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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KEEP THE CODE, INC.,
Plaintiff and Appellant,
v.
COUNTY OF MENDOCINO et al.,
Defendants and Respondents;

NORTHERN AGGREGATES, INC.,
Real Party in Interest and Appellant.

A140857

(Mendocino County
Super. Ct. No. SCUKCVPT1260196)

Appellants Keep The Code, Inc. (KTC) and real party in interest Northern Aggregates, Inc. (NAI) separately appeal following the trial court's resolution of KTC's request to compel the County of Mendocino and its board of supervisors (hereinafter also referred to collectively as county) to rescind (1) certification of an environmental impact report (EIR)[1] prepared for a project expansion of the Harris Quarry, new construction of an onsite asphalt processing facility, and an amendment to the county's zoning ordinance adding a Mineral Processing Combining District in areas zoned R-L (rangeland); and

[1] "EIR" as used hereinafter refers to the final version of the EIR that was certified by the county. The final EIR consists of the draft EIR, the revised draft EIR (RDEIR), the final EIR, and the related county records constituting the record of the proceedings conducted prior to certification.

(2) related approvals of use permits for the expanded quarry, the asphalt processing facility, and a quarry reclamation plan. The trial court determined the county had proceeded in a manner consistent with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the administrative guidelines promulgated by the Governor's Office of Planning and Research for adoption by the Secretary for Resources to implement CEQA (Pub. Resources Code, § 21083; Cal. Code Regs., tit. 14, § 15000 et seq.).[2] The court also determined that the county's findings were supported by substantial evidence with the exception of its analyses of project alternative 4 (extended quarry and temporary asphalt processing facility) and alternative 5 (redesign of the project relative to nighttime activities and construction of a partial highway interchange at the project's access driveway). A judgment was entered, and a peremptory writ of mandate was issued, directing the county to set aside the certification of the EIR and the approvals of the use permits and reclamation plan for the purpose of allowing the county to reconsider project alternatives 4 and 5. Based on our independent review of the parties' contentions, we agree with the trial court's determinations, and accordingly, we affirm.

FACTS

A. Background

The Harris Quarry is located to the west of U.S. Route 101 (Highway 101) "near the top of the Ridgewood Grade" and Black Bart Drive. The quarry operates on 11.5 acres of a 320-acre parcel (which is part of a larger 600-acre parcel of undeveloped

[2] Unless otherwise stated, all statutory references are to the Public Resources Code. The CEQA guidelines are referred to as "Guidelines, section . . . ." "Whether the Guidelines are binding regulations is not an issue in this case, and we therefore need not and do not decide that question. At a minimum, however, courts . . . afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 (*Laurel Heights*), citing *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1022.)

land). The 320-acre parcel is designated rangeland in the county general plan and under the county zoning ordinance.

In 1983, the county issued the quarry's first use permit for mining, allowing extraction of up to 10,000 cubic yards of rock each year.[3] In 1997, the county approved a 10-year use permit allowing the extraction of 75,000 cubic yards of rock per year. In January 2005, before the expiration of the quarry's existing use permit, NAI applied for a renewed and modified use permit and approval of a quarry reclamation plan, seeking to mine the quarry until the material was exhausted in 90 years (hereinafter, End of Quarry Life application). NAI later combined its End of Quarry Life application with a request to amend the county zoning ordinance to allow for the onsite construction of asphalt and concrete batch plants to process aggregate extracted from the quarry. The county contracted with Leonard Charles and Associates (hereinafter, county EIR consultant) to prepare a draft environmental impact report (DEIR). Following public comments and before the completion of a final environmental impact report, NAI placed its End of Quarry Life application on hold and decided to revise its application in light of the public comments received by the county.

B. Current CEQA Proceedings

In January 2010, an RDEIR, prepared by the county EIR consultant, was submitted for the county's consideration.[4] At that time the project description was *significantly* narrowed in scope to reflect NAI's "scaling back" of the original proposal. The project description now consisted of three actions: "(1) a Use Permit Renewal/Modification (UR 19-83/2005) for 30 years to allow expansion of the quarry;

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[3] The RDEIR stated, "Harris Quarry is an existing quarry that has been intermittently mined since the 1920[']s," but the quarry "does not have a 'vested right' since no permits were issued until 1983." In a related appeal (case No. A147544), we conclude NAI does not have a vested right to operate any portion of the quarry and aggregate business as a legal nonconforming use.

[4] Although the quarry's current use permit expired on January 26, 2007, under county policy NAI has been allowed to continue operating under the expired use permit during the processing of this application.

extraction of up to 200,000 in-place cubic yards (approximately 258,000 cubic yards processed) of material per year; production of up to 150,000 tons of asphalt per year from the processed material; and nighttime operations that could occur up to 100 nights per year; (2) an amendment to the County Zoning Ordinance creating a new Mineral Processing (MP) Combining District to allow for asphalt processing to occur onsite with a concurrent rezone adding the combining district to an 18-acre portion of the project site to accommodate the proposed asphalt facility; and [(3)] a revised Reclamation Plan for the site."

The RDEIR described the project's objectives in the following manner: "1) secure a permit that will allow for the continued operation of the Harris Quarry mine for 30 years; 2) expand the maximum allowable annual extraction from the quarry [from 75,000 cubic yards in situ (i.e., the volume of rock as measured in place in the quarry wall or floor)] to 200,000 cubic yards (in situ) per year; . . . 3) add a new asphalt facility to the site[;] . . . [¶] [4)] locate the asphalt processing facility close to the aggregate source [because] market demand is an important part of this application[;] [¶] . . . [¶] [and 5)] locate the project between Willits and Ukiah, the main aggregate consumption areas." The RDEIR further advised that the information presented in the report was "based on the project description data, including supporting technical reports, that were provided by [NAI]. The EIR consultants and County staff have reviewed and commented on [NAI's] submittals to ensure that the description presented . . . addresses the important components of the project. However, the description and claims presented . . . are solely [NAI's]. The EIR will assess [the] accuracy of these claims when identifying and assessing the potential impacts of this proposed project description, including an assessment of the accuracy of supporting technical data."

Following circulation of the EIR, a public hearing, and unanimous approval by the county, a notice of determination was issued adopting resolution No. 12-065, which certified "the Final Environmental Impact Report (FEIR) for the Harris Quarry Expansion Project including its incorporated Water Supply Assessment, the Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting

Program in compliance with the requirements of the California Environmental Quality Act (CEQA). The FEIR consists of the Draft EIR . . . , comments and responses to comments on the Draft EIR, and an errata section listing minor edits to the Draft EIR. The project also includes four ordinances amending portions of Division I of Title 20 of the Mendocino County Code and one ordinance approving a rezone of a portion of the subject property." Following the EIR certification, the Mendocino County Planning Commission (planning commission) separately considered and, following a hearing, approved NAI's applications for renewed/modified/new use permits for the quarry, the asphalt processing plant, and the reclamation plan. KTC administratively appealed the planning commission's decisions, but the board of supervisors denied the appeal.

KTC[5] filed a petition for writ of mandate and included a complaint for injunctive and declaratory relief, seeking, among other things, to compel the county to vacate its decisions. The trial court determined "that, for the most part, [the county] proceeded in the manner required by law and that its decision[s] [are] supported by substantial evidence in the record," with the exception of the EIR's analysis of project alternative 4 (permit for extended quarry and temporary asphalt processing facility) and alternative 5 (redesign of the project relative to nighttime activities and construction of a partial highway interchange at the project's access driveway). The court granted the petition and directed the county to set aside its decisions and the related use permit approvals and the reclamation plan, and to undertake further review and reconsider its decisions on project alternatives 4 and 5.[6] A judgment was entered on the first amended petition and

[5] KTC describes itself as a "California non-profit corporation," which is "the successor to the unincorporated association Keep the Code, which had been formed in 2005." KTC's "mission is to preserve and protect for the general public the natural environment, agriculture and rural character of Mendocino County."

[6] In its initial return to the writ in the superior court, the county stated it would "take at least the following actions to comply with" the court's judgment: "1. Recirculate the pages of the EIR discussing Alternatives 4 and 5, hold a noticed public hearing, receive additional evidence, accept additional public comments, and make new findings. The County does not concede that recirculation is required because an EIR is an *environmental document* and is not required to contain economic information. (*See*

complaint, and a peremptory writ of mandate was issued consistent with the judgment. KTC and NAI have timely appealed.

