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 REPLY BRIEF

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TABLE OF CONTENTS

Page No.

I. INTRODUCTION 9

II. STANDARD OF REVIEW 10

III. ARGUMENT: THE COUNTY'S EIR CERTIFICATION AND PROJECT APPROVAL VIOLATED THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT 13

A. Res Judicata and Collateral Estoppel Do Not Apply Because the Trial Court Required the Entire EIR and All Project Approvals to be Set Aside, Rendering the County's EIR a New Certification. 13

1. New Facts and Circumstances Render the 2015 EIR Factually Different from the EIR Challenged in the 2012 Action. 13

2. Because the EIR in the 2012 Action Was Completely Decertified, The Alleged Validity of Some Portions of It Is Not Relevant to This Proceeding. 15

3. *Federation of Hillside & Canyon Associations* is Distinguishable. 18

4. An Appeal of the Ruling in the 2012 Action Would Have Been Unauthorized or Moot. 20

B. The County Improperly Failed to Respond to Significant Comments as It Over-Restrictively Limited its Responses to Public Comments. 21

C. Water Supply and Water Quality Issues Were Not Properly Addressed. 23

1. Water Supply Shortfalls That Adjacent Groundwater Users Would Suffer Were Not Assessed. 24

2. The Water Board's Letters to the County and Project Proponent Requiring Analysis of Onsite Disposal of Wastewater to Protect Water Quality Were Not Addressed. 29

3. The Groundwater Management Act Required Consideration of Allocations of Groundwater to All Potential Groundwater Basin Users. 32

a. Appellant Sufficiently Exhausted Groundwater Management Claims. 33

b. The County's General Plan Amendment for the Project is a Substantial Amendment 33

D. The Recirculated EIR Omits Important Information Regarding the Project's Traffic Impacts. 37

1. The County's Response to Caltrans' Concerns Was Inadequate. 38

2. The County Traffic Consultant's Conclusion that the Mule Creek State Prison Expansion Would Not Change Any of the Project's Cumulative Traffic Impact Conclusions Is Unsubstantiated Speculation 40

3. The County Fails to Disclose the Data or Analytic Route It Took In Addressing the Potential Rail and Traffic Impacts Raised by the City of Galt. 42

E. The County Omitted Analysis of Potential Biological Resource Impacts From Train Bridge Reconstruction. 43

F. The County Failed to Disclose and Mitigate The Project's Air Quality Impacts. 47

1. The County Failed to Update the Air Quality Analysis to Reflect New Disclosures of Increased Project-Generated Traffic. 47

2. The County's Air Quality Impact Analysis Did Not Reflect Current Conditions 49

3. The EIR Failed to Disclose the Adverse Health Consequences of Air Pollution Created and Exacerbated by the Project. 49

4. The County Did Not Establish an Adequate Baseline Since Its Air Quality Monitors Were at Distant Locations in a Different County. 50

5. The County Refused to Adopt Feasible Air Quality Mitigation Measures 51

G. The County Failed to Analyze Feasible Alternatives. 54

H. The Statement of Overriding Considerations Was Not Supported by Accurate Findings of Infeasibility of Alternatives. 56

IV. CONCLUSION 57

TABLE OF AUTHORITIES

STATE CASES **Page No.**

Association of Irritated Residents v. County of Madera
(2003) 107 Cal.App.4th 1383.....11

Bakersfield Citizens for Local Control v. City of Bakersfield
(2004) 124 Cal.App.4th 1184.....49, 50

Barthelemy v. Chino Basin Mun. Water Dist.
(1995) 38 Cal.App.4th 1609.....11, 12

Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners
(2001) 91 Cal.App.4th 1344.....50, 51

Bowman v. City of Petaluma
(1986) 185 Cal.App.3d 1065.....40

Cadiz Land Co., Inc. v. Rail Cycle, L.P.
(2000) 83 Cal.App.4th 74.....28

Cherry Valley Pass Acres and Neighbors v. City of Beaumont
(2010) 190 Cal.App.4th 316.....26, 36

