IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

No. C081893

IONE VALLEY LAND, AIR, & WATER DEFENSE ALLIANCE LLC,

Petitioner and Appellant,

v.

COUNTY OF AMADOR,

Respondent,

NEWMAN MINERALS, LLC, WILLIAM BUNCE,
FARALLON CAPITAL MANAGEMENT, JOHN TELISCHAK,
EDWIN LANDS, LLC, GREENROCK RANCH LANDS, LLC

Real Parties in Interest and Respondents.

Appeal from the Superior Court,
State of California, County of Amador
Case No. 15-CVC-09240
The Honorable Leslie Nichols

APPELLANT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Third **APPELLATE DISTRICT, DIVISION**	Court of Appeal Case Number: C081893
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* Douglas P. Carstens; SBN: 193439 Chatten-Brown & Carstens LLP 2200 Pacific Coast Highway, Ste. 318 Hermosa Beach, CA 90254 TELEPHONE NO.: 310-798-2400 FAX NO. *(Optional):* 310-798-2402 E-MAIL ADDRESS *(Optional):* dpc@cbcearthlaw.com ATTORNEY FOR *(Name):* Ione Valley Land Air & Water Defense Alliance LLC	Superior Court Case Number: 15-CVC-09240 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: Ione Valley Land Air & Water Defense Alliance LLC RESPONDENT/REAL PARTY IN INTEREST: County of Amador	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Ione Valley Land, Air & Water Defense Alliance LLC

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: November 18, 2016

Douglas P. Carstens
(TYPE OR PRINT NAME)

▶ Douglas P. Carstens
(SIGNATURE OF PARTY OR ATTORNEY)

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

STATE CASES

STATUTES

Civil Code of Procedure

Public Resources Code

California Code of Regulations, CEQA Guidelines

Government Code

Water Code

I. INTRODUCTION.

The County of Amador approved a quarry and asphalt processing plant called the Newman Ridge Project ("Project") in 2012. Petitioner Ione Valley Land Air and Water Defense Alliance ("Ione Valley LAWDA") successfully challenged the County's certification of the environmental impact report (EIR) for the Project. (*Ione Valley Land, Air, and Water Defense Alliance v. County of Amador*, Amador County Superior Court Case NO. 12-CVC-08091.) In response to the Judgment and Writ of Mandate issued by the Superior Court of Amador County in March 2013, the County withdrew its approval of the Newman Ridge Project and released a Partially Recirculated Draft EIR for only the transportation and circulation chapter of the EIR.

The Partially Recirculated Draft EIR contained new information in the form of a revised traffic analysis that showed potential traffic and congestion impacts on a greater area than was disclosed in the prior EIR. This new analysis also revealed that the Project will have a greater reliance on train transport. Train transport was intended to carry 95% of product from the mine, thus relieving truck traffic impacts, but nothing was provided to show that the rail line, bridges, and creek crossings would be upgraded to accommodate the number of train cars that would be added. Instead, evidence was submitted showing such rail transport would require the construction or rehabilitation of 20 rail bridges, each with potential environmental impacts and requiring the involvement of the Department of Fish and Wildlife, but the County disregarded this evidence.

Many comments on the Partially Recirculated Draft EIR highlighted new information or changed circumstances since the County's defunct 2012 approval of the Project. These changes included the new analysis of

transportation and circulation in the EIR. The new analysis led to identification of new air quality impacts, but these impacts were not adequately analyzed. New evidence of potential impacts from rail line usage was identified by the public but not analyzed. State approval of Mule Creek Prison expansion impacting the same roads as the Project was noted but not analyzed in the EIR. The County's 2013 approval of the expansion of a nearby quarry called the Jackson Valley Quarry created the opportunity for a less damaging alternative but the EIR did not examine it. The passage of the 2014 Sustainable Groundwater Management Act in response to California's continuing drought was identified but no new analysis was undertaken in response to it. Additional new information came to light regarding the potential interconnectedness of local aquifers and the drying of wells near the Project, but no analysis was performed. Despite requests from Appellant Ione Valley LAWDA, key agencies, and the public, the County refused to address new information that undercut the validity of its environmental analysis. These new circumstances and information could not have been considered in the County's previous review process but the County refused to respond to comments about them during its recirculation process. The County certified the Partially Recirculated Final EIR in March 2015.

The Project will cause unmitigated damage to the environment, and the County failed to adopt mitigation measures which were feasible and necessary, or to consider less damaging alternatives. The County violated CEQA and the Sustainable Groundwater Management Act. Its approval of the Project must be set aside and scrupulous compliance with statutory mandates must be ensured.

II. STATEMENT OF FACTS.

The Project site lies within the foothills of the Sierra Nevada range, and topography in the area is rolling hills and valleys. (Administrative Record (hereafter "AR") Volume 2, page 469 (hereafter "volume:page").) The existing site consists of open space and lands used for cattle grazing. (AR 2:384.) It is part of a historic ranch called Arroyo Seco Ranch, one of the few remaining large open grasslands in the state of California. (AR 2:591.) Both the Quarry area and the Edwin Center contain aquatic features, including seasonal wetlands. (AR 2:421.)

The Newman Ridge Project includes two components: the proposed 278-acre Newman Ridge Quarry and the 113-acre Edwin Center. (AR 2:367.) The Newman Ridge Quarry ("Quarry") is a proposed quarry with an estimated production level of five million tons of rock per year, to be extracted for approximately 50 years. *(Ibid.)* Final reclamation of the Quarry would occur after all mineral extraction is completed, which would occur in approximately 2063. (AR 2:999.) Various material processing facilities, including an aggregate plant, hot asphalt concrete plant, ready-mix concrete plant, an asphalt and concrete recycling plant, and a rail loading facility for finished products would be located at the Edwin Center. (AR 2:367.)

The General Plan designation of various portions of the Project site is Mineral Resource Zone (MRZ) and Agriculture-General (A-G). (AR 2:368.) However, the site's zoning designation was entirely Single Family Residential and Agricultural District (R1-A) prior to the County's approval of the Project. (AR 2:426; 2:428.) Numerous residences are located adjacent to the Project site in other R1-A zones. (AR 2:717; 2:847.)

The Project included a quarry Conditional Use Permit and

Reclamation Plan, the Edwin Center North General Plan Amendment, Zone Change, and various use permits but did not include an air quality, wastewater, or water drilling permits. (AR 2:458.) The Project was proposed under the County's outdated General Plan, some of which was over 40 years old at the time. (*See, e.g.*, AR 6:3638 et seq.; 6:3675 et seq.; 6:3741 et seq.) The proposed zone change for the Edwin Center North site would convert land designated as "single family residential-agricultural" to "manufacturing." (AR 2:457.)

The County claimed impacts to visual character and from toxic air contaminants would be reduced below a level of significance, while admitting impacts to long-term operational air quality impacts, cumulative impacts to regional air quality, impacts related to greenhouse gas emissions, and cumulative impacts to City of Ione intersections remained significant. (AR 2:383.)

Numerous agencies and individuals commented on the original draft EIR. (AR 1:178-188; 1:168-173; 1:201-204; 1:268-272.) When the Final EIR was released (AR 1:118), Ione Valley LAWDA learned that significant alterations to the analysis occurred after the comment period closed, without public review. Ione Valley LAWDA appealed the Planning Commission's approval to the Board of Supervisors. (AR 6:3450.) A memorandum dated February 22, 2012 from a company called Air Permitting Specialists noted because "the proposed project is located near another source of emissions [the ISP/SGI quarry] … the cumulative impact would be higher than suggested by the [emissions rates set forth for the Project]." (AR 13:8159.) This memo continued, "This cumulative impact would affect homes east of the quarry and Edwin Center." (AR 13:8159-8160.) The memo, though it had been prepared for the County,

was not disclosed in the EIR or subject to public review. The EIR did not address the ISP/SGI Quarry at all.

