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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: F. Becerra, Jr., Deputy

CLIMATE RESOLVE v. COUNTY OF LOS ANGELES
Case Number: 19STCP01917 [related w/19STCP02100]

Hearing Dates: September 30 and November 13, 2020 and January 8, 2021

ORDER DENYING PETITION FOR WRIT OF MANDATE FILED BY CENTER FOR BIOLOGICAL DIVERSITY and CALIFORNIA NATIVE PLANT SOCIETY

ORDER GRANTING PETITION FOR WRIT OF MANDATE FILED BY CLIMATE RESOLVE

These actions challenge the approval by Respondent, the County of Los Angeles (the County), of the Centennial Specific Plan Project, "a new master-planned community in the unincorporated community of Antelope Valley" (the Project). (AR 165:46787.)[1]

The Project:

> "proposes a new master-planned community to develop up to 19,333 dwelling units on 4,937 gross acres of land designated for residential uses. Other land uses include 7.36 million square feet and 597 acres of Business Park uses (such as office, research and development, warehousing, and light manufacturing); 1.03 million square feet and 102 acres of Commercial sues; 1.57 million square feet and 110 acres of Institutional and Civic land uses (such as schools, medical facilities, library and other civic uses); and 130,680 square feet and 75 acres of Recreation/Entertainment Overlay uses (such as clubhouse, farmers market, childcare facilities, and health clubs)." (AR 165:46814.)

The Project has a maximum resident population of 57,150 persons. (AR 40:20229.) It includes its own utility facilities to serve the community (AR 165:46815), a full range of "light industrial, business and other commercial uses . . . intended to yield a broad range of employment opportunities" (AR 165:46816), preservation of open spaces for natural resource protection and public parks. (AR 165:46815.) Additionally, significant ecological areas within the Project site avoid development for conservation purposes. (AR 165:46816.)

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[1] There is one administrative record for both petitions. Citations to the administrative record are as follows: AR [Tab Number: Page Number].

As designed, the Project:

> "includes the development of nine Villages that will each contain a mix of land uses that enable residents to live near schools, recreation, shopping, neighborhood businesses and services, civic facilities, medical facilities, and employment centers. Project buildout would be implemented in phases based on future market conditions over an approximate 20-year period through a series of future tract and parcel maps. The Project includes a mix of housing options within each Village, ranging from apartment homes in the high-density Town Center to single-family homes in lower-density neighborhoods located away from the center." (AR 14:46816; see also AR 30:19426.)

The Project site is located in the County approximately 35 miles north of the City of Santa Clarita, approximately 50 miles south of the City of Bakersfield in Kern County, and approximately 36 and 43 miles west of the cities of Lancaster and Palmdale, respectively. (AR 27:19280.) State Route (SR)-138 runs through the southern portion of the Project site, which is located approximately one mile east of Interstate (I)-5, just south of the boundary between the County and Kern County in the vicinity of Quail Lake. (AR 27:19280; see also 30:19421.)

The Project site is:

> "generally bound by the Tehachapi Mountains to the north, and the Antelope Valley to the east; the northern edges of the Liebre and San Gabriel Mountains (Angeles National Forest) are approximately one mile to the south, and privately owned vacant land is immediately adjacent to the site to the west. The Los Padres National Forest is approximately seven miles to the west." (AR 30:19421.)

The Project site is currently undeveloped "with limited use for grazing and agriculture." (AR 165:46817.)

Petitioners, Center for Biological Diversity and California Native Plant Society (collectively, CBD Petitioners), seek to set aside the County's certification of the environmental impact report (EIR), the findings of fact and the statement of overriding considerations supporting the County's approval of the Project. CBD Petitioners also seek to set aside the Project's entitlements "including, but not limited to, the specific plan, zone change, general plan amendment, vesting tentative parcel map, conditional use permit, and the development agreement. CBD Petitioners also seek an injunction precluding development of any portion of the Project site. (See Generally CBD Petitioners' Petition Prayer.)

Petitioner, Climate Resolve (CR), seeks nearly identical relief. (See Generally CR Petition Prayer.) CR, however, also requests the County be ordered to "prepare and certify a legally adequate EIR for the Project."[2] (CR Petition, Prayer 1.c.)

The County as well as the Project's developers, Real Parties in Interest, Tejon Ranch Company and Tejon Ranchcorp (the Companies), oppose the petitions.

STATEMENT OF THE CASE

The EIR for the Project considered and analyzed the following discretionary actions: (1) adoption of the Project; (2) approval of a zone change; (3) approval of a general plan amendment to the Antelope Valley Area Plan (AVAP) and County Highway Plan; (4) approval of a vesting tentative parcel map; (5) a development agreement; (6) a conditional use permit (CUP) for grading; and (7) a CUP for infrastructure. (AR 30:19546-19548.)

On March 15, 2004, the County issued a notice of preparation of a draft EIR. (AR 2:25.)

On June 17, 2008, the Companies entered into a Conservation and Land Use Agreement with Audubon California, the Endangered Habitats League, Natural Resources Defense Council, Planning and Conservation League and Sierra Club and a non-profit entity, the Tejon Ranch Conservancy (Conservancy). In exchange for designating more than 240,000 acres "or approximately 90 percent" of the Project as open spaces and/or dedicated conservation easements, the signatory environmental groups agreed they would not oppose the Project. (AR 30:19479.) Pursuant to the Conservation and Land Use Agreement, the Conservancy will manage the conserved lands pursuant to a Ranch-wide Management Plan (RWMP). (AR 30:19479.)

The County released the Draft EIR (DEIR) on May 15, 2017 for a 90-day public comment period. (AR 2:6.) A County hearing examiner conducted a hearing to receive public comments on the DEIR on July 17, 2017. (AR 2:6.)

In May 2018, the County released the Final EIR (FEIR).[3] (AR 2:7; 12:11864.)

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[2] CR's arguments are incorporated by reference by the CBD Petitioners. (Climate Resolve Opening Brief 2:6-7.) There are two separate but related actions before the court; the matters have not been consolidated. It is unclear how the CBD Petitioners may incorporate by reference arguments made in a separate action by a different party. (See fn. 31 *infra.*)

[3] The FEIR consists of the "[DEIR], [DEIR] appendices, comments received on the [DEIR], a list of commenters, written responses to the significant environmental issues raised in those comments, revisions to the text of the [DEIR] reflecting changes made in response to comments and other information, including several Project design features and mitigation measures added and revised as a result of the comments, along with other minor changes to the text of the [DEIR] . . . ." (AR 2:7.)

The County's Regional Planning Commission held noticed public hearings on the Project on June 6, July 11 and August 29, 2018. (AR 2:7; 2:28.) At the conclusion of the hearings, the Regional Planning Commission recommended the County's Board of Supervisors certify the FEIR and approve the Project. (AR 2:28.)

In November 2018, the County produced a consolidated FEIR (the EIR).[4] (AR 2:29.) On December 11, 2018, the County's Board of Supervisors held a hearing to consider the discretionary Project entitlements. While the Board of Supervisors indicated its intent to approve the Project, it required several changes be made to the development agreement, the CUPs, the vesting tentative parcel map as well as the mitigation monitoring and reporting program (MMRP). (AR 2:3-4; 2:29; 217:48661-48663.)

On April 30, 2019, the County's Board of Supervisors, in a four-to-one vote, certified the EIR, made certain CEQA findings, adopted a statement of overriding consideration and approved the Project. (AR 2:8; 2:29-31; 214:48209; 215:48346.)

The writ petitions ensued.

STANDARD OF REVIEW

In reviewing an agency's compliance with CEQA during the course of its legislative or quasi-legislative actions, the trial court's inquiry during a mandamus proceeding " 'shall extend only to whether there was a prejudicial abuse of discretion,' " which is established " 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' " (*Vineyard Area Citizens for Responsible Growth Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 [citing Pub. Resources Code § 21168.5].) "In evaluating an EIR for CEQA compliance, . . . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Id.* at 435.)

CEQA requires an EIR to "be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines[5] § 15151; *Sierra Club v. County of Fresno* [*Friant Ranch*](2018) 6 Cal.5th 502, 516.) "An EIR's designation of a particular environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." (*Friant Ranch, supra,* 6 Cal.5th at 514.) "[T]here must be a disclosure of the 'analytic route the . . . agency traveled from evidence to action.'"

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[4] The court refers herein to this final environmental document as the EIR. The consolidated FEIR is a single document containing the DEIR, the FEIR and comments raised after publication of the FEIR but prior to the Board of Supervisors' hearing to consider certification of the EIR and approval of the Project. (AR 2:29.)

[5] The CEQA Guidelines are found at Title 14, Chapter 3 in the California Code of Regulations. For ease of reference, the guidelines are cited herein as "Guidelines."

(*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 404.) "[A] conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence." (*Friant Ranch, supra,* 6 Cal.5th at 514.) If the deficiencies in an EIR preclude "informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 128.)

"Where the alleged defect is that the agency has failed to proceed in the manner required by law, the court determines de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated requirements." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 845.)

In *Friant Ranch,* our Supreme Court distilled "[t]hree basic principles" guiding judicial review of agency decisions under CEQA. (*Friant Ranch, supra,* 6 Cal.5th at 515.) First, "[a]n agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*Ibid.*) Second, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including " ' "detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." ' " (*Id.* at 515-516 [citation omitted].) Third, "[t]he determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions." (*Id.* at 516.)

With respect to "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 appellant's failure to carry his burden." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) Moreover, "the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, [the court's] task 'is not to weigh conflicting evidence and determine who has the better argument.' " (*Vineyard Area Citizens for Responsible Growth Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at 435.)

"Regardless of what is alleged, an EIR approved by a governmental agency is presumed legally adequate, and the party challenging the EIR has the burden of showing otherwise." (*Chico Advocates for a Responsible Economy v. City of Chico, supra,* 40 Cal.App.5th at 846.)

Finally, "[t]he legal duties imposed by CEQA are to be strictly enforced. [Citation.] 'Only by requiring the County to fully comply with the letter of the law can a subversion of the important purposes of CEQA be avoided . . . .' [Citation.] The requirements of CEQA also must be 'interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1176.)

Of course, perfection is not required. Instead, courts look "for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines § 15151.)

ANALYSIS

I. THE CBD PETITIONERS' CHALLENGE

The Project Description:

"[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052.) "[A] project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading. [Citation.]" (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287.) "Regarding the question of whether the EIR's project description complied with CEQA's requirements, the standard of review is de novo." (*stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 15.)

The CBD Petitioners claim the "EIR . . . violates CEQA because it creates 'conflicting signals to decision makers and the public about the nature and scope of the project . . . .' " (CBD Opening Brief 13:12-13.) They assert there is a "mismatch between the Project as described in the EIR and as set forth in the [d]evelopment [a]greement." (CBD Opening Brief 12:27.) More specifically, the CBD Petitioners argue the EIR informs the Project will be built in ten phases with actual timing to be based on factors such as the economy, market demand and off-site infrastructure. The development agreement, however, gives the Companies "sole authority over the 'order,' 'rate,' and 'times' of development in a manner the Companies " 'deem appropriate within the exercise of their respective sole and subjective business judgment.' " (CBD Opening Brief 13:8-10 [quoting AR 291:054134].)

Thus, the CBD Petitioners argue there is a misleading disconnect in the environmental documents. While the EIR designates the Project will consist of "up to 19,333 dwelling units" as well as "approximately 7,363,818 square feet . . . of Business Park uses [] and approximately 1,034,550 [square feet] of Commercial uses" (AR 30:19426), the development agreement—according to the CBD Petitioners—gives the Companies unfettered discretion to build what they want to build, when they want to build it. (AR 291:54134, 416:58733-58734.) The CBD Petitioners reason the Project description is therefore misleading and legally inadequate because the Project as described may not be the Project actually built.

The development agreement provides "it is the intent of [the Companies] and the County to hereby acknowledge and provide for the right of [the Companies] to develop the Property in such order and at such rate and times as [the Companies] deem appropriate within the exercise of their respective sole and subjective business judgment." (AR 7:1682; see also AR 291:54134.)

The development agreement also expresses "nothing in this Agreement requires [the Companies] to proceed with the construction of or any other implementation of the Project or any portion thereof." (AR 7:1682; see also AR 291:54134.)

The EIR discloses a "conceptual" phasing program that is only for "information purposes." (AR 30:19531.) While the phasing program "may be revised by the [Companies] without a Specific Plan Amendment," it may be revised only with "County approval during the tentative tract map process and Centennial Specific Plan requirements." (AR 30:19531.) Moreover, "[a]ny changes" in the Project must comply with CEQA requirements and the Development Agreement." (AR 30:19531.)

As the CBD Petitioners view it, a phasing program providing the Companies with discretion about what gets built and when, risks undesirable sprawl development. That is, the Companies' discretion allows residential units to be built without the related commercial development, thereby requiring residents to commute to jobs.

The California Department of Transportation (Caltrans) shares a similar concern: "If residential development occurs prior to the commercial, business, and employment center, the typical morning and evening commutes could occur, thus establishing a sprawl type of development." (AR 8:2140.) Caltrans advised to "avoid an unsustainable scenario," the County should properly phase the development: "Both residential and employment centers should be developed concurrently." (AR 8:2140.)

The CBD Petitioners also contend the discretion provided to the Companies will result in a reduction in the commercial development. Such a reduction is foreseeable, according to the CBD Petitioners, because "market demand" for development at the Project site is absent from the administrative record. In fact, a market study commissioned by the Companies shows even after all 19,333 residential units are built, "there will only be demand for 2,932,000 million square feet of office space. . . . This is less than half of the 8,398,368 square feet of commercial and business park uses proposed by the Centennial Specific Plan." (AR 110:32687 [CBP Petitioners' comments citing AR 110:32816 [market study].) The market study also concluded the "potential demand" for office space is about " '1/7 of the total planned office inventory.' " (AR 110:32687 [CBD Petitioners' comments citing AR 110:32819 [market study].)

The potential for commercial area to be undeveloped as required by the Project—because of discretion given to the Companies in the development agreement—is significant. The CBD Petitioners find the foreseeable consequence to be a "severe underestimation in the Project's traffic impacts."[6] (CBD Opening Brief 14:2.)

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[6] The CBD Petitioners suggest a defective traffic analysis (based on an imbalance in residential and commercial units) also informs on whether the EIR's greenhouse gas and air quality analyses are defective. (AR 52:20952 [GHG analysis based on traffic analysis]; 42:20453-54 [air quality analysis based on traffic analysis].)

As alleged by the CBD Petitioners, the EIR traffic analysis turns, in part, on the ratio of residential to commercial development. The traffic impacts studied by the EIR depend upon complete commercial development of the Project. The EIR estimates 65 percent of the "average daily traffic" would be internal to the Project site as a result of the balance between commercial and residential uses. Specifically, the EIR reports the Project "has been designed to balance residential and non-residential uses and to balance the number of on-site jobs available with on-site housing units to encourage local trips." (AR 41:20319.)

Accordingly, distilled to its essence, the CBD Petitioners argue a bait and switch by the County. That is, they believe the Project described in the EIR is not the Project that will actually be built by the Companies over the course of 20 years. The CBD Petitioners speculate—based on market studies—the Companies will exercise their unfettered discretion and build substantially fewer commercial units for the Project because the Project overestimates the demand for commercial units. Fewer commercial units, the CBD Petitioners argue, means more average daily traffic with "typical morning and evening commutes . . ., thus establishing a sprawl type of development." (AR 8:2140.)

The CBD Petitioners' theory that the Companies have the discretion to decide what to build and when to build it is an oversimplification of the anticipated 20-year build out process. Specifically, the theory disregards the County's involvement in the Project's build out and the ongoing nature of the approval process.

As a preliminary matter, the EIR discloses the phasing plan provided is conceptual and for informational purposes. (AR 30:19531.) The phasing plan, as explained in the EIR, is "an organizational framework to facilitate development while assuring provision of infrastructure and the public facilities necessary to support Project development." (AR 30:19531.) The framework provides for ten phases over a 20-year period. (AR 30:19531-19539, 8:2718-2724.) Thus, as an informational document for the public and decisionmakers, the EIR expressly acknowledges and reveals the potential for variation as a result of the phasing plan.

The Project contains specific provisions for implementation and "processes and procedures for subsequent Project approvals." (AR 18:17053.) The implementation provisions "allow flexibility in the development of the Project . . . while ensuring consistency with the purpose and intent" of the Project. The County's Board of Supervisors is responsible for making decisions about Project amendments, "other legislative actions, calls for review, or actions on the final maps." (AR 18:17054.) The Board of Supervisors will be required to take action on Regional Planning Commission decisions as well as "associated CEQA documentation." (AR 18:17054.)

The comprehensive process and procedure for subsequent Project approvals is set out in detail in the EIR. The County has provided a process for minor deviations from the Project plans (ministerial review) (AR 18:17054), "additions, deletions, or changes" to the Project "that otherwise substantially conform" to the Project (AR 18:17055), deviation from development standards (AR 18:17056) as well as changes to the phasing design. (AR 18:17057.)

Each phase of the build out "will require the preparation and implementation of tentative tract maps . . . ." (AR 8:2143.) The "Tentative (subdivision) maps and the Tentative Map process will be used to establish the precise boundaries of all lots and their corresponding land use designations and villages." (AR 18:17064.) The tentative tract maps (TTMs) "will also establish the exact locations of streets illustrated in the Circulation Plan and other infrastructure." (AR 18:17064.) A TTM requires independent approval by the County. (AR 18:17065.)

In addition, the CUP process "is the method by which the County controls the location and operation of certain types of land uses." (AR 18:17070.) The County's approval of a CUP

> "is based on an analysis of a proposed project's consistency with the General Plan, the intent and provisions of this [Project], compatibility with surrounding land uses, adequacy of public facilities and services, and potential environmental impacts." (AR 18:17070.)

CUPs are processed in accordance with the County's zoning ordinance. (AR 18:17070.) Accordingly, depending on the nature of the conditional use, approval from a hearing officer or the Regional Planning Commission may be required. (AR 18:17070.) Ultimately, in either case, the County controls whether the Companies will obtain a CUP.

