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County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By ________, Deputy
Raul Sanchez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FRIENDS OF THE SANTA CLARA RIVER, SCOPE (SANTA CLARITA ORGANIZATION FOR PLANNING AND THE ENVIRONMENT),
PETITIONERS,

v.

COUNTY OF LOS ANGELES, LOS ANGELES COUNTY BOARD OF SUPERVISORS, DOES 1 TO 10,
RESPONDENTS,

AND

NEWHALL LAND AND FARMING COMPANY, INC., DOES 11 TO 20,
REAL PARTIES IN INTEREST.

CASE NO. BS170568

Assigned for all purposes to
Hon. Richard L. Fruin

PETITIONERS' OPENING BRIEF

Original Petition Filed: August 17, 2017

Trial Date: August 8, 2018
Time: 1:30 PM
Department: 15

BY FAX

05/31/2018

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I. Introduction

Newhall Ranch, possibly the largest housing project ever approved in California, will have enormous effects on the environment. It will contain over 20,000 housing units on a 12,000-acre site in the Santa Clarita Valley, and will incorporate commercial uses, schools, fire stations, a public library, and so on. It will be, in essence, a new city. The development will be composed of several interconnected "villages," the first two of which—Landmark Village and Mission Village—are the subject of the present lawsuit. Petitioners were among groups of environmental organizations that previously challenged the environmental review and land-use approvals for these two projects. Those successful suits resulted in writs of mandate requiring the County of Los Angeles to address deficiencies in the analysis of greenhouse-gas impacts from the projects.

This action challenges what the County calls the "Recirculated Analysis" for the Landmark Village and Mission Village projects, which the County prepared in response to orders of the California Supreme Court, the Court of Appeal, and the Superior Court, to bring the prior environmental analysis into compliance with the California Environmental Quality Act (**CEQA**). The Recirculated Analysis, however, falls short. It does not comply with CEQA's mandate to analyze and mitigate greenhouse-gas impacts of the two projects. And, the Recirculated Analysis should have included supplemental review of the projects' water supply impacts because new information and changed circumstances since the time of the prior environmental impact reports (**EIRs**) show the projects will have significant effects on water supply that were not previously analyzed. Finally, the County improperly failed to require new Water Supply Assessments for the projects, and in so doing, violated both CEQA and the Water Code.

For these reasons, Petitioners request that Court order the County to vacate its certification of the Landmark Village and Mission Village Recirculated Analysis and EIRs, and set aside the land-use approvals for the two projects.

II. Statement of Facts

A. Parties

Petitioners, public-interest organizations Friends of the Santa Clara River and Santa Clarita Organization for Planning and the Environment (collectively, **SCOPE**) bring this lawsuit against Respondent County of Los Angeles and the Los Angeles County Board of Supervisors (collectively, **County**) and Real Party in Interest, Newhall Land and Farming Company, Inc. (**Newhall**). Petitioners are nonprofit public-interest organizations whose missions focus on protecting the environment. The County is the lead agency for

purposes of Public Resources Code § 21067,[1] with principal responsibility for conducting environmental review for and approving the projects at issue in this case. Newhall is the applicant for the entitlements at issue.

B. Newhall Ranch and the Specific Plan

Newhall Ranch is a large, master-planned development to be located in the northwestern portion of Los Angeles County, near the City of Santa Clarita. Approved in 2003, the Newhall Ranch Specific Plan covers approximately 12,000 acres (SR 39447), and allows the construction of 21,308 dwelling units, 629 acres of mixed-use development, 67 acres of commercial uses, and 249 acres of business park. (LV 120894.)[2]

C. Department of Fish and Wildlife Project and Litigation

The Newhall Ranch project involves a Resource Management and Development Plan and a Spineflower Conservation Plan, covering certain aspects of biological resource management and development for the project. (SR 1568.) Those two plans constitute a CEQA project (the **RMDP/SCP Project**) for which the California Department of Fish and Wildlife (**CDFW**) serves as the lead agency. (*Ibid.*) CDFW certified an EIR for the RMDP/SCP Project in December 2010, and approved a Master Streambed Alteration Agreement and two Incidental Take Permits. (*Ibid.*)

In January 2011, environmental organizations filed a petition for a writ of mandate challenging CDFW's actions. (SR 28618.) The trial court granted the writ in 2012, but the Court of Appeal reversed that ruling. (*Ibid.*) In November 2015, our Supreme Court again reversed, in *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204 (*CBD v. CDFW I*). The Court held that CDFW violated CEQA by failing to support with substantial evidence its conclusion that the Newhall Ranch project's greenhouse-gas (**GHG**) impacts were insignificant. (*Id.* at pp. 225-31, 240.) The Court also concluded that CDFW violated the Fish and Game Code by adopting two mitigation measures that unlawfully allowed "take" of the unarmored threespine stickleback, a fully protected species, in connection with construction and water diversion activities in the Santa Clara River. (*Id.* at pp. 231-37, 240.)

In December 2016, the trial court issued a writ of mandate, with judgment in favor of

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[1] Undesignated section references are to the Public Resources Code.

[2] Citations to the original record for the Landmark Village Project are designated by the prefix "LV." Citations to the original record for the Mission Village Project are designated by "MV." Citations to the record in the present action, related to the further environmental review and re-approval of both Landmark and Mission, are designated by "SR."

the petitioners as to the GHG-emissions and stickleback-take issues. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1251 [*CBD v. CDFW II*].)

In response to the court decisions, Newhall modified some aspects of the Newhall Ranch development, related to GHG emissions and design and construction methods for bridges and bank stabilization in the Santa Clara River. (SR 28620.) In November 2016, CDFW prepared and circulated "Additional Environmental Analysis" (**AEA**) for the RMDP/SCP Project, which addressed GHG emissions and stickleback take. (SR 11, 1569.) CDFW certified the Final AEA on June 14, 2017, and re-approved the project.

D. The Landmark Village Project

1. Project Description

Landmark Village is the first-approved phase of the Newhall Ranch project. (LV 9623; SR 39447.) The site comprises approximately 1.042 acres. (SR 1572.) The Landmark Village Project (**Landmark Project**) will consist of 1,444 residential units (270 single-family and 1,174 multi-family), 1,033,000 square feet of commercial space, and various open-space, recreation, park, trail, and public-facility lots. (LV 312; SR 1572-73.)

2. Original Environmental Review and Project Approval

The County began preparation of the original EIR in 2003. (SR 42.) The original Draft EIR was issued in 2006, and a Final EIR in November 2007. (SR 1573.) Thereafter, the Landmark Project was updated, and a Recirculated Draft EIR was issued in February 2010. (SR 1573; LV 18.) After recirculation, the Revised Final EIR was issued in 2011, and the Board of Supervisors (**Board**) certified it on October 4, 2011 (the **2011 Landmark EIR**). (SR 1574; LV 27-28.)

On February 21, 2012, the Board approved CEQA findings and a statement of overriding considerations. (SR 39445; LV 27-28.) It approved a vesting tentative tract map, two conditional use permits, an oak tree permit, and amendments to the General Plan, Specific Plan, and Local Plan. (SR 1574.)

3. Landmark Project Litigation

In March 2012, a group of environmental organizations, including Petitioners, filed suit challenging the Landmark Project approvals and certification of the 2011 Landmark EIR. (SR 11.) After initial denial of the petition by the trial court and affirmance by the Court of Appeal, the Supreme Court ordered the Court of Appeal to reconsider the case in light of *CBD v. CDFW I*. (SR 11.) The Court of Appeal then reversed the trial court's original judgment in part, as to its conclusion that there would be no significant environmental impact from the Project's GHG emissions, noting that the analysis of

GHG impacts in the 2011 Landmark EIR paralleled the analysis invalidated in *CBD v. CDFW I.* (*Friends of the Santa Clara River v. County of L.A.*, Case No. B256125, Nov. 3, 2016 [2016 Cal.App.Unpub. LEXIS 7971, at p. *10]; see Case Chronology [to be filed with Reply] for further information about this procedural history.)