DISCUSSION

I. Applicable Law

"When enacting CEQA, the Legislature made clear its intention that 'public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.' [Fn. omitted.] [Citation.] Accordingly, public agencies are required by CEQA to prepare an EIR that, among other things, provides the public with 'detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.' (§ 21061; see Guidelines, § 15003, subds. (b)–(e).) Where project alternatives or mitigation measures are not feasible, the EIR must set forth that there are overriding considerations that render the unmitigated effects outweighed by the project's benefits. (Guidelines, § 15093.) In this way, the public is adequately informed of the agency's reasoning in deciding that an environmentally significant action should either be approved or rejected, and can thus hold the agency accountable for its decision. [Citation.]" (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 260 (*California Oak Foundation*).)

"To ensure these public policies are respected, the Legislature has designed an extensive procedural framework, which the California Supreme Court has succinctly described as follows. 'Under CEQA, the public is notified that a draft EIR is being

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[Guidelines,] § 15131; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 690-691; and *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1401.) However, in an abundance of caution, the County wants to disseminate any additional information as public[ly] as possible; [¶] 2. Take any other action the County deems necessary to comply with the Judgment; and [¶] 3. Take any other action the County deems necessary to comply with CEQA."

prepared (§§ 21092 and 21092.1), and the draft EIR is evaluated in light of comments received. (Guidelines, §§ 15087 and 15088.) The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process. (Guidelines, §§ 15090 and 15132, subds. (b)–(d).) [Fn. omitted.] The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. (Guidelines, § 15090.) Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. (§§ 21002, 21002.1, and 21081; Guidelines, §§ 15091–15093.)' " (*California Oak Foundation, supra*, 188 Cal.App.4th at pp. 260-261, quoting *Laurel Heights, supra*, 47 Cal.3d at p. 391.)

II. Standard of Review[7]

We review the county's compliance with CEQA to determine " ' "whether there was a prejudicial abuse of discretion." [(§ 21168.5.)]' " (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 511 (*Cleveland*), quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 (*Vineyard*).) " '[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], we accord greater deference to the agency's substantive factual conclusions.' " (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2

[7] Our Supreme Court has granted review in a case in which the issue presented is the standard and scope of judicial review under CEQA. (*Sierra Club v. County of Fresno* (2014) 226 Cal.App.4th 704, review granted October 1, 2014, S219783.) Pending resolution of that appeal, we will apply the review dichotomy most recently enunciated by the Supreme Court. (See *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 427, fn. 6.)

Cal.5th 918, 935, quoting *Vineyard*, *supra*, at p. 435 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Citizens of Goleta Valley*).) In our review for substantial evidence, our "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 [the] scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that '[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' " (*Laurel Heights*, *supra*, 47 Cal.3d at p. 393, quoting *Bozung v. Local Agency Formation Com*. (1975) 13 Cal.3d 263, 283.) " ' "CEQA gives lead agencies discretion to design an EIR . . ." [citation] and the agency is not required to conduct every recommended test or perform all requested research or analysis (Guidelines, § 15204, subd. (a)). . . . An EIR is required to evaluate a particular environmental impact only to the extent it is "reasonably feasible" to do so. (Guidelines, § 15151; [citation].)' " (*Cleveland*, *supra*, at p. 512, quoting *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 937.)

III. Adequacy of the EIR

" 'The purpose of an EIR is to give the public and government agencies the information needed to make informed decisions, thus protecting " 'not only the environment but also informed self-government.' " [Citation.]' [Citation.] [¶] 'In determining the adequacy of an EIR, the CEQA Guidelines look to whether the report provides decision makers with sufficient analysis to intelligently consider the environmental consequences of a project. [Citation.] The CEQA Guidelines further provide that "the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. . . . The courts have [therefore] looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." [Citation.]' [Citation.] The overriding issue on review is thus 'whether the [lead agency] reasonably and in good

faith discussed [a project] in detail sufficient [to enable] the public [to] discern from the [EIR] the "analytic route the . . . agency traveled from evidence to action." [Citation.]' [Citation.] [¶] Ultimately, ' "[w]e may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." ' [Citation.]" (*California Oak Foundation, supra,* 188 Cal.App.4th at p. 262.) With these principles in mind, we now discuss the parties' contentions.

A. Cumulative Impacts of Mineral Processing Combined District (MPCD)

KTC makes a multi-faceted argument attacking the EIR's analysis of the potential environmental impact of the adoption of the Mineral Processing Combined District (MPCD).

First, KTC argues that the EIR omits any analysis of the potential impacts that could result from the amendment to the Mendocino County Zoning Code beyond the site-specific impacts at Harris Quarry, and accordingly, the county failed to comply with CEQA by deferring all analysis of the cumulative impacts of adopting the new MPCD. We disagree. The Guidelines describe the level of analysis and detail necessary for an EIR relative to an amendment of a zoning ordinance in the following manner: "An EIR on a project such as the . . . amendment of a comprehensive zoning ordinance . . . should focus on the secondary effects that can be expected to follow from the . . . amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow." (Guidelines, § 15146, subd. (b).) Additionally, an amendment of a zoning ordinance "EIR must include an analysis of the environmental effects of future expansion or other action if: *(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects*. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project. [And], if the future action is not considered at that time, it will have to be discussed in a subsequent EIR before the future action can be approved under CEQA. [¶] . . . Under this standard, the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action." (*Laurel Heights, supra,* 47

Cal.3d at p. 396, italics added.) In this case the RDEIR "served its purpose as a disclosure document, by informing decision makers and the public of the potential environmental impacts of approving" the project, which included both the expansion of the Harris Quarry and construction of an asphalt plant, as well as the enactment of the MPCD. (See *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 21 (*San Diego Citizenry Group*).) Contrary to KTC's contentions, the county set forth its findings addressing the challenges to the zoning change, finding it was unlikely that existing quarries, other than the Harris Quarry, would seek rezoning under the MPCD, and that any "future effects will themselves require analysis under CEQA" (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369).[8]

B. Project Alternatives

1. Applicable Law

"The core of an EIR is the mitigation and alternatives sections. The Legislature has declared it the policy of the State to 'consider alternatives to proposed actions

[8] The county specifically found that "the RDEIR determined that of the nine sites currently zoned Rangeland, which have quarries on the site, only one site, the Blue Ridge Rock Quarry site is zoned Rangeland and has the potential to have an asphalt plant. Blue Rock's permits expire in 2016 and there is no evidence before the [county] that the operator intends to apply for the permits necessary to have an asphalt plant. Thus, the [county] finds that there is no evidence that the Zoning Ordinance amendments will result in a significant number of additional asphalt plants because only one other parcel has the potential to be practically and economically viable and any assertion that the amendments will result in additional permit applications for asphalt plants is speculation because there are no pending, known or reasonably foreseeable asphalt plant permit applications. The [county] further finds that it is not required to engage in speculation or to analyze speculative impacts. (CEQA Guideline §15145.) Furthermore, if any such hypothetical application were to be submitted, the application would be a separate discretionary decision and would require its own CEQA review and permitting process." Additionally, the county found "that the RDEIR provided a programmatic discussion of the potential range of impacts that could result from approval of amending the Zoning Code, and recognizes that additional site-specific and project-specific impact analysis would need to be assessed in CEQA documentation before the County could consider other rezonings of property into the MP Overlay district."

affecting the environment.' (. . . § 21001, subd. (g); *Laurel Heights*, *supra*, 47 Cal.3d at p. 400.) Section 21002.1, subdivision (a) . . . provides: 'The purpose of an environmental impact report is to identify the significant effects of a project on the environment, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided.' (Italics added. See also . . . § 21061 ['The purpose of an environmental impact report is . . . to list ways in which the significant effects of such a project might be minimized; *and to indicate alternatives to such a project*.' (Italics added.)].)

"In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' '[I]t is the policy of the state that public agencies should not approve projects as proposed if there are *feasible alternatives* or *feasible mitigation measures* available which would substantially lessen the significant environmental effects of such projects . . . . [I]n the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.' (. . . § 21002, italics added.)