The Companies recognize they have some flexibility to respond to unforeseeable market conditions. Nonetheless, the flexibility is limited and ensures development in substantial compliance with the assumptions in the EIR. For example, the Companies note the Project's master CUP requires each phase of the Project's development "be in conformity with the master phasing plan of the Centennial Project" and to provide a jobs-housing balance summary. (AR 5:1433.) Further, the development agreement requires the Companies provide an extensive list of employment generating amenities included in the Project, such as retail centers, grocery stores, utility infrastructures, medical facility, schools and parks before the County will issue its first residential certificate of occupancy [occupancy certificate linked to retail center, sheriff's station, waste water treatment plant]. (AR 7:1774-81; 7:1777.)

Last, and perhaps most importantly, as a requirement of the County's MMRP approval, Project conditions and impacts must be evaluated at appropriate development phases—such as each TTM application—to ensure the Project continues to conform to the EIR's assumptions. Such review ensures there are no new or worsened significant impacts associated with the Project's phased development. (AR 2:266-67, 2:434, 2:446-49.)[7]

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[7] For example, referring to mitigation measure (MM) 10-25, "[i]f the Project traffic evaluated in a TTM application deviates significantly from projected levels, the County has the authority deny the approval of any new TTMs and additional development until Project conditions are verified to be within projected levels, or a new project application, with new CEQA analysis, is reviewed and approved." (AR 2:267.)

Given the scope and immensity of the Project, some uncertainty as to a 20-year build out is inescapable.[8] (See e.g., *Citizens for a Sustainable Treasure Island v. City and County of San Francisco, supra,* 227 Cal.App.4th at 1054; see also *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 292 [addition of eight housing units is type of change expected during CEQA process and did not render project description defective].) An EIR's sufficiency, however, "is to be reviewed in the light of what is reasonably feasible." (Guidelines § 15151.)

Based on the foregoing, the court finds the EIR's Project description does not violate CEQA. The court finds the CBD Petitioners' characterization of the Companies having unchecked discretion to build whatever and whenever it is an over generalization and inconsistent with the environmental documents. The EIR sets forth a comprehensive Project description. While the phasing plan set forth in the EIR is conceptual and informational, the required ongoing Project approvals from the County ensures compliance with the Project description and the law.

The EIR's Analysis of Mitigation of Impacts on Biological Resources:

1. ***Discussion of the Project's Impacts on the Tehachapi Linkage and the Central Coast South Mountain Lions and Pronghorn Antelope***

"Landscape linkages used by wildlife . . . can serve to provide dispersal corridors between areas that provide wildlife habitats and that are otherwise separated by impassable terrain,

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[8] As a practical matter, a project of this size and scale requires some flexibility:

> "To be sure, as a matter of necessity at this stage in the planning process, there are many Project features that are subject to future revision, and quite likely will be the subjects of supplemental review before the final Project design is implemented. However, the EIR cannot be faulted for not providing detail that, due to the nature of the Project, simply does not now exist. (Guidelines, § 15146 ["The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR"].) Nor have the courts required resolution of all hypothetical details prior to approval of an EIR, as [the EIR challenger] implies." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1054.)

vegetation, developed lands, or other disturbances."[9] (AR 38:19937.) The Tehachapi Linkage[10] is the "only upland connection between the 2000-mile Sierra-Cascade mountain system and the 800-mile-long system comprised of the Sierra Madre . . . the Transverse Ranges, and the Peninsular Ranges . . . ." (AR 79:27881 [illustrative map].)[11]

The EIR explains the importance of the Tehachapi Linkage:

> ". . . the Tehachapi Mountains provide a regional landscape linkage between the Sierra Nevada, the Coast Ranges, and the San Gabriel Mountains to the south. Although I-5 and the California Aqueduct substantially reduce the permeability of the linkage for many wildlife species, it remains functional for many species to some degree. This is largely due to the limited amount and sparse nature of development in the vicinity of the remaining wildlife crossings and elsewhere in the Tehachapi Mountains. Keeping the Tehachapi linkage functional is important for the long-term viability of many species and for the overall health of the plant and wildlife communities in the region." (AR 68:19948.)

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[9] The EIR explains:

> "The fragmentation of open spaces resulting from urbanization can create isolated 'islands' of wildlife habitat imbedded in a suitable matrix. Landscape linkages mitigate the effects of fragmentation by allowing animals to move between otherwise isolated habitats, thereby permitting depleted populations to be replenished; promoting genetic exchange; and providing wildlife with potential escape routes from fire, predators, and human disturbances. These linkages thus provide opportunities to reduce the likelihood that catastrophic events (such as fire or disease) may result in extirpation of populations of susceptible species. Landscape linkages also may serve as travel routes for individual animals as they disperse across their home ranges in search of food, water, mates, and other necessary resources." (AR 38:19937.)

[10] The EIR defines Landscape Linkage as follows: "A segment of land with similar characteristics and habitat that connects similar habitats, thereby facilitating dispersal of species that occupy such habitat types. These linkages connect the natural processes that are associated with the habitat. Linkages are typically associated with larger scale connectivity." (AR 38:19937.)

[11] "Tejon Ranch is part of a landscape-scale connection between the Coast Ranges and Sierra Nevada and between the San Joaquin Valley and the Mojave Desert—truly a *continental-scale* linkage that is integral to the contiguity and interconnectedness of California's biogeographic regions. It is thus crucial to maintaining the viability of existing conservation investments in the region, such as the Sequoia and Los Padres National Forests, land administered by the Bureau of Land Management [], and The Wildlands Conservancy's Wind Wolves Preserve, which depend on unrestricted movement of the species they support []. This is particularly true in the face of global climate change that will surely force alteration of species ranges, which can only occur within unfragmented landscapes." (AR 2282:18654.)

The CBD Petitioners argue, "The EIR did not contain an accurate and informed discussion of the Project's impacts on the Tehachapi Linkage." (CBD Opening Brief 15:14-15.) Such failure, according the CBD Petitioners, also informs on the EIR's inadequate discussion of impacts on Central Coast South Mountain Lions and Pronghorn Antelope. (CBD Opening Brief 16:22-23; 17:3-4; 17:13-15.) They assert the EIR's allegedly deficient discussion is inadequate as a matter of law. (*Friant Ranch, supra,* 6 Cal.5th at 516.) Importantly, the CBD Petitioners do not challenge the County's conclusions on substantial evidence grounds.

At the center of the CBD Petitioners' challenge is the allegation the County "downplay[ed] the Project's impacts on the Tehachapi Linkage for wildlife and fail[ed] to analyze the region-wide impacts of the Project on the linkage." (CBD Opening Brief 15:23-24.) The CBD Petitioners support their argument with comments submitted to the County by the Santa Monica Mountains Conservancy (SMMC), the California Department of Fish and Wildlife (CDFW) and Caltrans.

The SMMC, a state agency, expressed its view that the DEIR was "massively flawed." (AR 12:12482.) The SMMC provided a comprehensive and critical comment on the issue. The comment provided in part:

> "... the proposed project, ... would sever the most optimal five-mile-wide habitat linkage across Highway 138 between I5 and State Route 14. The DEIR is massively flawed for totally failing to analyze the project's potential impacts on habitat connectivity from the Tehachapi Mountains south (across Highway 138) into the portion of the Angeles National Forest located just east of I5. Habitat connectivity into this portion of the National Forest is vital for wildlife to connect to the Castaic Creek and Soledad Canyon areas that cross into the Rim of the Valley Trail Corridor Zone." (AR 12:12482.)

The SMMC continued:

> "The DEIR is deficient for not comparing how Metro and Caltrans have or have not provided Highway 138 under or over-crossings in the Northwest Corridor Improvement Project EIS/EIR where the proposed project straddles the highway. The DEIR is further deficient for not analyzing how the proposed project ... would eliminate virtually all wildlife movement across Highway 138 within the project boundary. Not even the slightest contiguous band of habitat or open land is proposed from the northern project area to Highway 138 or the proposed project open space sought of Highway 138." (AR 12:12482.)[12]

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[12] The SMCC made extensive comments concerning the DEIR. The EIR provided a fulsome response to each critical comment made by SMCC. (AR 8:2655-2671.)

The CDFW, like the SMCC, expressed similar concerns about wildlife movement through the Project. Among other things, the CDFW recommended the County incorporate and conduct "focused protocol surveys . . . in all areas of potentially suitable habitat for the entirety of the Project impact area . . . prior to the initiation of construction-related activities for all special status species that have a potential to occur on the Project site. . . . This CDFW recommendation is necessary because previous surveys varied in their areas of coverage and levels of intensity and were not designed for maximum species detectability." (AR 8:2199.)

Caltrans commented expanding capacity on state routes would involve issues related to "species habitat and wildlife." (AR 532:66252.) Caltrans specifically noted, "Development in this area may affect the wildlife corridor crossing of SR-138 and mitigation measures should be planned for." (AR 532:66252.)

The EIR discusses wildlife movement on the Project site. (AR 38:19935-19950; 79:26298-26302; 27863-28028.) The County concluded, "in general, a lack of vegetation cover and the presence of significant existing barriers to wildlife dispersal combine to make the Project site an area of limited opportunity for regional wildlife movement." (AR 38:19936.) Nonetheless, the County acknowledged "individual animals move on and off the site and travel significant portions of it; this discussion also recognizes that some species may cross significant portions of or the entire site on occasion." (AR 38:19936.)

The EIR reports wildlife movement studies "in the Project region have generally shown the Project area as a whole to be largely outside the critical" Tehachapi Linkage. (AR 12:12494.) The Tehachapi Linkage "occurs just to the west of the Project [and] the Project lands have generally not been included as part of this regional corridor." (AR 12:12494.) The western and southern borders of the Project site are in a significant ecological area thereby preserving wildlife movement. (AR 12:12494.) As noted, the CBD Petitioners do not wage a substantial evidence challenge on this issue.

The CBD Petitioners also dispute any reliance on the Tejon Ranch Conservation and Land Use Agreement (Ranch-wide Agreement [see AR 21:17594]) and the Tehachapi Upland Multiple Species Habitat Conservation Plan (Conservation Plan) to promote connectivity and minimize impacts on wildlife movement from the Project. (AR 12:12494, 38:19948-19949, 38:20065.) The CBD Petitioners contend such "conclusions lack evidentiary support, are at odds with the independent analysis of expert agencies, and ignores the ***quantity*** of habitat does not ensure that movement corridors remain open." (CBD Opening Brief 16:19-21.) (AR 291:54138 [CBD Petitioners' comment letter], 462a:63254 [SMCC letter re Notice of Preparation].)

The CBD Petitioners argue the EIR omitted analysis of the Central Coast South mountain lion population. The record shows mountain lions suffer from low genetic diversity and are already at risk of extinction due to lack of connectivity with other populations. (AR 270:50713-50726 [study].) Connectively with respect to the mountain lion population had been found to be especially important and has been linked to species survival. (AR 292:54223. ["Without receiving gene flow, small populations are especially subject to inbreeding, genetic drift, and

increased extinction risk."]; AR 292:54231. ["In some of these populations, individual migrants are of immediate conservation importance, and human-induced mortality should be avoided to the extent possible. We strongly encourage land owners and managers to proactively consider broad-scale wildlife connectivity in future development proposals."])

The EIR specifically discusses "high mobility ground-dwelling species" such a "mountain lions" in its discussion of wildlife movement. (AR 38:19935-19936.) It also discusses wildlife corridors and landscape linkages. (AR 38:19937. See fn. 9 *supra.*) The EIR explains landscape linkages "mitigate the effects of fragmentation by allowing animals to move between otherwise isolated habitats, thereby permitting depleted populations to be replenished; promoting genetic exchange; and providing wildlife with potential escape routes from fire, predators, and human disturbances." (AR 38:19937.)

The EIR informs on wildlife movement. The EIR explains:

> "the statement that the Project site provides crucial linkages for imperiled terrestrial animals and avian species, is not supported by the results of expert assessment of the Project site. Please see pages 5.7-50 through 5.7-64 and pages 5.7-164 through 5.7-170 of the Draft EIR for an in-depth and adequate discussion of wildlife movement, which includes post-Project impact considerations, connectivity of different guilds, and a complete evaluation on the Project's impacts on wildlife movement. Various regional wildlife studies have been conducted on the Project site (see Table 5.7-2 in Section 5.7-3, Environmental Setting). The conclusion of these studies has been that the sparse vegetation occurring on the Project site, coupled with the existing barriers of the California Aqueduct (both West Branch and East Branch) and Interstate 5, is not favorable for wildlife movement across the site as part of regional migration and local movement. Please note that considerable consideration is given to major movement deterrents in the Project area, including the SR-138 and the California aqueduct, due to their substantial potential to prevent movement of some wildlife. Accordingly, passage points (some of which are bridges) are discussed at length accordingly. [Significant ecological area] 17 is widely recognized as a crucial linkage area for the region and contains many undisturbed habitats. The Project has been designed to avoid direct impacts to [significant ecological area] 17 completely . . . ." (AR 8:3113.)

The County based its linkage considerations and decision on scientific literature regarding wildlife movement corridor principles, ground surveys, maps and photographs. (AR 38:19935-50, 38:19940; 79:26298-26302 [Centennial Biota Report (2003) Wildlife Habitat Linkages, prepared by Impact Sciences, Inc.]; 79:27862-8032 [DRAFT Interim Wildlife Movement Corridor Assessment Centennial Project Site].) On that basis, the County concluded:

> As previously stated, possible impacts on wildlife corridors from development must be evaluated with respect to blockages or barriers to movement in a regional

> context (i.e., the animal's ability to move between existing large, regional open space areas) (Beier 2003). Project development is not expected to interfere with a majority of regional wildlife movement (1) based on the findings of independent studies that the Project site is largely outside the regional wildlife movement corridor; (2) since the site's feasibility to be utilized as part of a regional wildlife corridor between the Tehachapi Mountains (to the north) and the Angeles National Forest (to the south and west) is limited by the Aqueduct and I-5; and (3) because the majority of the site is open grassland and does not support the forest and shrub cover that many larger, wide-ranging species tend to use during movement episodes. The most likely north-south passage across or in the vicinity of the Project site (on the western edge of the site and adjacent areas) would be retained as open space. (AR 38:20060.)

Despite the County's factual findings concerning the Tehachapi Linkage[13] and its location vis-à-vis the Project site—findings the CBD Petitioners do not challenge as lacking substantial evidence—the Project nonetheless preserves the most viable and promising north-south passages across the western edge of the Project site as open space. (AR 38:20060.) The County concluded the Project's impact to regional wildlife movement was "less than significant and no mitigation was required." (AR 38:20061.)

Based on the foregoing, the court finds the EIR did not fail to provide an accurate and informed discussion of the Project's impacts on the Tehachapi Linkage. That is, the EIR does not fail as an informational document on this issue. Rather, the EIR includes "sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises . . . ."[14] (*Friant Ranch, supra,* 6 Cal.5th at 510.)

2. *Native Perennial Grasslands and Pronghorn Antelope, Wildflower Fields, Alleged Deferral of Mitigation, Tricolored Blackbirds and the Ranch-wide Management Plan*

The Project site contains extensive vegetation communities which "include, but are not limited to, Wright's buckwheat scrub, mixed oak woodland, alluvial scrub, cottonwood woodland, riparian herb, rush riparian grassland, southern arroyo willow riparian, southern cottonwood-willow woodland, southern willow scrub, valley oak riparian woodland, unvegetated wash, willow riparian forest, willow riparian woodland, alkali meadow, Baltic rush, coastal and valley

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[13] As a factual matter, the EIR reports the Project site is an unsuitable habitat for mountain lions because it contains very little cover, very little water, and is not ideal for mountain lion prey. (AR 79:27947 [habitat preferences], 79:27949 [prey], 79:27977 [map], 79:27979 [prey map].)

[14] The CBD Petitioners' argument the EIR failed to consider mitigation measures to reduce the Project's impacts on the Tehachapi Linkage and mountain lions is derivative of their claim of inadequate discussion. As the court found the EIR's discussion adequate, the court need not address the CBD Petitioners' claim the EIR failed to "require mitigation measures or alternative project designs to sufficient address [the] impacts." (CBD Opening Brief 18:14-15.)

freshwater marsh, seeps and ephemeral ponds, and native perennial grasslands, wildflower fields, and native and nonnative annual grasslands." (AR 2182, 4780.)

The CBD Petitioners argue the EIR failed to adequately disclose, analyze, or mitigate the Project's harm to native perennial grasslands and pronghorn, wildflower fields, rare plant species, and tricolored blackbirds. (CBD Opening Brief 19:9.) The CBD Petitioners assert the "Project will convert thousands of acres to urban use with devastating impacts on native perennial grasslands, the rare species and wildflower fields found within, and the Antelope Valley's only namesake pronghorn heard. The Project will eliminate nesting and foraging grounds relied on by listed bird species." (CBD Opening Brief 19:21-24.)

a. Native Perennial Grasslands and Pronghorn Antelope

Native perennial grasslands and wildflower fields are considered special status vegetation types requiring discussion in an EIR. (AR 38:20051.) "Native grasslands are believed to have once covered nearly a fifth of the state and have been reduced to approximately 0.1 percent of their former area . . . ." (AR 38:20053.) "From either a statewide or regional perspective, the quality and extent of native perennial grasslands on the [Project] site is excellent." (AR 38:20053.)

The EIR discloses "the Project would impact 6,415 acres of the Native Perennial Grassland/California Annual Grassland vegetation type on site." (AR 38:20054.) The EIR does not differentiate between the two classes of grasses and the impacts on each type. According to the CBD Petitioners, this lack of information "precludes informed decisionmaking" on impacts and mitigation because without a loss quantification, it is not possible to determine whether the Project's establishment of a reserve system (AR 20077-20079)[15] will be adequate to mitigate the Project impacts (AR 58761, 54640-54641).[16] (CBD Opening Brief 21:8.) Therefore, the CBD Petitioners assert the EIR's failure to disclose impacts to native perennial grasslands violates CEQA.

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[15] The Companies "shall preserve grasslands, including native perennial grassland and associated wildflower field vegetation types, at a minimum 2:1 ratio within the approximate 27,408-acre mitigation preserve (see Table A). The Project would impact 6,416 acres of grasslands; therefore, a total of 12,832 acres of grassland mitigation acreage is required to bring impacts to a less than significant level." (AR 38:20077.)