On March 13, 2017, this Court entered judgment and issued a peremptory writ of mandate directing the County to void certification of the portion of the 2011 Landmark EIR that addressed the significance of the Project's GHG emissions, to suspend project activity that could result in an adverse change or alteration to the physical environment until the County took corrective action to address the EIR's deficiency and comply with CEQA, and to suspend the CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Plan. (*Friends of the Santa Clara River v. County of L.A.*, L.A. Super. Ct. Case No. BS136549, Mar. 13, 2017.)

4. Subsequent Environmental Review and Project Approval

After this Court issued its judgment and writ, the County conducted further environmental analysis for the Landmark Project. In November 2016, the County issued the Landmark Village Draft Recirculated Portions of the EIR, or 2017 Draft Recirculated Analysis. (SR 9, 12.) The Draft Recirculated Analysis re-analyzed the Project's GHG emissions, as ordered by the writ. (SR 1566.) The County analyzed 13 new GHG-related mitigation measures, concluding that those measures will reduce, mitigate, and offset 100 percent of Landmark's emissions, resulting in "net zero" GHG emissions. (SR 1566-67.)

Additionally, the County determined that two mitigation measures related to stream diversion, which were similar to the mitigation measures the Supreme Court had found constituted "take" of protected stickleback, must be replaced or eliminated, and accepted related project modifications proposed by Newhall. (SR 1567-68.) The County prepared Errata to the Mitigation Monitoring and Reporting Plan (**Landmark 2017 Errata to the 2011 MMRP**). (SR 1568.)

After the 2017 Draft Recirculated Analysis was circulated for public comment, the Board of Supervisors held a public hearing to reconsider the Landmark Project on July 18, 2017 (together with the Mission Project). (SR 46-47, 41761-65.) At that hearing, the Board certified the 2017 Recirculated Analysis (the **Landmark Recirculated Analysis**) in combination with the 2011 Landmark EIR as complete and in compliance with CEQA, adopted Supplemental CEQA Findings and Statement of Overriding Considerations, and adopted the 2017 Errata to the 2011 MMRP. (SR 15.) The Board rescinded the findings and conditions of approval supporting its prior land-use approvals for the Landmark Project, and re-approved the following land-use entitlements: Vesting Tentative Tract

Map No. 53108-(5); SEA Conditional Use Permit No. 2005-00112-(5); Conditional Use Permit No. 00-196-(5); Oak Tree Permit No. 00-196-(5); and Specific Plan Amendment No. 00-196-(5). (SR 9-10, 15, 25, 34, 39447-50).

E. The Mission Village Project

1. Project Description

Mission Village is the second-approved phase of the Newhall Ranch project. (SR 29388.) The Mission Village Project (the **Mission Project**) will include 4,055 residential units (351 single-family and 3,704 multi-family), over 1.5 million square feet of commercial space, public services including an elementary school, a fire station, and a library, and open-space, park, trail, and public facility lots. (MV 7-8; SR 29388.)

2. Original Environmental Review and Project Approval

The County began preparing the original EIR in 2004. (SR 109.) A Draft EIR was issued in 2010, and a Final EIR in May 2011. (SR 30866.) In October 2011, the County issued "Additional Environmental Information" with clarifications and updates to the Final EIR, and a Revised Draft EIR. (MV 298, 303.) On October 25, 2011, the Board certified the Final EIR (the **2011 Mission EIR**).[3] (SR 30867; MV 48519.)

On May 15, 2012, the Board approved CEQA findings and a statement of overriding considerations. (SR 40248; MV 311-12.) It approved a vesting tentative tract map, two conditional use permits, two oak tree permits, a parking permit, and a substantial conformance review. (SR 30867.)

3. Mission Project Litigation

In June 2012, the present Petitioners and other environmental organizations filed suit challenging the Mission Project approvals and certification of the EIR. The trial court denied the petition, and the Court of Appeal affirmed, but the Supreme Court ordered the Court of Appeal to reconsider the case in light of *CBD v. CDFW I*, as it had for Landmark. Thereafter, the Court of Appeal issued an opinion, very similar to that issued in the Landmark litigation, reversing the trial court judgment in part, as to the EIR's GHG-emissions analysis. (*California Native Plant Society v. County of L.A.*, Case No. B258090, Dec. 1, 2016 [2016 Cal.App.Unpub. LEXIS 8719]; see Case Chronology [to be filed with Reply] for further information about this procedural history.)

On March 13, 2017, this Court entered judgment and issued a peremptory writ of mandate directing the County to void certification of the portion of the final revised EIR that addressed the significance of the Mission Project's GHG emissions, to suspend

[3] This brief refers collectively to the 2011 Landmark EIR and the 2011 Mission EIR, as certified, as the **2011 EIRs**.

project activity that could result in an adverse change or alteration to the physical environment until the County took corrective action to address the EIR's deficiency and comply with CEQA, and to suspend the CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Plan. (*California Native Plant Society v. County of L.A.*, L.A. Super. Ct. Case No. BS138001, Mar. 13, 2017.)

4. Subsequent Environmental Review and Project Approval

The County conducted further environmental analysis for the Mission Project, in tandem with the further analysis done for Landmark. In November 2016, the County issued the Mission Village Draft Recirculated Portions of the EIR, or 2017 Draft Recirculated Analysis. (SR 84, 88.) The Draft Recirculated Analysis re-analyzed the Project's GHG emissions, and analyzed 13 new mitigation measures, concluding the measures will result in "net zero" GHG emissions from Mission. (SR 30859-60.)

Additionally, the County determined two mitigation measures related to stream diversion must be replaced or eliminated, and accepted Newhall's related project modifications. (SR 30860-61.) The County prepared Errata to the Mitigation Monitoring and Reporting Plan (**Mission 2017 Errata to the 2011 MMRP**). (SR 30861.)

The Board of Supervisors reconsidered the Mission Project, together with the Landmark Project, at its public hearing on July 18, 2017. (SR 113-14, 41761-65.) At that hearing, the Board certified the Mission Project's 2017 Recirculated Analysis (the **Mission Recirculated Analysis**)[4] in combination with the 2011 Mission EIR as complete and in compliance with CEQA, adopted Supplemental CEQA Findings and Statement of Overriding Considerations, and adopted the 2017 Errata to the 2011 MMRP. (SR 90.) The Board rescinded the findings and conditions of approval supporting its prior land-use approvals for the Mission Project, and re-approved the following land-use entitlements: Vesting Tentative Tract Map No. 61106-(5); SEA Conditional Use Permit No. 2005-00080-(5); Conditional Use Permit No. 2005-00081-(5); Oak Tree Permit Nos. 2005-00032-(5) and 2005-00043-(5); Parking Permit No. 2005-00011-(5); and Substantial Conformance Review No. 2010-00001-(5). (SR 84, 90-91, 100, 40250-52.)

[4] This brief refers collectively to the Landmark Recirculated Analysis and the Mission Recirculated Analysis as the **Recirculated Analysis**. The two documents are nearly identical with the exception of information specific to each Project.

III. The 2011 Landmark and Mission EIRs, as supplemented by the Recirculated Analysis, violate CEQA.

A. The Recirculated Analysis's greenhouse gas analysis violates CEQA in several significant respects.

1. The Recirculated Analysis adopted the existing low baselines as the significance threshold for GHG impacts.

The County has adopted 698 metric tonnes of carbon-dioxide equivalent per year (**$MTCO_2e$/year**) as the threshold of significance for greenhouse-gas emissions on the Landmark Site, and 369 $MTCO_2e$/year as the threshold of significance for GHG emissions on the Mission Site. Those are the amounts of greenhouse gases that are currently generated on the Project Sites, according to the Recirculated Analysis. (SR 1642; 30935.)[5] One of the significance thresholds adopted for both Projects, Threshold 2.1-1, is "Would the Project generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?" (SR 1643; 30937.) The Recirculated Analysis claims the Projects will not have significant GHG effects because they will cause no net increase in GHG emissions as compared to the existing environmental setting, effectively adopting the existing baseline as the threshold of significance. (SR 1646; 30940.) "Because the Project, as mitigated, would result in no net increase in the GHG emissions level, the Project would not have a significant impact on global climate change." (SR 1670; 30963.) Based on this adopted threshold, any increase above the existing baseline GHG emissions would be significant, requiring further mitigation, if feasible, and, if infeasible, a statement of overriding considerations.