"The Legislature has defined 'feasible,' for purposes of CEQA review, as 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.' (. . . § 21061.1; Guidelines, § 15364; [citations].) Both the California and the federal courts have further declared that '[t]he statutory requirements for consideration of alternatives must be judged against a rule of reason.' [Citations.] [Fn. omitted.] . . . .

"These statutory and judicial concepts are carried forward in the Guidelines, which state that an EIR must '[d]escribe a range of reasonable *alternatives to the project, or to the location of the project*, which could feasibly attain the basic objectives of the project, and evaluate the comparative merits of the alternatives.' (Guidelines, § 15126, subd. (d), italics added.) As the [italicized] language suggests, project alternatives typically fall into one of two categories: on-site alternatives, which generally consist of different uses of the land under consideration; and off-site alternatives, which usually involve similar

uses at different locations. [Citations.] [¶] CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose." (*Citizens of Goleta Valley*, *supra,* 52 Cal.3d at pp. 564-566.)

2. EIR's Statement of Project Objectives

KTC contends the county failed to comply with CEQA because it did not "vet" NAI's objectives for the project. We disagree. "CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives." (*California Oak Foundation*, *supra*, 188 Cal.App.4th at pp. 276-277.) As the trial court properly found, the EIR acknowledged that "NAI is the proponent of the Harris Quarry expansion, and the objectives for the quarry expansion are properly those of the applicant: 1) to secure a permit which allows for continued operations of the Harris Quarry mine for 30 years; 2) to expand the maximum allowable annual extraction for the quarry to 200,000 cubic yards [per] year; and 3) to add a new asphalt processing facility to the site. The final two objectives were joint objectives of the applicant and the [c]ounty: 4) to locate the asphalt processing facility as close as possible to the aggregate source and the market demand; and 5) to locate the project between Willits and Ukiah, the main aggregate consumption areas [citation]." The county both considered and independently chose to approve the objectives set forth in the EIR, and no more was required under CEQA. Thus, KTC's disagreement with the county's adoption of these objectives provides no basis to set aside the EIR. (See *San Diego Citizenry Group*, *supra,* 219 Cal.App.4th at p. 18.).

3. EIR's Consideration of a Reasonable Range of Alternatives

KTC further contends the EIR failed to include a reasonable range of alternatives. The EIR "evaluated" *in great detail* seven alternatives to the Project: [¶] 1. No Project – No Future Development [¶] 2. No Project – Future Development Consistent with Land Use Classification [¶] 3. Quarry Only [¶] 4. Quarry and Temporary Asphalt Plant [¶] 5. Project Redesign [¶] 6. Reduced Production [¶] 7. Alternate Location." As found by the trial court, the seven alternatives were "reasonable and appropriate under the

circumstances, as they addressed both the Harris Quarry expansion and, to a lesser but adequate degree, the proposed zoning amendment." Contrary to KTC's contentions, the courts have upheld limited discussions of alternatives for projects with similarly restrictive and specific requirements. (See, e.g., *San Diego Citizenry Group, supra*, 219 Cal.App.4th at p. 18.).

4. Rejection of Alternatives 3 and 7

With respect to alternative 3 (quarry only, without asphalt processing facility) and alternative 7 (alternative location for project), the trial court determined that substantial evidence supported the county's rejection of those alternatives. We agree with the court's findings for the following reasons. First, as found by the trial court, the administrative record supports the county's rejection of alternative 3 on the grounds it "did not meet the project objectives because it did not satisfy the local need for asphalt" and "traffic impacts" for the alternative "would potentially be worse than the impacts of the project [citation]." The fact that the administrative record may have supported other findings is not a basis for reversal. Similarly, we agree with the trial court that there was substantial evidence to support the county's rejection of alternative 7 on the ground that "it was not feasible for NAI to acquire an alternate site for the project [citation]." Again, the fact that the record may support other findings is not a basis for reversal.

5. Rejection of Alternatives 4 and 5

With respect to alternative 4 (quarry with temporary asphalt processing facility) and alternative 5 (project redesign relative to nighttime activities at the quarry and construction of a partial highway interchange at the project's access driveway), the trial court found there was no substantial evidence to support the county's rejections on the grounds that the alternatives were not feasible, and the matter was remanded for the county to reconsider these alternatives.

On appeal, NAI contends the county's rejection of alternative 4 can be upheld because "a reasonable person" could conclude that the alternative met less than half the project's objectives, and therefore was not a feasible alternative. We disagree. The RDEIR explained, in pertinent part, that alternative 4 "would be environmentally superior

to the project as proposed" because, of the five project objectives, the alternative met two of the objectives (maintain the quarry and expand the maximum rate of production) and partially met three other objectives (develop an asphalt facility, locate processing facilities adjacent to the quarry, and locate the project in a central location between Willits and Ukiah). Therefore, we conclude, as did the trial court, that there was no basis for the county's rejection of alternative 4 on the ground it was not feasible because it failed to meet most of the project's objectives.

We also see no merit to NAI's arguments that the administrative record contains substantial evidence to support the county's finding that alternative 4 was economically infeasible. In support of its argument, NAI asks us to consider the facts that it has endured an almost decade-long permitting process costing $2.3 million and that quarries with limited production capacity would not invest in an asphalt plant because doing so was cost-prohibitive. However, " '[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the *additional* costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.' (*Citizens of Goleta Valley v. Board of Supervisors* [(1988)] 197 Cal.App.3d [1167,] 1181, italics added.)" (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599 (*Uphold Our Heritage*).) Thus, the trial court correctly found that NAI had failed to produce any evidence showing that it was economically impractical to proceed under alternative 4.

In seeking to set aside the trial court's ruling relative to the county's rejection of alternative 5, NAI argues that each of the county's reasons, standing alone, was sufficient to support the finding of infeasibility. We disagree. The RDEIR found this alternative was "the same" as the proposed project, except that nighttime activities would only be allowed 20 nights per year to serve a major road construction and NAI would finance its fair share of at least a partial interchange at the quarry access road/Highway 101 intersection. The RDEIR further concluded this alternative met all the project objectives, but there would be no Highway 101 improvements constructed immediately. Instead, NAI would simply finance its fair share of a partial interchange, and actual construction

would be delayed to some unknown future time. Contrary to NAI's contention, the fact that alternative 5 would not produce the same level of highway improvements as the proposed project is not relevant to the alternative's feasibility absent a showing that postponing improvements to Highway 101 would render alternative 5 infeasible. Similarly, there was no evidence that alternative 5's proposed reduction in nighttime operations from 100 nights to 20 nights would be economically infeasible. NAI's reliance on the county's statement of overriding considerations as evidence supporting rejection of alternative 5 is misplaced. "The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. [Citation.] But 'differing factors come into play at each stage.' [Citation.] For the first phase—inclusion in the EIR—the standard is whether the alternative is *potentially* feasible. [Citations.] By contrast, at the second phase—the final decision on project approval—the decisionmaking body evaluates whether the alternatives are actually feasible. [Citation.] At that juncture, the decisionmakers may reject as infeasible alternatives that were identified in the EIR as potentially feasible. [Citation.]" (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981 (*California Native Plant Society*).) Consequently, " '[a] statement of overriding considerations is not a substitute for the [infeasibility] findings required by . . . section 21081, subdivision (a).' [Citations.] 'Rather, a statement of overriding considerations supplements those findings and supports an agency's determination to proceed with the project despite adverse environmental effects.' [Citation.] It 'is intended to demonstrate the balance struck by the body in weighing the "benefits of a proposed project against its unavoidable environmental risks." [Citation.]' [Citation.] 'While the . . . feasibility findings typically focus on the feasibility of specific proposed alternatives . . . , the statement of overriding considerations focuses on the larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.' [Citation.]" (*Id.* at p. 983.)

In sum, we conclude the trial court properly found the county failed to make findings regarding the feasibility of alternatives 4 and 5, as required by CEQA. Because there was no substantial evidence to support the county's findings that alternatives 4 and 5 were not feasible—i.e., "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors" (§ 21061.1; Guidelines, § 15364), the trial court did not err in remanding the matter for a reconsideration of alternatives 4 and 5.