[16] "Table 5.7-3 and 5.7-11 summarize the different vegetation types and acreages within the Project Site. In both tables, all vegetation types are presented at the Alliance level (based on Keeler-Wolf) - except for "Grass and Herb-dominated Vegetation Types." Instead, this type is identified as "Native Perennial Grassland/California Annual Grassland." This lumping is done in spite of the fact that grasslands occur over more than 9,000 acres (70%) of the Project site and include at least two distinguishable sensitive plant community types subject to EIR review- NPG [native perennial grasslands] and WFF [wildflower fields]." (AR 416:58761 [CBD Petitioners' comment letter.)

The EIR reports, "There is no official operational definition of 'native perennial grassland' that has been published by the CDFW, [California Native Plant Society], or California Native Grass Association . . . . Since all California's native grasslands were invaded by non-native plants prior to any full botanical description, it is difficult to define 'native grassland.' " (AR 38:19905.) "Defining native grasslands is more complicated than most vegetation types because the dominant species may be non-native, may be non-grass species, and may be seasonally variable." (AR 38:19923.)[17]

Despite the difficulty in quantifying native perennial grasslands, the County conducted literature review, aerial vegetation mapping and field studies to evaluate the plant communities present.[18] (AR 38:19898-19900; 79:26467-27420; 38:19904; 38:19905-19907.) Thereafter, the County determined approximately 9,100 acres of the Project site consisted of a mosaic of native perennial grasslands/California annual grassland. (AR 38:19915; 38:19921.) Moreover, using predictive modeling, the County determined the highest quality native perennial grassland and native forb communities were found on the southern slopes area north of the Project site, where Mitigation Preserve Areas 2, 3, 4, and 6 are currently located. (AR 9:3120.) Based on the infeasibility of distinguishing between native perennial grasslands and California annual grasslands, the EIR requires the Companies to mitigate for the use of all grasslands impacted by the Project at a 2:1 ratio. (AR 38:20054.) The County reasoned: "The result shall be native perennial grassland and wildflower field values that are equal to or greater than the overall ecological functions and values of those lost as a result of Project implementation." (AR 9:3120.)

The Court finds the EIR relied on the best available information to present a good faith effort of full disclosure of the environmental impacts and efforts to mitigate such impacts. (See Guidelines § 15144. ["A lead agency is only required to "use its best efforts to find out and disclose all that it reasonably can" about potential environmental impacts."] § 15151. ["An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible."]; *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 253. ["CEQA requires only that the agency 'use its best efforts to find out and disclose all that it reasonably

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[17] As noted earlier, "The native perennial grassland component of the grassland mosaic is a special status vegetation type." (AR 38:19921.)

[18] The County disclosed it elected not to use a "commonly accepted standard" of identifying "native grasslands as those where native grasses comprise between 10 to 20 percent of the cover in areas of very few shrubs or trees." (AR 38:19905.) Instead, the County explained:

> "because of the scientific uncertainty regarding the historical composition and distribution of native grasslands, especially in Southern California (Hamilton 1997), and because of the varying range of definitions of "native grassland" in use in California today, a definition that incorporates regional and site-specific information for the Project site has been used in this analysis." (AR 38:19905.)

can' (Guidelines § 15144), and that the EIR display 'adequacy, completeness, and a good faith effort at full disclosure' (Guidelines § 15151)."])

Finally, as noted by the CBD Petitioners, the native perennial grassland also supports animal species. The CBD Petitioners note the "entire life cycle" of pronghorn antelope[19] "depends on productive grassland ecosystems." (AR 532:66274.) Pronghorn antelope at the Project site suffer from a small population size (less than 50 animals), low population growth, climatic variability (dry seasons), vegetation quality ("expansive perennial grasslands of a high quality are probably the reason why this population is still marginally persistent"), isolation from other herds and probable low genetic diversity. (AR 532:66328-66329.)[20]

The EIR discloses a "relatively small population of reintroduced pronghorn antelope on the Project site . . . ." (AR 38:20016; 8:2241.) According to the County, the "[d]ata show a distribution concentrated northeast of the Project site, and within the Mitigation Preserve, with much more infrequent occurrence on the Project site . . . ." (AR 8:2241.) "[O]n-site observations are largely in the on-site preservation area." (AR 8:2241.) "The Project site represents a small fraction of the land that comprises Tejon Ranch. The data shows that Pronghorn do not substantially use or rely on the Project site . . . ." (AR 9:3158.) The EIR reported "preservation of the Mitigation Preserve and management of the grasslands in perpetuity consistent with the [RWMP] will benefit the pronghorn." (AR 9:3158.) Accordingly, the County determined from the data impacts to pronghorn antelope from the Project are less than significant . . . ." (AR 8:2242.)

The CBD Petitioners do not argue the County's findings are not supported by substantial evidence. Thus, the County's conclusion the Project results in a less than significant impact to the pronghorn antelope is unchallenged.

b. Wildflower Fields

As noted earlier, wildflower fields "are considered special status vegetation" requiring consideration in an EIR. (AR 38:20051.) Despite the requirement, the CBD Petitioners contend, "the EIR omits any real consideration of wildflower fields. . . . The EIR admits the Project will destroy 70 [percent] of onsite grassland, but it does not discuss the distribution, species richness, stand size, or acreage of wildflower fields themselves, within the Project site." (CBD Opening Brief 21:26-22:1.)

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[19] "Pronghorn were native to most southern California rangelands prior to the early 1800s, but were extirpated during the late 1800s and early 1900s. During the 1980s, translocation by the California Department of Fish and Game resulted in the restoration of a permanent pronghorn population on Tejon Ranch – currently the most southern herd in California." (AR 532:66274.)

[20] To the extent the CBD Petitioners contend (as they did in their letter to the County) the Project "will likely extirpate this population" of pronghorn antelope, the court notes the claim is unsupported.

The EIR describes the types of wildflowers at the Project site: lupine, California poppy, California goldfields, needle goldfields, several species of fiddleneck, owl's clover and many more. (AR 38:19921; 10:4861.) The EIR discloses more than 71 wildflower species on the Project site. (AR 10:4861.) The EIR reports wildflower fields "occur throughout grasslands on the site, and botanical studies conducted over several years have shown that they are seasonal and intermixed with other native and non-native grassland species." (AR 38:19921-19922.) The native wildflower's showy spring displays give way to perennial bunchgrasses in late spring and early summer. (AR 10:4861.)

The EIR advises the mosaic of native perennial grasslands/California annual grassland "include intermixed, seasonal wildflower fields that vary in density from year to year. Wildflower fields are a component of grasslands that are temporarily visible depending chiefly on rainfall amounts and timing." (AR 38:19921.)

The EIR explains:

> "Although areas of wildflower fields have been observed and are known to occur, this component of the grassland vegetation type was not mapped due to its ephemeral nature and high variability between years depending on weather patterns. Based on field observations and data collected during grassland studies, in general, varying densities of wildflower fields occur amidst the grassland vegetation throughout the site." (AR 38:19904.)

The EIR's discussion of the ephemeral nature of wildflower fields and their variability is supported by substantial evidence. (AR 79:26947.) A study included in the EIR verifies the "cover of native annual forbs varies dramatically among years with differing precipitation rates." (AR 79:26951.) For example, the study found great variability between 2007 and 2008 (1.1 percent native annual forb cover versus 11 percent). (AR 79:26951.) The study also explains "[n]ative annual forbs compete heavily with nonnative grasses for space, water, and other resources." (AR 79:26951.)[21]

The EIR also explains "[v]ast wildflower fields were observed in Off-Site Preserve Area 1 spanning many contiguous acres." (AR 80:28998.) The same mitigation preserve area had the "highest species diversity" compared to other mitigation preserve areas. (AR 80:28998.) The dominant species included Bristly fiddleneck, Bigelow's tickseed, California poppy, needle goldfields, coastal tidytips, chick lupin, common monolopia and Great Valley phacelia. (AR 80:28998.) The same mitigation preserve area had "numerous other native herbaceous species interspersed throughout." (AR 80:28998.)

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[21] While the study is contained in an appendix to the EIR, the County's response to comments expressly refers to the study to explain the EIR's reasoning. (AR 9:3122.) The EIR's narrative provides the information. The reference to the study merely provides the foundation for the County's opinion. Thus, the court does not find the County's explanation is buried in an appendix.

Wildflower fields are also present in Off-Site Preserve Area 2. (AR 80:28999.) The fields span "many contiguous acres." (AR 80:28999.)

According to the EIR, attempts at modeling spatial distribution of wildflower fields was unsuccessful. (AR 9:3123.) "[P]redictive results were poor due to the drastic variability of cover among years with differing participation rates." (AR 9:3123.)

The issue is whether the County used " 'its best efforts to find out and disclose all that it reasonably can' (Guidelines § 15144), and [whether] the EIR display[s] "adequacy, completeness, and a good faith effort at full disclosure" (Guidelines § 15151)."(*Planning & Conservation League v. Castaic Lake Water Agency, supra*, 180 Cal.App.4th at 253.)

The court finds the County relied on the best available evidence to inform decisionmakers and the public about the Project site's wildflower fields. Substantial evidence supports the County's position additional wildflower field metrics are infeasible—or do not further inform decisionmakers—based on annual variability. Nothing suggests the County did not disclose all that it reasonably could concerning wildflower fields.

The CBD Petitioners also take issue with the County's mitigation measures for wildflower fields. They suggest a designated mitigation preserve is inadequate and misleading as a mitigation measure because there is no identified criteria to determine assessment of " 'overall ecological functions.' " (CBD Opening Brief 22:11-12.) Thus, according to the CBD Petitioners, there is no basis for the EIR's assertion that the "highest quality grassland and native forb communities" are within the preserves and the impacts to wildflower fields will be mitigated to below a level of significance. (AR 9:3120; 38:20056. ["Impacts to all special status vegetation types, including native perennial grasslands and wildflower fields, would be reduced to less than significant levels with implementation of MM 7-10 and 7-11."])[22]

The Companies are required to provide mitigation lands similar to those impacted by the Project. The Companies are required to do so at a 2:1 ratio. (AR 2:379.) "Mitigation lands for impacts to biological resources would consist of 3,861 acres of unimpacted/[significant ecological area] lands on the site and 23,547 acres with additional off-site areas . . . ." (AR 38:20028.)

The EIR informs:

> "It should be noted that the similarity of the biological resources contained within the impact areas and mitigation areas is relative. The greater the level of detail

[22] The CBD Petitioners also argue a mitigation preserve does not address the loss of wildflower fields from the Pacific Crest Trail and other public vantage points. The EIR disclosed wildflower fields as an existing visual characteristic of the Project site. (AR 44:20585.)

> available for a particular resource, the greater potential for variability between sites. Although intensive studies may reflect differences between the impacted grasslands and preserved grasslands, this is to be expected. The understanding of the general similarity and the long-term preservation goals for regional native species biodiversity should dictate the appropriateness of preservation lands. Grassland and wildflower studies of mitigation areas also indicate an acceptable degree of similarity in vegetation species composition at varying degrees consistent with Project impact areas (NRC 2008b)." (AR 38:20028.)

Thus, MM 7-1 will mitigate impacts to wildflower fields. The measure requires "focused surveys of mitigation lands . . . to confirm compliance with 2:1 mitigation . . . ." (AR 2:379.) The surveys "will provide information to help determine habitat suitability in areas where propagation of rare plants may be considered." (AR 2:379.) Where successful 2:1 mitigation does not occur, the Companies are required to employ contingency measures to "further create or enhance plantings . . . ." (AR 2:380.) Certain mitigation areas will be "preserved, enhanced, expanded, restored, or created in order to compensate at a 2:1 ratio for the thousands of individual special status plants that will be lost due to the Project." (AR 2:381.)

The County's finding environmental impacts to wildflower fields will be less than significant is supported by substantial evidence.

The CBD Petitioners also take issue with the EIR's claim mitigation for biological resources will occur "by conserving vast acreage in perpetuity, but [7,490] of these 'conserved' acres were protected in 2010 when the State paid [the Companies] $15.8 million for conservation easements." (CBD Opening Brief 19:24-26; AR 8:2266.) The CBD Petitioners allege California's taxpayers should not have to pay for a private company's development. (AR 416:58757 [CBD Petitioners' comment].) The CBD Petitioners also contend the EIR misleads when it uses the conservation easement area as mitigation for the Project.

The EIR discloses that two of the mitigation preserve areas (areas 3 and 4) are subject to conservation easements. (AR 8:2266.) Mitigation areas 3 and 4 will be enhanced and restored to create biological value within those areas. Thus, while mitigation areas 3 and 4 alone are not mitigation, the required enhancement, restoration and creation of biological values on areas 3 and 4 does constitute mitigation—actions taken to lessen environmental impacts. (AR 8:2266.) Moreover, in response to comments and discussions with CDFW, the Companies added a seventh mitigation area of 7,877 acres to ensure the 2:1 preservation ratio is met. (AR 8:2266.)

c. Alleged Deferral of Mitigation Measures

"CEQA requires an EIR to propose and describe mitigation measures to minimize a project's significant environmental impacts." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 240.) "An EIR may not defer the formulation of mitigation measures to a future time . . . ." (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280.) The specific details of a mitigation measure may be developed after the approval of a

project, however, if including those details in the EIR is currently impracticable or infeasible, so long as the County commits itself to mitigation, adopts specific performance standards, and identifies actions for achieving the performance standards that will be considered, analyzed, and potentially incorporated into the mitigation measure. (Guidelines § 15126.4; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.)

The CBD Petitioners contend the County impermissibly deferred the mitigation measures for native perennial grasslands and wildflower fields, rare plant species, and other biological resources. They contend MM 7-1 defers "the formulation of both specific procedures *and* performance criteria, and the evaluation of their likely efficacy . . . ." (CBD Opening Brief 24:3-4.)

The EIR acknowledges the Project will adversely impact numerous rare plant species associated with the Project site's unique grasslands. Impacted plants include: California androsace (97 population impact), crownscale (entire population impact), round-leaved filaree (80 percent population impact), Mojave spineflower (51 percent population impact), sylvan scorzonella (most of population impact), and adobe yampah (48 percent population impact). (AR 38:20033-20037.)

As a mitigation measure, the EIR reports the Companies shall prepare and implement the MM Plant Plan that must be approved by the County prior to any vegetation clearing or grading of the Project site. (AR 38:20071.) MM 7-1 states the MM Plant Plan must:

> "specify the following: (1) procedures for the collection and temporary storage of seed (all available seed from every impacted occurrence shall be collected); (2) planting procedures, including soil preparation and irrigation; (3) a schedule and action plan to maintain and monitor enhanced, restored, and/or created populations; (4) methods to control plant densities (of competing plants) to promote the establishment of California androsace, crownscale, round-leaved filaree, Mojave spineflower, sylvan scorzonella, and adobe yampah; and (5) a list of County-approved success criteria (e.g., germination rates, growth, plant cover) to compare to the density of existing populations." (AR 38:20071.)[23]

The CBD Petitioners suggest MM 7-1 does not include a performance standard. (CBD Opening Brief 23:22-27.) The CBD Petitioners also imply MM 7-1's performance standard will later be a bilateral negotiation between the County and the Companies. (CBD Opening Brief 24:8-11.)

The court disagrees. MM 7-1 contains a specific performance standard. MM 7-1 requires that for every individual plant of a rare plant species that is impacted, two plants will be preserved in a mitigation preserve. (AR 2:379; 9:3169.) Prior to any lands being disturbed on the Project

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[23] Petitioner also contends that Mitigation-related attempts to transplant, reintroduce, and enhance plant populations succeed only 8 percent of the time, and CDFW "does not support" the practice. (AR 8:2195; 416:58763.)

site, "[s]urveys will be conducted in accordance with the current California Native Plant Society [] protocol and will occur at the appropriate time of the year." (AR 2:379.) Both the County and CDFW will be provided with the surveys. The surveys will ensure the 2:1 performance standard is obtained prior to the County issuing any grading permits.[24] (AR 2:379.) MM 7-1 also identifies actions to meet the specific performance standard—preservation and/or enhancement of existing populations and creation of new populations if necessary within a mitigation preserve—to ensure a method to meet that performance standard. (AR 8:2249-2250.) The methods used for meeting MM 7-1's performance standard will be "those that have the most potential for success—enhancement or expanding of existing populations." (AR 8:2250.)

To be sure, the CDFW disagreed that transplantation of rare plant species—one of the potential methods for meeting the performance standard of MM 7-1—would be effective. The CDFW commented:

> "Scientific literature does not support the assertion that transplanting plants into areas of microhabitat where they do not occur is viable in assuring long-term persistence of the species. Therefore, CDFW does not support transplantation of rare plants as a mitigation strategy. CDFW recommends avoidance of rare plant populations by delineation and observation of a no-disturbance buffer from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species . . . ." (AR 8:2195; 416:58763 [transplantation/relocation efforts have 8 percent effective].)

The EIR acknowledged and disclosed creating plants "is less preferable to preservation and enhancement" and noted any such creation "would occur only in suitable locations (e.g., appropriate soils, topography, slope, etc.)." (AR 8:2249.) The County reported, however, transplantation programs have been successful on at least two other occasions not involving the plants growing at the Project site. (AR 8:2250.)

The CBD Petitioners challenge other mitigation plans for the Project as well. They claim the County has impermissibly deferred mitigation in the Wildlife Relocation Plan (AR 38:20073), the Oak Woodland Mitigation Plan (AR 38:20083-20084), and the Streambed and Wetland Habitat Creation and Enhancement Plan (AR 38:20086-20088.) The EIR relies on these plans to mitigate the Project's impacts on special status wildlife species, oak woodlands and wetlands to less than significant.