2. The County has failed to require all feasible mitigation in violation of CEQA, since the Projects will have significant GHG impacts.

CEQA requires an EIR's determination of whether a particular environmental impact is significant to be made before mitigation measures are considered. (*Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658 [cited with approval in *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 529]; see *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 [*Vineyard*] [water supply availability must be analyzed in EIR, even if mitigation will stop further development if water supply turns out to be inadequate].)

As discussed above, the Recirculated Analysis effectively adopts zero as the first of two thresholds of significance. The Recirculated Analysis admits that the Projects,

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[5] Hereafter, when citations to the record are separated by a semicolon, the first refers to the Landmark portion of the record, the second to the Mission portion of the record.

without mitigation, would have significant greenhouse-gas impacts. (SR 1646; 30940.) Since the Projects' impacts will be significant, CEQA requires that all feasible mitigation be adopted. (§ 21002.1(b).) There is no substantial evidence in the record—because the Recirculated Analysis does not contend—that the approved GHG mitigation measures constitute all feasible mitigation. There is no showing, for example, that it would be infeasible for Newhall to provide additional renewable energy generation and storage on the Project Sites so as to become a net generator of energy—to go below "net zero," or at least to offset some of the Project's remaining mobile-source GHG emissions on-site instead of purchasing offsets. Since the Projects' GHG impacts will be significant without mitigation, CEQA requires all feasible mitigation.

The failure by the County to require all feasible mitigation is a procedural violation of CEQA, a failure to proceed in the manner required by law, which is evaluated de novo by this Court. This Court should order the Recirculated Analysis set aside, and should order the County to require Newhall to adopt all feasible measures to mitigate the significant GHG effects of the Landmark and Mission Projects.

3. Mitigating only 30 years of operational GHG emissions leaves substantial emissions unmitigated, violating CEQA.

The County's strategy is to require Newhall to mitigate only the first 30 years of operational emissions. (SR 1776; 31069.) This is improper, as there is no substantial evidence that the Projects' operational GHG emissions will cease after 30 years. In fact, the Projects' GHG emissions will continue well beyond that time limit. To give just two examples, residents will continue to cook with natural gas, a direct source of GHG emissions, and they will continue to drive to and from the Projects—and there is no reason to think all such driving will be in zero-emission vehicles, or the electricity used to supply power for those vehicles will all come from zero-emission sources.

The Recirculated Analysis contains topical responses attempting to justify the County's 30-year GHG horizon. (SR 1776-89; 31059-68.) The topical responses make a variety of arguments, some supported by evidence, some supported only by argument with citations to legal authority.

In most cases, the arguments put forth by the County may justify the use of 30 years as an analysis window for estimating a project's total GHG emissions—something the County has apparently not done for these Projects—but these arguments do not support a 30-year limit on mitigation. The GHG mitigation will be done as the Projects are built out and occupied, a process expected to be complete by 2024. (SR 1618, fn. 2; 30911, fn. 2.) When such a substantial part of the proposed mitigation consists of the purchase of

offsets, a readily available commodity, a monitoring program could continue to evaluate the effectiveness of the other mitigation measures and require purchase of offsets to compensate for all unmitigated Project GHG emissions in the future.

To justify the 30-year mitigation limit, the County points to a letter from the California Air Resources Board (**CARB**) dated November 3, 2016, which states that CARB "finds the documentation [submitted in support of the net-zero greenhouse-gas determination in the CDFW RMDP/SCP Additional Environmental Analysis] provides an adequate technical basis to determine that the project would not result in any net additional GHG emissions after the mitigation measures are fully implemented." (SR 28917; 38945 [the **CARB Letter**].) This letter does not directly support the similar analysis in the Recirculated Analysis for the Landmark and Mission Projects, but the GHG mitigation measures for the CDFW RMDP/SCP Project are similar. The CARB Letter also does not mention the 30-year analysis window or mitigation limit and provides no information about how CARB reached its conclusion that the measures in the CDFW Additional Environmental Analysis fully mitigate the GHG effects of the RMDP/SCP Project. Because it's impossible, from the CARB Letter, to determine whether CARB actually considered the 30-year mitigation limit, the Court should heavily discount this letter as substantial evidence supporting the 30-year limit on mitigation of the Project's GHG impacts.

The County also points to the 30-year analysis horizon used by CARB when determining whether projects comply with § 21183(c)'s requirement that "leadership projects" not result in net additional GHG emissions. (SR 1781; 31074.) And SCAQMD guidance allows a 30-year analysis window when determining a project's total GHG emissions for the purpose of purchasing offsets at one time at the beginning of a project. (SR 1783; 31075-76.) But, again, these 30-year windows are for the purpose of analyzing GHG emissions, and it does not indicate that CARB would support limiting GHG *mitigation* to the first 30 years of a project's operation.

The 30-year period over which the County has amortized construction-related GHG emissions (SR 1784; 31076-77) is still further removed from the question at hand. Amortization is merely an accounting function used to spread one-time construction emissions over the years of a project, to convert them into annual emissions, when a significance threshold of a certain number of $MTCO_2e$ per year is being used.

The alignment of the 30-year analysis window with Executive Order S-3-05 (SR 1785-86; 31078-79) is also irrelevant to the mitigation issue. To the extent the County is arguing that the GHG problem will have been solved or greatly reduced in 30 years, this is

very optimistic speculation, given how slowly the process of reducing GHG emissions is proceeding now.

The County also argues that the Recirculated Analysis likely overestimates project emissions. (SR 1786-87; 31079-80.) This argument is contradicted by the County's own analysis. If the County thought the emissions estimate was high, it should have corrected it.

The substantial evidence and legal argument cited by the County do not support its claim that it may not require any mitigation for the Projects' emissions after 30 years.

4. There is no substantial evidence supporting the County's conclusion that the Projects, with mitigation, will not have significant GHG impacts.

The County has set the threshold of significance very low for GHG impacts, as discussed above. The significance threshold is 698 $MTCO_2e$/year for Landmark Village, a little over one percent of the 58,393 $MTCO_2e$ the Landmark Project would emit without mitigation. (SR 1642, 1648.) For Mission Village, the significance threshold is 369 $MTCO_2e$/year, about one-half percent of the 79,202 $MTCO_2e$/year that Project would emit without mitigation. (SR 30935, 30941.)

The County claims this mitigation to near-zero emissions will be achieved in each case by 13 mitigation measures: LV 4.23-1/2-1 to LV 4.23-13/2-13 for Landmark Village (SR 1659-69), and MV 4.23-1/2-1 to MV 4.23-13/2-13 for Mission Village. (SR 30952-62). These two sets of mitigation measures are essentially identical to each other, and identical to the mitigation measures approved by CDFW for the RMDP/SCP Project for Newhall Ranch as a whole. (SR 1658-59; 30951-52.)

For this Court to find that the Landmark and Mission GHG mitigation scheme is supported by substantial evidence, there must be substantial evidence that each of the 13 mitigation measures is guaranteed to function properly and will contribute its claimed share of GHG reduction. Conclusory assertions of effectiveness are not substantial evidence. (§ 21080(e) [opinions must be supported by fact to be substantial evidence].)

One such global assertion of effectiveness is the CARB Letter dated November 3, 2016, stating that CARB "finds the documentation [submitted in support of the net-zero greenhouse-gas determination in the CDFW RMDP/SCP Additional Environmental Analysis] provides an adequate technical basis to determine that the project would not result in any net additional GHG emissions after the mitigation measures are fully implemented." (SR 28917; 38945.) This letter sets out a conclusion reached by CARB, but provides no information on how CARB reached that conclusion. It contains no information on whether CARB considered the many objections to the GHG mitigation

program raised in the Center for Biological Diversity's comment letter. (SR 3677-97; 32976-96.) Because CARB's raw conclusion is not supported by any analysis or evidence in the record, it is not substantial evidence. (§ 21080(e) [expert opinion is substantial evidence only when supported by fact].)

