's decision not to recirculate. (CBIA at 25; CSAC at 11.)

The argument fails because it conflates two entirely different findings: whether impacts are less than significant and whether significant new post-DEIR information precluded meaningful comment opportunity on the DEIR itself. Thus, in *Joy Road Forest and Watershed Association. v. California Department of Forestry and Fire Protection* (2006) 142 Cal.App.4th 656, recirculation was required where the Court found the cumulative analysis in the initial review

"woefully inadequate" (*id.* at 676), *even though* the Court found that "there is substantial evidence to support CDF's ultimate finding," because "that evidence does not 'cure' the defect" in the initial review. (*Id.* at 684 [requiring recirculation due to "significant new information"] ; *cf. Communities for a Better Env't, supra*, 184 Cal.App.4th at 82 [the "existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA"].)

Finally, CSAC argues incorrectly that Petitioners seek de novo review. (CSAC at 11-12.) Not so. Petitioners argue only that no court has squarely addressed the standard of review for Subdivision (a)(4) claims and that that de novo review would be justified by Supreme Court precedent. (POB at 69-70.) However, Petitioners explain that de novo review is not required here because the Trial Court was correct in holding that substantial evidence does not support the decision not to recirculate. (POB at 70-71.)

III. FAILURE TO RECIRCULATE WAS PREJUDICIAL.

Failure to recirculate the FEIR's new groundwater analysis was prejudicial because it precluded "informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Save Our Peninsula, supra*, 87 Cal.App.4th at 118.) By finding that recirculation was required, the Trial Court found prejudice because "meaningful public review and comment were precluded." (Guidelines, § 15088.5(a)(4).) As Petitioners have shown, prejudice occurred here because the fundamentally new analysis in the FEIR raised new issues about which the public commented, but without response by the County. (POB at 71-80; PRB at 83-101 [detailing failure to respond to post-FEIR comments on new analysis].)

The very purpose of recirculation is to provide the opportunity to comment on significant new information *and to ensure a response* to those comments in the EIR itself. (Guidelines, § 15088.5(f).) Only by the process of comment *and response* is the integrity of the CEQA process for informed participation and decision making upheld. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516–517 ["a lead agency's response to comments is an integral part of the EIR"]; *People v. County of Kern* (1974) 39 Cal.App.3d 831, 841 ["requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug "].) Thus, *Sutter* holds that recirculation was required for new information because comments are "integral" to the EIR process and require "lead agency responses." (*Sutter, supra*, 122 Cal.App.3d at 820.) *Save Our Peninsula* required recirculation to ensure the opportunity for "public comment *and* meaningful response." (*Save Our Peninsula, supra*, 87 Cal.App.4th at 123, emphasis added; *see also id.* at 115, 120, 133.)

However, Amici argue that prejudice was not shown. First, they argue that the public was able to comment on the draft EIR about "the very issues that the trial court found were lacking in the Draft EIR." (CSAC at 19.) Second, they argue that Petitioners had opportunity to comment on the FEIR itself after it was released. (CBIA at 15; CSAC at 17, 19.) Third, they argue that Petitioners have not shown that the failure to recirculate resulted in the omission of information from the review process. (CSAC at 18, 19.) Amici are wrong because (1) the FEIR raised *new* issues; (2) comments without responses did not provide informed participation and decision making; and (3) Petitioners met their burden to show what was lacking.

First, contrary to Amici (CSAC at 19), the comments by the public and hydrogeologist Timothy Parker on the FEIR did not raise the same issues that were

triggered by the DEIR because the FEIR provided a fundamentally new analysis. (*See generally*, POB at 37-38 [detailing post-FEIR comments]; POB at 72-73 [summary of objections to FEIR].) As briefed, comments on the FEIR made substantive objections that were *not* triggered by the DEIR's discussion *and that the public had no reason to anticipate* when commenting on the DEIR. (POB at 72-73.)