Each of the mitigation plans identified by the CBD Petitioners, however, provides a verifiable and specific performance standard. For example, the Wildlife Relocation Plan requires all silvery legless lizards, coast horned lizards and two-striped garter snakes to be relocated from construction areas within the Project site to relocation areas. (AR 9:3170.) The goal of the plan is minimizing species mortality. (AR 9:3170.) The Wildlife Restoration Plan identifies actions for achieving the performance standard—identification of suitable relocation areas, trapping and

[24] The surveys will also provide a baseline for ongoing management efforts. (AR 2:379.)

relocation process including adherence to the Amphibian Task Force Fieldwork Code of Practice, and management of species relocation. (AR 9:3170.) The Wildlife Restoration Plan's components will be prepared by a qualified biologist, provided to the CDFW for comment, approved by the County and "implemented prior to grading an area for which the pre-construction survey identified one or more of the[] species." (AR 9:3170.)

The Oak Woodland Mitigation Plan also provides a verifiable and specific performance standard—a 2:1 (preservation to impact) standard. (AR 9:3171.) The plan requires the preservation of 6.2 acres of mixed oak woodland at the mitigation preserve. (AR 9:3171.) It also requires 6.2 acres of mixed oak woodland with a density of 80 trees per acre including the establishment of 322 oak trees to "replace impacted individual oak trees at a ratio of 3:1 for non-heritage oaks and 10:1 for heritage oaks." (AR 9:3171.) The plan also identifies specific actions for achieving the performance standard. (AR 9:3171.)

The Project's Streambed and Wetland Habitat Creation and Enhancement Plan is similar. (AR 9:3172.) The plan contains a verifiable and specific performance standard: "Mitigate for the loss of waters/riparian areas by (1) providing approximately 4,748.5 functional equivalent units under the Functional Capacity Unit [] methodology (or other accepted functional value unit); or (2) meeting the following mitigation ratios . . . ." (AR 9:3172.) The plan sets forth detailed mitigation ratios for wetland waters and streams. (AR 9:3172.)

Finally, the CBD Petitioners contend MM 7-10's plan for managing native perennial grassland and wildflower field mitigation preserves through the RWMP is ineffective because the RWMP does "not manage for conservation as a primary goal, as required." (CBD Opening Brief 24:27-28.) The CBD Petitioners assert the RWMP is a grazing plan that, according to the EIR, has resulted in "an extensively grazed landscape (compacted soil, invasive species) with relatively low vegetative cover over the majority of the Project site." (AR 9:3119.)

The RWMP incorporates best management practices "for grazing . . . and weed management, including invasive plant mapping and targeted removal actions . . . ." (AR 8:2218.) "The RWMP includes standards for management of the grasslands areas that will preserve the grasslands in perpetuity." (AR 8:2218.) The RWMP is subject to review and approval by the CDFW as well as the United State Fish and Wildlife Service. (AR 8:2218.) The RWMP, and all that it requires, is enforceable against the Companies as a mitigation measure—it is not a mere grazing plan.

Based on the foregoing, the court finds the County did not impermissibly defer mitigation for impacts to biological resources.

d. Tricolored Blackbirds

"The tricolored blackbird is a California Species of Special Concern and a California Candidate for listing as an Endangered Species." (AR 38:20001.) The tricolored blackbird has five "distinct breeding colony locations" on the shores of Quail Lake. (AR 38:20002.) The closest breeding colony location to the Project site is 50 feet west of the Project; the farthest location is

approximately 2,030 feet southwest of the Project. (AR 38:20002.) The tricolored blackbird also has a nesting site at Holiday Lake approximately 5 miles from the Project site. (AR 38:20001-20002.)

The tricolored blackbird had been observed on the Project site nesting in 2006 and 2008. (AR 38:19980.) Focused surveys in 2015 observed the tricolored blackbird foraging at the Project site but no evidence of breeding was detected on the Project site. (AR 38:20002.)

The CBD Petitioners argue the Project's mitigation plan with respect to the tricolored blackbird is inadequate and will not prevent "take."[25]

MM 7-7 requires an "avoidance and additional space open buffer" for the tricolored blackbird nesting area. (AR 38:20075.) "Permanent impacts will be reduced to a distance of 400 feet from the nesting area excluding small impact areas associated with infrastructure and utilities . . . ." (AR 38:20075.) MM 7-7 also restricts construction noise during breeding season. (AR 38:20075.) Finally, the measure requires "enhancement, restoration, and/or preservation of potentially suitable tricolored blackbird breeding and foraging habitat." (AR 38:20076.)

The CBD Petitioners argue only two known nesting areas will have buffers under MM 7-7 "but not the other three." (CBD Opening Brief 26:6; AR 8:2222.) They contend the EIR's position the other three nesting areas are unsuitable or severely degraded is without support. (CBD Opening Brief 26:6.) The CBD Petitioners also contend to the extent tricolored blackbird habitat degradation has occurred because of drought, any such drought is a temporary condition. (AR 8:2492.)

As noted earlier, the most recent focused survey information from 2015 revealed the tricolored blackbird had no nesting sites at the Project site. Instead, the survey revealed only that the tricolored blackbird forages at the Project site. (AR 8:2492; 38:19980; 79:27793-27818.) The closest nesting area is 50 feet from the Project site at Quail Lake. (AR 38:20002.)

Further, MM 7-7 does not limit the buffer to the Quail Lake nesting site; MM 7-7 requires the buffer at the Project site where tricolored blackbirds were last observed nesting in 2006 and 2008. (AR 8:2220.) In addition, the mitigation preserves will provide the tricolored blackbird with suitable foraging habitat.

Accordingly, the EIR's conclusion there will be less than significant impacts to the tricolored blackbird is supported by mitigation measures addressing the single *on-site* nesting area and the nesting site 50 feet from the Project at Quail Lake (direct impacts). Other mitigation measures reduce impacts by requiring the preservation of approximately 15,258 acres of suitable foraging habitat and 1.1 acres of breeding habitat (MM 7-10), and further preserving

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[25] Fish and Game Code section 86 defines "take" as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

wetland areas that could become a breeding habitat (MM-12). (AR 8:2222, 8:2252, 8:2493-2494, 38:20042-2043.)

The court finds the CBD Petitioners have not met their burden of demonstrating the EIR's conclusion concerning mitigation of impacts on the tricolored blackbird is not supported by substantial evidence. The CBD Petitioners have also not met their burden of demonstrating the County failed to proceed as required by law on this issue.

e. Ranch-wide Management Plan (RWMP)

Mitigation measures must be concrete and "fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code § 21081.6, subd. (b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445.)

The mitigation measures required by the County for approval of the Project includes a set aside of 27,412 acres to offset the Project's impacts to biological resources (the Mitigation Preserve). The EIR explains:

> "The mitigation measures set forth in Section 5.7 require the long-term preservation of a variety of biological resources to off-set Project impacts. An in-depth analysis of lands in the region was conducted in an effort to find these resources in the quantities required and of an equal or greater biological value. The result of these efforts is a comprehensive 27,412- acre Mitigation Preserve (Exhibit 1) which incorporates the required resources and provides connectivity with adjacent undeveloped lands providing for the preservation of a substantial representation of the biological diversity of the region." (AR 80:28984. See also 80:29004 [map].)

The Mitigation Preserve is managed through the RWMP.[26] (AR 8:2218; AR 11:10112.) "The RWMP provides a comprehensive framework, with the context of the TRCRWA [Tejon Ranch Conservation and Ranch-Wide Agreement], for the effective preservation and management of the preserved open space lands located on the Tejon Ranch, including the mitigation lands for the Project site." (AR 8:2218-2219.) "Under the TRCRWA, the Tejon Ranch Conservancy will adopt, update, monitor and enforce implementation of the [RWMP] . . . ." (AR 8:2219.)

Thus, the Tejon Ranch Conservancy "adopt[s], update[s], monitor[s] and enforce[s]" the RWMP which manages the Mitigation Preserve. (AR 8:2219)

The CBD Petitioners argue the County's reliance on the Conservancy enforcing the RWMP violates CEQA because it places the Companies in charge of managing the Mitigation Preserve since the Companies "control[] the Conservancy." (CBD Opening Brief 27:9.) The CBD

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[26] A Ranch-wide Agreement (RWA) conserves 240,000 acres of Tejon Ranch. (AR 11:10122.) The Companies and five environmental groups signed the RWA. (AR 11:10122.)

Petitioners contend the Conservancy is "understaffed and underfunded," and nothing ensures the Conservancy will be funded into perpetuity. (CBD Opening Brief 27:10-13. See AR 264:50641-50642.) The CBD Petitioners raise concerns the mitigation is unenforceable "because the County is not a party to" the RWMP. (CBD Opening Brief 27:16.)

As an initial matter, there can be no question the 27,143 acres that are the Mitigation Preserve will be free from development. The County explained:

> "[T]he conserved lands on the Ranch are already subject to a recorded prohibition on unauthorized activities such as residential and other development. In short, the entirety of the Project mitigation lands are off limits to development if the Project is approved, which creates contiguous open space acres of more than 200,000 acres as well as a funding source to appropriately manage and protect the resource values of these preserved lands." (AR 10:4149.).

With regard to Conservancy funding, the County explained the TRCRWA "creates an in-perpetuity source of funding" for required mitigation tasks. (AR 10:4149.) The County reported:

> "For example, the Conservancy has, as its long-term funding source, transfer fees that are collected as homes are sold on all three of the master plan community projects included in the Tejon Ranch Land Use and Conservation Plan, inclusive of Tejon Mountain Village, Grapevine, and Centennial. The transfer fee funding obligation is a recorded covenant that applies to the developed projects, and the collection of these transfer fees is not dependent on any independent management or funding decisions by [the Companies]." (AR 10:4149; 11:10127.)

While such transfer fees are dependent upon build out of the Project which may take years, the RWA "provides for interest-free payments . . . from [the Companies] to the Conservancy." (AR 11:10127.) The payments by the Companies fund the Conservancy's operations through 2022, "when the transfer fees on residential sales are anticipated to be available to provide an adequate funding stream for Conservancy operations." (AR 11:10122.)

Based on the foregoing, the court finds the CBD Petitioners did not demonstrate the RWMP—and the Mitigation Preserve—is "vague," "illusory" or "unfunded." (CBD Opening Brief 26:24-25.) The County's use of the Mitigation Preserve and the RWMP to manage it as a mitigation measure is supported by substantial evidence.

Alleged Failure to Adequately Address and Analyze Impact to the Scenic Vistas on the Pacific Crest Trail (PCT)

The PCT is a 2,650-mile-long national scenic trail running from Mexico through California to Canada "traversing the best scenic areas and maintaining an absolute wilderness character." (AR 44:20591; 45:20630; 45:20618.) The PCT passes southeast of the Project and "the

Tehachapi and San Gabriel Mountains are the prominent visual features." (AR 44:20592; 44:20604; 45:20630.)

The Project creates urban development where "expansive views of rolling hills, wildflower fields, and the mountains" currently exist. (CBD Opening Brief 28:8.) The CBD Petitioners contend the Project would have a "substantial adverse effect on a scenic vista" and "substantially degrade the existing visual character or quality of public views of the site and its surroundings" for individuals hiking on the PCT. The CBD Petitioners contend the Project's impact on views and tranquility is a significant adverse impact. According the to the CBD Petitioners, the significant adverse impact is neither admitted nor mitigated by the County. (See Guidelines Appendix G at I(a) and I(c); AR 44:20597 (relevant County thresholds).)

The County determined there were multiple significance thresholds related to the PCT. The County considered the visual impacts experienced by persons generally, as well as, the visual impacts experienced by users of the PCT. (*Compare* 44:20601 [impacts to persons in general under Threshold 13-1 and 13-4] *with* 44:20604 [impacts to PCT users under Threshold 13-2].)[27]

The County found the impacts from the Project to visual character were significant and unavoidable to the public generally. The County therefore adopted a statement of overriding consideration as to persons generally. (AR 2:339.)

As to PCT users specifically, the County concluded:

> From the existing alignment of the PCT, the Tehachapi and San Gabriel Mountains are the prominent visual features in the background. Distant views of the Project site are available in some locations along the PCT, but are often blocked by the foothills. Project development would not block any views from the PCT's current alignment. Additionally, views from the PCT of the Project site's visual character changes would be infrequent due to intervening topography. Therefore, impacts to the current alignment of the PCT would be less than significant. (AR 44:20604.)

The EIR also disclosed the possible "conceptual future realignment" of the PCT for about 1.5 miles "so that it is generally aligned along 300th Street West between SR-138 and the northeastern corner of the Project site."[28] (AR 44:20579; 44:20604.) "Views from the conceptual realignment of the PCT, if approved, would be of development on the Project site, the adjacent foothills, and the distant Tehachapi Mountains." (AR 44:20604.) Trail users, from

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[27] The CBD Petitioners do not attack the significance thresholds adopted by the County. "The lead agency has substantial discretion in determining the particular threshold of significance to evaluate the severity of a particular impact." (*Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 192.)

[28] The United States Forestry Service and Pacific Crest Trail Association found the proposed realignment to be "an acceptable and preferable location over the existing alignment." (AR 44:20579.)

the conceptual realignment, would be presented with "views of residential, commercial, and business park structures along 300th Street West" for about 1.5 miles. (AR 44:20604.)

The CBD Petitioners take issue with the EIR's discussion of the proposed realignment of the PCT and the mitigation measure adopted to address significant visual impacts to the PCT.

As to the "conceptual PCT realignment," the EIR reports MM 13-4 would prevent impacts to PCT users by constructing a "block wall" along the trail to screen urban views on the limited portion of the PCT exposed to the Project's urban development. (AR 44:20604; 44:20579-20580; 44:20613; 45:20636; 45:20646.) The wall would ensure "on-site urban uses in the foreground of views from the trail, as it passes through the [Project] site, would have limited visibility." (AR 44:20604.) The EIR disclosed the proposed realignment "is intended to be a similar (i.e., some rural/agricultural uses and some land development) to comparatively better than views from the existing alignment." (AR 44:20604.) Accordingly, the County reasoned MM 13-4 would lessen visual impacts from the Project to the realigned PCT to "a less than significant level." (AR 44:20604.) The County did, in fact, disclose this as a significant impact.

The CBD Petitioners argue the EIR fails to explain how walling off a trail in any way mitigates the impact to a trail. They note the PCT showcases expansive views of the unique visual resources. They believe "it is difficult to imagine how replacing what was once a view of undeveloped open space with a block wall is not a significant effect." (AR 291:54180.)

Additionally, the CBD Petitioners further contend the proposed realignment of the PCT along 300th Street will have environmental impacts because 300th Street contains a Class I bikeway along a 63-foot right-of-way. (AR 30:19462-19463, 30:19460.) The PCT, however, expressly prohibits the use of motorized vehicles and even bicycles. (AR 45:20630.)

To the extent the CBD Petitioners' claim concerning impacts to the proposed realigned PCT is one of the County's failure to disclose and analyze, the court is unpersuaded. (CBD Opening Brief 28:15.) The court finds the County did not fail to proceed as required by law on the issue. The EIR provides sufficient information for decisionmakers and public participation on the possible proposed realignment of the PCT.[29] (AR 44:20604.)

As the court views it, the real thrust of the CBD Petitioners' challenge here is as to mitigation. More specifically, will MM 13-4 actually mitigate the significant visual impacts from the Project to the proposed realignment of the PCT to less than significant? As the CBD Petitioners have presented the issue, the County's proposed mitigation of the visual impacts on users of the proposed realigned PCT trial by use of a block wall will not be effective. Additionally,

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[29] Of course, the CBD Petitioners' claim concerns the proposed realignment of the PCT. The proposed realignment is not part of the Project and would require a separate environmental permitting process. (AR 45:20630-20631.) Nonetheless, the EIR disclosed and analyzed the realignment assuming the realignment will occur. (Companies' Opposition 11:12-13.)

realignment of the PCT along a roadway with bicycles and cars—otherwise prohibited by the PCT—also presents questions of the efficacy of the mitigation measures.

The County's mitigation is reviewed under substantial evidence. "For projects for which an EIR has been prepared, where substantial evidence supports the approving agency's conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy." (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.) A reviewing court, however, will not defer to the agency if there is no substantial evidence in the record showing the mitigation measure is feasible and effective, or if the feasibility or effectiveness of the mitigation measure "def[ies] common sense." (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-1117.)

The EIR explained its finding MM 13-4 would be effective mitigation:

> "Due to distance and intervening topography, views of the Project site from the existing PCT alignment are very limited and do not substantially contribute to the visual experience of users of the existing PCT alignment. Users of the currently conceptual future PCT realignment along 300th Street West would have some direct views of portions of the Project site, the foothills, and the Tehachapi Mountains, as depicted in Draft EIR Exhibit 5.13-5. The Draft EIR acknowledges that views of the local foothills and/or Tehachapi Mountains would be partly obstructed by proposed structures. Development on the eastern section of the site would present trail users with views of residential, commercial, and business park structures along 300th Street West for a distance of approximately 1½ miles. Therefore, MM 13-4 requires that structures proposed along the PCT alignment be screened by a block wall along the rear of the structures and a wide, landscaped setback that would contain the conceptual PCT realignment. These features would ensure that the on-site urban uses in the foreground of views from the trail, as it passes through the site, would have limited visibility. The location and design of the conceptual PCT realignment is intended to be a similar (i.e., some rural/agricultural uses and some land development) to comparatively better than views from the existing alignment. Therefore, views from the conceptual future realignment of the portion of the PCT along 300th Street West would be reduced to a less than significant level." (AR 9:3011 [footnotes omitted].)

Importantly, a difference of opinion on the issue of mitigation does not raise a CEQA violation.[30]

> " 'In reviewing the record for substantial evidence, we presume the agency's findings are correct and resolve all conflicts and reasonable doubts in favor of the findings.' [Citation.] Substantial evidence in a CEQA case is 'enough relevant information and reasonable inferences from this information that a fair argument

[30] The CBD Petitioners' "concerns" about the block wall do not meet Petitioner's burden here. (CBD Reply 14:13.)

> can be made to support a conclusion, even though other conclusions might also be reached. . . . Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.' (Guidelines, § 15384, subds. (a) & (b).)" (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 540.)

The CBD Petitioners have the burden of explaining how the County's finding that MM 13-4 will effectively mitigate substantial visual impacts to less than significant is not supported by substantial evidence. The CBD Petitioners have not done so here.