Each of the 13 GHG mitigation measures is flawed to the point that it doesn't comply with CEQA. Some of those flaws are discussed in the following sections, and as a result, it is evident that the measures will not reduce the Projects' GHG emissions to near-zero. Even if there were a 95 percent chance that each of the 13 mitigation measures would accomplish its part in the mitigation scheme, the overall scheme would have just a 51 percent chance of reaching the goal of near-100 percent mitigation.[6]

The County's conclusion that each measure will contribute its part to the GHG mitigation scheme is not supported by substantial evidence. The failure of the County to provide substantial evidence in support of any one of the 13 mitigation measures is enough to require the Court to invalidate the GHG analysis in the Recirculated Analyses.

a. Mitigation Measures 4.23-1/2-1 and 4.23-2/2-2, which purport to reduce the GHG emissions from the operation of residential and commercial buildings to zero, do not ensure that goal will be accomplished.

Mitigation Measures 4.23-1/2-1 (SR 1659-60; 30952-53) and 4.23-2/2-2 (SR 1660-62; 30953-55) purport to require the Projects' residential buildings to reduce their net energy consumption to zero by complying with the ZNE (zero-net energy) standard established by the California Energy Commission (**CEC**) in its 2015 Integrated Energy Policy Report. (SR 51410-728, **2015 IEPR**.) The ZNE standard, as defined in the 2015 IEPR, is slightly misquoted in the mitigation measures.[7] Under the standard, "A ZNE Code Building is one where the value of the energy produced by on-site renewable energy resources is equal to the value of the energy consumed annually by the building . . . measured using the California Energy Commission's Time Dependent Valuation metric." (SR 51464.)

Notice that the standard does not require the energy consumed in the building, or the building's direct GHG emissions—e.g., from burning natural gas in stoves, hot-water heaters, and fireplaces—to net to zero. It requires the *value*, i.e., the cost of such energy, to net to zero. The CEC Time Dependent Valuation defined by the California Energy Commission in the 2011 document titled "Time Dependent Valuation of Energy for Developing Building Efficiency Standards" (SR 51729-805, the **CEC TDV Document**) uses a complicated methodology. The basis, which is applicable primarily to electricity, is

[6] $0.95^{13} = 0.5133$.

[7] E.g. MM 4.23-1/2-1. (SR 1659; 30952 [changing "energy" to "net energy"].)

that energy is worth more at peak times, so that a building should be credited more for its energy contribution from, for example, photovoltaic panels at peak times when the price of energy is high than it is credited for its contribution at times when the price is low.

The CEC ZNE requirements are used as a performance standard for Mitigation Measures 4.23-1/2-1 and 4.23-2/2-2, but there are many uncertainties in the ZNE standard, acknowledged in the 2015 IEPR, that prevent the ZNE definition from functioning as a CEQA mitigation performance standard. One such uncertainty is how to address natural gas within the definition. The 2015 IEPR's discussion of potential ways to deal with natural-gas use includes replacing natural gas with waste heat, replacing it with renewables, and replacing natural-gas appliances with electrical ones. (SR 51466-67.) The ZNE standard, as set forth in the 2015 IEPR, comprises a lot more than just the high-level requirement that the value of the energy produced by the Projects equal the value of the energy consumed by the Projects. But it's unclear from the text of Mitigation Measures 4.23-1/2-1 and 4.23-2/2-2 which parts of the standard the ZNE Report must comply with, given the uncertainties and state of flux.

There is no showing, let alone substantial evidence, in the Recirculated Analysis's GHG analysis (SR 1618-71; 30911-64), the Ramboll Environ Greenhouse Gas Emissions Technical Report (SR 395-540; 29617-763), the ConSol Residential and Commercial Building Analysis Report (SR 660-71; 29943-54), the responses to comments (SR 1794-3567; 31087-2860), the 2015 IEPR, or the CEC TDV Document that compliance with the ZNE Standard in the 2015 IEPR will reduce the Projects' net energy use, or the GHG emissions that indirectly result from that energy use, to zero, as required for these mitigation measures to do their part in achieving the overall mitigation scheme's requirement to reduce the Landmark and Mission Projects' GHG emissions to near zero.

b. The California Cap-and-Trade Program does not exempt any GHG sources from CEQA.

In the discussion of the California Cap-and-Trade Program, the Recirculated Analysis states, "the Cap-and-Trade Program has been designed to provide a firm cap, ensuring that the 2020 statewide emissions limit identified by CARB in the 2008 Scoping Plan will *not* be exceeded. Thus, for the emission sources covered by the Program, which are nearly all of the sources associated with land use development projects . . . compliance with AB 32's 2020 mandate is assured by the Cap-and-Trade Program." (SR 1640; 30933.)

The Recirculated Analysis cites a guidance document issued by the San Joaquin Valley Air Pollution Control District (**SJVAPC Guidance**)—a document pertaining to another jurisdiction, and not binding as a regulation anywhere—as concluding that the

GHG sources subject to the Cap-and-Trade Program "are determined to have a less than significant impact on global climate change under CEQA." (SR 1640, fn. 29; 30933, fn. 29.) The Ramboll Environ Greenhouse Gas Emissions Technical Report (**GHG Tech Report**) for each Project goes further: it concludes, based on the SJVAPC Guidance, that "GHG emissions increases that are otherwise covered under CARB's Cap-and-Trade Program . . . cannot constitute significant increases in emissions under CEQA . . . ." (SR 434; 29656.) As a result, GHG emissions from landscaping and construction equipment, stoves and water heaters, electricity production, and cars and trucks, and methane generated by wastewater treatment and waste disposal are not mitigated for the Landmark and Mission Projects. (SR 1640-41; 30933-34.)

It may be proper to assume that the Cap-and-Trade Program mitigates these types of GHG emissions under Threshold 2.1-2, where the focus is on compliance with state and local regulatory programs. But the SJVAPC Guidance does not justify ignoring these emissions under Threshold 2.1-1, where the standard is to reduce the Projects' GHG emissions to near zero. The SJVAPC Guidance may be contrasted with § 21159.8(a), which, under certain circumstances, exempts from CEQA GHG emissions from cars and light-duty truck trips. There is no authority showing that GHG impacts subject to Cap-and-Trade should not be taken into account in determining whether the suite of mitigation measures reduce the Project's GHG emissions to the point where they fall under Threshold 2.1-1.

The exclusion of the Cap-and-Trade-related GHG sources from the Project's GHG analysis is a failure to proceed in the manner required by law, analyzed de novo by this Court, which should order the Recirculated Analysis for each Project voided and should order the County to comply with CEQA.

B. The Recirculated Analysis does not contain the energy analysis required by Guidelines Appendix F.

CEQA requires an analysis of energy impacts and potential energy conservation measures. (§ 21100(b)(3); Guidelines § 15126.4(a)(1)(C), App. F.) An EIR must expressly address energy consumption, and must calculate the amount of energy used by mobile sources and in construction and operation of a project; merely citing compliance with energy-efficiency standards or relying on GHG reduction measures, as the Recirculated Analysis has done, is insufficient to satisfy CEQA's energy-impacts analysis requirements. (See *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 261-65; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173.)

The Recirculated Analysis does not contain the required analysis (nor, in fact, did the

2011 EIRs). It analyzes Projects with substantially different energy impacts than the Projects as addressed in the 2011 EIRs: GHG emission estimates, building efficiency standards, mobile source assumptions, and a host of other factors affecting energy use and conservation have changed in the revised analysis. Accordingly, certifying that the Recirculated Analysis in combination with the 2011 EIRs is complete under CEQA, when the energy analysis was not included, is a violation of CEQA, a failure to proceed in the manner required by law.