Despite the objections of various state agencies, Ione Valley LAWDA, the long-established local Foothill Conservancy, and hundreds of members of the public directly affected by the Project, the Board of Supervisors voted to approve the Project and certify the EIR as adequate. (AR 6:3590.)

Petitioner challenged the County's approval by seeking a petition for writ of mandate. The trial court agreed with a key claim of Ione Valley LAWDA, finding the inaccuracy in the EIR's traffic data was significant and deprived the public of the ability to comment about traffic impacts. (SAR 649.) The Court found the information regarding rail impacts was not reasonably calculated to inform the public about increased rail traffic impacts. (SAR 651.) The Court further found that these were not merely technical errors, but were prejudicial to public review of the EIR.

After the County revoked the approval of the original project, the County grudgingly complied with the trial court's order but only recirculated one isolated section of the EIR related to traffic. Ione Valley LAWDA, hundreds of local citizens and others, including the California Farm Bureau, Caltrans, and the City of Galt objected to the County's further certification because the changes in the traffic and circulation section affected other sections of the EIR that were not recirculated. (Supplemental Administrative Record (hereafter "SAR" 101 et seq. [Caltrans]; SAR 131 et seq. [City of Galt]; SAR 137 [California Farm Bureau]; and SAR 139 et seq. [Appellant Ione Valley LAWDA], 349.) Commenters, including Petitioner, requested that the full EIR be recirculated in light of new information. (*Ibid*.) However, the County

obstinately refused to recirculate the EIR or respond to numerous comments that provided new information or raised issues that had not been addressed. Instead, the County re-approved the Project again without making any changes to it and without sufficient mitigation. (SAR 1:1.)

On April 21, 2015, Ione Valley LAWDA filed a petition for writ of mandate challenging the County's re-approval of the project. On March 4, 2016, the trial court entered judgment denying LAWDA's amended petition for writ of mandate in a single page ruling. (Clerk's Transcript (CT), 4:1092.)

III. STANDARD OF REVIEW.

In reviewing the County's actions under CEQA, the standard of review is to determine whether there was "a prejudicial abuse of discretion." (Pub. Resources Code § 21168.5.) "An abuse of discretion occurs where the agency has not proceeded in a manner required by law, or its decision that the EIR is adequate is not supported by substantial evidence." (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 721.)

Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to adequately analyze the Project, omitting information necessary for informed public review, failing to respond to comments, and failure to mitigate a project's significant adverse impacts, are subject to a less deferential standard than challenges to an agency's substantive factual conclusions. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.)

A lead agency must provide a complete and accurate assessment of potential environmental impacts. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.) The detailed statements in

an EIR are reviewed for "adequacy, completeness, and a good-faith effort at full disclosure." (Tit. 14, Cal. Code Regs. (hereinafter "Guidelines"), § 15003, subd. (i).) Where necessary information is omitted or inaccurate, a lead agency fails to comply with the procedures required by law, and thus its error or omission is presumptively prejudicial. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236.)

The EIR is a document of accountability. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) CEQA ensures accountability through the requirement that the lead agency provide written "good faith, reasoned analysis" in response to comments on an EIR by the public. (Guideline § 15088, subd.(c).) CEQA requires the lead agency to evaluate comments it receives on the draft EIR and prepare written responses to those comments that will be included in the FEIR. (Pub. Resources Code § 21091(d)(2); Guidelines §§ 15088(a), 15132(d).) The lead agency must provide specific, detailed reasons when it chooses not to implement recommendations or does not make changes to the project based on specific objections received in comments. (Guidelines § 15088, subd.(c).) Detailed reasoning is of particular importance when critical comments have been made by other public agencies or experts. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842.) The lack of an adequate response to comments in a final EIR indicates the inadequacy of the EIR as a whole. (*People v. County of Kern, supra*, 39 Cal.App.3d at 841-842.) When a comment raises a significant environmental issue, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted." (Guidelines § 15088, subd.(c).) "Conclusory statements unsupported by factual information will not suffice." (*Ibid*; *Laurel Heights Improvement Assn. v. Regents of University of California*

(1993) 6 Cal.4th 1112, 1124.) The level of detail of responses to comments must be commensurate with the level of detail of the comments. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 878 ["the determination of the sufficiency of the agency's responses to comments on the draft EIR turns upon the detail required in the responses"].)

This requirement for good faith, reasoned analysis in response to comments "ensures that stubborn problems or serious criticism are not swept under the rug." (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal. App. 4th 715, 732.) Courts have held that inadequate responses to comments – alone – can be grounds for voiding a project's approval. (*See, Env. Protection Information Center. v. Johnson* (1985) 170 Cal. App. 3d 604, 627.) Failure to respond to a *single* substantive comment is sufficient to invalidate approval of a final EIR. (*Flanders Foundation v. City of Carmel by-the-Sea* (2012) 202 Cal. App. 4th 603, 616-617.)

Where significant new information is added to an EIR before its certification, the EIR must be recirculated. (Pub. Resources Code § 21092.1; *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131.) Recirculation is required when an alternative is shown to be feasible. (Guidelines, § 15162, subd. (a)(3)(C), (D); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.) Although there is no prior certified EIR involved in this case because the 2012 EIR was decertified, it bears noting that where the circumstances of a project change after an EIR's certification, adequate environmental review of those new changed circumstances must be undertaken before the agency approves another

portion of the project. (Pub. Resources Code § 21166.) The Supreme Court explained why recirculation is required more broadly under section 21092.1, where the public interest is in meaningful participation, than under section 21166, where an important interest is in finality of environmental review:

> By way of contrast [with section 21166], section 21092.1 was intended to encourage meaningful public comment. (See State Bar Rep., *supra*, at p. 28.) Therefore, new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1. (See, e.g., *Mountain Lion Coalition v. Fish & Game Com.*, *supra*, 214 Cal.App.3d 1043.)

(*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.)

No public agency shall approve a project for which an environmental impact report has been certified which identifies one or more significant environmental effects unless specific economic, legal, social, technological, or other considerations make the mitigation measures or alternatives identified in the EIR infeasible. (Pub. Resources Code § 21081.) "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible." (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368–369.)

IV. ISSUES PRESENTED

A. Whether the County failed to adequately analyze and mitigate the project's significant adverse impacts on water supply, water quality, biological resources, air quality, and traffic;

B. Whether the County violated the Sustainable Groundwater Management Act;

C. Whether the County adequately analyzed alternatives;

D. Whether the County erred in adopting a statement of overriding considerations.

V. STATEMENT OF APPEALABILITY.

The trial court's denial of a petition for writ of mandate is an appealable final judgment pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1).

ARGUMENT

VI. THE COUNTY FAILED TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S SIGNIFICANT ADVERSE IMPACTS.

The 2012 EIR was decertified in 2014, and the County was required to prepare a revised and legally adequate EIR. (SAR 653.) The Partially Recirculated Draft EIR contains new and revised analysis regarding numerous impacts derived from the Project's vehicular and train traffic generation. As discussed in more detail below, the Partially Recirculated Draft EIR included a revised traffic analysis, which in turn affects the Project's potential environmental impacts on air quality (due to changes in the numbers of cars and trains reported) and on biological resources (due to

needed bridges for train tracks). The EIR was approved after the state adopted the Sustainable Groundwater Management Act to require stricter control and management of groundwater resources by local jurisdictions. The EIR was also approved after state approval of the Mule Creek Prison expansion, which affects traffic on local two-lane roads and highways. The EIR approval also followed the County approval of the expansion of the 60-year-old Jackson Valley Quarry, located 5 miles from Ione, which fulfills the aggregate production goal shared by the Newman Ridge Project, affects the availability of alternatives, and undermines the statement of overriding considerations that relies upon the infeasibility of environmentally less damaging alternatives.