Citizens of Goleta Valley v. Board of Supervisors
(1990) 52 Cal3d 553.....56

City of Barstow v. Mojave Water Agency
(2000) 23 Cal.4th 1224.....28

City of Marina v. Board of Trustees of the California State University
(2006) 39 Cal.4th 341.....12

Clover Valley Foundation v. City of Rocklin
(2011) 197 Cal.App.4th 200.....53

Communities for a Better Environment v. City of Richmond
(2010) 184 Cal.App.4th 70.....53

East Pen. Ed. Council, Inc. v. Palos Verdes Pen. Unified School Dist.
(1989) 210 Cal.App.3d 155.....33

Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection
(2008) 43 Cal.4th 936 10

Federation of Hillside & Canyon Assns. v. City of Los Angeles
(2004) 126 Cal.App.4th 1180 18

Flanders Foundation v. City of Carmel by-the-Sea
(2012) 202 Cal. App.4th 603 30

Fluor Corp. v. Superior Court
(2015) 61 Cal. 4th 1175 34

Golden Gate Land Holdings LLC v. East Bay Regional Park
(2013) 215 Cal.App.4th 353 ..... 16, 17

Kings County Farm Bureau v. City of Hanford
(1990) 221 Cal.App.3d 692 48

Koch v. Rodlin Enterprises
(1990) 223 Cal. App. 3d 1591 50

Landvalue 77, LLC v. Board of Trustees of California State University
(2011) 193 Cal.App.4th 675 17

Land Waste Management v. Contra Costa County Bd. of Supervisors
(1990) 222 Cal.App.3d 950 35

Laurel Heights Improvement Assn. v. Regents of Univ. of California
(1988) 47 Cal. 3d 376 ..... 11, 26, 28, 41, 48

Lincoln Place Tenants Assn v. City of Los Angeles
(2005) 130 Cal.App.4th 1491 52

Los Angeles Unified School Dist. v. City of Los Angeles
(1997) 58 Cal.App.4th 1019 ..... 48, 49

Marin Municipal Water District v. KG Land California Corporation
(1991) 235 Cal.App.3d 1652 28

Mira Mar Mobile Community v. City of Oceanside
(2004) 119 Cal.App.4th 477 ..... 55, 56

Mountain Lion Foundation v. Fish & Game Com.
(1997) 16 Cal.4th 105 ..... 12, 54

North Coast Rivers Alliance v. Westlands Water District
(2014) 227 Cal.App.4th 832 21

Planning & Conservation League v. Castaic Lake Water Agency
(2009) 180 Cal. App. 4th 210 ..... 18, 19, 23, 24, 38, 43, 47, 54

Preserve Wild Santee v. City of Santee
(2012) 210 Cal.App.4th 260 ..... 16, 17

Ruben v. City of Los Angeles, 51 Cal.2d 857 20

San Joaquin Raptor Rescue Center v. County of Merced
(2007), 149 Cal.App.4th 645 24

Santiago Cty. Water Dist. v. Cty. of Orange
(1981) 118 Cal. App. 3d at 830 37

Save Round Valley Alliance v. County of Inyo
(2007) 157 Cal.App.4th 1437 55

Sierra Club v. County of San Diego
(2014) 231 Cal.App.4th 1152 10

Sutter Sensible Planning, Inc. v. Board of Supervisors
(1981) 122 Cal.App.3d 813 30

Topanga Assn. for a Scenic Community v. County of Los Angeles
(1974) 11 Cal.3d 506 43

Union of Medical Marijuana Patients v. City of Upland
(2016) 245 Cal.App.4th 1265 28

Village Laguna of Laguna Beach, Inc. v. Board of Supervisors
(1982) 134 Cal.App.3d 1022 12

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova ("*Vineyard Area Citizens*")
(2007) 40 Cal.4th 412 ..... 10, 12, 15, 29, 37

Watsonville Pilots Ass'n v. City of Watsonville
(2010) 183 Cal.App.4th 1059 52

Public Resources Code

§ 21002 ..... 12, 51, 52
§ 21081.6 ..... 52, 53
§ 21082.2 27
§ 21104 46
§ 21168.9 ..... 15, 16