C. *The County violated CEQA because the Recirculated Analysis does not analyze significant water supply impacts resulting from changed circumstances and new information.*

The County limited the scope of its additional environmental review for the Landmark and Mission Projects to a re-analysis of GHG emissions, analysis of how project changes would avoid take of unarmored threespine stickleback, and related revisions to the MMRP. (SR 1578; 30868.) The County refused to conduct further review of other environmental impacts of the Landmark and Mission Projects despite commenters raising further issues during the comment period. (SR 1766; 31059.)

Responding to comments on the Draft Recirculated Analysis, the County justified its decision to limit the scope of its additional environmental review by saying it was "not 'required to start the EIR process anew,'" and asserted that the "scope of the corrective action is determined 'in light of the legal standards governing recirculation of the EIR prior to certification.'" (SR 1772; 31065 [citing *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112; § 21092.1; Guidelines[8] § 15088.5].) Thus, the County relied on § 21092.1 and Guidelines § 15088.5 as the standards governing its additional review.

The County focused its attention on changes that were made to the Projects with respect to GHG emissions and avoiding stickleback take (SR 1773; 31065), but the Projects are not the only things that changed in the years between the 2011 EIRs' certification and the County's re-approval of the Projects. During that time, new information of substantial importance became available regarding climate change's effects on water resources in the Santa Clarita Valley. As a result, it has become apparent that the circumstances under which the Projects are being undertaken have changed substantially. For this reason, the County was obligated to go beyond analyzing the changes made to the Projects to correct the previously identified CEQA violations, and should have

[8] "Guidelines" refers to the CEQA Guidelines in 14 Cal. Code Regs. §§ 15000-15387.

prepared supplemental analysis of water supply impacts pursuant to § 21166.[9]

1. CEQA requires an agency to prepare a subsequent or supplemental EIR when significant new information or changed circumstances come to light after the certification of the original EIR.

Under § 21166, a subsequent or supplemental EIR should be prepared if any of the following occurs:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
> (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Section 21166 applies when environmental review of a project has already occurred in a prior EIR, and the time to challenge the prior EIR has expired. (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1050.) Thus, where an agency undertakes further discretionary approval of a project, such as when changes are made to the project, the agency must determine whether a subsequent or supplemental EIR is required because any of the above conditions is present. (Guidelines § 15162(a), (c); *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935.)

The limitations in § 21166 "are designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency." (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949 [*San Mateo Gardens*].) The purpose of a subsequent or supplemental EIR is to consider potential environmental impacts that were not considered in the original EIR. (*Id.* at p. 950.)

Guidelines § 15162 provides guidance concerning when conditions triggering further environmental review exist:

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[9] Even if the County was correct in concluding that the Recirculated Analysis was governed by § 21092.1 and not § 21166, that is a distinction without material difference, because the standards for recirculation are similar to those for determining if new information or changed circumstances necessitate a subsequent or supplemental EIR. In *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, our Supreme Court interpreted § 21092.1 by reference to § 21166 and its implementing regulations because the two statutes govern "analogous situation[s]." (*Id.* at p. 1129.) The Court held that recirculation is required under circumstances described in Guidelines § 15162. (*Id.* at p. 1130.)

Project changes: A subsequent EIR is required if proposed project changes are substantial and involve new significant environmental effects or a substantial increase in the severity of significant effects already identified, requiring major revisions of the previous EIR. (Guidelines § 15162(a)(1).

Changed circumstances: A subsequent EIR must be prepared if a substantial change has occurred in the circumstances under which a project is undertaken, and that change involves new or substantially more severe significant environmental effects, requiring major revisions to the previous EIR. (Guidelines § 15162(a)(2); see *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1255 [*T-Line Loop*].)

New information: A subsequent EIR must be prepared if "[n]ew information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified," shows (1) the project will have significant effects not analyzed in the previous EIR, (2) significant effects of the project will be substantially more severe than shown in the previous EIR, or (3) mitigation measures or alternatives, either that were found infeasible but that are in fact feasible, or that are considerably different from those previously analyzed, would substantially reduce significant impacts of the project, but the project's proponent declines to adopt the measures or alternatives. (Guidelines § 15162(a)(3); see *Moss v. County of Humboldt*, *supra*, 162 Cal.App.4th at pp. 1057-58.)

Guidelines § 15163 provides that a supplemental EIR may be prepared instead of a subsequent EIR if one of the above conditions requiring a subsequent EIR exists, but "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." (Guidelines § 15163(a).) A supplemental EIR may be limited to the information needed to respond to the project changes, changes in circumstances, or new information that necessitated further environmental review. The supplement must contain only information needed to make the previous EIR adequate under the new conditions. (Guidelines § 15163(b).)[10]

There are no cases directly governing circumstances like those present here, in which an agency was required by a court order to conduct additional environmental review to address deficiencies in a prior EIR, and during the intervening time, new information came to light or the circumstances under which the project was undertaken changed,

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[10] This brief assumes that analysis of water supply impacts in a supplemental EIR—rather than a subsequent EIR revising the entire 2011 EIR for each Project—would meet the County's obligations under § 21166 and Guidelines §§ 15162 and 15163.

requiring further environmental review of other project impacts under § 21166. But nothing in CEQA or the Guidelines makes § 21166 inapplicable simply because the agency is already preparing further environmental review to respond to a court order, when triggering conditions arise. Even when the agency is already re-analyzing some project impacts, when "further discretionary approval of [a] project is required," and "any of the conditions described in subdivision (a) occurs," the agency granting the further approval must analyze the new (or substantially more severe) significant effects revealed by new information or resulting from changed circumstances. (Guidelines § 15162(c).)

An agency's decision regarding what it must do to comply with its obligations under § 21166 and Guidelines §§ 15162 and 15163—including whether a subsequent or supplemental EIR is required, and the scope of that document—must be supported by substantial evidence. (*San Mateo Gardens, supra*, 1 Cal.5th at p. 953; *T-Line Loop, supra*, 6 Cal.App.5th at p. 1251.)

2. Changed circumstances and new information about drought and water supply required analysis in a supplemental EIR.

The Recirculated Analysis is improperly limited to analysis of only the Project modifications related to GHG emissions and avoiding take of stickleback. Instead, the County should have prepared a supplemental EIR that addressed changed circumstances and new information, which rendered the prior analysis of water supply inadequate.

a. The Projects will get their potable water mainly by pumping groundwater.

The Landmark and Mission Project Sites lie within the Santa Clara River Valley Groundwater Basin, East Subbasin, which includes two aquifers: the Alluvial aquifer and the Saugus Formation. (LV 10813; MV 6043.) The two Projects will obtain potable water from the Alluvial aquifer via Valencia Water Company, a local retail water purveyor. Specifically, the Projects, as part of the Newhall Ranch Specific Plan, are slated to use water that Newhall has historically used for agricultural irrigation. (LV 10938; MV 6171.) The 2011 EIRs explain that Newhall has rights to 7,038 acre feet per year (**afy**) of Alluvial groundwater, which will be used for the Newhall Ranch Specific Plan area. (LV 10819, 10938; MV 6049, 6171.) Landmark Village would use approximately 608 afy of that amount, and Mission Village would use approximately 1,676 afy. (LV 10938; MV 6172.)

b. There are substantially changed circumstances and new information concerning the Projects' effects on water supply in the Santa Clarita Valley since the 2011 EIRs were certified.

Commenters presented evidence that after the 2011 Landmark and Mission EIRs were certified, the region in which the Projects are to be built has suffered severe drought

conditions, and climate change has led to hotter and drier conditions exacerbating the effects of drought. This evidence strongly suggests that future conditions will be markedly different from historical patterns of wet and dry years, and will affect water supply in ways not previously accounted for.

California entered a prolonged period of drought in 2011. (SR 7056.)[11] This has been called a "drought of extreme proportions." (SR 7022.) The cumulative precipitation between 2011 and 2014 was at a record low. (*Ibid.*) And as of June 2016 (before the temperature of that year had been measured), 2014 and 2015 were the two hottest years on record. (*Ibid.*) These high temperatures exacerbate drought conditions. (*Ibid.*) This period of extreme drought affected the Santa Clarita Valley specifically. (SR 3972; 33272.)