For example, comments on the FEIR objected that the FEIR's belated admission of "overdraft" in the CDT Subbasin fails to acknowledge that this overdraft has caused the long-term groundwater level declines documented by Geosyntec or that these declines meet the EIR's definition of significant impact. (AR13149, 6792-6793, 6794-6795 [Parker].) The public had no reason to raise this objection after reviewing the DEIR because the DEIR did not acknowledge that overdraft, but instead claimed that groundwater levels in the vicinity of the Project wells "have been sustained" by existing groundwater projects. (AR830.)

As Parker objected in his comments on the FEIR, the FEIR retracts the DEIR's claim that existing projects have sustained groundwater levels, casting doubt on the FEIR's new claim that future groundwater projects will do so. (AR13146-13147 [Parker], *citing* AR373 [FEIR, striking DEIR's claim of sustained groundwater levels].) Again, the public had no reason to raise this issue after reviewing the DEIR.

Responding to the FEIR's new claim that the Salinas Valley Water project would mitigate cumulative pumping impacts in the CDT Subbasin, the public also objected that the FEIR fails to demonstrate that groundwater projects to maintain *Valley* groundwater levels could maintain groundwater levels in the CDT Subbasin, *250 to 350 feet higher*. (AR14149-14150, 13125-13126, 6787-6788, 5828-5829 [LandWatch]; AR13144-13147, 13149-13151, 6795 [Parker].) Because the DEIR's cumulative impact analysis does not rely on this mitigation

but only on a purported shared surplus, and because the DEIR claims that groundwater levels have *already* been sustained by existing projects, the public had no reason to raises this objection to the cumulative impact analysis after reviewing the DEIR.

Responding to the FEIR's change of the geographic scope of the cumulative impact analysis to include the entire Salinas Valley Groundwater Basin, the public and Parker made three objections: that groundwater management projects cannot maintain Valley groundwater levels because they assume out-of-date demand projections (AR13329-13331, 13127-13130); the County admits additional groundwater projects are needed but they are neither funded nor environmentally reviewed (AR13126-13132, 13151-13152, 6788, 6791, 5825-5829 [LandWatch]; AR6795-6796 [Parker]); County staff admit the 2009-2011 increase in Valley groundwater levels is not indicative of a long-term trend (AR13390). The public would have had no reasons to raise this objection to the DEIR's cumulative impact analysis *because it does not consider impacts outside the purportedly distinct "El Toro Groundwater Basin" in which there was a purported groundwater surplus.*

Hydrogeologist Parker raised other objections to the new analysis in the FEIR. Parker objected that the FEIR continues to report and rely on the purported surplus conclusion in the Todd report even while admitting the overdraft conclusion documented by the Geosyntec report, and that it is simply not true that these conclusions are "similar." (AR13148-13149 [Parker], *citing* AR385 [FEIR].) Parker objected that continuing overdraft will in fact impair wells in the CDT Subbasin and that the groundwater level in the Project wells has fallen at the same rate as levels in the rest of the Geosyntec Study Area. (AR6793, 6794.) But the FEIR claims that the Project wells "would not likely affect" the stressed areas of the Geosyntec Study Area because they are "hydrogeologically contiguous" to the aquifers to the east in the Salinas Valley. (AR375-376, 385.) Parker challenged

this new claim, pointing out the data show only limited connectivity to the Salinas Valley. (AR13145, 13147.) The public would have had no reason to raise these objections to the DEIR because its analysis was confined to the four interconnected subareas in the Toro area, which the DEIR claims share a groundwater surplus.

In sum, it is simply not true that the opportunity to comment on the DEIR was sufficient here because, contrary to Amici, the FEIR's fundamentally changed analysis raised new issues that the public could not have anticipated.