California Code of Regulations, CEQA Guidelines

§ 15088 ..... 21, 29, 30, 48
§ 15088.5 ..... 21, 29, 30
§ 15125 24
§ 15126.4 53
§ 15200 22
§ 15384 27

Government Code

§ 65350.5 ..... 24, 33, 34, 35, 36
§ 65358 35
§ 65588 34

Water Code

§ 10720 13

I. INTRODUCTION.

Despite the fact that this case is based upon a petition for writ of mandate challenging the County of Amador's compliance with the California Environmental Quality Act (CEQA) in a number of different substantive environmental impact areas, Respondents repeatedly and improperly attempt to limit the Court's examination to the subjects of traffic and rail service impacts.

There is no dispute that a prior version of the environmental impact report (EIR) for the Newman Ridge quarry and Edwin Center asphalt plant (Project) in this case provided inaccurate and incomplete information about traffic and railroad impacts in a way that prejudiced public understanding of the Project's impacts. The County's entire EIR was decertified. The EIR's erroneous or omitted information regarding circulation and train traffic in turn obscured the Project's real impacts on biological resources and air quality. Because the 2012 EIR was completely decertified, rather than partially decertified, the Appellant Ione Valley Land, Air, and Water Defense Alliance ("Ione Valley LAWDA") and other members of the public asked the County to look anew at the full spectrum of environmental impacts, and mitigation measures and alternatives as matters stood in 2015 at the time of EIR certification. Instead, the County refused to consider the full range of impacts, and sought to foreclose public comments on issues of broad concern for which significant new information was available such as water supply and quality. The County's artificially constrained review impaired the value of public comment and involvement in the 2015 EIR review process. The County must be required to address environmental impacts and meaningfully address the public comments about them on the basis of all information available to it at the time of EIR certification in

2015. It must not evade public accountability for its decision to approve the Project and override its significant impacts.

II. STANDARD OF REVIEW

Respondents argue that all claims in this case are reviewed for substantial evidence. (Respondents' Opposition Brief (ROB), p. 23.) However, challenges to an agency's failure to proceed in the manner required by CEQA are subject to a significantly different standard of review than challenges that an agency's decision is not supported by substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, 435.) "Where the challenge is that the agency did not proceed in the manner required by law, a court must 'determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements.'' " (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164, *quoting Vineyard*, *supra*, 40 Cal.4th at 435.)

Respondents are incorrect in relying on an overly expansive application of the substantial evidence standard of review, claiming it applies to the scope of CEQA analysis. As found by the California Supreme Court, the Court exercises its independent judgment when determining whether an agency that prepared an EIR has "applied the correct legal standard to determine the scope of analysis." (*Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection* (2008) 43 Cal.4th 936, 954.) As discussed below, the County in this case incorrectly limited the scope of its analysis to traffic and circulation impacts, but repeatedly refused to consider comments related to water, air quality, and biological resources impacts or alternatives prompted by new information and analysis that became apparent after 2012.

Respondents cite *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 ("*Laurel Heights I"),* among other cases. (ROB, p. 24.) In *Laurel Heights I*, the Court applied the deferential substantial evidence standard of review to a neighborhood association's claim that challenged an agency's *ultimate conclusion* as to whether the project's adverse environmental effects would be mitigated. (*Id.* at 387.) The Court exercised its independent judgment in determining the following: that the Regents were required to consider and discuss the impacts of reasonably foreseeable future activities (*id*. at 396); that the Regents were required to consider and discuss project alternatives; and that the EIR did not discuss and consider alternatives (*id*. at 404-405). The Court stated:

> The Regents miss the critical point that the public must be equally informed. Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. We do not impugn the integrity of the Regents, but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials. 'To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.' [Citations.]

(*Id*. at 404-405.)