One indicator of the severity of this drought is the snowpack deficit it caused. A study published in 2016 concluded this drought is the worst in California's recorded history in terms of the deficit in snowpack, a crucial source of freshwater for the state. (SR 7047.) Comparing 65 years of records, the study found 2015 unique: it was the driest year on record, to an extent that would not be expected to occur more than once in 600 years. (SR 7048.) That dry snow year compounded the effects of several prior years of drought. (SR 7048-49.) The study found that in the historical record, past deficits were erased within one year for all years except one. (*Ibid.*) By contrast, this deficit was so severe that the recovery was expected to take more than four years, or even longer if any of those future years were drier than normal. (SR 7049-50.)

Evidence shows a link between climate change effects, including both warming and drying of the climate, and intensifying drought conditions—and resulting imbalances between water supply and demand. (SR 7056.)

The consequences of the multi-year drought have been felt in the local area of Landmark and Mission. Monitoring of wells near the Whittaker Bermite facility, about five miles from the Project Sites (LV 4672; MV 6047) has shown a decline in water levels of more than 70 feet from 2006 to the beginning of 2016. (SR 43426.) Wells relied on by the Santa Clarita Valley's retail water purveyors have also shown declines, and an inability to meet target production volumes. According to a 2014 study by GSI Water Solutions, Inc., several retail water wells in the Alluvial aquifer experienced difficulty in achieving target volumes in 2014, and some were unable to produce at all. (SR 3973; 33273.)

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[11] Some evidence cited herein was submitted as attachments to letters commenting on both Landmark and Mission Projects. (See, e.g., SR 3672, 3704; 32971, 33003.) Some attachments were included in the administrative record only once, for the Landmark Project. Therefore, only a Landmark Project citation is available for these documents.

c. Changed circumstances and new information concerning the Projects' effects on water supply in the Santa Clarita Valley since the 2011 EIRs were certified are substantial enough that a supplemental EIR was required.

The evidence discussed above constitutes new information that did not exist when the prior 2011 EIRs for Landmark and Mission were certified, and demonstrates that substantial changes have occurred in the circumstances under which the Projects are being undertaken. (§ 21166(b), (c); Guidelines § 15162(a)(2), (3).) This new information is substantially important because it shows the Projects will potentially have significant effects on water supply, which the prior 2011 EIRs did not address. (Guidelines § 15162(a)(3)(A).). It also demonstrates that circumstances have changed substantially, requiring major revisions of the 2011 EIRs (in the form of a supplemental EIR) to discuss previously unaddressed significant environmental effects. (Guidelines § 15162(a)(2).)

Among the significance thresholds selected for water supply impacts in the 2011 EIRs is that each Project would have a significant impact on water resources if it would "[s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)." (SR 4734; 6156-57.) Although the County previously concluded that water supplies in the Santa Clarita Valley are sufficient to serve the Landmark and Mission Projects and existing and planned uses in the Santa Clarita Valley (LV 10819; MV 6049), the evidence presented above strongly indicates that local water supplies are not sufficient for other existing uses in the area, and the Projects will draw on already scarce water resources. According to the 2011 EIRs, the potable water demands of the Landmark and Mission Projects would be met through the use of local groundwater. (LV 4708; MV 6107.) But new information calls into question the supplies of groundwater for the area as previously analyzed, indicating that the Projects may substantially deplete groundwater supplies that otherwise would support existing uses, thereby causing a significant impact the 2011 EIRs did not previously discuss.

One primary climate change effect is increased temperatures. Projected temperatures for the Upper Santa Clara River region follow the global trend of increasing temperatures between the present day and the end of this century. (SR 51925.) As explained above, temperature increases exacerbate drought. (SR 7022.) Accordingly, conditions of drought and recovery from past history cannot be expected to continue in the future.

New climate conditions, including exacerbated drought, have significant effects on

water supply, including sources that supply water to the Santa Clarita Valley. As explained in the 2015 Santa Clarita Valley Urban Water Management Plan (**2015 UWMP**), drier conditions resulting from climate change can affect the process of recharge to the region's groundwater basins. (SR 50087.)

Additionally, the information presented above about Sierra Nevada snowpack deficits is relevant new information because the water supply in the Santa Clarita Valley relies on more than local sources of water. First, part of the Valley's water supply comes from imported water from the State Water Project (**SWP**), which depends on snowpack. (SR 50205, 51301, 51327.) One potential impact of climate change is reduction in those imports, with forecasts showing overall lower SWP deliveries under all types of water year, and as much as a 20 percent decrease in deliveries in dry years. (SR 51305.) Such a reduction would lead to greater reliance on local groundwater to meet the area's water needs, and therefore increased groundwater production. (SR 51301-02.) Second, when snowpack is in deficit, water must come from other sources, including groundwater, leading to deficits in that water source as well. (SR 7051, 7056.)

Future deficits in the water supply from drought will be coupled with higher demands on water. Water use is projected to increase over the life of the Projects. (SR 7062, 7063). That will further tax the water supply, as California "[w]ater use in 2012 was already proven unsustainable given the ongoing multi-year drought." (SR 7063.)

The new information set forth above demonstrates that water supply for the Santa Clarita Valley will be more precarious in the future than in the past. The 2011 EIRs concluded that the Landmark and Mission Projects would cause no significant impacts to water supply, but did so by assuming that the water supply was sufficient for existing and planned uses. (LV 10819; MV 6049.) That analysis is called into question by the new information and evidence that the climatic circumstances under which the Projects are being undertaken have changed substantially. Because hotter and drier climate will reduce the water available for area land uses, Landmark and Mission will "[s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge" by using water that otherwise would be available for existing uses. (SR 4734; 6156-57.)

A useful comparison can be made with *Moss v County of Humboldt*, *supra*, 162 Cal.App.4th 1041. In that case, during a subdivision project's initial environmental review, a water assessment evaluation concluded that the creek from which water was supplied to a city downstream from the project could accommodate an increase of approximately 74 percent over the city's current number of water users, and the project would not substantially reduce the water available for the city, although it would slightly

reduce the water in the creek. (*Id.* at p. 1059.) The County approved the project and adopted an MND. (*Id.* at p. 1046.) While litigation was pending, the applicant's tentative tract map expired, and he applied for a new tract map several years later. (*Id.* at pp. 1046-47.) County staff determined an EIR would be required, and the applicant appealed that decision. (*Id.* at p. 1047.) The downstream city's water commissioner submitted data demonstrating that the city's use of creek water had increased by 74 percent, and now was at the creek's maximum capacity. (*Id.* at pp. 1059-60.) The court concluded this was new evidence not available when the project was previously reviewed, and was substantial evidence showing the project—even though it would only slightly increase water demand —could cause significant effects on water supply to the downstream city, justifying the County's finding that supplemental environmental review was required. (*Id.* at p. 1060.)

Similarly here, the original analytical assumption was that sufficient water supplies exist to reliably serve current and planned land uses in the Santa Clarita Valley. The 2011 EIRs found that the local groundwater basin is sustainable and that adequate water supply is available for the Landmark and Mission Projects from the Alluvial aquifer. (LV 4681, 4734; MV 6062, 6157.) New information now shows that in the face of climate change, droughts have already become, and are projected to become, more severe. As a result, an unprecedented snowpack deficit has already occurred (SR 7048), and with a trend toward higher temperatures, deficits can be expected in the future, in turn causing deficits in groundwater supplies. Groundwater supplies in the Valley are declining (SR 43315), and pumping fell below target levels in 2013-2014. (SR 3973; 33273.) Groundwater is likely to be less available in the future as climate-change effects intensify. This information shows that the area's groundwater resources are significantly closer to their sustainable capacity than previously concluded, and will be more stressed in the coming decades, so that the Landmark and Mission Projects' draw of groundwater supplies potentially will cause significant effects on water supply for other uses in the Valley. The County therefore should have undertaken supplemental environmental review of water supply impacts to make the prior EIRs adequate in light of new information and changed circumstances.

d. The record does not contain substantial evidence supporting the County's decision not to undertake supplemental water supply analysis.