Second, as briefed in detail, the County did not provide responses to comments on the FEIR's new analysis, either in an amended EIR or otherwise. (POB at 75-78; PRB at 83-101.) CEQA requires that comment responses be in the EIR itself. (Guidelines, §§ 15088 [response to comments on draft EIR], 15088.5(f) [response to comments on recirculated EIR]; POB at 74-75; PRB at 84-85.) The California Supreme Court holds that, in an adequate response to substantive comments, such as hydrogeologist Parker's comments, an EIR must "lay out any competing views," "summarize the main points of disagreement," and "explain why it declined" to accept those views. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940-941; *see also Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371[EIR must "acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR's analysis;" "conclusory and evasive" responses unsupported "by scientific or objective data" are not sufficient].) As briefed in detail, not only did the County fail to amend the EIR to respond to new comments on the new analysis, but the County failed to respond even outside the EIR. (POB at 75-78; PRB at 87-101.)

Third, contrary to Amici (CSAC at 19), Petitioners have met their burden to show prejudice. *San Francisco Baykeeper, Inc. v. State Lands Commision* (2015) 242 Cal.App.4th 202, 230 is not on point. There the Court held that Baykeeper

"does not identify any information that was omitted from the environmental review process" as a result of the error. (*Id.*) Here, by contrast, Petitioners have identified specific information that was omitted: responses to comments by LandWatch and an expert, hydrogeologist Parker, challenging the FEIR fundamentally new claims.

Thus, Petitioners met any burden to show that pertinent information was omitted from the environmental review by identifying the critical unanswered questions raised in response to the FEIR's new analysis. Again, the opportunity to raise objections is meaningless unless the agency actually provides good-faith, reasoned response. (*Cleveland National Forest Foundation*, *supra*, 3 Cal.5th at 516–517 ["a lead agency's response to comments is an integral part of the EIR"]; *People v. County of Kern*, *supra*, 39 Cal.App.3d at 841 ["requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug "]; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723 [comments themselves insufficient; responses required].)

Contrary to CSAC and Respondents (CSAC at 19; ROB at 17, 69) the fact that the Trial Court found that substantial evidence supported the FEIR's new analysis does not cure prejudice. (POB at 78-80.) Prejudice may occur "regardless of whether a different outcome would have resulted if the public agency had complied" with CEQA. (CEQA, § 21005(a).) Thus, substantial evidence to support an ultimate finding does not preclude prejudice. (*Joy Road Forest and Watershed Association*, *supra*, 142 Cal.App.4th 656, 684.) As noted above, in *Joy Road,* as occurred here, the Court found the cumulative analysis in the initial review "woefully inadequate" in light of "significant new information." (*Id.* at 676, 684; JA1414.) In *Joy Road*, recirculation was required, even though "there is substantial evidence to support CDF's ultimate finding," because "that evidence

does not 'cure' the defect" in the initial review (*id.* at 684.) Similarly, in *Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal.App.4th 556, 574, 576, the Court set aside the project approval for failure to circulate the cumulative analysis for public review, even though the agency found the project would have no significant impact.[4] *Joy Road* and *Schoen* invalidate project approval because there was inadequate comment opportunity, despite substantial evidence of no significant effect in *Joy Road* and an unchallenged substantive conclusion in *Schoen*.

Furthermore, as briefed (POB at 79-80), this Court cannot determine how compliance with CEQA's comment and response obligations would have affected decision-making, so it should not assume that omission of responses to the substantive comments on the FEIR's new analysis was not prejudicial. The California Supreme Court held that where an agency has failed to consider public comments, "courts are generally not in a position to assess the importance of the omitted information to determine whether it would have altered the agency decision . . .." (*EPIC, supra*, 44 Cal.4th at 487.) *EPIC* holds that "a determination of whether omitted information would have affected an agency's decision . . . is highly speculative, an inquiry that takes the court beyond the realm of its competence." (*Id.* at 488; *see also Ultramar, Inc. v. South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 703 [where agency had not circulated cumulative analysis for comments, trial court should not "evaluate the

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

omitted information and independently determine its value"].) Thus, where there is a duty to respond to comments, *EPIC* holds that "the omission of the information *must be deemed prejudicial*" unless the comments are "repetitive," "patently irrelevant," or supportive comments. (*EPIC*, *supra*, 44 Cal.4th at 487, emphasis added.) As briefed, comments by LandWatch and hydrogeologist Parker were not repetitive, irrelevant, or supportive. (PRB at 85-87.)