C. Water Supply Assessment (WSA)

"Water Code section 10910 requires that, before approving any projects as defined in Water Code section 10912, the lead agency must request a WSA from the water supplier most likely to serve the project. (Wat. Code, § 10910, subd. (b).)[9] The WSA must evaluate whether the total water supplies during a 20-year period will meet the projected water demand of the proposed project. (Wat. Code, § 10910, subd. (c)(4).) [Water Code] [s]ection 10910, subdivision (c)(2) allows the public water supplier to incorporate into the WSA information from the water system's most recent urban water management plan, if the plan has taken the project demand into account. But if the plan has not taken the proposed project into account, or the public water system has no urban water management plan, the WSA for the project shall include a 'discussion' with regard to whether the public water system's total projected water supplies available during normal, single-dry, and multiple-dry water years during a 20-year projection will meet the projected water demand associated with the proposed project. (Wat. Code, § 10910, subd. (c)(3).) . . . In addition, [Water Code] section 10910 indicates that if the water supply for the proposed project relies on ground water supplies, additional specific information must be provided in the WSA. (See Wat. Code, § 10910, subd. (f).) . . . [¶] . . . [¶] After the water supplier provides the WSA to the lead agency, the law further

[9] "If the lead agency is unable to identify a potential water supplier, it must prepare the required water supply assessment in consultation with the local agency formation commission and any water supplier with a service area that overlaps or is adjacent to the project site. (Wat. Code, § 10910, subd. (b).)"

dictates that the lead agency shall include the WSA in any CEQA environmental documents, namely the EIR the lead agency prepares for the project. (Wat. Code, § 10911, subd. (b).) [Water Code] [s]ection 10911 further provides the lead agency 'may include in any environmental document an evaluation of any information included in' the WSA. (Wat. Code, § 10911, subd. (c).) Further the lead agency 'shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.' (*Ibid.*)" (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1480-1481, fns. 16-17 omitted (*California Water Impact Network*).)

The county here made the following findings relative to the WSA: "The [county] notes that a Water Supply Assessment (WSA) was prepared for the Proposed Project on January 11, 2012 and was independently peer reviewed on February 6, 2012. Both the WSA and the peer review were included in the FEIR and have been available for public review and comment since at least February of 2012. The [county] notes that recent case law, *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 523-527 [(*CREED*)], determined that lead agencies are not required to hold separate hearings to approve a WSA and a CEQA document. Accordingly, the [county] hereby adopts and approves the WSA and its peer review for the Proposed Project."

We initially note the parties do not dispute that a WSA was required to be prepared because the proposed project included "[a] proposed . . . processing plant . . . occupying more than 40 acres of land . . . ." (Wat. Code, § 10912, subd. (a)(5); see *California Water Impact Network*, *supra*, 161 Cal.App.4th at p. 1472.) KTC contends, however, that the county failed to proceed as required by CEQA because the county did not prepare the WSA or hire a consultant to prepare the WSA. Instead, the county relied on the WSA prepared by an expert consultant hired by NAI, the project's applicant. The trial court rejected this claim of error, and we agree with its conclusion. As the court

noted, "[t]he 'WSA's role in the EIR process is akin to that of other informational opinions provided by other entities concerning potential environmental impacts—such as traffic, population density or air quality.' " (*CREED*, *supra*, 196 Cal.App.4th at p. 525.) Because informational opinions, analyses, and reports "may be submitted by a project applicant and independently reviewed by [the] lead agency," we conclude the county proceeded in the manner required by CEQA when it reviewed the WSA submitted by NAI's retained expert consultant. As the courts have held, "[o]ur focus is on the adequacy of the information provided in the EIR, not the fact that it came from the applicant." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 663, fn. 6 (*San Joaquin Raptor Rescue Center*); see *California Native Plant Society*, *supra*, 177 Cal.App.4th at p. 999 ["[a]lthough the EIR must reflect the agency's independent judgment, its preparation may be delegated to agency staff, outside consultants, or even the project proponent"].)

Of significance here, Balance Hydrologics, Inc., hired by the county EIR consultant, conducted "a peer review" of the WSA, prepared by HydroFocus, Inc., a water specialist firm hired by NAI, and an additional aquifer test report titled "Potential Impacts of Increased Groundwater Pumping to Supply Proposed Harris Quarry Expansion," prepared by Luhdorff & Scalmanini, consulting engineers who were also hired by NAI. Balance Hydrologics found the WSA and aquifer test report were "concise, well written technical documents," which provided sufficient information and analysis to support the WSA's conclusion, in which Balance Hydrologics concurred, that there were sufficient groundwater resources for the proposed project except for possibly during a severely dry year when NAI might need to reduce water use for its operations. In response to comments made by KTC's counsel relative to the WSA's adequacy, the county EIR consultant stated, "Water use rates were provided by the applicant following discussions with the manufacturer of the wash plant (for plant water replacement requirements) and based on the applicant's experience for dust control and moisture conditioning of aggregate. The applicant projected a water demand of about 9.1 acre feet per year (afy). The County deemed these figures accurate and directed they be used in

preparing the EIR. The EIR preparers are currently preparing an EIR for the expansion of the Mark West Quarry in Sonoma County, which contains an existing wash plant. We compared the water demand projections for the two quarries and found that the projections for the wash plant demand were identical. Overall, the Mark West Quarry would use more water for dust control . . . . Adjusting the dust control water demand for what Harris Quarry projects, the water demand for Harris Quarry would be about 85% of the demand projected for Mark West Quarry. The applicant states that the remaining 15% difference is due to the Harris Quarry requiring less water for moisturizing the type of rock it mines. The proposed water consumption appears consistent with the water demand projected for this other quarry. . . . The water demand described in the EIR provides a solid basis for assessing impacts to groundwater resources." The county EIR consultant further stated: "[T]here is always the possibility that under prolonged severe drought year conditions . . . the [proposed project's onsite well] would not provide sufficient water . . . . To address such unexpected, but possible events, the RDEIR contains a mitigation to ensure that adequate dust control is maintained at the quarry to avoid air pollution impacts. . . . [T]his mitigation does not indicate a need for the applicant to purchase off-site water. The applicant has the option of such purchase as it has done in the past. However, as stated in the RDEIR, this water would only be needed in times of a severe drought year, and off-site water likely would be unavailable under those regional conditions . . . . [¶] . . . [Thus,] [t]here is no requirement to identify 'alternative sources of water' because if there is inadequate water available from on-site wells or purchasing from off-site sources, this project would need to be reduced or terminate production. This is quite different from a residential development where if water is not available, additional sources may need to be developed (since it is not feasible to 'shut down' a residential development). . . . In the case of a severe drought year, the project like most residents and businesses would be affected, and it is possible that production would need to be reduced or terminated for the remainder of the drought as required in Mitigation Measure 4.8-D.1." Thus, as the trial court determined, and a view we share, the RDEIR and the WSA accurately described the availability of water to

serve the project availability and mitigation in times of prolonged drought. No additional studies were needed to explore alternative sources of water, since the project will be curtailed if there is inadequate water. KTC's other arguments regarding the WSA are similarly unavailing. Specifically, we agree with the trial court that the county's procedure in adopting the WSA did not deprive the public of the opportunity " 'to weigh in on the impacts' " of water consumption by the project. (*CREED, supra,* 196 Cal.App.4th at p. 525 [court found no prejudicial error based on petitioner's argument that decision maker erred by failing to review the WSA early in the CEQA process].) As the court here stated, "while it may have been preferable to include the WSA with the RDEIR, the [county] proceeded in the manner required by law when it approved the WSA in conjunction with the final EIR" for the following reasons: (1) there is no requirement that a WSA be separately noticed for hearing or public comment; (2) the county was merely required to include the WSA in the EIR; and (3) early in the environmental review process the RDEIR disclosed information to the public regarding the quarry's existing water demand, supply, and storage, and the proposed demand, supply, and storage requirements of the project, and the public had access to the WSA in February 2012, at least two months prior to the county's certification of the final EIR.

Even assuming merit to KTC's arguments, KTC has failed, as required, to establish prejudicial error. "Although an agency's failure to disclose information called for by CEQA may be prejudicial 'regardless of whether a different outcome would have resulted if the public agency had complied' with the law (§ 21005, subd. (a)), under CEQA 'there is no presumption that error is prejudicial (§ 21005, subd. (b)).' " (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463.) " 'A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' [Citation.]" (*Ibid.*) In this case, both the RDEIR and the WSA provided analyses of the water supply for the proposed project, which were "sufficiently detailed to allow reasoned analysis . . . . It was not necessary that the analysis be so exhaustively detailed as to

include every conceivable study or permutation of the data," such as the use of water for a septic system or water demand to implement mitigation measures such as watering plants. (*San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at p. 666, citing Guidelines, § 15151 [information need not be exhaustive], and *Association of Irritated Residents v. County of Madera, supra*, 107 Cal.App.4th at p. 1396 ["CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project"].)