Despite the evidence of changed circumstances and new information regarding climate-change effects on water sources, the County declined to undertake supplemental analysis of water supply. It asserted that no substantial changes have occurred in the circumstances under which the Projects are undertaken, and that neither the property on which the Projects are to be built nor the governing regulatory structure has changed

since the 2011 EIRs were approved. (SR 1773; 21066.) It further asserted that no new information has become available that meets the standards of Guidelines §15126(a)(3). (SR 1773-74; 31066.) That determination should be upheld if it is supported by substantial evidence. (*San Mateo Gardens*, *supra*, 1 Cal.5th at p. 953.) But it is not.

First, the prior analysis of water supply did not sufficiently address the potential water supply impacts of the Projects as a result of climate change, with resulting higher temperatures and worsening drought conditions.

As mentioned above, the Landmark and Mission Projects contemplate obtaining all potable water supplies from the Alluvial aquifer. (LV 4370; MV 6043.) The 2011 EIRs' analysis recognized the need to maintain the sustainability of groundwater to meet demand on a renewable basis. (LV 4690; MV 6074.) The water supply analysis relied on a "groundwater operating plan" developed by Castaic Lake Water Agency (**CLWA**) and the local retail purveyors. (LV 10842, 4686-87; MV 6070, 6072-73.) The groundwater operating plan's purpose is to meet water requirements for municipal, agricultural, and other uses while maintaining the groundwater basin in a sustainable condition, based on the assumption that there can be greater pumping in dry years and lower pumping in wet years to allow for groundwater recharge. (*Ibid.*) The plan is quantified as ranges of water volumes that can be pumped without causing detrimental effects to groundwater and surface water resources, as set forth in a table in each EIR. (LV 4687; MV 6072-73.) The EIRs' analysis assumes the groundwater operating plan will maintain the aquifers in a sustainable condition, but commenters' evidence calls that that assumption into question.

With respect to the Alluvial aquifer, the water supply analysis concluded pumping from the aquifer continued to be sustainable, with no symptoms of water-level-related overdraft. (LV 4695; MV 6078.) The analysis noted that past dry-period declines had been followed by wet-period recoveries, with recharge of aquifer storage space. (*Ibid.*) But the 2014 study by GSI Water Solutions showed that assumptions about amounts that could be pumped from the Alluvial aquifer were not borne out in practice during a multi-year drought. (SR 3972-76; 33722-76.) The study concluded target pumping volumes from the aquifer would not be achievable in continued drought conditions, with an estimated total shortfall for 33 wells owned by retail water purveyors of 5,600 to 10,300 afy compared to the pumping targets in the groundwater operating plan. (SR 3974, 3976; 33274, 33276.)

With respect to the Saugus Formation, the groundwater operating plan relies on the assumption that significantly higher pumping would be allowed from that aquifer during dry years (when SWP imports decline and Alluvial pumping is curtailed), but that after three consecutive dry years, pumping would return to the lowest, normal-year amounts,

allowing natural recharge processes to enable groundwater levels and storage volumes to recover. (LV 4688; MV 6073-74.) But it is no longer reasonable to assume droughts will end quickly enough to allow for reduced pumping from the Saugus Formation after three years. The most recent drought lasted at least five years, and was extreme by historical standards. (SR 7022.) Because temperatures are increasing, and higher temperatures exacerbate the effect of drought (*ibid.*), the use of historical patterns of wet and dry years to project future water supplies is questionable, and requires further analysis.

Because new information raises questions about assumptions on which the original water supply analysis relied, the County should have done supplemental analysis. (See *Security Environmental Systems, Inc. v. South Coast Air Quality Management Dist.* (1991) 229 Cal.App.3d 110, 124 [new information led air quality district to be concerned about potentially higher health risks from hazardous waste incinerator emissions than original analysis assumed]; *Moss v. County of Humboldt, supra*, 162 Cal.App.4th at pp. 1060-61.)

Another problem with the water supply analysis in the 2011 EIRs is that studies used there included modeling of groundwater pumping and recharge based on historical rainfall records. (LV 2390.) Basing models on historical rainfall is questionable given new evidence of the accelerating effects of climate change on rainfall. (See, e.g., SR 7048.) The County acknowledged in 2011 that water supply studies up to then did not fully account for climate change, but said it was relying on the best information available at the time. It recognized future studies might provide new information about predicted changes in the strengths of future droughts, which could be incorporated to test the influence of climate change on the groundwater system. (LV 2391.) Nevertheless, the County declined to conduct further analysis of potential climate-change effects on water supplies at that time, saying it would be speculative to quantify the effects of climate changes on the SWP system and local groundwater basin. (LV 2394.) In preparing the Recirculated Analysis, the County should have re-analyzed water supply impacts without relying on historical water trends, and accounting for climatic changes and their effects on water resources.

The 2011 EIRs' analysis of water supply also relies on the fact that the Landmark and Mission Projects' potable water will come from existing groundwater being converted from agricultural use. The EIRs assert that because the water is already used to support agricultural uses, no net increase in groundwater use will occur, and there will be no resulting significant adverse effects resulting from use of the water. (LV 4737; MV 6169.) This reasoning ignores the fact that the effect of increased droughts on groundwater in the Santa Clarita Valley is an aquifer-wide issue. If drought reduces the amount of available groundwater to the extent that there is not enough water for other uses in the

area, then the Projects' use of groundwater will impact water supply for those other uses. The fact that Newhall has used some groundwater for agricultural uses in the past and present does not mean the Projects will have no impact on overall water supply in the future. If Newhall were to continue to use the water for agricultural purposes after increased drought driven by climate change led to reduced groundwater supplies, that use would also affect water supply for other uses, and Newhall's right to that agricultural water might very well be curtailed. (See SR 7056 [noting that in June 2015, in response to the severe drought since 2011, the State Water Board mandated cuts to senior agricultural water rights holders].) Thus, although the water slated for the Projects currently is being used for another purpose, there is an obligation to analyze impacts on water supply from the Projects resulting from more extreme droughts driven by climate change.

Furthermore, in rejecting commenters' calls for supplemental water supply analysis, the County declared that the Santa Clarita Valley was no longer in an extreme drought. (SR 2309; 31609.) Although it is true that the drought status of the Valley was downgraded after heavy rainfall in the winter of 2016-2017, the effects of drought on water supply outlast the drought period itself. For example, it is estimated that it will take several years to recover from the deficit in snowpack from 2015. (SR 7049.)

Moreover, as discussed above, the strong potential for more frequent, more extreme, and longer-lasting drought periods as a result of climate change means the County can no longer rely on historical patterns of drought and wetter periods to conclude water supply will be reliable. (SR 50087 [noting drought events could increase in intensity, impacting regional groundwater recharge].) New information shows the water supply is not as reliable as assumed in the 2011 EIRs because of climate change, raising concerns about Santa Clarita Valley's water supply. Because the Landmark and Mission Projects are new developments that will draw on water that otherwise could be available for existing uses, they will potentially exacerbate water shortages, and thus have potentially significant impacts. The County should have conducted supplemental analysis to "make the previous EIR[s] adequate for the project[s]" given the new information and changed circumstances that has come to light. (Guidelines § 15163(a)(2).)

Failing to conduct supplemental environmental review despite the changed circumstances and presence of new information violates CEQA and impedes the EIR's function as an informational document. (*Mira Monte Homeowners Ass'n v. County of Ventura* (1985) 165 Cal.App.3d 357, 364-65.) Thus, the County's failure to include a revised water supply analysis in a supplemental EIR "deprived the public . . . of meaningful participation regarding the issue of" water supply. (*Id.* at p. 365.)

IV. The County violated Water Code § 10910 by failing to include a new Water Supply Assessment in the Recirculated Analysis.

SB 610, one of the "show me the water" laws passed in 2001, was enacted to "strengthen the process pursuant to which local agencies determine the adequacy of existing and planned future water supplies to meet existing and planned future demands on those water supplies." (Sen. Bill No. 610 (2001-2002 Reg. Sess.) § 1(b).)