A. The Recirculated EIR Fails to Adequately Address Water Supply and Water Quality.

Analysis of surface water and groundwater supplies is critical to the legal sufficiency of an EIR. The Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard Area Citizens*) stated, "An EIR evaluating a planned land use project must . . . analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. [Citation.]" (*Id*. at 431.) *Vineyard Area Citizens* held that the EIR prepared by the City of Rancho Cordova was inadequate because it failed to identify the long-term water sources for a project and failed to analyze the environmental impacts of providing water to the project from the anticipated sources. (*Id*. at 441.) Where groundwater is a potential source of water for a project, the impact of the increased groundwater pumping at peak production on other water users must be analyzed. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 663.)

CEQA also requires that an EIR address "any inconsistencies

between the proposed project and . . . regional plans." (Tit. 14 Cal.Code Regs. (CEQA Guidelines) § 15125 (d).) Thus, the EIR is required to address the inconsistency of the project with County or regional plans related to groundwater. The passage of the Sustainable Groundwater Management Act underscores the need for regional groundwater management plans. The County's failure to address groundwater usage in the larger context of regional groundwater plans violates both CEQA and the Sustainable Groundwater Management Act.

The County did not establish that groundwater supply would be available for the Project without detrimental impacts to adjacent ranchers. The EIR indicates that the Project would primarily utilize groundwater from on-site wells. (AR 2:743.) The water wells of farmers and ranchers near the Project site have been running dry since 2013. (SAR 2:453) Based on information prepared before 2012, the EIR asserts, "surrounding users are not pulling groundwater from the same source as the project." (SAR 2:466.) The EIR failed to address the new circumstances of the Project where local water users would find new supplies to replace those that had gone dry after 2013. An EIR must use the best information available. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 455 ["public and decision makers are entitled to the most accurate information on project impacts practically possible"].) The EIR did not inform the public of where the wells on the adjacent property are drilled, nor how deep they are, nor what aquifer they are drawing down from.

Available groundwater supply is projected based on yield estimates from a test boring, estimates of the volume of groundwater within the Basal Ione Aquifer Sand underlying the Project site, and published yield estimates for the Cosumnes Subbasin. (AR 2:752.) The Project Site is

located in the Ione Basin. (AR 2:654) However, the EIR uses data from the larger Cosumnes Subbasin to estimate groundwater yield, not data for the Ione Basin. (*Ibid;* AR 2:657.) The EIR's estimates based on a different basin are misleading and uninformative to the public.

While in 2012 local water users may not have had to rely on the groundwater that would be used by the Project, the situation changed since then, with the continuing drought. A comment letter directly stated, "Wells have been running dry throughout the county and the state." (SAR 453.) Specific wells were identified as running dry, and the County provided no contradiction of this factual information. (SAR 145 ["We have been informed that the wells of John and Evelyn Dubois near the Irish Hill quarry have run dry within the past six months and they have been buying water from the Amador Water Agency. We also understand that properties near local Newman Minerals operations have lost water from their wells this past summer."]) When wells run dry, it is a logical inference that the water users would have to search out new sources of water. This situation was not present in 2012 when the original EIR was approved. The County did not update its analysis to address these new conditions.

The EIR states: "[T]he aquifer from which groundwater would be extracted for project use (i.e., Ione Formation) is not tapped by neighboring water users, *who instead rely on aquifers in the Mehrten Formation*, which is geologically separate from the Ione Formation." (AR 2:668, emphasis added.) In view of statements of local ranchers with knowledge of local wells (AR 4:1887, Comment 14), the EIR's assertions that local wells draw from the Mehrten Formation and that the Project would draw water from the distinct Ione Formation is not supported. The schematic prepared by the Real Party's consultant contradicts the EIR's conclusions since it depicts the Mehrten Formation as being located only to the west of the

Project site and nearly all neighboring residences located to the east of the Project. (AR 2:669; AR 2:425.)

The County claimed that local domestic wells "tap into alluvial aquifers at shallower depths" (AR 2:668), that these aquifers are located east of the Project site, and that the conclusion that local wells use shallow aquifers is based on confidential well logs (AR 1467.) Local long time ranchers who would know the depth and source of their own wells contradicted this alleged well log information. (AR 4:1887 ["Most of the surrounding homes have wells that draw from this local aquifer. . . There are no local wells in the Mehrten Formation that I am aware of."]) The purpose of CEQA is not only to protect the environment, but "also to demonstrate to the public that it is being protected." (Guidelines § 15003 (b) and (d).) Therefore, if the County could not disclose the location and impacts of groundwater pumping on local wells, based upon the asserted confidentiality of those well drilling reports, it should have conducted independent drilling and pumping tests so that it could provide publicly reviewable information. The County's reliance on paid consultants to review confidential reports and characterize their content for public review does not provide a sufficient full disclosure document for the public to "demonstrate to an apprehensive citizenry" (Guideline § 15003 (d)) that local wells would not be adversely affected by the Project.

The Environmental Health Department expressed concern that "[t]he location of the additional 100 acres proposed for groundwater development is not identified nor is the presence of the silty sand aquifer demonstrated." (AR 2:915.) Including the additional 100 acres in the calculations without analyzing the potential location for these wells was improper. (*Vineyard, supra,* 40 Cal.4th at 431 [environmental impact of supplying water must be

disclosed].) As soon as wells are dug down through the alluvial aquifer, through the Ione formation, and into the basal Ione aquifer sand, they would provide a hydraulic connection between the three layers, thus allowing drainage of the alluvial aquifer into the basal Ione aquifer. (See AR 2:670.)

Even if the aquifer from which the Project would draw water were drought resistant, the drought would cause other local users to find new sources, including possibly the same aquifer. The County's failure to analyze the impact of the Project potentially depriving other local users of necessary groundwater violates CEQA. Nearby ranchers have overlying rights to the groundwater as much as the Project proponents do, as some of their ranch holdings date back several generations. (AR 3:831 ["Ione Valley ranchers and farmers, many of them multi-generational, need dependable water supplies to maintain their livelihood for their livestock"]). An overlying right "is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto." (*City of Barstow v. Mojave Water Agency (*2000) 23 Cal.4th 1224, 1240.) "As between overlying owners, the rights, like those of riparians, are correlative; [i.e.,] each may use only his reasonable share when water is insufficient to meet the needs of all. [Citation]. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.)

The County failed to determine whether the Project's use of groundwater as an overlying right would be a reasonable share, or deprive other landowners with similar overlying rights of their reasonable shares in the Mehrten or Ione Formation water. "When the water is insufficient, overlying owners are limited to their 'proportionate fair share of the total

amount available based upon [their] reasonable need[s].'" (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1253.) Despite the fact that water in the area is clearly insufficient, the County failed to determine or attempt to limit the Project proponents to their proportionate fair share of the total amount available based upon their reasonable needs. In this, the County completely failed to fulfill its duties under both CEQA and the Sustainable Groundwater Management Act.

B. The County Did Not Adequately Address the Water Board's Specific Comment Letter.

Seeking to protect water quality, the Central Valley Water Quality Control Board (the Water Board) made specific comments that contradicted the County's position that no Waste Discharge Requirements (WDRs)[1] were required. The Water Board stated in 2011: "When waste is stored on or disposed to land, Waste Discharge Requirements (WDRs) are required.

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[1] WDRs are requirements regarding the nature of any proposed discharge, existing discharge, or material change in an existing discharge of waste. (Wat. Code, § 13263, subd. (a).) The Water Code provides:

> The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

(Wat. Code, § 13263, subd. (a).)

This applies to aggregate wash water, concrete wash water, returned/rejected concrete, and uncured concrete in recycling piles." (AR 11:7058.) Additionally, in October 2014, the Water Board stated that a Waste Discharge Requirement permit was required for the Project. (SAR 1:125, 127.) These comments contradicted the County's position, which continued in the Recirculated EIR (SAR 1:129), that it considered WDRs as unnecessary on the theory that wastewater would not be discharged from the Project site (AR 1:206). The Water Board's letter made it very clear that even if wastewater were merely stored on the site, WDRs are required. (AR 11:7058.) Furthermore, the County did not address the point that at the end of Project operation, the water stored onsite would have to be discharged, even if not discharged during operation. (AR 12:7221 ["Most abandoned mining pits in the area hold water."])