Respondents also cite *Barthelemy v. Chino Basin Municipal Water District* (1995) 38 Cal.App.4th 1609 (ROB, p. 23), but the reasoning in this case was criticized as "unsound" in *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392 because an evaluation of all claims under the substantial evidence standard undervalued the prejudice to the public caused by the omission of

information. (*Id*. at 1392 [*Barthelemy* reasoning failed "to acknowledge the important public informational purpose that EIR's serve."])

Here, many of Appellant's arguments focus on issues that are reviewed under the less deferential failure to proceed in a manner required by law standard. As stated in the Opening Brief, challenges to an agency's failure to proceed in the manner required by CEQA are subject to a less deferential standard than challenges to an agency's factual conclusions. (*Vineyard, supra,* 40 Cal.4th at 435.)

Respondents refer to the burden of proof on Appellant (ROB, pp. 23, 24) without acknowledging their own weighty responsibility under CEQA. The County is prohibited from approving the Project "if there are … feasible mitigation measures available which would substantially lessen the significant environmental effects . . ." (Pub. Resources Code § 21002.) Thus, the County has the burden of proving that alternatives, and other types of mitigation measures, are "truly infeasible." (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 369; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034.) As discussed below, the County did not consider the feasible alternative of a quarry at Jackson Valley, even though it approved expansion of a quarry in that location in 2013.

III. ARGUMENT: THE COUNTY'S EIR CERTIFICATION AND PROJECT APPROVAL VIOLATED THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT.

A. Res Judicata and Collateral Estoppel Do Not Apply Because the Trial Court Required the Entire EIR and All Project Approvals to be Set Aside, Rendering the County's EIR a New Certification.

Respondents claim many of Appellant's claims are barred under the principles of res judicata and collateral estoppel. (ROB, pp. 27-28.) However, this is incorrect because the circumstances surrounding the project approval and the information contained in the Recirculated EIR are new and different from those that existed in 2012 when the County approved the prior version of the Project and its now decertified original EIR.

1. New Facts and Circumstances Render the 2015 EIR Factually Different from the EIR Challenged in the 2012 Action.

Respondents incorrectly assert that many claims made in this case are "identical to those raised and actually litigated in the 2012 Action . . . ." (ROB, p. 28.) For example, Respondents argue that the 2012 Action included claims related to use of groundwater data that were litigated previously. (ROB, p. 28 citing Appellant's Opening Brief (AOB), pp. 19-24). However, the passage of the Sustainable Groundwater Management Act in 2014 (SAR 1:145, 1:236, and 2:453; Wat. Code, § 10720 et seq.; Stats. 2014, chs. 346, 347, 348), the official state of drought in California as proclaimed by the Governor in 2014 (SAR 1:145, 1:236, 2:453), and the drying of local wells discovered in the summer of 2015 (SAR 1:145; SAR 2:453) all created new conditions in which analysis of groundwater supply from 2012 would no longer serve as an adequate baseline for analysis and

approval of the Project in 2015. Respondents assert air quality claims in this case could have been raised earlier. (ROB, p. 29, citing AOB, pp. 35-46). However, with regard to air quality impacts and mitigation measures, the misleading information in the 2012 EIR related to project traffic and railroad impacts prevented informed public comment and analysis of the consequences of these impacts such as increased air pollution. The omitted information about railroad traffic also prevented informed public comments on railroad bridge reconstruction impacts on biological resources. Such information became available in 2014 in a newspaper article brought to the County's attention at that point (SAR 1:206-207). Therefore, Appellant's current claims including these new facts are not blocked by collateral estoppel or res judicata.

Absent the information that was missing in the original EIR, many other impacts could not be clearly understood in 2012. The original EIR was not merely technically defective in a limited way. Rather, the information it omitted prejudiced public comment on the entire document. In 2014, the trial court reasoned:

> [T]he DEIR did not indicate any intersection required a traffic signal, but the FEIR reported that three would be required. The [County] predicted LOS in the morning peak hour for one intersection was "A" in the DEIR and "F" in the FEIR [AR 1:158, referring to E. Main Street and S. Church Street intersection]. . . This Court finds that the data contained in the DEIR was not an accurate reflection of the data contained in Appendix O, and, as a result, the DEIR understated the LOS at the seven intersections. *This Court further finds that this inaccuracy was significant, and deprived the public of an opportunity to comment.*

(SAR 3:648-649, emphasis added.)