D. EIR's Analysis of Traffic and Air Quality Impacts

1. Analysis of Daily Emissions of Various Air Pollutants

KTC argues the air quality impacts analysis, included in the EIR's appendix D, was inadequate because it did not analyze *maximum daily* emissions for pollutants attributable to the proposed project. According to KTC, the EIR's daily emissions estimates were based on 247 total daily vehicle trips in July, but the transportation analysis reveals the number of truck trips that could occur under peak October conditions is 412 daily truck trips; thus, *maximum* daily emissions appear to be nearly twice the amount disclosed and evaluated in the EIR. Accordingly, KTC asserts the EIR must be recirculated to consider the air quality implications of *maximum* permitted production. We conclude KTC has not preserved this issue for our review, and further, KTC has not demonstrated prejudicial error requiring reversal.

Initially, we note KTC did not draw the attention of the county to the EIR's purported failure to use October trips instead of July trips in appendix D. On appeal, KTC now asks us to consider its counsel letter dated July 20, 2011, and pages 1567-1568 and 15606-15607 in the administrative record in support of its contention. However, neither the letter nor the cited pages of the administrative record provide notice of the EIR's failure to use October trips instead of July trips in appendix D. Because KTC failed to provide notice of its concerns regarding appendix D during the administrative process, it cannot now complain that the issue was not specifically addressed. Under these circumstances, we find the county's "general response to [KTC's] general concern was adequate. (*Eureka Citizens for Responsible Government v. City of Eureka* (2007)

147 Cal.App.4th 357, 378 . . . ['where a general comment is made, a general response is sufficient'].)" (*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1056, fn. 3.)

In all events, we agree with the trial court that KTC has not demonstrated that the county abused its discretion by considering the impact of greenhouse gas (GHG) emissions based on average daily truck trips in July as opposed to peak truck trips in October or maximum truck trips. Appendix D provides calculations of average daily GHG emissions from project-related vehicle travel "[b]ased on number of average daily trips in July." The RDEIR explained the reason for the use of average daily truck trips in July in the following manner: "It is expected that these trips will slightly overestimate actual average daily project trips since projected July production rates of aggregate and asphalt are greater than the overall average monthly production rates." Despite KTC's argument to the contrary, the county was "within its discretion to use average daily trips because an 'average,' by definition, takes into account both the higher emissions which can be expected during peak production periods and the decreased emissions during slower periods." Moreover, given the fact that the need for quarry rock and asphalt fluctuates during the year, appendix D's additional calculations of the impact of GHG emissions based on annual production levels and truck capacities provided sufficient data for a reasoned analysis of the impact of project-related vehicle travel on air quality. (See *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th at pp. 667-668 [appellate court found EIR contained sufficient air quality analysis that was based on the mine's maximum production of 550,000 tons *per annum*," italics added].) Accordingly, we reject KTC's claim of error relative to the analysis of GHG emissions.

2. County's Failure to Adopt Conditions of Approval Setting Daily Limits on Asphalt Production

KTC also asserts the EIR cannot stand because the county failed to adopt conditions of approval setting *daily* limits on asphalt production. According to KTC, the EIR was required to evaluate, and the county was required to include as a specified condition of approval of the use permit, either a total daily or annual production limit of

the proposed asphalt plant. A condition limiting production of the proposed asphalt plant was required, according to KTC, because the EIR and use permit allow for "100 nights of night time operations per year and the [asphalt processing] plant is capable of producing more than 3,000 tons of asphalt per day." We see no merit to the claim of error.

KTC's argument ignores the fact that the RDEIR specifically states: "The applicant is limited to asphalt production of 300 tons/hour with a total maximum annual output of 150,000 tons/year. The plant scales shall be managed by a certified weigh master. Submittal of the annual asphalt concrete tonnage produced will be submitted to the County Planning Department annually, on July 1st of each year. [ ] *This will become a condition of approval for the project*." (Italics added.) Thus, the RDEIR placed limits on the hourly and annual production of the asphalt plant. Moreover, we see no prejudice in the county's failure to include a maximum *daily* limit on production in either the EIR or the use permit for the asphalt plant. In addressing a comment regarding the "oversizing" of the asphalt plant relative to the "maximum output of 150,000 tons/year," NAI responded: "It is assumed that this comment is referencing the ability to run the [asphalt] plant at 300 tons/hour every day of the year which would far exceed the annual 150,000 [t]on annual output. Although the plant output capacity can provide this output, this output is theoretical and based on peak plant performance. It is much more likely that the actual maximum output of a '300 ton/hour' plant would only produce 250 tons/hour. More importantly, construction demands fluctuate significantly throughout the year. That being said, the size of the plant was selected to meet the peak demand during the peak season. This would occur infrequently. During the bulk of the year, this plant would operate at much lower output levels, and significantly less during the off-peak season. This is evident based on the requested overall annual production limit cited in the project description. Limiting the plant output to meet an average production rate spread over the entire year would not meet the goals of the project, as [NAI] would then not be able to meet the peak construction demand periods, when asphalt is most needed." Given NAI's explanation of the asphalt plant's production, the county reasonably found no maximum limits should be set because there was a need for

flexibility in the maximum *daily* asphalt production, as well as *daily* aggregate production, to accommodate seasonal changes when the quarry "would be expected to operate overnight or on weekends due to an urgent need for [asphalt] or aggregate, usually due to a natural disaster, or to satisfy the need for [asphalt] or aggregate for overnight road work as requested by Caltrans or other government [agencies]." Consequently, KTC's claim of error relative to limits on asphalt production fails.

E. Mitigation Measures

KTC also argues the county violated CEQA by its adoption and rejection of certain mitigation measures relative to the project's impacts on traffic safety, GHG emissions, and nitrogen oxide (NOx) emissions. We address each of the contentions, in turn, below.

1. Traffic Safety Impacts

KTC challenges the traffic impact analysis on the sole ground that traffic mitigation measure 4.4-B.2 is inadequate because it "constitutes impermissible deferral of mitigation," does not contain "objective criteria," fails to commit either the county or NAI to mitigation of any "unsafe operation conditions" that might occur in the future, and relies on NAI's fair share payments that do not comply with CEQA. We find no merit to KTC's arguments.

As the trial court explained, "[t]he EIR properly recognizes that over time, adverse traffic impacts could develop on Highway 101 as a result of the project. As traffic safety standards evolve and change, Cal[t]rans and the Mendocino County Department of Transportation need the flexibility to ensure that mitigation measures meet then-applicable safety standards. Many cases hold that requiring the applicant to consult with the responsible [agencies] to determine future mitigation based on site conditions is legally appropriate (*[s]ee, e.g., Sacramento Old City Assn[.] v. City Council* (1991) 229 [Cal.App.3d] 1011, 1030; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 [Cal.App.4th] 1059, 1065). Here, the EIR commits the County and Cal[t]rans to reviewing the biennial traffic monitoring conducted at NAI's expense and addressing any traffic issues which may arise. [KTC's] speculation that Cal[t]rans and the Department

of Transportation may not agree on what constitutes 'unsafe traffic operations' does not render the measure . . . legally unenforceable. Specific mitigation measures have been suggested. If the identified measures do not resolve the traffic issues, the agencies have committed to require construction of a highway interchange within three years, with NAI paying its fair share of this improvement [citation]."