In January 2013, the Water Board wrote a very specific letter to the Project proponents stating "[Y]our letter did not discuss the solids that will be collected in those clarifier tanks or how they will be managed and disposed. . . . [T]he Board cannot yet conclude that there is no need to either issue WDRs or conditionally waive the issuance of WDRs." (SAR 230-231.) The Water Board then required the Project proponent to submit various items of information to the Water Board by February 2013 including whether it operates another aggregate quarry or processing plant in the County, a description of its operations, and a plan of operations to discharge aggregate wash water. (SAR 231.) None of the answers to these questions, asked by the Water Board in 2013 after the original 2012 approval, appear in the Recirculated EIR, or elsewhere in the record even though Appellant Ione Valley LAWDA requested this information. The County failed to obtain this necessary information or disclose it in the EIR.

Instead of responding to the Water Board's comments, the County asserted such comments were "outside the scope" of the Recirculated EIR and thus did not require a response. (CT 605.) The county claimed CEQA Guidelines section 15088.5 subdivision (f)(2) provides "that a lead agency may limit responses to only those portions of the EIR that are revised." (CT 605.) This position oversimplifies the requirements for responding to comments in the context of the recirculation of an EIR. The Guideline cited by the County states "the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR." (Guidelines § 15088.5 subd. (f).) While the County relied on CEQA Guidelines section 15088.5 subdivision (f)(2), that subsection is controlled by the mandatory requirement of section 15088 subdivision (f) which states "*In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues*." (CEQA Guidelines § 15088.5 sudb. (f), emphasis added.) In keeping with CEQA's overarching requirement to respond to public comments, a lead agency may not fail to respond to "pertinent comments" by claiming they are outside the scope of recirculated sections of the EIR. This is especially true in the present case where the initial EIR comment period, from April 24, 2012 to June 7, 2012 (AR 7296), was separated from the recirculated EIR comment period, from August 27, 2014 to October 13, 2014 (SAR 1224), by over 2 years and 4 months. During that time between circulation of the draft EIR, which was adjudicated to be inadequate as an informational document, and the recirculation of the Recirculated EIR, new members of the public had moved into the affected area and public agencies that had previously been unaware or unconcerned about the Project such as the City of Galt became focused on the Project. As discussed above, numerous changes in circumstances occurred during this time. Therefore, the County could not

defeat CEQA's public comment response requirements by attempting to limit public comment to only those portions of the EIR it had recirculated.

C. The County Failed to Evaluate Groundwater Usage As Required by the Sustainable Groundwater Management Act.

In addition to violating CEQA by approving the Project without adequate analysis, the County violated the Sustainable Groundwater Management Act of 2014, Water Code section 10720 et seq. The Sustainable Groundwater Management Act provides that any substantial amendment to the General Plan requires an update to the groundwater sustainability plan or groundwater management plan. Specifically, this law requires:

> Before the adoption or any substantial amendment of a city's or county's general plan, the planning agency *shall review and consider all of the following*:
> (a) An adoption of, or update to, a groundwater sustainability plan or groundwater management . . . or groundwater management court order, judgment, or decree.
> (b) An adjudication of water rights.
> (c) An order or interim plan by the State Water Resources Control Board . . . .

(Govt. Code § 65350.5, emphasis added.) The County failed to comply with this requirement before it adopted a major amendment to the County General Plan to allow industrial uses of the Edwin Center site. In fact, the County did not comply with *any* of the three requirements of this section: the County did not consider the adoption of a groundwater sustainability plan, an adjudication of water rights, or an interim plan by the Central Valley Water Board. Instead, the County asserted the Sustainable Groundwater Management Act does not restrict groundwater use by the Project or in any way affect the project-specific analysis. (SAR 2:466.)

Here, the Project involves a substantial general plan amendment in that it changes the land use designation of the 141 acre Edwin Center North site from Mineral Resources Zone (MRZ) and Agriculture - General (A-G) to Industrial (I). (AR 2:458.) Neither the County nor project proponents included drawdown tests to evaluate the effects that the quarry and asphalt plant water usage and wells would have on agricultural water. Instead of analyzing the potential for the Project to deprive other water users of water, the County chose to deny the new legislation would affect its analysis. (SAR 236-237.)

D. The Recirculated EIR Fails to Adequately Analyze and Mitigate Traffic Impacts.

1. The County's Response to Caltrans' Concerns Regarding Safety and Operational Impacts Is Deficient.

A lead agency must respond to the comments of sister agencies with particular areas of expertise. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1367 ["where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*"])

In its comment letter on the Partially Recirculated Draft Environmental Impact Report, Caltrans expressed concerns regarding safety and traffic impacts of the proposed access to the Edwin Center North project site. (SAR 5:1373-74.) The EIR's project description identifies access via an existing easement onto SR 104. (AR 2:458.) However, Caltrans explained that the existing easement, a 20-foot-wide opening provided for agricultural use of the property, is not of adequate width to

support a driveway for the Edwin Center North. (SAR 5:1373.) Caltrans concluded that "the project access is infeasible; the Department cannot support this proposal for access to SR 104." (SAR 5:1373-74.)

On July 22, 2013, Caltrans denied a request to approve the purchase of access rights for a 50-foot-wide opening in access control for the Edwin Center North, citing the inadequacy of the Traffic Impact Study (TIS). (SAR 5:1378.) On August 4, 2014, the applicant requested approval of the purchase of access rights for a 70-foot-wide opening to allow shared access to the ISP Granule facility and the Edwin Center North. (SAR 5:1374, 1380.) This request included preliminary design drawings showing turn lanes, acceleration and deceleration lanes, and "lowering of the highway profile by as much as eight feet for approximately one-quarter mile." (SAR 5:1374.)

Caltrans "considers the proposal for shared use of the driveway to be new information of substantial importance." (SAR 5:1374.) When significant new information is added to the EIR, it must be recirculated. (Pub. Resources Code § 21092.1.)

Driveway and potentially highway improvements would be needed to provide a wider access opening for the Edwin Center North, and this information is absent from the EIR. Caltrans stated:

> The Department recommends that, in order for the PRDEIR to address the whole of the proposed action, the project description should be revised to include the above described actions and improvements. The Department recommends that the TIS should address joint use of the driveway and should evaluate *potential safety impacts as well as level of service/operational impacts at the project entrance*.

(SAR 5:1374, *emphasis added*.)

The County's response to Caltrans' concerns is inadequate.

Contrary to CEQA's requirement to adequately respond to public comments, the County repeatedly references Master Response I (SAR 1:122-123), which claims that certain comments are beyond the scope of the trial court's February 6, 2014 order (SAR 1:96). Yet, as Master Response I recognizes, transportation issues are within the scope of the trial court's order. (SAR 1:96; SAR 3:653.) Rather than conducting any new analysis of safety and traffic impacts of the proposed shared entrance, the County relies on its outdated and incomplete 2012 analysis and summarily concludes that the "applied-for access point does not constitute new information or a change in circumstances …" (SAR 1:123.) Contrary to the County's position, Caltrans is correct that the shared driveway information is new and should have been analyzed in a recirculated EIR.

2. The EIR Failed to Account for Mule Creek State Prison Expansion in Its Cumulative Impacts Analysis of Traffic Impacts.