With regard to railroad impacts, Respondents misleadingly claim that the full amount of train traffic was disclosed in the original EIR.

(ROB, pp. 44-45.) However this disclosure was so buried in an appendix that the trial court, the Honorable Judge J.S. Hermanson presiding, correctly found it failed to inform the public in a meaningful way and prejudiced public review. (SAR 3:651.) The trial court stated:

> The Court finds that in the DEIR, Appendix N, section 2.6, it was stated that use would increase from one train per week to 1.88 trainloads per day. However, this Court also notes that Appendix N was the "Draft *Noise and Vibration* Impact Assessment Technical Report." As a result, this information was not included in the text of the DEIR on traffic or even in the TIS [traffic impact study], Appendix O, on which the text on traffic was based. *It therefore [was] not reasonably calculated to inform the public or the decision-makers as to the effects of increased rail use on traffic delays*.

(SAR 3:651, *emphasis added.*) This comports with the manner in which courts have found burying important information in an appendix "is not a substitute for 'a good faith reasoned analysis.'" (*Vineyard, supra,* 40 Cal.4th at 442, citations omitted.)

2. Because the EIR in the 2012 Action Was Completely Decertified, The Alleged Validity of Some Portions of It Is Not Relevant to This Proceeding.

Respondents repeatedly claim various sections of the EIR were found to be adequate in the 2012 Action, and assert the theory that these sections may no longer be challenged in this action. (ROB, pp. 27-29, 29-30 [water], 42-43 [traffic comments of City of Galt], 44 [biological resource issues], 46 and 51 [air quality issues], 54 [alternatives].) However, this theory fails.

The trial court in 2014 carefully considered its discretion under Public Resources Code section 21168.9 to order a *partial* decertification or invalidation of some but not all project approvals. (SAR 3:651-652.) Nonetheless, the trial court ordered the *complete* decertification of the EIR and rescission of *all* project approvals. (SAR 3:653.) Pursuant to Public

Resources Code section 21168.9, when a public agency's decision, determination, or finding does not comply with CEQA, a peremptory writ of mandate must issue containing one or more of the following mandates:

> (1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
>
> . . .
>
> (3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with [CEQA].

(Pub. Resources Code, § 21168.9, subd. (a); *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 286.)

Any order finding a CEQA violation "shall include only those mandates which are necessary to achieve compliance with [CEQA] and only those specific project activities in noncompliance with [CEQA]." (Pub. Resources Code § 21168.9, subd. (b).) Therefore, if the order is to be limited to a "portion of [the agency's] determination, finding, or decision" found not to be in compliance (a "limited writ"), the court issuing the writ must make three specific findings: "(1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with [CEQA], and (3) the court has not found the remainder of the project to be in noncompliance with [CEQA]." (*Ibid.*)

Respondents argue the trial court in the 2012 Action only found a portion of the EIR invalid so the rest must be deemed valid. (ROB, pp. 17-18.) However, the trial court did not make severability findings, and because CEQA mandates a limited writ if one is possible, the fact the trial court issued an unlimited writ requires the conclusion that severability findings could not be made. Courts have repeatedly and consistently upheld the necessity of the severability findings as prerequisites to issuance of a limited writ. (*Golden Gate Land Holdings LLC v. East Bay Regional*

Park (2013) 215 Cal.App.4th 353, 371-380 [limited writ permissible after finding of severability]; *Preserve Wild Santee, supra*, 210 Cal.App.4th at pp. 289-90 [limited writ not appropriate because issues were not severable].)