The trial court also explained its reasons for rejecting KTC's argument that the EIR's requirement that "NAI pay its fair share of the highway interchange is illusory because there is no guarantee the interchange will be built given that other funding sources have not been identified." In so concluding, the trial court stated in pertinent part: "In *Save Our Peninsula Comm[ittee] v. Monterey County Bd. of Supervisors* (2001) 87 [Cal.App.4th] 99, 140, the court held that '. . . a commitment to pay fees without any evidence that mitigation will actually occur is inadequate.' However, where, as in this case, improvements to specific road segments had been planned, the court held that '. . . the collection of fees was not an idle act.' (*Ibid[.]*) Similarly, in *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 [Cal.App.4th] 807, 819 [(*Friends of Lagoon Valley*)], the court found legally sufficient a mitigation measure which required the applicant to '. . . contribute money to specific mitigation measures, which are described in the EIR addendum' where 'the City and Cal[t]rans will be cooperating to prepare a Project Study Report for the freeway ramp improvements described in the EIR.' [In fact,] [t]he [*Friends of Lagoon Valley*] court rejected the same challenge made by [KTC] in this case, namely, that the fair share fee payments were inadequate because there is no guarantee that the improvements would be constructed in light of the financial situation of the State or local government ([*id*.] at [pp.] 818-819)." (Italics added.) *Friends of Lagoon Valley* applies with full force here, and accordingly, we conclude that mitigation measure 4.4-B.2 is not illusory and passes muster under CEQA.

2. GHG Emissions

At the time the project was undergoing environmental review, neither Mendocino County nor the Mendocino County Air Quality Management District (MCAQMD) had adopted "a Greenhouse Gas Reduction Plan or Strategy." Consequently, the drafters of

the EIR followed the recommendation of the MCAQMD and prepared the EIR's air quality analysis using the Bay Area Air Quality Management District's (BAAQMD) existing numerical threshold of significance for annual GHG emissions (1,100 metric tons of carbon dioxide equivalents ($MTCO_2E$)). KTC now argues the air quality analysis must be reconsidered by the county because the EIR used a numerical threshold of significance that had been recommended but not adopted by the MCAQMD. However, as explained by our Supreme Court, Guidelines section 15064.4, which governs GHG emissions analysis, "was not intended to closely restrict agency discretion in choosing a method for assessing greenhouse gas emissions, but rather 'to assist lead agencies' in investigating and disclosing 'all that they reasonably can' regarding a project's greenhouse gas emissions impacts." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 221.) Given that the MCAQMD had not adopted its own numerical threshold of significance for assessing GHG emissions, the county acted well within its discretion in relying on the EIR's air quality analysis that used the BAAQMD's existing numerical threshold of significance for annual GHG emissions. (See *id.* at p. 230 [citing to the BAAQMD's 2010 proposed threshold of 1,100 $MTCO_2E$ in annual GHG emissions as one alternative that a lead agency might use in determining CEQA significance for new land use projects].)

KTC also argues the county improperly relied on the MCAQMD recommendation for the numerical threshold of significance for GHG emissions because the October 7, 2010 memorandum setting forth the threshold standard was never made available to the public and is not included in the administrative record. However, in the RDEIR and in response to written comments, the county EIR consultant indicated the October 7, 2010 memorandum, and the threshold standard, were available for public view and accessible through a URL to specific Web site addresses. Thus, KTC's claim of error in this regard fails.

KTC also challenges the GHG mitigation measure 4.6-1.1, arguing that it fails to identify a performance standard and improperly delegates the issue of performance standards to NAI. While KTC acknowledges the mitigation measure provides a list of

various actions aimed at the reduction of GHG emissions, it argues the EIR does not discuss how the mitigation measure will reduce GHG emissions below the thresholds in the EIR. According to KTC, while the EIR relies on this mitigation measure to reduce GHG emissions by at least 80 $MTCO_2E$ per year, it is impossible to know, from reviewing the EIR, whether the mitigation measure will result in the stated reduction. Finally, KTC contends the EIR does not explain how the mitigation measure meets Assembly Bill No. 32's GHG reduction goals. Given the flaws in mitigation measure 4.6-1.1, KTC argues the EIR's conclusion that the project's GHG impacts will be reduced to a less-than-significant level violates CEQA. We find KTC's arguments unavailing.

The EIR in this case "disclosed 1) the current levels of indirect emissions for the existing quarry (baseline); 2) the change in emissions based on the proposed project; and 3) whether the emissions from the project would exceed the threshold of significance . . . . Although the new fuel standards were expected to take the CO2 equivalents below the threshold of significance, mitigation measure [4.6-1.1] nevertheless requires NAI to adopt all feasible measures required by MCAQMD following an energy audit. . . . In this case, MCAQMD approved the specific actions contained in mitigation measure [4.6-1.1] . . . , and NAI is bound to comply with the approved mitigation measure." Relevant to the issue of deferral, "it is generally improper" for the lead agency "to defer the formulation of mitigation measures until after a project is approved [citation]. However, 'when a [lead] agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, so long as it commits to mitigating the significant impacts of the project. . . . [T]he details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study [citation]. '[W]here practical considerations prohibit devising such measures early in the planning process . . . , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval [citation]." We conclude

that in this case the county complied with its obligations under CEQA regarding consideration of mitigation measures. As the trial court explained, "the EIR discussed a reduction in GHG emissions of at least 80 [$MTCO_2E$] per year (AR 1170-1171, 1845). Mitigation measure [4.6-1.1] requires NAI to reduce GHGs by taking the steps described in [Guidelines, section 15126.4, subdivision (c)], . . . which regulates mitigation measures for GHGs, and Appendix F thereto: using energy efficient lighting and appliances; fluorescent lighting; green building; increasing new building efficiency by 20%; using clean, alternative fuels when available; and installing solar panels (AR 1170-1171). NAI is further required to conduct an energy audit and follow recommendations of MCAQMD [regarding] reduction of GHGs (AR 1170-1171, 1845). A mitigation measure which expressly adopts the 'best practices' identified in the CEQA Guideline[s] complies with CEQA."

3. NOx Emissions Impacts

Relying on the RDEIR's statement that NOx emissions would be a "significant and unavoidable Project impact," KTC argues the county violated CEQA because it failed to adopt a feasible mitigation, proposed by MCAQMD, to reduce production at the asphalt plant by approximately 50 percent (80,000 tons) for the first 6-7 years of the 30-year use permit. In support of this argument, KTC relies on a comment made by a member of the MCAQMD staff during that agency's evaluation of an administrative draft of the RDEIR. KTC then argues the RDEIR's rejection of the proposed mitigation measure was incorrect for the following reasons: (1) a feasible mitigation measure must be adopted even if it does not reduce a significant impact to a less-than-significant impact so long as the magnitude of the impact is reduced, and the RDEIR does not demonstrate that reduction of asphalt production for the first 6-7 years of a 30-year use permit is infeasible; (2) this temporary reduction is properly viewed as a mitigation measure, rather than a project alternative, because the project objectives included the addition of an asphalt facility but did not provide for production amounts of asphalt; and (3) the county failed, as required, to reject this proposed mitigation on the grounds of infeasibility as an alternative or a mitigation measure. However, in addressing the adverse environmental

impact of NOx emissions, the RDEIR appropriately considered the project's description that the proposed asphalt processing facility would produce a maximum of 150,000 tons of asphalt per year. The RDEIR further stated that a 50-percent reduction in the maximum allowable annual production of asphalt (allowing 75,000 tons of asphalt, not 150,000, a year) for approximately 20 percent of the term (6-7 years) over the life of the 30-year use permit was a significant change in the project such that it was proper to consider the 50-percent reduction as a project alternative rather than a mitigation measure. While the RDEIR did not separately consider the described reduction change as a project alternative, the RDEIR did, in fact, consider several other alternatives that would "reduce allowable production and therefore indirect [NOx] emissions from hauling vehicles." CEQA clearly states: "An EIR need not consider every conceivable alternative to a project . . . ." (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163.) In all events, KTC has the burden of demonstrating that the alternatives that were evaluated were "manifestly unreasonable and that they [did] not contribute to a reasonable range of alternatives." (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.) KTC has failed to do so.

F. KTC's Other Challenges

In seeking to set aside the county's decisions, KTC also argues: (1) the trial court erred in granting respondents' joint motion to strike portions of KTC's first amended petition; (2) the board of supervisors and the planning commission were misinformed regarding their discretionary authority to consider certain matters; and (3) there is insufficient evidence to support certain EIR findings.

1. Order Granting Respondents' Joint Motion to Strike Portions of KTC's First Amended Petition

a. Relevant Facts

On May 11, 2012, KTC filed its petition for writ of mandate. In that document, KTC challenged the county's April 10, 2012 certification of the EIR for the project and approval of the MPCD. Thereafter, KTC filed a supplemental petition to challenge the county's June 19, 2012 approvals of the use permits and reclamation plan for the quarry.