The Mule Creek State Prison Expansion Project was approved after the April 2012 Traffic Impact Study and after the County's October 2012 approval of the quarry project. (SAR 3:660.) The County's traffic consultant confirmed that the approval of the Mule Creek Project is a "substantial change in the area that is relevant to traffic." (SAR 3:660.) While the Buena Vista Casino was added to the Partially Recirculated Draft EIR, the Mule Creek Project was not included in the list of approved projects assumed in the baseline analysis. (SAR 3:602.) The consultant stated that the addition of the Mule Creek project traffic would increase peak hour traffic at the SR 104 intersection with the project driveway by 65 peak hour trips, and would increase peak hour traffic "at the critical intersections on Preston Avenue in downtown Ione" by "about 80 trips." (SAR 3:661.) The consultant explained "the Mule Creek project will have

trip generation similar to the Newman Ridge project." (SAR 3:660.) However, the EIR stated the Newman Ridge Project traffic impact study conclusions "would remain the same even with these increased volumes." (SAR 3:661.)

The consultant arrived at this conclusion by speculating that all of the study intersections except for the downtown Ione intersections, which would remain at Level of Service F, "are so far below the thresholds of significance that we can conclude with certainty that there would be no change to impact conclusions with the Mule Creek Project included." (SAR 3:661.) The Level of Service (LOS) describes operating conditions a driver experiences while traveling on a particular street or at an intersection during a specific time interval to reflect congestion-related delays. LOS F is the worst possible level, and means long delays and congestion. No facts or analysis support this conclusion. Agency findings under CEQA must be supported by substantial evidence based on CEQA's definition of the term. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) Speculation is not substantial evidence. (Pub. Resources Code § 21082.2(c).) The EIR should have included accurate information projecting peak hour trips that included the new and additional volumes of traffic from the Mule Creek expansion project, rather than jumping to the conclusion that impacts would remain the same.

3. The EIR Failed to Respond to the City of Galt's Concerns Regarding Rail Impacts.

The City of Galt, which had not previously commented on the draft EIR in 2012, submitted a letter noting that "impacts to railroad crossings with Cherokee Lane, Marengo Road, Carillion Blvd., N. Lincoln Way and Elm Ave." in the City of Galt "were not addressed." (SAR 1:131.) Galt stated the additional trains generated by the project "will significantly

impact traffic operation at those crossings" and requested an analysis of the impacts and mitigation measures for them. (*Ibid.*) The County's response noted that the City of Galt's General Plan called for grade separated crossings. (SAR 1:133.) However, the County did not require the Project to contribute any fair share funding to build such overcrossings to address the impacts created by the trains generated by the Project.

The City of Galt also objected, as Caltrans did, that the EIR only analyzes impacts on seven intersections in the Ione vicinity, but does not analyze the impacts on intersections of the SR 104 and State Highway 99. (SAR 1:132.) The Partially Recirculated EIR indicates in a figure that 25% of the 495 daily trips will travel SR 104/Twin Cities Road to Highway 99. (SAR 3:598.) However, no analysis was provided as to how the 25% assumption was derived. The County claimed that such issues were previously addressed and no further analysis was necessary but no analysis or explanation was provided. (SAR 1:134.) The County summarily concludes, "Based on the market area information and discussions with the applicant, it was concluded that 25 percent of the trips would generally use SR 104 to access the region located to the west." (AR 2:197.) The EIR should have disclosed what "market area information" was used and what information the applicant provided that supports the 25% assumption. The County's analysis is deficient.

E. Biological Resource Impacts of Increased Rail Usage Were Not Adequately Analyzed.

Public comments noted that the Project's use of rail transportation will require the reconstruction or rehabilitation of 20 new bridges to satisfactorily upgrade the area's railroad and trestle bridge infrastructure. (SAR 1:146, 1:206-207 ["do you know how many bridges there are between Ione and Galt? About twenty. They would all have to be rebuilt"];

2:454.) This will have impacts that have not even been identified, let alone mitigated in the EIR.

A representative of the Department of Fish and Wildlife "objected to the complete lack of mitigation" provided in the now decertified EIR and stated that if the railway line was going to be used as revealed in the Recirculated EIR, the Department of Fish and Wildlife "would need to be deeply involved due to the stream crossings." (SAR 2:455.) The Department of Fish and Wildlife's concerns about the Project's analysis of the biological impacts of bridge construction over Dry Creek relates to these new rail bridges as well as to the cumulative impacts of bridge construction. The County should have considered and resolved every fair argument that could be made about the possible environmental effects of the project. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; accord *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) ---Cal.Rptr.3rd--- , 2016 WL 6581170, at 11 ["As in *Amador Waterways*, the EIR contains no explanation why such increases in traffic in the core area are not significant impacts, other than reliance on the mobility element of the general plan that permits LOS F in the core area during peak times."])

In response to the original EIR, which failed to adequately disclose the extensive use of rail lines, the California Department of Fish and Wildlife had requested information about the Project's potential impacts to the 459 linear feet and 1.5 acres of Dry Creek that pass through the Project site. (AR 1:268.) Dry Creek drains into the lower Mokelumne River, and eventually into the San Joaquin River (AR 2:654), both of which are listed as impaired water bodies under the Clean Water Act, in part due to pollution from resource extraction activities such as the mining proposed by

the Project. (AR 4:2191; AR 7:4381; AR 7:4276.) The construction of the bridge across Dry Creek and others, or repair or improvement of those railway bridges, has the potential to cause environmental impacts, including fill that results in increased flood risk and sedimentation. Despite comments requesting information about bridge impacts (AR 1:172), the EIR provided no information about the proposed bridge, its size, materials, or construction, aside from noting that it will use only a single pier. (AR 2:678.)

With regard for the potential for new bridges, the EIR stated an existing rail line was already in use. (SAR 2:468.) However, it failed to note that the single rail line cannot accommodate the number of rail cars needed to alleviate truck traffic. The FEIR did not address public comments documenting the need for 20 new or reconstructed stream crossings or bridges for the rail line's increased activity. (SAR 1:146, 1:206-207, 2:454.) Project related operations would involve at least 160 rail cars per day, which would represent an increase in the number of train operations thirteen fold compared to current 20-car, single rail line conditions. (*Cf.* SAR 1:93 [1 train per week] *with* SAR 3:595-569 [1.88 trains per day = 13.16 trains per week].) While the frequency of train passage would increase thirteen-fold, train length would also increase. Each train would be four times longer than the trains that currently operate. (SAR 395 [current 20-car, 1200 foot train increasing to 80-car, 4800 foot train].) Therefore, *52 times more material (13.16 times four) will move over the same track each week.* The frequency and weight of ISP's current usage of the Union Pacific Railroad rail line simply does not compare to the enormity of the rail traffic projected for the Project. This movement of material would be over track apparently built as long ago as 1875. (SAR 209.) Even if existing bridges are adequate for moving the small amount of

material quarried at the SGI Quarry currently, that does not demonstrate their adequacy for moving the large volumes and weight of material from the proposed Newman Ridge Quarry. Information from a local online newspaper, the Voice of Ione, submitted along with public comments, stated the Project as proposed "called for an estimated 200 carloads of rock being shipped each day. The Ione line in its current condition was considered [by UPRR sources] to be not physically adequate to handle the proposed tonnage to be shipped by rail." (SAR 206.)

F. The County Did Not Adequately Disclose or Mitigate Air Quality Impacts.

A public agency has a duty to find out and disclose all that it reasonably can with regard to potentially significant environmental impacts. (Guidelines § 15144.) With regard to air quality impacts, addressing health effects is especially important. (*Bakersfield Citizens for Local Control* v. *City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.) Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, among other things, "health and safety problems caused by the physical changes" that the proposed project will precipitate.

While the County disclosed some information in the EIR's air quality section and acknowledged some significant impacts that it claimed were unavoidable (AR 2:506-527), the County failed to conduct a thorough investigation, to respond to repeated public agency and public requests for specific information, and to mitigate impacts as much as it feasibly could have. The County is already a designated non-attainment area for its failure to meet existing air quality standards for ozone. (AR 2:509; AR 2:510.) These standards "represent safe levels that avoid specific adverse health effects." (AR 2:506-507.) Approval of the Project will worsen Amador County's unhealthy air quality situation and increase the level of ozone

nonattainment, which adversely affects public health.