IV. POLICY IMPLICATIONS DO NOT MILITATE AGAINST UPHOLDING THE TRIAL COURT.

CBIA offers a number of "policy implications" of the Trial Court's recirculation holding as if these implications should weigh against upholding applicable precedent in light of the actual facts of this case. (CBIA at 30-34.) These purported policy implications are not in fact at issue here.

First, CBIA argues that upholding the Trial Court would lead to "great uncertainty" because, CBIA claims, the Trial Court's "'substantial changes' rule replaces the existing 'significant' new information rule." (CBIA at 30.) Not so. For the reasons set out in Section I above, the Trial Court did not rely on a new rule. The Trial Court applied existing precedent under which a court necessarily must compare the information in the draft and final EIR to identify changes in the information in order to determine if new information is in fact "significant."

Second, CBIA argues that upholding the Trial Court would make project applicants "less willing to agree to project changes in response to comments since project changes (such as a change in the mix of uses) made after release of the draft EIR could trigger recirculation." (CBIA at 31.) But there *were no* project changes here. What changed was the EIR not the Project, in particular the EIR's setting description and its rationale for its significance conclusions. Upholding the

Trial Court under the facts of this case would have no effect on the willingness of applicants to make changes to their projects because that issue was simply not at play here. Amici's 30,000-foot "policy view" ignores the actual record on the ground here.

Third, CBIA argues that upholding the Trial Court will result in longer and more expensive environmental reviews. (CBIA at 32-34.) CBIA argues that "the facts of this case prove the point: the 17-home Project took 14 years to approve and during that time, changes occurred." (CBIA at 32.) Once again, CBIA disregards the record. Petitioner's objections to the DEIR's water supply analysis were not responsible for the 14-year delay, and the pertinent information on which the objections were based was available to the County over a year before it released the draft EIR. (PRB at 13-14.)

The Project's 14-year review commenced with the applicant's improper reliance on a negative declaration in 2002, which both the Planning Commission and the Board of Supervisors rejected *three years later* in 2005. (AR681.) The draft EIR was then not released until *three more years*, in October 2008. Petitioners, the public, and the local water agency promptly objected to the water supply analysis at issue here, submitting timely comments within the two-month review period pursuant to CEQA. (*See*, e.g., AR156, 161-162, 185, 226, 234, 246.) The County then took *five more years* to release the final EIR in 2013 with its fundamentally changed water supply analysis. (AR117, 350-388.) The County then took another 18 months to approve the project in April 2015. (AR3-116.) Although the public submitted additional comments on the FEIR, those comments did not delay the project *because the County did not expend any time responding to them*. In sum, Petitioners comments did *not* delay this project. Indeed, CBIA demonstrates that the 14 years the County and the applicant took to get this Project

to approval were anomalous by acknowledging that the *typical* review period for housing projects is two and one-half years. (CBIA at 32.)

CBIA also mischaracterizes the record by claiming that the new information here arose *after* the release of the draft EIR. (CBIA at 14, 17, 32.) As the Trial Court found, the primary information newly disclosed in the 2013 final EIR had been available for over a year before the October 2008 draft EIR was released. (JA1420.) This information was the July 2007 Geosyntec Report, which the final EIR eventually acknowledged "superseded" the technical reports relied on by the draft EIR. (AR353.)