The parties resolved their disputes regarding the completeness of the administrative record, with the county lodging a third amended administrative record on March 12, 2013. KTC then filed a motion for leave to file a first amended petition, and the trial court granted the relief requested. KTC's first amended petition was filed on March 29, 2013.

Subsequently, respondents, the county and NAI (hereinafter referred to collectively as NAI), moved to strike from KTC's first amended petition the following allegation: "[Paragraph] 110(A). The Final EIR stated that the County made all materials referenced in the EIR available to the public for review during the comment period. As a result of the discovery process and the discovery referee's Order/Report served on February 28, 2013, Petitioner learned that the County would not include certain referenced documents in the public (sic), based on the County's representation under oath that not all documents had been made available to the Public. By failing to make all documents referenced in the EIR available during the comment period, the County failed to proceed in a manner required by law under CEQA and the CEQA Guidelines." NAI argued that while the quoted paragraph 110(A) and all references to its contents were added as a "General Allegation," and incorporated by reference into the first cause of action, the allegation improperly attempted to assert a new, separate, and distinct CEQA claim which was time-barred pursuant to section 21167 and should be stricken. NAI argued section 21167 allows for a 30-day statute of limitations for all actions and proceedings alleging violations of CEQA, and "[n]o 'tolling' or 'discovery rule' revives a CEQA claim" subject to the 30-day statute of limitations.

KTC opposed the motion to strike, arguing that the new allegation related to a previously alleged claim that the county had failed to proceed in the manner required by CEQA. KTC pointed to paragraph 137 of its original petition, which alleged that the county had failed to comply with CEQA's procedural requirements regarding the adequacy of the comment period and public notice, noting a specific reference to section 21092, that addressed the availability of documents referenced in an EIR. KTC conceded the statute of limitations set forth in section 21167, relied upon in support of the motion

to strike, could potentially bar amended pleadings; however, KTC argued that its amended petition did not add a new cause of action, but only "added facts and a new theory supporting previously alleged CEQA violations included in the original" petition. Lastly, KTC argued the CEQA statute of limitations was strict but not absolute and the delayed discovery rule or the relation back doctrine should be applied to overcome any potential statutory time-bar.

The trial court granted the motion to strike, concluding that neither the delayed discovery rule nor the relation back doctrine allowed the proposed amendment after the CEQA statute of limitations had run. In rejecting the delayed discovery rule, the trial court stated: "While the court is sympathetic to [KTC's] 'delayed discovery' argument, *Stockton Citizens for Sensible Planning v. City of Stockton* [(2010) 48 Cal.4th 481 (*Stockton Citizens*)] appears to support [NAI's] position. In *Stockton Citizens*, the California Supreme Court held that: [¶] 'Nothing in [*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn*. (1986) 42 Cal.3d 929 (*Concerned Citizens of Costa Mesa*)] suggested, as a general principle, that flaws in a project approval process should delay the limitations period normally applicable when, as in the instant case, *the agency gave notice of the very approval the plaintiffs seek to challenge*. We find no basis for so holding here.' (*Stockton Citizens*, *supra*, 48 [Cal.4th] at [p.] 511, emphasis in original[.]) [¶] Similarly, in this case, [the county's] Notice of Determination put [KTC] on notice that any legal challenge to Resolution 12-065 must be filed within the very short 30 day limitation period established by [section] 21167(c). Unlike [an] unannounced change or variance to previously approved projects which were the basis for extending time to file suit in [*Endangered Habitats League, Inc. v. State Water Resources Control Bd*. (1997) 63 Cal.App.4th 227 and *Concerned Citizens of Costa Mesa, supra*, 42 Cal.3d 929], in this case [KTC] has simply alleged it was unaware of a defect that allegedly occurred during the initial review process. Unlike the cases in which petitioners did not have actual or constructive notice that would have allowed them to file their CEQA claims within the statute of limitations, in this case a close comparison of the documents cited in the EIR and those made available to the public could have potentially disclosed the problem

[KTC] belatedly seeks to address. Taken to its logical extreme, [KTC's] argument would authorize CEQA petitioners to routinely amend to add new legal theories 'discovered' after the statute of limitations has run. Clearly this result would be contrary to the Supreme Court's decision in *Stockton Citizens*."

In rejecting the relation back doctrine, the trial court stated: "The petition filed on May 11, 2012 contains an allegation in paragraph 137 that [the county] failed to proceed in the manner required by law in approving Resolution 12-065 ([§] 21092). [KTC] asserted . . . that the [c]ounty's alleged failure to make all documents available for public review is nothing more than an additional factual allegation supporting [KTC's] timely filed claim that [the county] failed to proceed in the manner required by law. However: [¶] 'The policy behind statutes of limitations is to put defendants on notice of the need to defend against a claim in time to prepare a fair defense on the merits. The policy is satisfied when recovery under an amended complaint is sought *on the same basic set of facts as the original pleading*.'[10] ([*Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670, 1677, italics added.]) [¶] In this case, unlike *Garrison*, [KTC] is attempting to add a legal theory based on facts which were not alleged in the original petition approximately ten months after the statute of limitations expired. Allowing [KTC] to add a new legal theory long after the statute has run would circumvent the policy of putting [NAI] on notice in time to prepare a fair defense on the merits [citation]. For this reason, 'relation back' does not apply to the allegations in paragraph 110(A)."

b. Analysis

The discrete issue before us is whether the trial court abused its discretion in determining that KTC could not rely on the delayed discovery or relation back exceptions to the statute of limitations. We conclude the trial court acted well within its discretion in

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[10] At this point in its decision, the trial court added the following footnote: "In *Garrison* . . . , an individual petitioner was allowed to amend his original pleading after the statute of limitations had run to add an organizational petitioner. The Court of Appeal found that the amendment was one of form, not substance, and that it 'related back' to the filing of the original petition."

finding that neither exception was appropriate in this case because KTC had both the ability and the means to ascertain the claimed defect before filing its initial petition. *Stockton Citizens*, *supra*, 48 Cal.4th at pp. 509-511, and *Garrison v. Board of Directors*, *supra*, 36 Cal.App.4th at p. 1677, cited by KTC, are factually distinguishable from the circumstances in this case, and neither case supports KTC's arguments. We are not persuaded by KTC's conclusory assertion that if the court's ruling is upheld a party will be forced in every case to file a Public Records Act request to obtain the entire administrative record before filing a petition to verify that statements in an FEIR are accurate.

2. Discretionary Authority of the Board of Supervisors and Planning Commission

Relying on isolated portions of the administrative record, KTC contends that during the proceedings to consider the EIR and the approval of the conditional use permit, both the board of supervisors (hereinafter, board) and the planning commission were improperly advised, by county counsel and staff members, of the scope of the respective bodies' discretionary authority and obligations to adopt mitigation measures or alternatives before certifying the EIR. However, a fair reading of the administrative record, including portions of the proceedings *that are not cited by KTC*, demonstrates that the board and the planning commission were appropriately informed and aware of their discretionary authority at the various stages of the proceedings under review.

The project required hearings before two agencies: the board and the planning commission. In March and April 2012, the board considered and certified the project EIR. (Mendocino County Code, §§ 20.212.025, 20.212.030.) KTC filed a petition challenging the certification of the project EIR on May 11, 2012. Thereafter, on May 17, 2012, the planning commission considered and approved Northern Aggregates, Inc.'s application for a conditional use permit and a reclamation plan for the quarry. (Mendocino County Code, § 20.196.010.) In June 2012, the board denied KTC's administrative appeal of the planning commission's decisions approving the conditional use permit and reclamation plan for the quarry.