1. The County Did Not Conduct Air Quality Analysis Reflecting its New Disclosures of Increased Traffic Impacts.

The 2015 Partially Recirculated EIR's traffic analysis discloses greater impacts at seven important intersections (SAR 617), higher traffic volumes (SAR 601), and changes in the predicted use of trains at the facility (SAR 596). Public comments also pointed out likely increases in traffic from the construction of the Mule Creek State Prison expansion (SAR 2:449) and the approval of expansion of the Jackson Valley Quarry (SAR 2:446.) Petitioner requested that the County update portions of the EIR that would be affected by the updated traffic analysis; the County refused (SAR 1:96-97, 140-44, 233-36,448, 459.)

An air quality hotspot analysis is required when an intersection is degraded to LOS E or worse. (AR 2:522.) Intersection 4 would be degraded to LOS F. (SAR 617.) Therefore, a hotspot analysis should have been conducted but was not, despite requests from the public. (SAR 2:451.) By failing to acknowledge the significant impact to Intersection 4 in the Draft EIR, disclosing it in the Recirculated EIR, but not conducting any further analysis of air quality, the County also failed to conduct the required air quality analysis for hotspots created by congested intersections.

2. The County's Air Quality Impact Analysis Did Not Reflect Current Conditions.

The Amador Air District's consultants stated that significant health impacts could be expected from the Project for a two-mile radius around it, but the County never shared that information with the public through the EIR. (AR 5:2642.) In private correspondence to the Amador Air District, Air Permitting Specialists stated, "*Adverse health impacts would be most*

significant at locations within 1 to 2 miles from the project sites. Cumulative impacts would also be significant for both air quality and public health." (AR 5:2642, emphasis added; AR 13:8158.) Numerous sensitive receptors sit within this 2-mile radius, including schools, housing for veterans and retirees, ranches, farms, and homes. (AR 2:511 ["existing sensitive receptors near the project area consist of residential dwellings, with the closest residence located just across Dutschke Road from the Edwin Center site."])

The County acknowledged that significant air quality impacts would result from Project implementation, including long-term operational air quality impacts, impacts related to emissions of toxic air contaminants (TACs), and cumulative impacts related to *regional* (but not *local*) air quality. (AR 2:380.) The EIR concluded that the Project would have significant and unavoidable adverse impacts on air quality with regard to nitrogen dioxide and particulate matter (PM_{10}). (AR 2:520.) The EIR did not disclose information about potential $PM_{2.5}$ emissions.

The disclosures of maximum concentrations at the eight closest residential receptors (AR 3:1116-1119) is misleading and omits critical information of several types. First, the disclosed concentrations are annual average concentrations, not an hourly or daily average as is needed to correctly evaluate acute health impacts. Second, the disclosed concentration is composed of concentrations of TACs associated with diesel equipment only. It does not include criteria air pollutants associated with all of the mining and material processing operations that would be generated by the Project, and excludes nitrogen dioxide and particulate matter generated by sources other than diesel equipment. The disclosed concentration omits analysis of concentrations of all pollutants (TACs and criteria pollutants) at other sensitive receptors located within a two mile

radius of the Project.

Diesel equipment operations are only a single source of PM 10 emissions. (AR 2:517 [wind blowing over exposed earth is primary source].) The EIR failed to disclose dispersion modeling of nitrogen dioxide- which the Project would emit at a rate *seven times the significance threshold of 82 pounds per day*- and PM 10 from mining operations- which would be emitted at a rate *five times the significance threshold*. (AR 2:520.) An adequate analysis cannot limit disclosure to only one type of air pollutant while omitting analysis of a different type. (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692 at 716.) By providing partial answers, the Respondents obfuscated key facts, and by doing so, confused and misled the public as to the true health risks of the project.

3. The EIR Failed to Explain the Adverse Health Consequences of Air Pollution Created and Exacerbated by the Project.

It is well known that air pollution adversely affects human health. (AR 12:7684; AR 2:940.) However, the EIR did not acknowledge the health consequences that necessarily result from the identified adverse air quality impacts. (AR 12:520-521.) There is no acknowledgement or analysis in the FEIR of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. A statement of the Court of Appeal in another context requiring a legally adequate air quality analysis applies equally well here: "After reading the EIR[], the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.)

As discussed above, the EIR does not disclose where the likely

highest concentrations of nitrogen dioxide and PM_{10} pollutants would occur. Potential adverse impacts to human health are related to concentrations of pollutants which exceed hourly, daily, and annual averages set by state and federal agencies to protect public health. (AR 2:509.) While emission rates were disclosed, concentration levels were not disclosed. The EIR compared criteria pollutant (pollutants for which state and federal maximum standards have been set) emissions rates with significance thresholds and determined that the Project would far exceed them. (AR 2:520). However, the EIR did not compare the projected *concentrations* of these pollutants to standards set to protect public health. (AR 2:509.)

Thus, the EIR failed to analyze how sensitive receptors would be affected. Children and the elderly are especially susceptible to air pollution. (AR 2:511; *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 332.) However, from the EIR's discussion, there is no way to predict what will happen to children and the elderly who live near the Project (AR 2:511) if it is operated as proposed.

The EIR's bare acknowledgment that the Project would exceed air pollutant thresholds, without elaboration of the specific human health impacts, is insufficient, especially when public commenters specifically asked the County about the expected health effects of the Project. (AR 12:7685 ["what human health impacts to the people in Ione Valley would occur during the 50 year life of the Project?"].) The County failed to forthrightly confront the issue of health impacts. Such analysis is required by CEQA. (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 149 Cal.App.4th 892, 720.) Instead, the EIR misleadingly focused

on TACs, instead of the full range of impacts, and concluded that those human health impacts would not be significant. (AR 2:523.) This violates CEQA's full disclosure requirements.

Air pollution from the Project would adversely impact numerous small family ranches and residences in the City of Ione located within two miles of the Project. (AR 5:2642 ["Adverse health impacts would be most significant at locations within 1 to 2 miles from the project sites"].) CEQA requires a lead agency to respond to comments asking for such specific information. (Pub. Resources Code, § 21091, subd. (d); Guidelines, § 15088.) This assures significant impacts are not overlooked. (*People v. County of Kern* (1976) 62 Cal.App.3d 761, 770-771). A public comment submitted early in the CEQA review process and prior to the preparation of the Draft EIR asked for this precise information. (AR 2:941 ["EIR should include dispersion modeling of emissions of particulate matter (dust, PM 10, and PM 2.5) to determine if the project would cause or contribute to violations of the California Ambient Air Quality Standards or National AAQS at off-site receptors."]) The County failed to provide it. Specific comments require specific answers in return. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1567; *People v. County of Kern, supra,* 39 Cal.App.3d 830, 842.)

Projected concentrations of PM 2.5 were not disclosed. The disclosures do not include meaningful information about potential concentrations of PM 2.5 in the air breathed by nearby residents or at other sensitive receptors, such as farms, ranches, the City of Ione, and the nearby Mule Creek state prison. Human health impacts are not necessarily discernible from rates of pollutant emissions, but rather are directly related to high pollutant *concentrations*. (AR 2:509.) While emission rates were

disclosed, concentration levels were not disclosed. The EIR compared criteria pollutant (pollutants for which state and federal maximum standards have been set) emissions rates with significance thresholds and determined that the Project would far exceed them. (AR 2:520). However, the EIR did not compare the projected *concentrations* of these pollutants to standards set to protect public health. (AR 2:509.) The EIR misleadingly focused on Toxic Air Contaminants, instead of the full range of impacts, and concluded that those human health impacts would not be significant. (AR 2:523.) This violates CEQA's full disclosure requirements.