SB 610 generally requires a Water Supply Assessment (**WSA**) to be prepared for a development that will contain more than 500 dwelling units, more than 500,000 square feet of retail space, or commercial space employing more than 1,000 people. (Water Code, §§ 10910, 10912(a).) A city or county, at the time it undertakes CEQA review of such a development, must request a WSA from the "public water system" that will provide water to the project. (Water Code, § 10910(c).) The purpose of the WSA is to ensure sufficient water will be available for the project, and also to determine whether the public water system's supplies will be adequate to meet its overall projected water demand. (Water Code, § 10910(c)(3).) CEQA expressly requires that a city or county comply with SB 610 when it has determined a project is subject to CEQA. (§ 21151.9.) The public water system that will supply water for the Landmark and Mission Projects was, at the time the Recirculated Analysis was approved, Valencia Water Company (**VWC**).[12] In 2010 VWC prepared WSAs for Landmark and Mission (LV 8004-36; MV 25073-103.) The 2011 EIRs' water supply analysis for the two Projects relied on those WSAs.

Three provisions in SB 610 required the County to require new, updated WSAs before certifying that the Recirculated Analysis in combination with the 2011 EIRs constituted adequate and complete EIRs for both Projects.

The first requires the County, at the time it determines what form of CEQA document to prepare, to request the appropriate public water system to prepare a WSA. (Water Code § 10910(c)(1).) After the courts ordered the County to set aside portions of the EIRs for the two Projects, the County decided to proceed by preparing the Recirculated Analysis, amending the 2011 EIRs. This decision triggered the requirement in Water Code § 10910(c)(1) that the County request new WSAs for the two Projects.

Second, "[t]he city or county shall include the water supply assessment provided pursuant to Section 10910 . . . in *any* environmental document prepared for the project pursuant to [CEQA]." (Water Code § 10911(b) [emphasis added].) *Vineyard, supra,* 40

[12] In early 2018 Valencia Water Company merged into a valley-wide entity called SCV Water, composed of the water retailers in the Santa Clarita Valley plus the former CLWA, the primary mission of which was to provide SWP water to local water retailers.

Cal.4th 412, refers to the "plans and estimates that Water Code section 10910 mandates for future water supplies at the time of *any* approval subject to CEQA." (*Id.* at p. 434.) Neither the Water Code nor our Supreme Court's interpretation of it limits the WSA requirement to the initial EIR; a WSA is required for a supplemental EIR or when substantial portions of an EIR are recirculated.

Third, SB 610 requires a new WSA to be prepared when changes in circumstances substantially affect the water agency's ability to provide sufficient water supply, or significant new information becomes available that was not known and could not have been know at the time the assessment was prepared. (Water Code § 10910(h)(2), (3).)

The Recirculated Analysis for the Landmark and Mission Projects should have included a new Water Supply Analysis, as required by Water Code § 10910, because of the new information and changed circumstances relating to the Projects' effects on water supply in the Santa Clarita Valley, as described above in section III.C.2. That section lays out evidence showing the water table in aquifers underlying the Santa Clarita Valley declined substantially during the multi-year drought, and some wells were unable to meet their target production volumes. The evidence also shows that more-extreme drought conditions can be expected in the future because of the effects of climate change: the Santa Clarita Valley will get increasingly hotter and drier.

The SB 610 WSAs included with the 2011 Landmark EIR and the 2011 Mission EIR were prepared in January 2010 (LV 8005; MV 25073) by VWC, wholly owned at that time by Newhall. The 2010 WSAs were based in part on the 2005 Urban Water Management Plan (**UWMP**) for the Santa Clarita Valley. That UWMP has been superseded by UWMPs in 2010 and 2015. The 2015 UWMP lists several events that affect the Valley's water supply, and thus affect the Projects' effects on that water supply:

- SB X7-7, the Water Conservation Act of 2009, signed into law in November 2009, which sets a target of 20 percent reduction in per capita water use statewide by 2020, and requires retail water suppliers like VWC to comply with water-conservation requirements to be eligible for state water grants (SR 50074);
- several changes to the Water Code, which require modifications in water planning generally (SR 50074-75); and
- the increased presence of perchlorate in well water in the Santa Clarita Valley, initially found via testing in August 2010, and requiring a significant well to be taken out of production (SR 50160).

The 2005 UWMP barely mentions climate change. The 2015 UWMP contains, in Appendix I (SR 51284-335), drawn from the 2014 Upper Santa Clara River Integrated

Regional Water Management Plan, a 53-page discussion of the effects of climate change on water supply. It contains substantial information on how climate change is likely to affect water supply, including temperature increases of up to 8 degrees (SR 51294), and precipitation declining by up to 22 percent. (SR 51296.) In a table listing climate-change vulnerabilities, the report states climate change may well affect the availability of groundwater in the Santa Clarita Valley:

> Changes in local hydrology could affect natural recharge to the local groundwater aquifers and the quantity of groundwater that could be pumped sustainably over the long-term. Decreased inflow from runoff, increased evaporative losses, warmer and shorter winter seasons can alter natural recharge of groundwater. In addition, additional reductions in the SWP imported water imposed by climate change would lead to more reliance on groundwater. (SR 51297.)

The issue here is not so much whether sufficient water will be available for Landmark Village, Mission Village, and Newhall's other projects. Newhall has rigged the system to ensure its projects will be given priority in water allocation by signing an agreement with VWC, then its wholly owned subsidiary, before selling the water company to CLWA, under which agreement VWC agreed to lock in Newhall's water, and give priority to Newhall, regardless of competing uses:

> The Company agrees that it: (i) shall never use Newhall's 7,038 afy of groundwater as a basis for issuing water supply assessments, water supply verifications, or will serve letters for water service, permanent or temporary, other than for the Newhall Ranch Specific Plan, without the written consent of Newhall; (ii) shall never contend, ot authorize or encourage any other person or entity to contend, that the groundwater is not available to serve elements of the Newhall Ranch Specific Plan due to the need to use such supplies to support the water needs of other existing or future water users . . . . (SR 42669-70.)

The above-cited agreement may be contrary to law. Newhall's rights to pump groundwater for agriculture are overlying rights, akin to riparian rights, and appurtenant to the land. (*California Water Service Co. v. Edward Sidebotham & Sons* (1964) 224 Cal.App.2d 715, 725.) By contrast, the public use of groundwater is classified as an appropriative use. (*San Bernardino v. Riverside* (1921) 186 Cal. 7, 25.) The rights of overlying users in the groundwater basin are superior to appropriators; and the rights of prior appropriators in the basin are superior to VWC's. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.) VWC therefore has no legal right to guarantee that Newhall may use for municipal purposes the groundwater it is currently pumping for its own agricultural use.

The reason a new WSA is required is to allow the County to determine the effect of

approving the Projects on availability of water for other Santa Clarita Valley uses. "The ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." (*Vineyard, supra,* 40 Cal.4th at p. 434.)

The County's failure to require new WSAs when it prepared and circulated the Recirculated Analysis and then certified that the Recirculated Analysis in combination with the 2011 EIRs constituted adequate and complete EIRs for both Projects, violated both CEQA (§ 21168.5) and the Water Code (§§ 10910(c), 10911(b)). This failure was a failure to proceed in the manner required by law, reviewed de novo by this court. (*Vineyard, supra,* 40 Cal.4th at p. 435 [correct procedures are evaluated de novo].)

Though the courts upheld the water supply analysis in the 2011 EIRs, SB 610 and CEQA required the County to prepare new Water Supply Assessments as part of the process of recirculating portions of the EIRs. The County failed to comply with this procedural requirement of CEQA, and as a result, the Court should order the Recirculated Analysis for each Project set aside until corrected to comply with CEQA.

V. Conclusion

For the foregoing reasons, the Court should grant the petition for a writ of mandate, setting aside the County's certification of the Recirculated Analysis in combination with the 2011 EIRs, as well as the land-use approvals, for both the Landmark Project and the Mission Project, and ordering the County to prepare EIRs that comply with CEQA.

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Respectfully Submitted,
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