The present case involves a new challenge in a new writ proceeding altogether, not an objection to a writ return in a prior proceeding. In this case, Appellant withdrew objections to the discharge of the writ issued in the 2012 Action (see ROB, p. 20, citing 4 Clerk's Transcript (CT) pp. 1074 and 1020), and the present challenge is based upon a completely new petition for writ addressing various defects in the 2015 EIR. (ROB, p. 21.) Respondents point out a demurrer they brought in the present case was granted (ROB, p. 21), but because the defects were remedied in an amended petition (2 CT at 497) and trial proceeded on the basis of the new petition, the petition is properly regarded as completely new and different from that in the 2012 Action. Therefore, the alleged validity of portions of the 2012 final EIR is irrelevant. The 2012 final EIR was nullified in the 2012 Action.

When the project components or activities are not severable, the only correct remedy is the voiding of all project approvals. (*Landvalue 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 681-83.) The trial court properly directed this type of remedy by setting aside *all* portions of the EIR and *all* project approvals. (4 CT 945.) Respondents did not appeal the remedy aspect of the trial court's 2014 ruling and may not now complain that the trial court decided not to limit its writ to setting aside only certain portions of the EIR or project approvals.

3. *Federation of Hillside & Canyon Associations* is Distinguishable.

Respondents argue that res judicata and collateral estoppel apply to bar claims that were litigated or could have been litigated. (ROB, p. 28, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202 ("*Federation*") and other cases.) In *Federation*, the appellate court found "no fault with the EIR itself" and did not order the EIR to be set aside. (*Id.* at 1191.) Unlike the EIR in *Federation*, in the present case the EIR was defective and was ordered decertified by the trial court in the 2012 Action. The court ordered the *entire* EIR to be decertified. (4 CT 945; SAR 3:653 [ordering County "To vacate its certification of the EIR, Findings and Statement of Overriding Consideration supporting the Project" and "To decide anew whether to certify the new EIR"].) Therefore, unlike in *Federation*, where there was a valid and certified EIR, in the present case, there was no valid EIR, or portion thereof, for the County to rely upon.

The purpose of res judicata is "to prevent inconsistent rulings, promote judicial economy by preventing repetitive litigation, and protect against vexatious litigation." (*Federation, supra*,126 Cal.App.4th 1180, 1205.) "As a cause of action is framed by the facts in existence when the underlying complaint is filed, res judicata is not a bar to claims that arise after the initial complaint is filed" and may not apply when "there are changed conditions and new facts which were not in existence at the time" of the filing of the prior action. (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 227 ("*Planning & Conservation League*"), citations omitted.)

Respondents' reliance on *Federation* is misplaced. *Federation* involved consecutive cases brought by the same petitioners objecting to exactly the same EIR and exactly the same project. (*Federation, supra,*

126 Cal.App.4th at 1202-03.) The ruling in the first case required only that the City of Los Angeles recirculate a traffic mitigation plan. (*Id.* at 1191.) "The city had no obligation to update the analysis of environmental impacts in its adequate EIR" and did not do so voluntarily. (*Id.* at 1204.) Thus, petitioners were barred by res judicata from challenging the previously upheld EIR. Here, by contrast, the partially recirculated EIR is not the same EIR that was challenged in the 2012 Action. As discussed below, the Project access configuration has also changed in a significant way. The County was obligated to update the analysis of environmental impacts in its *inadequate* and completely decertified EIR, which it attempted to do with the partially recirculated EIR.

The facts in *Planning & Conservation League* are more akin to this action. In *Planning & Conservation League*, the court found an EIR did not comply with CEQA. (*Planning & Conservation League, supra,* 180 Cal.App.4th at 221.) The Castaic Lake Water Agency prepared a revised EIR to remedy the deficiencies of the original EIR. (*Id.* at 222-23.) Petitioners then brought an action alleging the revised EIR violated CEQA. (*Id.* at 224.) The court rejected the water agency's claim that the new petitioners were barred from bringing the second lawsuit by the doctrine of res judicata. Where an original EIR and a revised EIR are "distinct episodes of purported noncompliance" they involve "different causes of action" and are "factually distinct attempts to satisfy CEQA's mandates." (*Planning & Conservation League, supra,* 180 Cal.App.4th 210, 228.)