The record shows that EIR preparer had in fact received the Geosyntec Report by May 2008, five months before releasing the draft EIR. (AR18618.) The EIR preparer proposed to review it for "obvious inconsistencies" with the administrative draft EIR's conclusions, which, he explained, relied on a purported groundwater surplus in the aquifer supplying the Project. (AR18618.) A week later, the EIR prepare identified the most obvious inconsistency between the DEIR and the Geosyntec Report: "In a nutshell, the 2007 Geosyntec says that the entire El Toro Planning Area (called El Toro Groundwater Basin in other studies) is indeed in overdraft - as a whole." (AR18617.) But the DEIR did not disclose that inconsistency and instead reported and relied on the purported groundwater surplus in its significance conclusions. (AR836, 837-838, 842-843, 1459-1460.) In short, the County could have included an adequate water supply analysis in the October 2008 draft EIR on the basis of the then-available information. This case arose because the County chose to ignore that information until the public and the local water agency objected to the draft EIR.

As Amici and the Trial Court remind us, recirculation is in fact rare, and exceptionally rare under Subdivision (a)(4). (JA1413; CBIA at 17, 19, 20, 21, 27; CSAC at 9, 13-14.) Accordingly, upholding the Trial Court under the

extraordinary facts in this case, consistent with clear precedent that rarely applies, but does apply here, will not lengthen "the *typical* lengthy EIR process" as CBIA claims. (CBIA at 33, emphasis added.)

Finally, if upholding the Trial Court results in some delay to *this* Project, *Sutter* explains that such delay is the reasonable cost to assure the adequacy of the CEQA process:

> We realize that in ordering the board to vacate its approvals of the EIR and the project and requiring circulation of the revision for purposes of comment and review, we force further delay of the project; however, we may not permit such considerations to eviscerate the fundamental requirement of public and agency review, that is the strongest assurance of the adequacy of the EIR.

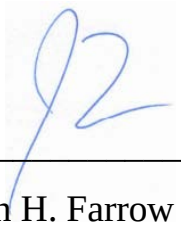
(*Sutter*, *supra*, 122 Cal.App.3d at 823; *see also Laurel Heights II*, *supra*, 6 Cal.4th at 1132 [in interpreting CEQA § 21092.1 to include the four categories for recirculation, Court considered both potential delay and "the legislative goals of furthering public participation in the CEQA process"].)

CONCLUSION

Petitioners LandWatch and Meyer respectfully request this Court to AFFIRM the Trial Court's Judgments regarding recirculation. And for reason set out in other briefing, Petitioners request this Court to AFFIRM the Trial Court's Judgments regarding wildlife corridors, to REVERSE its Judgments that the water supply analysis was informationally adequate and that substantial evidence supported the County's water supply findings, and to REMAND the matter to the trial Court with instructions to issue the writ sought.

Dated: October 8, 2020 Respectfully submitted,

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



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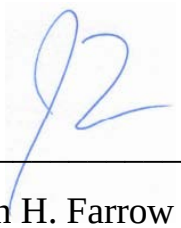
CERTIFICATION OF LENGTH

I, John Farrow, declare:

In accordance with Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the length of this brief excluding tables, as calculated by the word processing software with which it was produced, is 13,039 words.

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

Dated: October 8, 2020



John H. Farrow

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 580 California Street, Suite 1200, San Francisco, California, 94104. On October 8, 2020 I served the attached document(s):

JOINT ANSWER BY RESPONDENTS AND CROSS-APPELLANTS LANDWATCH MONTEREY COUNTY AND MEYER COMMUNITY GROUP TO AMICI BRIEFS

on the following parties in the manner indicated:

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[x] BY ELECTRONIC TRANSMISSION OR EMAIL by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below, via the Court's electronic filing service provider. I did not receive any electronic message or other indication that the transmission was unsuccessful.

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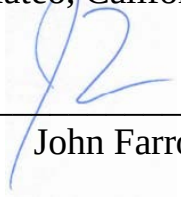

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