In May 2014, the Court of Appeal decided that exactly the type of vague analysis undertaken by the County here was inadequate and violated CEQA. In *Sierra Club v. County of Fresno (Friant Ranch)* (nonpub. opn., May 27, 2014, Fifth District case number F066798, formerly published at 226 Cal.App.4th 704)[2], the court explained:

> the EIR was inadequate because it failed to include an analysis that correlated the project's emission of air pollutants to its impact on human health; (2) the mitigation measures for the project's long-term air quality impacts violate CEQA because they are vague, unenforceable and lack specific performance criteria; and (3) the statement that the air quality mitigation provisions will *substantially* reduce air quality impacts is unexplained and unsupported.

(SAR 1:158.) More specifically, the Court of Appeal held:

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[2] *Sierra Club v. County of Fresno (Friant Ranch)* is currently pending review in the Supreme Court. (*Sierra Club v. County of Fresno* (*Friant Ranch),* Supreme Court case no. S219783.) However, Petitioner provided a copy of the Court of Appeal case to the County during administrative proceedings (AR 1:150-184), thus the unpublished appellate opinion is part of the administrative record and cited in this brief as such. Briefing in this case appears to have been completed June 15, 2015.

the Friant Ranch EIR was short on analysis. It did not correlate the additional tons per year of emission that would be generated by the project (i.e., the adverse air quality impacts) to adverse human health impacts that could be expected to result from those emissions. As defendants have pointed out, the reader can infer from the provided information that the project will make air quality and human health worse. Although the better/worse dichotomy is a useful starting point for analyzing adverse environmental impacts, including those to human health, more information is needed to understand that adverse impact.

To illustrate this point, we will use extreme examples from the continuum of potential human health impacts. The information provided does not enable a reader to determine whether the 100–plus tons per year of PM10, ROG and NOx will require people with respiratory difficulties to wear filtering devices when they go outdoors in the project area or nonattainment basis or, in contrast, will be no more than a drop in the bucket to those people breathing the air containing the additional pollutants.

The lack of information about the potential magnitude of the impact on human health also can be demonstrated by referring to quantitative information in the EIR. For instance, Table 3.3–2 in the draft EIR sets forth the days each year that pollutants, as measured at three monitoring stations in the Fresno area, exceeded federal and state standards. If an estimate of the project's impact on the “days exceeding standards” had been provided, the public and decision makers might have some idea of the magnitude of the air pollutant impact on human health. As presently written, the final EIR does not inform the reader what impact, if any, the project is likely to have on the days of nonattainment per year—it might double those days or it might not even add a single a day per year. Similarly, no connection or correlation is made between (1) the EIR's statement that exposure to ambient levels of ozone ranging from 0.10 to 0.40 parts per million for one to two hours has been found to significantly alter lung functions and (2) the emissions that the project is expected to produce.

(SAR 1:183.) The County's EIR shares exactly the same defects as the *Friant Ranch* EIR in failing to correlate identified air pollution data with human health impacts. In fact the County's EIR for the Project is signficantly *less* informative than the *Friant Ranch* EIR since the *Friant Ranch* EIR at least noted "ambient levels of ozone ranging from 0.10 to 0.40 parts per million for one to two hours has been found to significantly alter lung functions." (SAR 1:183.) In this case, the EIR does not make any statement about what ambient levels of ozone currently are or with the Project what they are expected to be.

4. The County Did Not Establish an Adequate Baseline Since its Air Quality Monitors Were in a Different County.

Air quality monitors to establish a baseline should be required near the Project site, in the communities that will suffer the adverse air quality impacts. The EIR improperly relies on monitors in the next county. The monitoring stations in the EIR do not establish the baseline conditions in the vicinity of the Project because they are located too far away. The Jackson-Clinton Road monitoring station, which monitors ozone only, is located about 12 miles from the Project site; the San Andreas-Goldstrike Road monitoring station is located even further away in Calaveras County, about 20 miles from the Project site. (AR 2:511.) Thus, the local baseline of current concentrations of air pollutants was not established by air quality surveys or some other reasonable way as requested by the public. (AR 2:941; AR 4:1886.) Lack of an adequately established baseline undercuts the entire air quality analysis. (*Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328.)

5. The County Refused to Adopt Feasible Air Quality Mitigation Measures.

To effectuate its overarching purpose, CEQA requires that an EIR analyze mitigation measures that will minimize significant environmental effects identified in an EIR. (Pub. Resources Code §§ 21002.1(a), 21100(b)(3); Guidelines § 15126.4(a)(1).) Mitigation may consist of a number of measures, including (1) avoiding an impact by not taking certain action; (2) minimizing impacts by limiting the degree or magnitude of the action; (3) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments. (Guidelines § 15370.) The EIR fails to incorporate all feasible mitigation measures for the Project's environmental impacts.

Many of the mitigation measures that are set forth are improperly deferred. In the leading case on deferred mitigation, *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307-09, the court disapproved a negative declaration requiring the project proponent to perform two studies in the future, holding that deferring evaluation of environmental impacts until after adoption of a negative declaration would amount to a *post hoc* rationalization and would skirt the required procedure for public review and agency scrutiny of potential impacts. A negative declaration "requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a negative declaration is approved." (1 Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2006), § 6.72, at 373.) The same holds equally

true for EIRs. The Guidelines require an EIR to identify and describe *feasible* mitigation measures to minimize significant impacts on the environment. (Guidelines §15126.4(a), emphasis added.) CEQA defines "feasible" as meaning "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code § 21061.1.)

Despite the existence of mitigation measures that would reduce significant air quality impacts, these measures were not adopted. Commenters called for operational limitations more restrictive than the Project applicant's desire for the "ability to operate on a 24-hour basis." (AR 2:935.) The reduced production alternative would reduce the number of truck trips and thus air quality impacts. (AR 2:829.) At 5 million tons per year, PM_{10} emissions would be 1,744 pounds per day, but at 230,000 tons per year production rate, PM_{10} emissions would only be 314 pounds per day. (AR 2:520.) Thus, this rate would be below the level of significance of 384 pounds per day. (*Ibid.*) However, the County did not adopt these feasible measures.

The *Friant Ranch* court found the EIR's mitigation measures for air quality impacts in that case were defective in a number of ways relevant to the present case. The court found the relevant measures vague and unenforceable, in violation of CEQA's "substantive requirement for mitigation measures" contained in Guidelines section 15126.4 subdivision (a)(2) that they "be fully enforceable through permit conditions, agreements, or other legally-binding instruments." (SAR 1:185.) The court "treat[ed] the question of vagueness as being part of an inquiry into enforceability because vagueness makes it difficult to identify the who-

what-when essential to enforcement." (SAR 1:187.) The court held the challenged "provisions do not clearly state who is to do what and when that action must be taken[,]" thus leaving "the reader … to speculate whether County or the developer will perform the selection [of mitigation tree plantings]" and as to "who will determine if the [required HVAC catalyst] system is 'reasonably available and economically feasible.'" (SAR 1:187.) Such measures "are vague on matters essential to enforceability" and thus were not enforceable as required by CEQA. (*Ibid*.) Further, the court held the EIR's conclusion that the challenged measures would "substantially reduce" air quality impacts was unsupported by any quantification or EIR discussion, rendering the statement "a bare conclusion … not supported by facts or analysis. (SAR 1:189.)

Instead of setting forth ways to mitigate these impacts so the area's air quality and attainment of state and federal air quality standards would not suffer, the EIR asserts that air quality impacts are unavoidable. (AR 2:521.) The EIR defers to a future Amador Air District permitting process the effort to mitigate air quality impacts. (AR 2:522 [requiring permits to operate and application for emissions offsets from Air District as mitigation measures].)

VII. THE EIR'S RANGE OF ALTERNATIVES WAS UNREASONABLE AS IT FAILED TO CONSIDER THE JACKSON VALLEY QUARRY APPROVED IN 2013 AS A FEASIBLE ALTERNATIVE.

"'One of [an EIR's] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.'" (*Laurel Heights I, supra*, 47 Cal.3d at 400 [quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197]; emphasis in original.) Further,

> Under CEQA, the public agency bears the burden of *affirmatively demonstrating* that…the agency's approval of the proposed project *followed meaningful consideration of alternatives* and mitigation measures.