Finally, motorized vehicles and bicycles will not be permitted on the PCT if the proposed realignment is adopted. Instead, a multi-purpose path will be separated from the PCT realignment by a two-foot buffer. (AR 10:5515.) Further, "the PCT alignment along 300th Street West would be separated from the street by [the] multi-purpose path that would accommodate pedestrians and bicyclists in order to avoid conflicts with hiking and equestrian uses on the PCT alignment." (AR 8:2059.)

Based on the foregoing, the court finds the EIR's discussion and analysis to visual impacts to users of the PCT complied with CEQA. The court also finds the CBD Petitioners did not meet their burden of demonstrating MM 13-4 is unsupported by substantial evidence.

The Project's Alleged Inconsistency with the Regional Transportation Plan/Sustainable Communities Strategy (Transportation Plan) and the Los Angeles County General Plan[31]

Under CEQA, "[t]he EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans." (Guidelines § 15125, subd. (d).) Petitioner contends the EIR fails to analyze inconsistencies with the Transportation Plan of the Southern California Association of Governments (SCAG) and the Los Angeles County General Plan (General Plan).

1. Transportation Plan

SCAG created the Transportation Plan under its authority derived from the Sustainable Communities and Climate Protection Act. The act is commonly known as Senate Bill No. 375. (See *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 505-506.)

> "Senate Bill 375 calls on regional planners to coordinate a response, in the form of centralized plans to reduce greenhouse gas emissions from a region's

[31] CR purports to incorporate by reference the CBD Petitioners' land use and CEQA arguments. (CR Opening Brief 19:32-35.) These two actions, however, have different petitioners. While the court related the actions, it did not consolidate them. It is not clear to the court how CR may incorporate by reference arguments made in a separate action by a different party.

> transportation infrastructure. [Citation.] The legislation begins by warning that the 'transportation sector is the single largest contributor of greenhouse gases' in the state, producing nearly half of overall greenhouse gas emissions. [Citation.] The Legislature thus declared that 'greenhouse gas reductions from changed land use patterns and improved transportation' will be 'necessary' to slowing climate change. [Citation.]" (*Id.* at 524 [Cuellar, J. dissenting].)

The Transportation Plan has certain greenhouse gas (GHG) emission objectives. The Transportation Plan results in an eight percent reduction in per capita GHG emissions by 2020, an 18 percent reduction by 2035 and a 21 percent reduction by 2040. (AR 1139:90759.) As an additional objective, the Transportation Plan results in a seven percent per capita reduction in vehicle miles traveled and 17 percent per capita for vehicle hours traveled. These objectives would be achieved in part by location efficiency which arises from "more location efficient land use patterns and improved transit service." (AR 1139:90760.)

The CBD Petitioners contend the Project promotes massive "sprawl" and growth in contrast to the Transportation Plan's objectives and goals. They argue the Project is in a rural area located off of I-5, approximately 35 miles north of Santa Clarita, 36 miles west of Lancaster, and 50 miles south of Bakersfield. (AR 30:19421.) They report the Project anticipates a new population of approximately 57,000 residents at buildout "exceed[ing] the [Transportation Plan] projections for 2040 . . . ."[32] (CBD Opening Brief 31:5-6.) Thus, the CBD Petitioners contend the Transportation Plan and the Project are inconsistent based on a SCAG population projection and the Project's population at build out.

The CBD Petitioners reject the County's "claims that the Project and the growth caused by the Project is expected, planned, or anticipated . . . ." They do so reasoning that "such growth exceeds SCAG's projections." (CBD Opening Brief 31:13-14.)

The population forecasts contained within the Traffic Analysis Zones (TAZ) of the Transportation Plan are not a component of the adopted Transportation Plan. (AR 1139:90821.) The population projections are "advisory only and nonbinding." (AR 1139:90821.) SCAG expressly did not adopt any TAZ level data in the Transportation Plan. In fact, SCAG makes clear, "There is no obligation by a jurisdiction to change its land use policies, General Plan, or regulations to be consistent with the" Transportation Plan. (AR 1139:90821.) Thus, based on SCAG's own guidance, the Project's inconsistency with TAZ-level data is not an inconsistency with the Transportation Plan adopted by SCAG.

Further, the EIR provides an explanation of what the CBD Petitioners argue is a contradiction in the County's position that the Transportation Plan and the Project are consistent:

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[32] The EIR disclosed an exceedance of 5,278 residents: "SCAG projects a 2040 resident population of 51,872 residents, while it is estimated that 57,150 persons would be residents of the Project." (AR 9:3581.)

> "The resident population of the Project at buildout is 82.46 percent of the projected resident population of traffic analysis zone (TAZ) 20280000 and TAZ 20281000 by 2035, but exceeds [SCAG] projections for 2040. The [Transportation Plan] states that TAZ level data or any data at a geography smaller than the jurisdictional level is included in the draft growth forecasts for regional modeling purpose only, and is advisory and non-binding. As such, the exceedance of population growth projections at the Project site on a TAZ level is not considered a significant adverse impact, as discussed in Section 5.9, Population, Housing and Employment. Population, housing, and economic growth relative to the SCAG [Transportation Plan] would be less than significant as it relates to the exceedance of regional population projections and no mitigation is required." (AR 39:20150.)

The County considered whether the Project constituted urban sprawl[33] or leapfrog development,[34] as suggested by the CBD Petitioners. (AR 9:2922.) The County considered the Project's infrastructure needs, on-site wastewater treatment, establishment of schools and emergency responders, and medical facilities. The County noted "none of the Project's backbone infrastructure will be sized to accommodate growth beyond that which is proposed by the Project." (AR 9:2922-2933.) The County concluded "the Project does not exhibit characteristics of leapfrog development." (AR 9:2923.)

The County also labeled the Project "precisely the 'smart growth' clustered and mixed-use development pattern proposed by the Centennial Specific Plan, as demonstrated by its land use plan." (AR 9:2923.) To reach its conclusion, the County explained:

> "While there may be some intervening undeveloped land that separates the Project site from other urban areas in the Antelope Valley, the resulting development pattern is anticipated by, and is at the heart of, the AVAP's Rural Preservation Strategy. As explained in the AVAP, the Rural Preservation Strategy 'creat[es] a pattern of rural town center areas, rural town areas, rural preserve areas, and economic opportunity areas. Each town in the Valley will flow outward from vibrant town centers that offer a range of housing and local-serving activities for day-to-day living. Lower density rural residences will surround these town centers, buffered by large contiguous open spaces that contain habitat areas, recreational spaces, and rural economic activities.' " (AR 9:2923.)

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[33] According to the EIR: " 'sprawl' is typically understood to mean ' "uncoordinated growth" ': the expansion of community without concern for its consequences; in short, unplanned, incremental urban growth which is often regarded as unsustainable'. " (AR 9:2922.)

[34] The EIR explains: " 'leapfrog development' is often understood to refer to the development of land in a manner requiring the extension of public facilities from their existing terminal point through intervening undeveloped areas where such extension is not provided for in the existing plans of the local governing body." (AR 9:2922.)

The County considered the Project and the Transportation Plan finding no inconsistency. In fact, the County found the Project was consistent with its overall development plan. The County's position is supported by substantial evidence; the CBD Petitioners did not demonstrate otherwise. The court finds the County's consideration of the Transportation Plan and Project did not violate CEQA.

2. *General Plan*[35]

The CBD Petitioners contend the EIR "failed to adequately analyze the Project's inconsistency" with the General Plan's provisions intended to limit sprawl. (CBD Opening Brief 32:9-11.) The CBD Petitioners also challenge the County's finding the Project is consistent with the General Plan. (AR 39:20168, 39:20222.) They argue the EIR "glaringly omits any discussion of the Project's inconsistency with [the General Plan's] Land Use Element Goal LU-3, which provides that development patterns in the County should discourage suburban sprawl."[36] (CBD Opening Brief 32:14-16.) (See AR 1359:110722.)

An agency's "determination that a project is consistent with the city's general plan carries a strong presumption of regularity." (*Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238.) Further, an agency's determination that a project is consistent with its land use plans will only be reversed when "a reasonable person could not have reached the same conclusion." (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243.) "A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a [project] must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan. [Citation.]" (*Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.)

"[W]hile there is no requirement that an EIR itself be consistent with the relevant general plan, it must identify and discuss any *inconsistencies* between a proposed project and the governing general plan. [Citation.]' [Citations.] 'Because EIRs are required only to evaluate "any *inconsistencies*" with plans, no analysis should be required if the project is *consistent* with the relevant plans. [Citation.]' [Citation.]" (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 918-919; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 632.)

The CBD Petitioners argue the Project is inconsistent with the General Plan because it creates a suburban sprawl by building a community of approximately 50,000 people "dozens of miles"

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[35] On October 6, 2015, the County adopted an update to its General Plan. (AR 28:19384, 1359:110638.) The General Plan serves as the foundation for community-based plans like the AVAP. Area plans must be consistent with General Plan goals and policies. (AR 1359:110663-110664.)

[36] Land Use Element Goal LU 3 provides: "A development pattern that discourages sprawl, and protects and conserves areas with natural resources and [significant ecological areas]." (AR 1359:110772.)

from employment of distant cities, while providing fewer than 25,000 jobs at the Project site. (AR 40:20250, 112:32973.) The Project is inconsistent with the General Plan, according to the CBD Petitioners, because the General Plan discourages suburban sprawl and its contribution to "traffic congestion, air pollution, and greenhouse gas emissions." (AR 1359:110709.) The CBD Petitioners assert the Project will generate new traffic trips of considerable length and have significant and unavoidable GHG and air quality impacts thus rendering the Project inconsistent with Land Use Element Goal LU-3. (CBD Opening Brief 32:23-27 [citing AR 41:20318, 416:58735; 52:20982; 42:20493].)

The CBD Petitioners' challenge to the Project on this basis relies on its argument the Project leaves the creation of jobs and infrastructure to the Companies because of the discretion provided to the Companies for phasing the Project. (See ANALYSIS I., Project Description, p. 6 *supra*.) As the court rejected this argument, their lack of jobs and urban sprawl analysis is without foundation.[37]

Further, the court notes the EIR discusses in detail the Project's consistency with the General Plan. (AR 39:20168-20221.) The EIR concluded the Project is consistent on the whole with the General Plan and the AVAP. (AR 167:47294-47296, 165:46829-46837.) Thus, the EIR did not fail to comply with the law as it addressed General Plan consistency.

Moreover, the EIR's analysis of consistency with Land Use Element Goal LU-3 appears supported by substantial evidence; the CBD Petitioners have not demonstrated otherwise. The County explained why it determined the Project does not constitute sprawl:

> "[T]he Project is, in fact, fully consistent with General Plan Goal LU 3. The Project site is already served by backbone regional infrastructure, which has long been planned and approved, and none of the Project's backbone infrastructure will be sized to accommodate growth beyond that which is proposed by the Project. Given its clustered development pattern and self-contained infrastructure improvements, the Project does not exhibit the characteristics of sprawl development. Accordingly, the Project is consistent with Goal LU 3 of the County General Plan." (AR 9:3594; See AR 9:3595; 9:2909-2931; 1359:110709.)

The CBD Petitioners have not overcome the strong presumption of regularity in favor of the County. (*Clover Valley Found. v. City of Rocklin*, *supra*, 197 Cal.App.4th at 238.)

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[37] The court also discussed urban sprawl and leapfrog development *infra* in connection with the Transportation Plan. (See ANALYSIS I., Alleged Project Inconsistency, 1. Transportation Plan, p. 31.)

Alternatives Analysis

The County evaluated six alternatives to the Project in the EIR. (AR 55:21046-21047.) The alternative analysis included (A) no project; (B) a previously proposed project; (C) a project with additional drainage avoidance; (D) a project with infrastructure relocation; (E) a project with density clustering; and (F) a central employment opportunity area development. (AR 55:21046-21047.)

Guidelines section 15126, subdivision (a) provides in part:

> "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible."

"The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." (Guidelines § 15126.6, subd. (c).) The key issue is whether the "range of alternatives discussed fosters informed decisionmaking and public participation." (*Cherry Valley Pass Acres Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 354.)

"A court will uphold the selection of project alternatives unless the challenger demonstrates that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.' " (*Golden Door Properties, LLC v. County of San Diego, supra,* 50 Cal.App.5th at 546.) "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Guidelines § 15126.6, subd. (a).)

The CBD Petitioners assert the EIR failed to consider a reasonable range of alternatives for the Project—more specifically, they find fault in the County not considering a housing development with a significantly smaller development footprint.[38] (CBD Opening Brief 34:7-8.) "As the focus of this contention is whether the analysis was reasonable and not whether it occurred, the contention presents a predominantly factual question and [the court's] review is for substantial evidence." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 435.)

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[38] The CBD Petitioners do not suggest the alternatives considered were unreasonable. As noted by the County, Alternatives D, E and F all reduced environmental impacts consistent with the AVAP in different ways. (County Opposition 18:23-28.)

The EIR reported:

> "Because the proposed Project was substantially reduced compared to the previously proposed project (Alternative B) in both development footprint and land use intensity to avoid and/or reduce environmental impacts, further consideration of a reduced development scenario (e.g., reduced grading footprint; reduced dwelling units; reduced nonresidential square footage) was not considered reasonable. The current Project design is consistent with the Los Angeles County General Plan 2035 and the AVAP [Antelope Valley Area Plan] . . . .
>
> . . . .
> Any reduction in the proposed unit count or in the amount of non-residential development that would be large enough to reduce a potentially significant environmental impact would also result in a development proposal that is not consistent with the goals and policies of the AVAP related to development within the West [Economic Opportunity Area], or supportive of the Project's objectives. Thus, alternative development scenarios were eliminated from further analysis in this EIR." (AR 55:21056.)

The CBD Petitioners argue "nothing in the AVAP [] mandates that a very large, 12,323-acre version of [the Project] go forward." (CBD Opening Brief 34:23-24.) In contrast to the information in the EIR, the CBD Petitioners contend many of the stated objectives of the Project reference reducing environmental impacts, which the CBD Petitioners contend would be achieved by a smaller project footprint. Additionally, the CBD Petitioners argue there is no evidence that a reduction in the Project's size would render the Project infeasible such that the County was not required to consider a smaller version of the Project as an alternative project. (AR 55:21056.) As such, the CBD Petitioners conclude given the Project's objective of creating a sustainable community and protecting the lands and resources surrounding the Project site, "at least one" of the project alternatives should have included a reduced development footprint. CBD Petitioners argue the failure to do so precludes informed decisionmaking by providing an "all or nothing" choice.

The EIR *did* consider an alternative with a smaller development footprint than that of the Project. (AR 55:21064.) Alternative C "reduce[d] the development footprint by approximately 37 acres" and converted the undeveloped 37 acres to preserved open space. (AR 55:21064-21065.) The EIR explained "main benefit of Alternative C is that it would reduce impacts to jurisdictional drainages that indirectly function as wildlife movement corridors and serve important ecological functions." (AR 55:21065.) Alternative C also, according to the EIR, preserved connectivity to other high value open space areas. (AR 55:21065.) Alternative C did not, however, significantly reduce residential units (19,333 to 19,241) or commercial square footage (200,000 square feet reduction). (AR 55:21063.)

The County found Alternative C infeasible. (AR 2:296.) The County found:

> "Given the well documented need for Antelope Valley employment and housing opportunities in order accommodate projected population growth, and the comparatively minor environmental benefits of Alternative C as compared to the Project, the Board of Supervisors hereby rejects Alternative C as infeasible after taking into consideration County employment and housing policy and the fact that Alternative C would provide fewer employment and housing opportunities for all income levels as compared to the Project. The County also rejects Alternative C as infeasible because this alternative's reduction of housing and job opportunities is inconsistent with the AVAP "Rural Preservation Strategy" to direct needed housing and job growth to designated Economic Opportunity Area (EOAs) in order to preserve the rural character of the Antelope Valley outside of EOAs." (AR 2:296.)

Thus, the County determined reduced housing and job opportunities were inconsistent with the AVAP. The County found Alternative C (and D) would "provide less development than the Project" but the

> "County would not be able to achieve housing and employment levels anticipated by the AVAP and associated with the adopted growth projections unless development occurs in excess of projection in other areas of the Antelope Valley, which would result in similar or greater impacts than the proposed Project." (AR 55:21121.)

Given the County's finding that fewer housing for all income levels and employment opportunities was inconsistent with the AVAP, the County was reasonable when it did not consider Project alternatives with fewer housing opportunities than already considered in Alternative C.

The CBD Petitioners have not demonstrated the alternatives analyzed in the EIR were insufficient to foster informed decisionmaking. (See *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14.) While Alternative C provided for only .5 percent fewer dwellings and 21 fewer acres of non-residential development than the Project (CBD Reply 18:7-8), the County determined fewer housing opportunities for all income levels was not consistent with the AVAP. The CBD Petitioners have not demonstrated the County's selection of alternatives was "manifestly unreasonable." (*Cherry Valley Pass Acres Neighbors v. City of Beaumont, supra,* 190 Cal.App.4th at 355.)

Consistency Planning and Zoning Law:

The CBD Petitioners argue the "Project violates the Planning and Zoning Law [] because it is inconsistent with" the General Plan and AVAP. (CBD Opening Brief 36:18-19.) The CBD Petitioners' planning and zoning claim is derivative of their claims concerning General Plan consistency (based on alleged non-compliance with Land Use Element Goal LU-3) and

inconsistency with the Transportation Plan (based on TAZ-level population projections).[39] As the court rejected those claims, this derivative claim also fails.

II. PETITIONER CR'S CHALLENGE

CR challenges the County's findings concerning GHG emissions and wildfire impacts. CR broadly contends the EIR misleads decisionmakers and the public as to both subjects. More specifically, CR argues the EIR misleads because it relies on a significantly flawed analysis for both GHG emissions and wildfire impacts.

GHG Analysis

1. The EIR Does Not Mislead as to Cumulative Effects of GHG

The County adopted two significance thresholds to evaluate GHG emissions.[40] Using Threshold 21-1 and 21-2, the EIR concluded the Project's GHG emissions would be less than significant. The County explained, however, the significance thresholds did not provide complete information on impacts:

> ". . . climate change is a global phenomenon and the significance of greenhouse gas emissions is inherently cumulative in nature. Accordingly, the Project's impact related to GHG emissions is most appropriately considered on a cumulative level, not on a project level. As described above, the Project would emit GHGs at an estimated rate of 278,577[41] metric tons per year that would contribute to the global inventory of GHGs." (AR 52:20974.)