During the hearings on the EIR, and before formally adopting a resolution certifying the EIR, the board added the following two "Whereas" clauses to its resolution: (1) " 'Whereas, the adoption of this Resolution will in no way impair or interfere with the original jurisdiction of the Planning Commission to review, approve, or reject the Applicant's application for a 30-year Conditional Use Permit and Reclamation Plan. The Board of Supervisors acknowledges that the Planning Commission may approve, conditionally approve, deny, or take any other action allowed by law on the Conditional Use Permit and Reclamation Plan' "; and (2) " 'Whereas, adoption of this Resolution will not prejudice the Board's future action with respect to the Applicant's application for a 30-year Conditional Use Permit and Reclamation Plan in the event of an appeal from the Planning Commission's actions relative to the Applicant's application. The Board specifically preserves its ability to take any action allowed by law or no action on appeal.' " In recommending the "Whereas" clauses, county counsel properly informed the board that its certification of the EIR would not preclude either the planning commission or the board, during the conditional use permit approval stage, from further requiring Northern Aggregates, Inc. to mitigate certain environmental impacts by complying with additional conditions that complemented the mitigating measures included in the EIR. Thus, for example, counsel informed the board members that whether Northern Aggregates, Inc. would be required to comply, as a condition of approval of the conditional use permit, with "suggest[ed]" recommendations made by qualified engineers conducting an energy audit, was an issue to be considered in the first instance by the planning commission and then by the board on an appeal. To which Supervisor Hamburg responded that he would allow the planning commission to grapple with the language to be used in any appropriate condition to be imposed as part of the conditional use permit approval.

When the matter appeared before the planning commission to consider Northern Aggregates, Inc.'s application for a conditional use permit, county counsel appropriately informed the planning commission of its discretionary authority in the following manner: "The item before you today is the use permit extension and modification. We know that

the environmental documentation, as well as the rezoning, were actions taken by the Board. The environmental document was certified and the mitigation measures set out there are put in place. [¶] So the purpose of the meeting today is to really focus on the project itself, which includes the expansion of the mining capacity, as well as the addition of the asphalt processing facility. [¶] In the Staff Report, there are a number of conditions. A lot of those are actually mitigation measures that are brought forward out of the environmental document and put into the Staff Report as conditions of approval. In fact, the Conditions 6 through 55 are actually mitigation measures that were set by the environmental certification. [¶] So when you review this today, we can't really modify those. There may be some clarifications necessary, if that's appropriate. You can, of course, add conditions. There are some conditions that we put in the Staff Report as suggested conditions which are in addition to the mitigation measures, and you can add any further conditions you believe are appropriate."

When the matter later appeared again before the board to consider KTC's appeal of the grant of the conditional use permit, the planning commission staff members properly informed the board of its discretionary authority at that stage of the proceedings in the following manner: "The appeal before you today is an appeal of the action by the Planning Commission to conditionally approve the use permit and reclamation plan renewal for the Harris Quarry mining operation. That incorporated the expansion of the allowed mining extraction up to 200,000 cubic yards per year, and that's over a 30-year period. It added a permanent asphalt processing facility [allowing for the production of 150,000 tons of asphalt per year] and allowed nighttime operations up to 100 nights a year, and that was basically what the Planning Commission approved. [¶] . . . [¶] The Planning Commission's action on May 17th basically did approve the expanded operations and the addition of the permanent asphalt processing facility. The approval incorporated 70 conditions. [Fifty] of those conditions were the mitigation measures that were approved as a part of the certification of the environmental document. [¶] The Planning Commission, in their review and action, also reviewed the additional proposed mitigations that the appellants have incorporated into their appeal before you. And in

that review, the Planning Commission felt that all of those issues had been addressed adequately through the environmental document that had previously been approved." In response to board members' questions regarding their ability to make changes to the certified EIR, the planning commission staff properly informed the board that "more mitigations can be added that are more restrictive but not less restrictive. The EIR and the [fifty] conditions that were adopted as part of the . . . Mitigation and Monitoring Program are sort of locked in because of that. Those can't really be changed so much. [¶] The Planning Commission added stuff that was really already a part of the project; they sort of wanted to clarify or make it clear in the condition language of what the project . . . allowed or didn't allow."

County counsel also informed the board of its discretionary authority during the appellate proceeding challenging the conditional use permit in the following manner: "[A]ny modifications or deletions to the EIR would require further environmental investigation and, under CEQA guidelines, they may require an additional environment document. . . . [¶] And you can move forward with an examination of the supplemental, quote/unquote, mitigation measures, but the EIR document is now being challenged in Superior Court. So while there's case law that allows a public agency to make modifications or deletions, there are requirements of findings to be made and subsequent investigation and subsequent documentation of the necessity for the changes. [¶] . . . [¶] . . . [U]nder the guidelines and the case law interpreting changes and modifications to mitigation measures, the Board still has to have a legitimate reason for making the change, the changes have to be supported by substantial evidence. [¶] You're changing what was originally your best shot at looking at the conditions and the project. And so there needs to be an adequate record and then, depending on what the change is, some justification for that change. [¶] You have . . . some discretion here, but the discretion always has to be supported by a reason and evidence in the record. And . . . the project was adopted with some overriding considerations. So you also want to be mindful of not undermining those without good reason."

Later in the appellate proceeding, a planning commission staff member again informed the board that: "[T]he EIR has been adopted by the Board, it was certified, including the Mitigation and Monitoring Plan. So those decisions have been made and they aren't before you today, but you do have the ability to add conditions that could be similar to mitigation. . . . [C]onditions are like mitigation measures . . . . [¶] So you can add additional conditions, if you believe that that's appropriate, without . . . going back and saying that it's any part of the environmental document process that's already been done. [¶] . . . [¶] So today, for the purposes of reviewing the use permit action, if you want to add any conditions in whatever action you may take, that's perfectly appropriate, as long as they're not in conflict with what was set out in the environmental document."

Thus, we conclude the bifurcation of the approvals in this case—the EIR and the conditional use permit—did not result in a prejudicial abuse of discretion by the board or the planning commission. Having examined the administrative record in great detail, we are confident neither the board nor the planning commission were misled regarding their discretion in resolving the issues relative to the EIR and the conditional use permit approval. At the time the board initially considered certification of the EIR, there was no deferral of mitigation measures or alternatives to the conditional use permit approval stage, as KTC suggests. The record shows that the board deferred to the conditional use permit stage only those matters that were appropriate for consideration as conditions of the conditional use permit by the planning commission in the first instance or on appeal to the board. During the appeal of the approval of the conditional use permit, the board unanimously modified two conditions and added a condition. We also see no merit to KTC's additional argument that the board improperly refused to consider public comments and recommendations regarding mitigation measures addressing environmental issues at the time of the appeal of the approval of the conditional use permit. The record shows the public comments and recommendations, which were directed at mitigation measures and alternatives, had already been considered as part of the certification of the EIR.

3. Sufficiency of Evidence to Support Certain EIR Assumptions, Findings and Conclusions

Relying on isolated portions of the administrative record, KTC makes additional arguments challenging the sufficiency of the evidence to support certain EIR findings, assumptions, or conclusions, relative to the analyses of vehicle miles traveled (VMT) and GHG emissions. However, " ' "[a]s with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for [an] appellant's failure to carry his burden. [Citation.]" ' (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 . . . .)." (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330 (*South County Citizens for Smart Growth*).) In its appellate briefs, KTC "invites us to disregard this limitation on our review by weighing competing technical data and arguments. [KTC] relies on evidence in the record that [KTC] claims supports conclusions contrary to those reached by the [county]. The question, however, is not whether there is substantial evidence to support [KTC's] position; the question is only whether there is substantial evidence to support the [county's] conclusion." (*Laurel Heights, supra*, 47 Cal.3d at p. 407.*)* While we are tasked with independently reviewing the administrative record, we "are not required to cull through [a 20,000-page] administrative record to see if there is support" for KTC's positions. (*South County Citizens for Smart Growth*, *supra*, at p. 332.) The error in KTC's opening brief is not cured by respondents' attempt to respond to KTC's opening brief citations, or KTC's responses in its reply brief. Consequently, we deem KTC's arguments forfeited.

G. Conclusion

As it has often been said, "[o]ur role here is not to decide whether the [county] acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision." (*Eureka Citizens for Responsible Government v. City of Eureka*,

supra, 147 Cal.App.4th at p. 378.) In this case, we find the EIR was sufficient for its required purposes, except to the extent noted as to the consideration of two alternatives to the project. (*Ibid*.)

DISPOSITION

The judgment and peremptory writ of mandate issued by the trial court are affirmed. The parties shall bear their own costs on appeal.

_____
Jenkins, J.

We concur:

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Pollak, Acting P. J.*

_____
Ross, J.†

* On Monday, November 26, 2018, the Commission on Judicial Appointments confirmed the Governor's appointment of Justice Pollak as the Presiding Justice of Division Four of this court.

† Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.