(*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134, emphasis added; accord *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035.) As the Supreme Court has said, while an EIR is "the heart of CEQA", the "core of an EIR is the mitigation and alternatives sections." (*Goleta II, supra*, 52 Cal.3d at 564.)

Determining the reasonableness of the range of alternatives in an EIR requires an evaluation of the circumstances of a project in light of the purpose of CEQA. (*Goleta II*, *supra*, 52 Cal.3d at 566.)

> A legally adequate EIR must produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. . . . It must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.

(*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 at 733, internal citations and quotation marks omitted.) While "An EIR need not consider every conceivable alternative to a project, 'it must consider 'a reasonable range of *potentially* feasible alternatives...'" (Guidelines § 15126.6(a), emphasis added.) "The range of feasible alternatives [for an EIR] shall be selected and discussed in a manner to foster meaningful public participation and informed decision making." (Guidelines § 15126.6(f).)

> [T]he discussion of alternatives shall focus on alternatives to the project *or its location* which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(Guidelines § 15126.6(b), emphasis added.) Numerous cases have set

aside EIRs on the ground that they do not analyze a reasonable range of alternatives. (*See San Joaquin Raptor Wildlife Center v. Stanislaus* (1994) 27 Cal.App.4th at 608, 735-39; *Kings County Farm Bureau, supra,* 221 Cal.App.3d at 733; and *San Bernardino Valley Audubon Soc'y, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-51.)

An EIR must be revised and recirculated when significant new information is added to the EIR. (CEQA Guidelines § 15088.5.) Significant new information includes the availability of a feasible project alternative that would clearly lessen the significant impacts of the project. Recirculation is required when an alternative is shown to be feasible. (Guidelines, § 15162, subd. (a)(3)(C), (D); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.)

The original EIR did not even mention or consider expansion of Jackson Valley Quarry as a means to achieve the objective of aggregate production in the County, or as a means of reducing the amount of aggregate that would be needed from the Newman Ridge site. A response to comments in the Final EIR claimed that Jackson Valley Quarry was an infeasible alternative. (AR 5:2738.) When the public offers reasonable alternatives to the Project, the City must provide a meaningful analysis of them. (*See* Pub. Resources Code § 21091(d)(2)(B); Guidelines § 15088(c); *Berkeley Jets*, *supra*, 91 Cal.App.4th at 1367, 1371.)

However, on July 30, 2013, the Amador County Board of Supervisors approved the Jackson Valley Quarry Expansion Project. (5:1340, 1359.) Since the County approved the expansion of the Jackson Valley Quarry in 2013, the claim of infeasibility is false. In rejecting Jackson Valley Quarry as an alternative to the Project, or a means of reducing the volume required to be extracted from the Project site, the original EIR relied upon "[i]nability to use or expand those facilities" and

other "additional reasons" including its proximity to neighbors and small size. (AR 5:2738.) None of these reasons is sufficient under CEQA. Even where a project proponent does not own a potential alternative site, other sites may nonetheless be feasible. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457.) "In-depth analysis of alternative sites may also be appropriate where two or more private developers are seeking the approval of a local agency for the same type of development at different locations." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575.) This is exactly what happened in this case – two or more developers sought approvals for the same type of development, a quarry, in different locations. Nonetheless, the County failed to analyze the alternative development of one site or the other, rather than assuming both would be necessary.

In *Goleta I*, *supra*, 197 Cal.App.3d at 1180, the EIR was set aside when Santa Barbara County analyzed *four on-site alternatives but no off-site alternatives*. Similarly, the EIR for a new cemetery that impacted rare plants and archaeological resources in *San Bernardino Valley Audubon Society v. County of San Bernardino*, (1984) 155 Cal.App.3d 738, was set aside because it failed to analyze any alternative locations. (*Id*. at 751.) It may be discerned that the failure to consider off-site alternatives is fatal unless the site has been selected as a result of a extensive planning process (*Goleta II, supra*, 52 Cal.3d 553; Guidelines § 15126.6 (f)(2)(C)), or there is something unique about the site that makes it, and not other sites, appropriate for the project, such as could occur with a geothermal project or a mining project. (*San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at 672; Guidelines § 15126.6 (f)(2)(B).) However, with the proposed mining project, the Jackson Valley Quarry would provide exactly the same type of product as the Newman Ridge mine. Therefore, failing to

analyze it as an alternative renders the EIR inadequate.

Since the County later approved the expansion of the Jackson Valley Quarry, which it had earlier rejected as an infeasible alternative, the EIR's claim of infeasibility was unsubstantiated. The omission of the Jackson Valley Quarry Expansion Project from the alternatives section of the EIR rendered the alternatives analysis in the EIR inadequate.

VIII. THE APPROVAL OF THE JACKSON VALLEY QUARRY UNDERMINED THE COUNTY'S FINDINGS FOR A STATEMENT OF OVERRIDING CONSIDERATIONS.

CEQA prohibits approval of projects with adverse environmental impacts if there are feasible alternatives and mitigation measures. Alternatives that would lessen environmental impacts *must* be adopted if feasible. (Pub. Resources Code §§ 21002, 21181; Guidelines § 15021(a)(2).) The "policy of the state" reflected in CEQA is that projects with significant environmental impacts *may not* be approved "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects…" (Pub. Resources Code § 21002; Guidelines § 15021(a)(2).)

As the California Supreme Court recently so powerfully stated:

> CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are *truly* infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (*id.*, § 21081, subd. (b)), would tend to displace the fundamental obligation of "[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (*id.*, § 21002.1, subd. (b)).

(*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368.)

The CEQA Guidelines require an agency to "disclose to the public

the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved." (Guidelines § 15002(a)(4).) In order to implement this policy, the Guidelines specify that:

> A public agency may approve a project even though the project would cause a significant effect on the environment *if* the agency makes a fully informed and *publicly disclosed decision* that:
>
> (a) There is no feasible way to lessen or avoid the significant effect.

(Guidelines § 15043, emphasis added.) More specifically, the Guidelines provide:

> If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR.

(Guidelines § 15126.6(f)(2)(B).)

As discussed above, in 2013 when the County approved the Jackson Valley Quarry it became a feasible alternative, but the County did not address this alternative in its findings approving the Project.

Furthermore, the County considered the benefits of "establish[ing] a hard rock quarry to produce high quality construction aggregate materials to meet local and regional market demand" and "creat[ing] new jobs in Amador County" (AR 1:429) to be two of the primary considerations used to conclude that the benefits of the Project outweigh the adverse environmental effects that were considered unavoidable. However, the approved expansion of the existing Jackson Valley Quarry achieves exactly those benefits already. Thus, the Statement of Overriding Considerations is not supportable in light of the Jackson Valley Quarry approval.

IX. CONCLUSION.

Because the County violated both CEQA and the Sustainable Groundwater Management Act, a writ of mandate should be granted.

Dated: November 18, 2016

CHATTEN-BROWN & CARSTENS

By: _____

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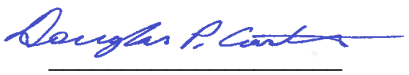
CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rules 8.204 and 8.520(c)(1), I hereby certify that Petitioners Appellant's Opening Brief is proportionally spaced, has a typeface of 13-point, proportionally-spaced font and contains 12,565 words, according to the word counting function of the word processing program used to prepare this brief.

Executed on this 18th day of November, 2016, at Hermosa Beach, California.



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PROOF OF SERVICE
Case Number C081893

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On November 18, 2016, I served the within documents:

APPELLANT'S OPENING BRIEF

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **VIA FACSIMILE TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the above-referenced document(s) to the persons at the fax number(s) listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☒ **VIA ELECTRONIC SERVICE THROUGH TRUEFILING.** Based on a court order or an agreement of the parties to accept service by electronic transmission through TrueFiling, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 18, 2016, at Hermosa Beach, California 90254.

Cynthia Kellman

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