Therefore, the EIR reported "the Project's incremental contribution to the global GHG emissions inventory would be considered cumulatively considerable and this cumulative impact is significant and unavoidable . . . ." (AR 52:20974.) The EIR disclosed updated GHG emissions calculations of 157,642 metric tons of carbon dioxide equivalent per year ($MTCO_2e/yr$) for the Project. (AR 10:5566.) Thus, the County provided a quantitative analysis of GHG emissions.

During argument, CR contends the County provided too much information in the EIR about GHG emissions. According to CR, the County unnecessarily disclosed to the "point of misleading" because most of the information disclosed was irrelevant. CR argues the EIR's GHG emissions analysis is misleading because the only relevant analysis for GHG emissions is a cumulative effects analysis, not a direct and indirect analysis. According to CR, the EIR overwhelms readers and does not inform decisionmakers or the public with a relevant informed analysis.

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[39] AVAP Land Use Element Policy 5.1 requires consistency with the Transportation Plan. (AR 416:58791.)

[40] CR does not challenge the thresholds of significance as inappropriate.

[41] The County updated its GHG emissions analysis between the DEIR and FEIR. (10:5692.)

The court agrees a cumulative effects analysis of GHG emissions is the appropriate focus in an EIR. (*Center for Biological Diversity v. Department of Fish & Wildlife* [*Newhall*] (2015) 62 Cal.4th 204, 219.) That said, other than an issue about the volume of information, CR does not identify how the EIR analysis is misleading given the information provided. The cumulative effect is not hidden in an appendix or a footnote. The EIR specifically cited *Newhall* and its instruction an EIR must consider " 'whether the project's incremental addition of greenhouse gases is "cumulatively considerable" in light of the global problem, and thus significant.' " (*Ibid.*)

The County appears to have complied with Guidelines section 15064.4, and CR has not argued otherwise. The court cannot find the EIR fails as an informational document where the EIR acknowledges the correct GHG analysis is a cumulative impact analysis and applies such an analysis to determine that the "the Project's incremental contribution to the global GHG emissions inventory would be considered cumulatively considerable and this cumulative impact is significant and unavoidable, even though the Project satisfies several 'pathways to compliance' identified by the *Newhall* court." (AR 52:20974.)

Based on the foregoing, the court does not find the EIR fails as an informational document because it contains too much irrelevant information and analysis concerning GHG emissions.

2. *The EIR's Discussion Concerning Mitigation through Cap-and-Trade is Misleading*[42]

To determine "the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonable incremental contribution of the project's emissions to the effects of climate change." (Guidelines § 15064.4, subd. (b).) "The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions" should be considered. (*Id.* at subd. (b)(3).)

The EIR reports "[a]pproximately 96 percent (150,808 $MTCO_2e$/yr) of the Updated GHG Calculations emissions are covered by, and subject to, the purchase of emission allowances under the new, expanded state Cap and Trade program . . . ." (AR 10:5567.) The EIR explains "[c]ompliance with the Cap and Trade program was upheld as a lawful CEQA mitigation measure to reduce GHG emissions to a less-than-significant-level . . . ." (AR 10:5692.) The EIR reveals 77,007 of $MTCO_2e$/yr from transportation fuels are reduced to zero because they are "covered by, and subject to," "cap-and-trade." (Companies' Opposition 19:12-13; AR 10:5567.) The EIR also shows reductions in GHG emissions to zero for electrical power and natural gas. According to the EIR's analysis, cap and trade compliance reduces the Project's total GHG emissions from 150,808 $MTCO_2e$/yr to only 6,834. (AR 10:5567.)

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[42] See *Association of Irritated Residents v. Kern County Bd. of Supervisors* (*AIR*) (2017) 17 Cal.App.5th 708, 734-735 for a concise general discussion of the cap-and-trade program. See also *Golden Door Properties, LLC v. County of San Diego, supra,* 50 Cal.App.5th at 485-486.

CR argues the Project is not subject to cap-and-trade program regulations. CR also contends the County misreads and mistakenly relies on *AIR* as support for its analysis. The EIR's claim the cap-and-trade program reduces the Project's GHG emissions by 96 percent, according to CR, is misleading. The court agrees.

First, while Guidelines section 15064.4, subdivision (b)(3) permits a lead agency to consider a project's compliance with statewide, regional or local plans for the reduction of GHG emissions in determining the significance of GHG emissions from a project, it is "the extent to which the project complies" with such plans, not the compliance by the project's suppliers of electricity, natural gas or distillate fuel oils. The plain language of Guidelines section 15064.4, subdivision (b)(3) is clear—the only relevant consideration is the project's compliance with a statewide, regional or local GHG reduction plan, not its suppliers.

The Project is not subject to the cap-and-trade program. It is not a covered entity. (See tit. 17 CCR § 95811.) As the Project is not required to comply with the cap-and-trade program, cap and trade is not relevant to determining the significance of the Project's GHG emission impacts.

A comment from the Executive Director of the California Air Resources Board (CARB) supports the court's view:

> "In this instance, the Cap-and-Trade Program simply does not cover the Project, or require it do anything to mitigate its emissions. . . . . the California State Legislature . . . did not intend for the Cap-and-Trade Program to mitigate emissions from land use projects." (AR 286:53990 [emphasis added]; 286:53993.)

The court finds CARB's Executive Director's statement persuasive based on the rationale he provided for his position:

> "Furthermore, the California State Legislature . . . did not intend for the Cap-and-Trade Program to mitigate emissions from land use projects. In AB 32, the Legislature specifically provided that GHG reductions from the Cap-and-Trade Program would be 'in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.'
>
> Two years later, the Legislature enacted Senate Bill (SB) 375 . . . , in which it found that substantial GHG reductions from 'new vehicle Technology' and 'increased use of low carbon fuel' alone would not allow California to achieve its climate goals. Specifically, in SB 375, the Legislature recognized that to meet the goals of AB 32 'it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation.' Accordingly, SB 375 laid out a legislative framework to coordinate transportation and land use plans to cause reductions of GHG emissions from cars and light-duty vehicles. If the Legislature intended the Cap-and-Trade Program to fully address

> transportation-generated GHG emissions from land use development projects, such legislation would have been entirely unnecessary and redundant." (AR 286:53993 [footnotes omitted].)

The EIR's reference to *AIR* to support the applicability of the cap-and-trade program to the Project is unavailing. *AIR* addressed a covered entity—an oil refinery and its modification project—under the cap-and-trade program. (*AIR, supra,* 17 Cal.App.5th at 735.) Specially, *AIR* addressed: "When determining the significance of a project's greenhouse gas emissions, can the volume of the project's estimated emissions be decreased to reflect the use of compliance instruments (both allowances and offset credits) under the cap-and-trade program?" (*Id.* at 739.) *AIR* held a covered entity could use its compliance with the cap-and-trade program to show its GHG emissions were less than significant. (*Id.* at 741.)

The court acknowledges *AIR* also referenced the refinery's electric service provider as covered by the cap-and-trade program. The EIR at issue in *AIR* disclosed GHG emissions would be reduced through, among other things, "offsets of electric utility greenhouse gas emissions through cap-and-trade." (*Id.* at 736.) *AIR* also referred to the electric utility, like the refinery, as a covered entity. (*Id.* at 735.)

From the *AIR* court's references to the EIR's statements concerning the electric utility, the County and the Companies extrapolate. The County and the Companies believe "the only relevant question is whether the Project's electricity and fuel suppliers are covered entities that will be required to surrender compliance instruments to counterbalance the emission increases associated with the Project's electricity and fuel usage." (Companies' Opposition 20:7-9.)

The court is not persuaded *AIR* can be read as broadly as the County and the Companies suggest. The *AIR* court discussed the electric utility in the context of that EIR's discussion of GHG emission reductions. The *AIR* court reported "the EIR states Pacific Gas and Electric will be required to reduce greenhouse gas emissions at its facilities or to surrender compliance instruments to counterbalance the emission increases associated with increased power usage." (*AIR, supra,* 17 Cal.App.5th at 735-736.) Similarly, *AIR* referred to "offsets of electric utility greenhouse gas emissions increases through cap and trade" in the context of information provided through the EIR. (*Id.* at 736.)

Ultimately, the *AIR* court did not find the EIR at issue misleading in its discussion of GHG emissions. The *AIR* court's rationale for its holding makes no mention of the electric utility. (*Id.* at 740.) *AIR* focused on the EIR's disclosures about "the project . . . compli[ng] with the cap-and-trade program by establishing its emissions are authorized by the compliance instrument." (*Ibid.* [emphasis added] [emissions "by the project" and "the refinery's compliance with the cap-and-trade program"].)[43]

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[43] See also *Golden Door Properties, LLC v. County of San Diego, supra,* 50 Cal.App.5th at 485 [cap-and-trade program limits emissions from " 'a group of regulated sources' "][quoting *AIR, supra,* 206 Cal.App.4th at 1498 n. 6].)

The County and Companies contend the EIR can rely on upstream covered entities' (utility producers') compliance with cap and trade to reduce the Project's GHG emissions. They rely on CARB's Statement of Reasons for the cap-and-trade program issued by its governing board:

> To cover the emissions from transportation fuel combustion and that of other fuels by residential, commercial, and small industrial sources, staff proposes to regulate fuel suppliers based on the quantities of fuel consumed by their customers. [¶] . . . [¶] Fuel suppliers are responsible for the emissions resulting from the combustion of the fuel they supply. In this way, a fuel supplier is acting on behalf of its customers who are emitting the GHGs. [¶] . . . [¶] Suppliers of transportation fuels will have a compliance obligation for the combustion of emissions from fuel that they sell, distribute, or otherwise transfer for consumption in California. [¶] . . . [¶] [B]ecause transportation fuels and use of natural gas by residential and commercial users is a significant portion of California's overall GHG emissions, the emissions from these sources are covered indirectly through the inclusion of fuel distributers [under Cap and-Trade]. [¶] . . . [¶] [C]ap-and-trade is not well-suited to address emissions from millions of distributed point sources such as automobiles. However, our approach is not to apply cap-and-trade to the end user (vehicle drivers), but to the fuel suppliers, who will be responsible for fuel that is combusted. By taking this "upstream" approach in the regulation, we avoid the challenges of applying [Cap-and-Trade] to millions of "downstream" users. (Companies' Opposition 20:17-25.)

The County and Companies suggest CARB's position is substantial evidence of CARB's regulatory intent. (Companies' Opposition 21:4-5.) They contend the statement demonstrates CARB's view that a project's energy suppliers' cap-and-trade program compliance reduces the Project's GHG emissions to zero. For example, GHG emissions related to a project's electric consumption is reduced to zero because the upstream electric utility is a covered entity under the cap-and-trade program.

CR characterizes CARB's statement—a "block quote com[ing] from five widely separated pages in two separate documents"—as a "policy statement saying that CARB regulates fuel and electricity suppliers under Cap-and-Trade because it would be impractical to regulate consumers." (CR Reply 5:1-2, 2-3.) CR dismisses the statement as having "no direct legal bearing on this case." (CR Reply 5:3-4.)

It is not clear to the court how, if at all, CARB's policy statement is relevant here. The broad policy statement does not directly address these circumstances. In fact, read as suggested by the Companies, the statement appears to suggest any land use development's GHG emissions may be reduced to zero based on cap-and-trade program compliance by covered entities regardless of any effort by that development to reduce GHG emissions.

The County's actions here belie the claim GHG emissions by downstream consumer use of transportation and other fuels is reduced to zero under the cap-and-trade program. CARB issued its policy statement referenced by the County and the Companies on October 28, 2010 (644:70592) and October 2011. (AR 1456:119099.) Thus, CARB's position had been established for more than six years when the County released the DEIR on May 15, 2017. (AR 2:6.) Despite CARB's position, the County did not find the Project's GHG emissions from downstream use of transportation and other fuels was reduced to zero in the DEIR.

As noted by the Companies, it was *AIR* that caused the County to rethink how the cap-and-trade program might be used to reduce the Project's GHG emissions. The Companies explained: "In response to *AIR*, the County prepared the Updated GHG Calculations to take Cap-and-Trade into account and found that approximately 96% of the Project's GHG emissions are covered by, and subject to, Cap-and-Trade compliance instruments." (Companies' Opposition 19:11-13.) Thus, it appears the County's reliance on CARB's policy statement from 2010 and 2011—to the extent it is even relevant here—is a post-hoc rationalization.

Based on the foregoing, the court finds the County failed to proceed as required by law as to its analysis of GHG emissions. The County's discussion of GHG emissions is misleading and constitutes a prejudicial abuse of discretion. The cap-and-trade program does not provide any reduction to the Project's GHG emissions.

3. ***The EIR is Not Misleading in its Discussion of CARB's 2017 Scoping Plan[44]***

CR contends the EIR misleads decisionmakers and the public when it reports the Project's "GHG analysis is the contention that the Project's per-capita GHG emissions will comply with the recommended targets in the CARB 2017 Climate Change Scoping Plan, 6 $MTCO_2e$ per capita by 2030 and 2 $MTCO_2e$ per capita by 2050." (CR Opening Brief 6:14-17.) The EIR analyzes GHG efficiencies based on service population. CR believes the EIR's statement is misleading because CARB's 2017 Scoping Plan recommends targets on a per capita and not a service population basis. CR contends the County used a service population analysis to decrease the environmental impact and show more GHG emissions efficiency.

First, CR's assertion the EIR evaluates the Project's per-capita GHG emissions is inaccurate. The EIR discusses GHG efficiency based on service population; it does not discuss the Project's GHG emissions on a per capita basis. The EIR does, however, report CARB's scoping plan provides for "per capita targets." (AR 10:5569.)

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[44] CR's challenge in its Opening Brief on this issue is based on the County's alleged failure to comply with the law by misleading decisionmakers and the public. (CR Opening Brief 6:14-26.) On reply, CR appears to pivot raising a substantial evidence question challenging the County's conclusion. To the extent CR has raised a new issue in reply, the court does not address it since the County and Companies did not have an opportunity to meaningfully respond to the argument.

Second, the EIR's use of a service population metric is authorized by CARB. CARB "recommends that local governments evaluate and adopt robust and quantitative locally-appropriate goals that align with the statewide per capita targets and the State's sustainable development objectives and develop plans to achieve the local goals." (AR 1023:78738-78739 [emphasis added].) CARB explains:

> "[s]ince the statewide per capita targets are based on the statewide GHG emissions inventory that includes all emissions sectors in the State, it is appropriate for local jurisdictions to derive evidence-based local per capita goals based on local emissions sectors and population projections that are consistent with the framework used to develop the statewide per capita targets.[fn]" (AR 1023:78739.) [fn] "Or some other metric that the local jurisdiction deems appropriate (e.g., mass emissions, per service population)." (AR 1023:78739 [emphasis added].)

Moreover, the EIR clearly provides:

> "As explained in Annotation 2, the 2017 Scoping Plan recommends statewide targets of no more than 6 MTCO2e per capita by 2030, and no more than 2 MTCO2e per capita by 2050.[] The Project's GHG Efficiency based on the estimated service population decreased from 3.02 as presented in the DEIR Quantified GHG Emissions to 1.93 as calculated in the Updated GHG Calculations.[] The Project's GHG Efficiency of 1.93 at Project buildout is thus below the Scoping Plan's 2030 and 2050 per capita targets."

While the EIR could have been drafted in a way to emphasize or delineate the per capita/service population distinction focused upon by CR, "CEQA does not demand an EIR be perfect." (*AIR, supra,* 17 Cal.App.5th at 741.) An EIR must be a "good-faith effort at full disclosure." (Guidelines § 15003, subd. (i).)

CR has failed to meet its burden of demonstrating the County failed to comply with the law by making misleading statements related to GHG efficiency. It is unclear to the court how the information provided in the EIR is misleading.

4. *"Net-Zero Carbon for the Electric Sector" Cannot Mislead When it is Immediately Thereafter Defined in the EIR*

CR contends the County's use of the label "Net-Zero Carbon for the Electric Sector" (AR 10:5568) in the EIR is misleading such that the County failed to proceed as required by law. CR argues the label "sounds like it is equivalent to [*Newhall Ranch*'s] Zero Net Energy where the project generates on-site, via renewable sources, as much electricity as it consumes." (CR Opening Brief 6:30-31.)

While it is true the EIR contains a section heading "Net Zero Carbon For The Electric Sector," the second sentence of the section expressly defines the label: "Per the Development Agreement, 'net zero carbon for the electric sector' means that carbon emissions created to produce electricity that is consumed within the Specific Plan area will be offset with an equivalent amount of carbon emission reductions that result from quantified greenhouse gas emission reductions." (AR 10:5568.)

While a decisionmaker or member of the public might have a preconceived notion of what "net zero carbon for the electric sector" might mean, no reasonable person could be misled after reading the first two sentences of the section.

CR has not met its burden of demonstrating the County failed to comply with the law by using "Net Zero Carbon For The Electric Sector" as a section heading under these circumstances.

5. *The California Emissions Estimator Model Calculations (CalEEMod) Do Not Demonstrate Error*

CR contends the County's final CalEEMod calculations are not contained in the administrative record. Therefore, CR argues substantial evidence does not support the County's updated GHG emissions calculations. The omission, according to CR, "deprives" "the public and decision makers" "of the ability to verify that the CalEEMod inputs and results are correct." (CR Opening Brief 7:18-19.)

Guidelines section 15148 provides technical reports "should be cited but not included in the EIR." The section further provides, "The EIR shall cite all documents used in the preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR." (Guidelines § 15148.) Thus, the County's failure to include the CalEEMod calculations is not a failure to comply with the law.

To the extent CR argues the 50 percent electric vehicle adoption rate (instead of the default CalEEMod rate of 4 percent) is "clearly wrong," the County properly substantiated its decision to adopt the rate with information in the EIR. The County based the 50 percent electric vehicle adoption rate on comparable projects, the state's electric vehicle goals and mandates, documented market trends, and "independent projections of [electric vehicle] adoption over time[,]" as described in expert academic studies prepared by the University of California-Davis and University of California-Berkeley, among other entities, and cited in the EIR. (AR 10:5694-5696.) Additionally, the EIR reports 50 percent electric vehicle use would not occur immediately but would increase throughout the Project's build-out. In fact, the EIR explains electric vehicle use at the Project would increase from the 4 percent CalEEMod default rate to 50 percent "over at least 20 years" and that "an [electric vehicle] use rate of 50 percent was determined to more appropriately characterize the Project's [electric vehicle] utilization at Specific Plan buildout." (AR 10:5694-5695.)

Substantial evidence supports the County's decision as to electric vehicle use and updated GHG emission calculations.

6. *The Effectiveness of Certain Mitigation Measures Is Not Greatly Underestimated*

"To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 93.) The EIR must contain "facts or analysis to support the inference that the mitigation measures will have a quantifiable "substantial" impact on reducing the adverse effects." (*Friant Ranch, supra,* 6 Cal.5th at 522.)

CR asserts the effects of certain mitigation measures on GHG emissions "are exaggerated or unsubstantiated." (CR Opening Brief 8:12.) While CR lists six mitigation measures, CR specifically attacks only two: MM 21-14 and MM 10-25.[45]

CR takes specifically takes issue with two mitigation measures used to reduce the Project's GHG emissions: MM 21-14 and MM 10-25.

MM 21-14 provides:

> "Ten percent of all homes in Centennial communities that permit housing, with the exception of the lowest density area (Community 8-2) will be affordable, in conformance with the Affordable Housing Implementation Plan . . . ." (AR 10:5740.)

The EIR explains the Project's inclusion of 10 percent affordable housing will reduce vehicle miles traveled. (AR 10:5696, 10:5740.) The EIR included the Project's level of affordable housing in its CalEEMod calculations. (AR 10:5696.) CalEEMod calculations consider affordable housing based upon "quantification criteria developed by the California Air Pollution Control Officers Association." (AR 10:5696.)

CR argues there is no evidence in the EIR "supporting the EIR's contention that MM 21-14, requiring 10% affordable housing . . . will be effective in mitigating the Project's GHG impacts." (CR Opening Brief 8:23-25.)

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[45] As CR has the burden of demonstrating error by the County, merely listing MMs 10-1, 10-26, 21-22 and 14-11 with a generalized claim of exaggerated mitigation results (i.e., a substantial evidence challenge) does not meet CR's initial burden. (See *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at 128.) In any event, the EIR explains CalEEMod includes inputs/calculations for pedestrian facilities (MM 10-26 and MM 10-21) and telecommuting (MM 10-1).

The County and Companies assert CR may not now pursue its claim concerning MM 21-14 because CR failed to exhaust its administrative remedies.

"The general rule of exhaustion 'forbids a judicial action when administrative remedies have not been exhausted, ..." (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) Exhaustion of administrative remedies is jurisdictional in California. (See *California Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, 1151.) "The rule 'is not a matter of judicial discretion, but is a fundamental rule of procedure . . . binding upon all courts." (*Campbell v. Regents of University of California* (2005) 35 Cal.App.4th 479, 486.)

CR's citation to the administrative record does not demonstrate it exhausted its administrative remedies as to MM 21-14. (See Reply 5:35; AR 291:54159-60.) CR has the burden of demonstrating exhaustion. (*Monterey Coastkeeper v. State Water Resources Control Bd.* (2018) 28 Cal.App.5th 342, 359.) As CR did not meet its burden of demonstrating it exhausted its administrative remedies, CR may not raise its MM 21-14 claim for the first time before this court.

As to MM 10-25, the EIR explains the measure mitigates GHG emissions by implementing a Mobility Plan (section 3.2 of the Specific Plan) "which provides an extensive system of sidewalks, greenway trails, community trails, a dedicated transit easement, and two transit hubs to serve as alternative means of transportation on the Project site." (AR 10: 5707.) The Mobility Plan would also require a Transportation Management Association (TMA) to implement ongoing transportation improvements and programs. (AR 10:5707-5708.) The TMA would ensure a minimum of 30 percent of daily internal on-site trips and 20 percent of off-site peak hour commutes are completed by using transit modes other than single-occupancy vehicles (SOV). (AR 10:5707–5708.)

CR makes two claims of error as to MM 10-25. First, CR asserts MM 10-25's estimated 10 percent reduction in vehicle traffic trips is unsupported. The County relies, according to CR, solely on the "undocumented opinion of the Project's traffic consultant." (CR Opening Brief 8:32-33.) Second, CR contends MM 10-25 is unenforceable. That is, nothing ensures the TMA will actually achieve the performance standards. CR argues there is no indication the SOV rates required by the Mobility Plan are feasible when only two percent of the population in Southern California uses public transportation. (AR 291:54157.)

As to CR's first claim of error, it failed to exhaust its administrative remedies on the issue. While CR did raise enforceability at the administrative level, it did not raise the issue of a lack of evidence to support a 10 percent reduction in vehicle trips. Accordingly, CR may not raise this issue for the first time before this court.

With regard to MM 10-25, the EIR explains the enforcement and feasibility. The Mobility Plan is a requirement of the Project. The TMA will be formed and operated. The TMA must implement a combination of transit and transportation measures to ensure the SOV limits are achieved, including mandated multi-passenger transit services connecting the Project to regional transit

hubs, as well as on-demand pooled car or multi-passenger vehicle service. (AR 2:446-48; 9:2859-62; 18:17148-65.) Additionally, the Project's conditions of approval specify development is only permitted in compliance with the Mobility Plan and require adequate funding of TMA operations. (AR 2:446; 5:1431-32, 5:1434.)

In addition, MM 10-25 will be monitored by the County through the MMRP. (AR 17:16741.) Conditions of approval for the vesting TTM include compliance with the MMRP. (AR 5:1228; 5:1230.) The Project's specific conditions require inclusion of the Mobility Plan. (AR 5:1431; 5:1432.)

Substantial evidence supports MM 10-25 as an effective and enforceable mitigation measure. CR did not meet its burden of demonstrating otherwise.

7. The County Complied with Its Obligations Under Guidelines Appendix F

The CEQA Guidelines at Appendix F provide:

> "In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy . . . ." (Guidelines, Appendix F.)

"Under CEQA, an EIR is fatally defective when it fails to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209.)

CR argues, "In spite of comments pointing out the omission (9 AR 2769), the EIR does not contain the discussion required by Appendix F, and thus violates CEQA." Therefore, CR asserts the EIR failed to comply with the law and is fatally defective.

The Court agrees with the Companies' response to CR's claim. CR bears the burden of demonstrating error. CR "commit[ed] the fatal error of not citing all of the evidence in the record and then explaining why it is deficient." (Companies' Opposition 22:10-11.)

The EIR contains the County's response to CR's comment on this issue:

> "Consistent with the requirements of Appendix F, energy use and conservation, both direct and indirect, are addressed in several sections of the Draft EIR because these subjects touch on several different topics under CEQA. Appendix 2-A of Draft EIR Appendix 4.0-A presents the Centennial Project's Green Development Program, which details all the sustainable development practices that would be incorporated into the Project. This includes energy efficiency." (AR 9:3076.)

The County's further informed:

> "The Draft EIR includes PDFs and, where appropriate mitigation measures, related to energy conservation, or otherwise addresses energy efficiency, in the following sections, for example: 5.8, Land Use, Entitlements, and Planning (Table 5.8-1, pages 5.8-49, 5.8-52 through 5.8-58, and 5.8-69); 5.10, Traffic, Access, and Circulation (MM 10-1, page 5.10-144); 5.11, Air Resources (PDF 11-2, page 5.11-30; POYU-3, page 5.11-30); 5.18, Water Resources (PDF 18-2, page 5.18-39; MM 18-1, page 5.18-75); 5.19, Wastewater Collection (PDFs 19-1 and 19-3, page 5.19-8); 5.20, Dry Utilities (pages 5.20-11 and -12 under heading "Energy Conservation in the Project"; pages 5.20-21 under heading "Energy Conservation in the Project"; pages 5.20-21 and -22 under heading "Vehicle Trip Reductions in the Centennial Project"); and 5.21, Climate Change (PDFs 21-1 througl1 21-8 on pages 5.21-42 and -43; "Energy Use" analysis beginning on page 5.21-56; "Water Supply, Treatment, and Distribution" analysis beginning on page 5.21-60; "Mobile Sources" analysis beginning on page 5.21-62; MMs 21-1 through 21-13, MM 21-15 through 21-20 on pages 5.21-88 through -93). As such, wherever energy conservation is relevant to the analysis of environmental impacts, the appropriate energy efficiency features of the proposed Project, presented in PDFs and MMs, are part of the analysis of environmental impacts and associated conclusions." (AR 9:3077.)

CR does not address the County's response to its comment. CR has failed to meet its burden of demonstrating the County failed to proceed as required by law.

8. ***The County Failed to Proceed as Required by Law for Failing to Require all Feasible Mitigation***

"The general rule is that an EIR is required to provide the information needed to alert the public and the decision makers of the significant problems a project would create and to discuss currently feasible mitigation measures." (*Friant Ranch, supra,* 6 Cal.5th at 523.) Whether the EIR's discussion of feasible mitigation measures is sufficient presents a question of law and fact generally subject to the court's independent review. (*King & Gardiner Farms, LLC v. County of Kern, supra,* 45 Cal.App.5th at 866.) Where factual questions predominate, however, the more deferential substantial evidence standard is warranted. (*Ibid.*)

Guidelines section 15041, subdivision (a) provides the County with authority to "require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment" consistent with the constitutional principles of nexus and rough proportionality. In addition, Guidelines section 15126.4, subdivision (a) requires an EIR to "describe feasible measures which could minimize significant adverse impacts . . . ." The Guidelines also specify "[w]here several measures are available to mitigate

an impact, each should be discussed and the basis for selecting a particular measure should be identified." (Guidelines § 15126.4, subd. (a)(1)(B).)

Public Resources Code section 21061.1 defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." Additionally, "[e]conomic unfeasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical." (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 449.) "[I]f a project can be economically successful with mitigation, then CEQA requires that mitigation . . . ." (*Ibid.*)

CR contends the County received numerous comments the Project should be reconfigured "as a net-zero project like Newhall Ranch, and that the Project adopt other GHG mitigation measures that were adopted for Newhall Ranch . . . ." (CR Opening Brief 10:21-22.) Such measures, in CR's view, would reduce the Project's GHG emissions to zero. (CR Opening Brief 10:24-25.)

The CBD Petitioners and the Center for Food Safety commented on the DEIR and questioned "why stronger mitigation measures—including zero net energy[46] standards—are infeasible." (AR 9:2769.) They remarked the Project "should generate more than the proposed 50 percent of renewable energy onsite." (AR 9:2769.) They also suggested faster charging electrical vehicle charging stations could be provided in a higher volume than required by the County. (AR 9:2769.)

The County explained in the EIR that nothing required it to explain why certain mitigation measures are infeasible. Instead, CEQA required only that the County "describe feasible measures that could minimize the Project's significant adverse impacts." (AR 9:3072.) The County reported CEQA did not require the Project to reduce its GHG emissions to net zero levels. (AR 9:3073.) In fact, the County specifically noted, "the EIR does not claim, and the [County] has not found, that any of the alternatives identified in the EIR, or recommended by [the CBD Petitioners and the Center for Food Safety], are economically infeasible." (AR 9:3076.) That is, "the County did not reject additional mitigation on the ground that they were economically infeasible." (Companies' Brief 23:1-2.)

The County found the Project could not be required to "bear a greater than proportional share of mitigating a cumulative significant impact." (AR 2:240.) The County determined:

> Because GHG emissions from transportation, water and waste management and use, heating and cooling of buildings, and a myriad of other activities are common to all new and modified development projects, and are common attributes of simply residing, working or producing goods or services in California, the County

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[46] Net zero energy means reducing "all project GHG emissions to zero to achieve no net increase over baseline conditions (carbon neutrality)." (*Golden Door Properties, LLC v. County of San Diego, supra,* 50 Cal.App.5th at 569.)

> has determined that feasibility of the mitigation measures required for this project must be commensurate with a fair share allocation and not with a hypothetical "zero net" or "net reduction" threshold or standard. Within this cumulative impact mitigation measure framework, all feasible mitigation measures to reduce the Project's GHG emissions impacts have been required and are described below. (AR 2:240-241.)

Thus, the County contends the mitigation associated with the Project's GHG emissions is consistent with the Project's fair share. Based on applicable regulations, other mitigation measures and compliance with the cap-and-trade program, the Project's total "uncapped" GHG emissions have been reduced to four percent of total unmitigated Project GHG emissions. (Companies' Brief 23:14-21.)

In reality, however, given the County's flawed reasoning on mitigation through the cap-and-trade program and after eliminating alleged mitigation through cap and trade, the Project's total, unmitigated Project GHG emissions are reduced only 35 percent through applicable regulations and other mitigation measures. That is, total, unmitigated GHG emissions of 244,379 $MTCO_2e$ are reduced to only 157,642 $MTCO_2e$, a reduction of only 35 percent.

Accordingly, the County's determination additional mitigation on the Project would exceed the Project's "fair share" is unsupported by substantial evidence and based on a flawed legal premise.[47] As the County's "fair share" determination fails, the County failed to comply with the law when the EIR did not discuss why additional GHG emissions mitigation would be infeasible. (In fact, the County admittedly undertook no such analysis. [AR 9:3076.])

9. ***The County Improperly Adopted a Statement of Overriding Considerations***

"A statement of overriding considerations reflects the final stage in the decisionmaking process by the public body." (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222.) A public agency cannot approve a project where there will be a significant effect on the environment unless the public agency finds "[s]pecific economic, legal, social, technological, or other considerations, . . . make infeasible the mitigation measures . . . identified in the [EIR]." (Pub. Resources Code § 21081, subd. (a)(3).) Where mitigation is infeasible, the public agency must also find "that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (*Id.* at subd. (b).)

As the County determined the Project's compliance with applicable regulations, certain mitigation measures and cap and trade was sufficient to meet the Project's "fair share" of mitigation for its GHG emissions impacts, the EIR did not consider other suggested mitigation

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[47] The Companies contend the Project's mitigation is sufficient even without using the cap-and-trade program for mitigation. (Companies' Brief 24:7-8.) Given the Project's mitigated contribution to GHG emissions without cap and trade reductions (157,642 $MTCO_2e$), the basis for the Companies' position is unclear.

measures to lessen the significant cumulative impacts of GHG emissions from the Project. As the County's reliance on the cap-and-trade program was misplaced, the County's failure to consider whether additional mitigation measures for the Project were infeasible, the County did not properly adopt a statement of overriding considerations.

Accordingly, the County failed to proceed as required by law when it adopted a statement of overriding considerations.

Wildland Fire Impacts Analysis

CR reports much of the Project's perimeter is designated as a Very High Fire Hazard Severity Zone while much of the Project site is designated as a High Fire Hazard Severity Zone. (AR 291:54192; 11:9282) CR asserts the Project increases the risk of wildfire in the Project site's high fire risk region. (AR 401:58272; 683:72026-72037.) Further fire risk is created by the Project's introduction of fuel sources common in urban uses to this undeveloped area. (AR 10:5169.) CR advises urban development also increases ambient temperatures thereby increasing the risks of fire start and spread. (AR 8:2064.)

Guidelines section 15126.2, subdivision (a) informs generally on an EIR's consideration and discussion of significant environmental impacts. It provides in part:

> "An EIR shall identify and focus on the significant effects of the proposed project on the environment. . . . The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land . . ., health and safety problems caused by physical changes . . . . The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions . . . ." (Guidelines § 15126.2, subd. (a) [emphasis added].)

CR takes issue with the EIR and its wildfire analysis for two reasons. First, CR contends the EIR fails to "fully disclose and analyze fire-safety impacts as required by CEQA . . . ." (CR Opening Brief 12:16-17.) Second, CR asserts the "Project plans and mitigation will not effectively avoid impacts that are not only significant but potentially catastrophic." (CR Opening Brief 12:17-18.)

1. The EIE's Disclosure and Analysis of Impacts Related to Development and New Ignition Sources

CR argues the EIR's analysis of new ignition sources in the Project site's "undeveloped, fire-prone region" is inadequate. (Opening Brief 12:14-18, 12:34-35.) A "sufficient discussion of

significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact." (*Friant Ranch, supra,* 6 Cal.5th at 519.)

a. Whether the EIR adequately discloses impacts from introducing development and new ignition sources in an area subject to severe wildfire hazards

CR argues the EIR treats wildfire risk in a conclusory fashion and fails to:

> "analyze one of the most important concerns about the Project: the fact that it brings human development into a region that already suffers from very high fire risks, and that in doing so, it may exacerbate those risks both outside and within the Project site." (CR Opening Brief 15:3-7.)

CR acknowledges the EIR "purports to address" wildfire risks. (CR Opening Brief 13:32. AR 34:19686-90; see AR 10:4482 [citing to EIR sections 5.3-35 to 5.3-39].) It claims the EIR, however, does not address the surrounding areas outside the Project site's boundary at the wildland-urban interface. The EIR's analysis, according to CR,

> "merely identifies some types of human activity that could ignite fires, and then jumps immediately to its conclusion that fuel modification will render the hazard insignificant, leaving a large gap in the analysis by failing to discuss the likelihood of fires from different human activities, the significance of the impacts, or how fuel modification would avoid significant impacts." (CR Opening Brief 14:10-14.)

The Companies contend the issue is not properly before the court because CR failed to exhaust its administrative remedies on the issue.[48] Nonetheless, the Companies argue the EIR adequately discloses the risks of fire under its Thresholds 3-8 and 3-9 analysis. (AR 34:19685.)[49]

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[48] CR argues otherwise relying on a comment to the EIR concerning a lack of analysis about how bringing human development into a region of high fire risk may exacerbate the risk. (AR 280:52260-61; 291:54147-48, 54150-51; AR 258:49853; 1AR 10:5169, 5171.) (CR Reply 8:1-4.) CR does not identify, however, exhaustion of the EIR's alleged failure to analyze environmental impacts under threshold 3-9. Accordingly, CR's argument there is no discussion in the EIR addressing Threshold 3-9 is not properly before the court. (CR Opening Brief 14:34-15:2.)

[49] Pursuant to Threshold 3-8, the EIR assessed whether the Project would expose people or structures to significant risk of loss, injury or death because the Project is located within an area that (i) is designated by the California Department of Forestry and Fire Protection as a "Very High," "High," or "Moderate" Fire Hazard Severity Zone, (ii) is a high fire hazard area with inadequate access, (iii) has inadequate water and pressure to meet fire flow standards, or (iv) is in proximity to a land use that has the potential for dangerous fire hazards. (AR 34:19685.) Under Threshold 3-9, the EIR considered whether the Project constitutes a potentially dangerous fire hazard. (AR 34:19685.) The EIR discloses the Project site is designated as a Very

In addition, the EIR reports with mitigation all-fire related impacts would be reduced to less than significant impacts. (AR 2:30-31, 2:135-146, 2:329- 334, 8:2074, 34:19686-19690.)

CR's argument the EIR's analysis is inadequate on this issue is not persuasive. As noted earlier, an EIR need not be perfect. Instead, courts look "for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines § 15151.)

The EIR discloses how construction of the Project itself poses a fire risk. (AR 47:20686-20687.) The EIR also reports there will be an increase in fire risk at the Project site as well as the wildland-urban interface because of the presence of brush with increased human activity and human presence. (AR 34:19687.) The EIR explains such factors increase the potential for fire due to accidental and arson-related causes. (AR 34:19686-19687.) The EIR also acknowledges the Project site is "highly vulnerable" to fires and the Project—and its new development—would "substantially increase the likelihood of [fire] incidents[,]" and wildfire conditions during dry Santa Ana wind events are "extremely high." (AR 34:19684-19685; 47:20687.)

Additionally, the EIR explains:

> "The Draft EIR evaluates the Project's potential fire safety impacts under two thresholds of significance. First, the Draft EIR considers whether the Project would expose people or structures to a significant risk of loss, injury or death involving fires because it is located (i) within a Very High Fire Hazard Severity Zone . . ., (ii) within a high fire hazard area with inadequate access, (iii) within an area with inadequate water and pressure to meet fire flow standards, or (iv) within proximity to land uses that have the potential for dangerous fire hazard. Second, the Draft EIR considers whether the Project constitutes a potentially dangerous fire hazard." (AR 8:2069.)

The court disagrees with CR's assessment CEQA requires more from the EIR as an informational document on this issue. Contrary to the position CR asserts, the EIR is not required to calculate the likelihood of fire from specific human activities and, as noted by the Companies, "[t]he [CEQA] statute does not demand what is not realistically possible given the limitation of time, energy, and funds. 'Crystal ball' inquiry is not required." (*Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286 [discussing project alternatives].) Further, "an EIR need not include all information available on a subject." (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.)

Thus, the court finds that the EIR adequately discloses the risk of fire from the Project related to introducing people to the Project site.[50]

High Fire Hazard Severity Zone and portions are designated as a High Fire Hazard Severity Zone. (AR 34:19684.)

[50] Subsumed within the inadequate analysis argument is CR's claim the EIR misleads decisionmakers and the public about the fire impacts of the Project. Petitioner argues the EIR

b. Whether the EIR shows Project plans will avoid significant impacts from on-site and off-site wildfire hazards:

The EIR evaluates on-site and off-site environmental impacts under two significance thresholds. (AR 34:19686, 19689; 8:2069.) The EIR concluded the Project's fire safety impacts would be less than significant after taking into consideration:

> "(i) Project site access, (ii) Project site water flows, (iii) Project site topography, (iv) Project site vegetative cover, (v) existing and proposed regulatory controls, (vi) existing mutual aid agreements between federal, state, and local fire safety service providers, and (vii) Project improvements and mitigation measures related to landscaping and vegetation management, building construction, circulation, public utilities, and fire protection services, including but not limited to MM 3-9." (AR 8:2069.)

MM 3-9 provides:

> "The [Companies] shall prepare a Fuel Modification Plan demonstrating compliance with the County Fire Code Title 32 and shall provide all new residents and business owners with recorded Covenants, Conditions, and Restrictions (CC&Rs) or disclosure statements that identify the responsibilities for maintaining

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repeatedly suggests the Project will reduce or eliminate fire hazards in the Project vicinity. (CR Opening Brief 15-16 [citing AR 29:19413].) The court disagrees with CR's characterization of the EIR's discussion. The EIR begins its analysis of environmental impacts with a broad disclosure about fire risk: "The Project would introduce urban development in an undeveloped area subject to wildfire hazards. The Project area is within a [Very High Fire Hazard Safety Zone] and a [High Fire Hazard Safety Zone], which are subject to high fire hazards due to the presence of high brush, woodlands, and steep slopes." (AR 34:19686.) Those portions of the EIR relied upon by CR to support its argument the EIR misleads affirmatively state:

> "With development of the Project site, fire hazards associated with the natural vegetative cover would be reduced through its replacement with urban landscape vegetation. In accordance with State law, fire-safe landscaping and minimum clearance (defensible space) requirements will be used in areas susceptible to wildland fire. While the potential for fire hazards would still exist, the potential for fires to burn out of control through undeveloped land would be minimized with development." (AR 29:19413.)

CR does not mount a factual challenge to the EIR's statement. In fact, nothing suggests the statement/conclusion is not supported by substantial evidence. In the court's view, the EIR properly places the fire reduction analysis in context and does not suggest the Project eliminates wildfire risks.

> the fuel modification zone(s) on their property, as defined in the approved Fuel Modification Plan. The CC&Rs or disclosure statements prepared by the [Companies] shall be submitted to the County [] to confirm that new property owners will be informed of their responsibilities for maintaining the fuel modification zone(s) on their property." (AR 34:19690.)

CR argues "the EIR fails to show how the factors identified as lessening the risk of wildfires will reduce the Project's impacts to less than significant." (CR Opening Brief 19:9-10.) CR disputes whether the identified factors effectively address and avoid potentially significant fire hazards. CR contends the EIR's discussion of both off-site and on-site impacts is insufficient. Relying on *Friant Ranch, supra,* 6 Cal.5th at 522, CR contends the EIR provides no facts or analysis on the issue—just bare conclusions.[51]

More specifically, CR posits "many of the considerations [relied upon to find a less than significant impact] do not address the external risks from the Project's new sources of fire starts and increased fuels and fire hazard." (CR Opening Brief 17:21-22.) CR suggests the EIR primarily focuses on Project improvements and mitigation measures in fire prevention but does not discuss how these plans will "avoid potential impacts outside the Project boundary." CR also argues the EIR "contains inadequate analysis to show [the factors relied upon] will reduce all significant on-site impacts." (Opening Brief 17:33-34.)

The EIR discusses compliance with state and local regulations for development in a Very High Fire Hazard Safety Zone and a High Fire Hazard Safety Zone. (AR 34:19687-19688.) The Project utilizes fuel modification planning. (AR 34:19682.) "The purpose of fuel modification is to provide defensible space between structures and wildlands." (AR 334:19682.)

Consistent with the County's fire department regulations, the Project's fuel modification zones will extend up to 200 feet from structures (see AR 34:19688 [100-foot setback may be appropriate]); three such zones exist under the fuel modification plan. (AR 34:19683 [explanation of zones]; 34:19682.) In each zone, "combustible native or ornamental vegetation has been modified and/or partially or totally replaced with drought-tolerant, low-fuel-volume plant species." (AR 34:19682.) The fuel modification zones protect structures by limiting and reducing the amount of fuel available for a fire. (AR 34:19682.) "The reduction in available fuel affects the flame lengths and amount of heat produced by the fire and eliminates landscape areas where embers can ignite vegetation." (AR 34:19682.)

The EIR also discusses the Project's fire defense. The EIR informs the Project will include at least three new fire stations each staffed with no less than a four-person company. (AR 47:20689-20690; 8:2070.) Additionally, the Project is designed with County fire code-compliant building construction, the provision of five vehicle access points from SR-138, construction of a County fire code compliant internal circulation system, and the provision of County fire code-compliant

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[51] On that basis, CR claims the issue is whether the County failed to proceed in the manner required by law, not a substantial evidence question.

water utilities and hydrant system. (AR 34:19686-19689, 47:20686-20691.) Finally, the Project will provide evacuation routes. (AR 34:19689.)

Based on the foregoing, the court finds the EIR's discussion and analysis of the on-site potential impact of the Project related to wildfires as less than significant is sufficient. The court finds the County did not fail to proceed in the manner required by law as to on-site impacts—CR expressly does not raise a substantial evidence challenge on the issue.

The EIR's discussion of off-site wildfire impacts, however, is problematic. The EIR seems to conflate on-site and off-site fire safety impacts. The EIR does not provide any analysis to support its conclusion the off-site impacts of the Project related to wildfires is considered less than significant. (AR 34:19689.)

While the EIR contains a separately titled discussion of off-site fire safety impacts, it is brief. The EIR concludes the Project's off-site features (intersections, water wells and aqueduct crossings) would not by themselves "increase the risk of fire hazards."[52] (AR 34:19689.) The EIR, however, does not address wildland fire risk outside the Project site in the area generally and how the landscape concept and fuel modification program reduce off-site fire safety impacts to less than significant. (See, e.g., AR 8:2064. [United States Forestry Service comment: "The lands and waters within the Angeles National Forest will be subject to greater fire risks." (AR 8:2064.)]

The EIR recognizes "the potential for wildland fire hazards would still exist[53] at the wildland urban interface due to (a) the presence of brush; (b) increased human activity; and (c) the increased potential for fires due to accidental and arson-related causes." (AR 34: 19687.) Without explanation, however, the EIR concludes fuel modification along with MM 3-9 will reduce "fire hazard potential in [the wildland urban] interface zone [to] less than significant." (AR 34:19687.) While that may, in fact, be the case, the County has failed to explain its conclusion in the EIR. The County's conclusion requires explanation to comply with CEQA.

The EIR's lack of analysis concerning a reduction in off-site fire safety impacts to less than significant through fuel modification and MM 3-9 becomes more apparent in the context of the

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[52] Consistent with the EIR's description of "Off-Site Impacts," the discussion addressed "potential impacts resulting from implementation of identified off-site Project features . . . ." (AR 31:19560.) The EIR, however, "shall analyze any significant environmental effects the proposed project might cause or risk exacerbating by bringing development and people into the area affected." (Guidelines § 15126.2, subd. (a).) The EIR must discuss the impacts of "locating development in areas susceptible to hazardous conditions (e.g., . . . wildfire risk areas) . . . ." (*Ibid.* [emphasis added].) Thus, off-site impacts should not be confused with impacts outside of the Project site where development and people have been brought into an affected area.

[53] The potential would "still exist" despite natural vegetative cover replacement with irrigated less combustible urban landscape vegetation. (AR 34:19687.)

EIR's discussion about fuel modification.[54] For example, the EIR reports fuel modification is appropriate for urban development within a wildland fire area—that is, it is a measure to reduce on-site impacts. The EIR discloses:

> "Generally, fire-prevention tactics for urban development in wildland fire hazard areas focus on [1] restricting the types of building materials used; [2] appropriate building design; and [3] incorporating setbacks, including fuel modification zones." (AR 34:19685.)

In its discussion of off-site impacts, the EIR explains:

> "With adherence to State and County requirements for fuel modification zone management, emergency access, building materials and methods, as well as change in land use, to be ensured with implementation of MM 3-9, the impact of the Project related to wildfires is considered to be less than significant." (AR 34-19689.)

MM 3-9 requires a fuel modification plan. Fuel modification zones create 100 to 200-foot buffers from structures. (AR 34:19688.) "Fuel modification zones are designed to protect homes from wildfire by limiting or reducing the amount of fuel available for a wildfire." (AR 34:19682.) Nothing in the EIR suggests fuel modification zones affect off-site fire safety impacts.

The EIR notes:

> "CAL FIRE[55] classifies a zone has having a moderate, high, or very high fire hazard based on a combination of how a fire will behave and the probability of flames and embers threatening buildings. . . . Typically, during the spring months, vegetation begins to lose its moisture content. By the fall, when Santa Ana wind conditions begin occurring, wildland fire conditions become extremely high." (AR 34:19684-19685.)

Wind-driven embers present off-site wildfire risk impact problems. (AR 291:54148 ["wind driven embers were blown about a mile away, across Highway 101 and large open spaces, into the community of Coffey Park, which was completely decimated by the fire"].) Fuel treatments "may also be ineffective against embers or flaming materials that blow ahead of the fire front." (AR 1426:118206.)

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[54] CR's challenge is not about the County's conclusion and substantial evidence. (CR Reply 8:35-9:1.) Therefore, the court considers only whether the EIR discloses the County's analysis that a fuel modification program and MM 3-9 reduce off-site fire safety impacts to less than significant.

[55] CAL FIRE is the common name for the California Department of Forestry and Fire Protection.

The EIR notes "[t]he landscape concept and fuel modification plan would reduce the potential for wildland fire and brush fire hazards on the Project site." (AR 47:20690 [emphasis added].) Given the EIR's discussion of fire spread (embers and winds), some explanation from the County of how it reached its conclusion impacts outside the Project area are less than significant is necessary to inform decisionmakers and the public. Without more, it is not clear how fuel modification zones and MM 3-9—in the County's view—reduce off-site wildfire impacts to less than significant. The County also did not explain how other wildfire mitigation measures (access, water flows and site vegetation) reduce off-site wildfire impacts to less than significant.

CR is correct—there is no analysis undertaken by the EIR to explain its conclusion on the issue—a failure to proceed as required by law.[56]

The court recognizes the Project's public access to undeveloped areas and steep canyon areas are restricted in the Specific Plan's Trail Plan and Open Space Management Plan, but remain accessible to firefighting equipment by way of air and existing fire roads, and clearance for fire access roads and gates will be incorporated into the subdivision map approval process as required by the County's fire department, making it easier to provide fire services to this difficult terrain and further reducing fire risks to onsite and offsite resources. (AR 9:3850, 34:19687-19688, 34:19687. ["Topography is connected to wildland fire hazards because steep slopes are not only inaccessible to fire fighting vehicles, but steep canyons can create updraft conditions (much like a chimney) and a fire in a steep canyon can spread rapidly into adjacent areas."]) Nonetheless, those measures concerning how fires are fought do not inform on risk of off-site wildland fire based on the Project's effect on the environment.

The court finds the County failed to proceed as required by law when it did not analyze wildfire risk impacts beyond the Project site. Alternatively, to the extent the County believes it did analyze such impacts, the County's failure to explain its conclusion that fuel modification zones and MM 3-9 will reduce off-site wildfire risk impacts to less than significant is a failure to proceed as required by law.

2. ***Whether the EIR's analysis of fire safety impacts is deficient because it fails to address the effects of climate change:***

CR argues the EIR fails to address the effects of climate change influence and the Project's fire-related impacts. (CR Opening Brief 19:22-23.) CR suggests the EIR's "brief" reference to climate

[56] Given how the EIR defines off-site impacts as "potential impacts resulting from implementation of identified off-site Project features" (AR 31:19560), it is not entirely clear to the court that the EIR analyzed wildfire impacts beyond the Project site. Guidelines section 15126.2, subdivision (a)'s focus on "areas" includes more than just the Project site.

change is inadequate. As such, CR asserts the EIR fails to adequately analyze how fire hazard impacts will be affected by climate change.[57]

The Companies persuasively argue climate change is an impact upon the Project rather than the Project's impact on the environment. CEQA requires an EIR to discuss a project's impacts on the environment, not the environment's impact upon a project. (See *California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 378 [". . . ordinary CEQA analysis is concerned with a project's impact on the environment, rather than the environment's impact on a project and its users or residents"].)

Additionally, to the extent climate change risks affect the Project, the Companies contend the EIR sufficiently discusses those impacts. The court agrees.

The specific impacts of climate change cannot be reasonable assessed beyond the general impacts disclosed in the EIR. The EIR reports climate change could cause increases in ambient temperatures, increases in extreme heat conditions, decreased snowfall and snowpack resulting in increased droughts, increases in frequency, intensity, and duration of extreme storms. (AR 10:5608-5609 [Local Climate Change Effects].)

The court acknowledges the EIR does not directly address climate change and fire safety impacts. The court finds, however, the EIR was not required to discuss the environment's impact on the Project.

Nonetheless, even assuming CEQA required the EIR to inform on the issue, the court does not find under the circumstances the EIR fails as an informational document for decisionmakers and informed public participation. An EIR need not be perfect. Instead, courts look "for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines § 15151.)

Here, as discussed earlier, the EIR, in large part, adequately discusses on-site fire risk. The EIR informs some of the Project's residential development will be adjacent to large open space areas with vegetative cover. Those plant communities "are highly combustible and . . . present a high fire hazard . . . ." (AR 34: 19687.) The EIR's discussion of climate change discloses increased ambient temperatures, increased extreme heat condition, exacerbation of drought-like conditions and reducing water supplies and water security. The information provided is sufficient to allow the public and decisionmakers to make an intelligent judgment concerning the Project's environmental consequences. (See *Napa Citizens for Honesty Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356.)

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[57] CR's argument is actually based on the environment's effect on the Project: "Specifically, the new conditions created by climate change make fire-prone areas even more vulnerable to human-caused ignitions." (CR Opening Brief 19:18-19.)

CONCLUSION

Based on the foregoing,

(1) The CBD Petitioner's petition is denied.

(2) CR's petition is granted. The court finds (a) the EIR's discussion of GHG emissions is flawed based on its reliance on the cap-and-trade program to substantially mitigate emissions; (b) the EIR's reliance fair share rationale for mitigation is flawed because it is based on reduced emissions from the cap-and-trade program; (c) as the EIR's mitigation discussion is flawed, the County improperly adopted a statement of overriding considerations; and (d) the EIR's conclusion wildfire risk impacts outside of the Project site will be reduced to less than significant is not supported by any analysis. Accordingly, the Project's entitlements are set aside.

IT IS SO ORDERED.

April 5, 2021

Hon. Mitchell Beckloff
Judge of the Superior Court