The 2012 EIR was completely decertified in Ione Valley LAWDA's 2012 Action, and the County was required to prepare a legally adequate EIR. The 2015 EIR contains new and revised analysis regarding numerous impacts derived from the Project's vehicle and train traffic generation. As discussed in more detail below, the 2015 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 Project EIR was also approved after California state approval of the Mule Creek Prison expansion, an expansion which logically will affect traffic on local roads and highways that would also be affected by the Project. (AR 2:747 [EIR only mentions Mule Creek State Prison in the context of fire protection].) The EIR was also approved after the County approved the expansion of the preexisting local Jackson Valley Quarry (SAR 2:446), which affects the availability of alternatives and undermines the County's statement of overriding considerations that relies upon the non-existence of feasible alternatives. Ione Valley LAWDA could not have reviewed or analyzed the partially recirculated EIR's traffic analysis, nor any of the subsequent changes in circumstances, as part of its 2012 Action. Thus, res judicata does not bar Appellant from objecting to the EIR now.

4. An Appeal of the Ruling in the 2012 Action Would Have Been Unauthorized or Moot.

By stating "LAWDA did not appeal the trial court's first decision" as if this fact has significance (ROB, p. 22), Respondents imply Appellant LAWDA should have appealed the 2014 trial court's ruling with regard to various sections of the EIR. Having obtained a writ of mandate (SAR 3:653), Appellant LAWDA was the successful party in the 2012 Action. Ordinarily if a judgment or order is in favor of a party, that party is not aggrieved and cannot appeal. (*Ruben v. City of Los Angeles* (1959) 51 Cal.2d 857, 864.) Even if LAWDA were an aggrieved party, such an appeal would have been moot. If Appellant LAWDA had partially appealed air quality, biological, alternatives or water issues of the EIR following the

trial court ruling in the 2012 Action, it would have faced the reality that these issues were mooted by the County's decertification of the entire EIR and complete rescission of approvals. After the County's April 2014 decertification of the EIR and revocation of project approvals (4 CT 949; see ROB, p. 19), there was no longer an existing Project approval or EIR certification to challenge. For Appellant to pursue portions of the decertified EIR would have been wasteful, as no further effective relief beyond complete revocation of the EIR certification and reversal of all project approvals could have been granted. (*North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal.App.4th 832, 849 [case was moot where challenged contracts had expired while the appeal was pending and all activity under those contracts had ended].)

B. The County Improperly Failed to Respond to Significant Comments as It Over-Restrictively Limited its Responses to Public Comments.

The County argues that it did not need to respond to comments on issues other than traffic and circulation because in the recirculated EIR it stated it would only respond to such comments. (ROB, pp. 33 [water], 38 [traffic], 40 [traffic].) However, as Appellant argued (AOB, pp. 15 and 26) and Respondents have not rebutted, CEQA's policy of promoting public participation is only served when the County responds to *all* comments that raise significant environmental issues, including those asserting new information or raising new concerns.

California Code of Regulations Title 14 ("CEQA Guidelines") section 15088.5 subdivision (f) states "In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues." (CEQA Guidelines § 15088.5.) Appellant argued that this provision in CEQA Guidelines section 15088.5 subdivision (f) controls over subdivision

(f)(2)'s statement "the lead agency *may request* that reviewers limit their comments to the revised chapters or portions of the recirculated EIR." (AOB, p. 26, emphasis added.) Respondents did not rebut this argument. Furthermore, the plain language of the Guideline states a lead agency may "request" reviewers limit their comments. It does not allow the lead agency to *require* reviewers to limit their comments to the recirculated section. Nor does it authorize a public agency to ignore public comments in a wholesale fashion because the agency deems them out of the scope of the recirculated section.

In numerous responses to comments, the County repeated the refrain that the comments were outside the scope of the analysis of the EIR. (SAR 1:96 [Master Comment 1 stating "A number of comments were submitted that are beyond the scope of the Court's February 6, 2014 Order. . . Some comments for instance, address non-transportation-related issues which were or could have been addressed or raised during the earlier comment period on the original Draft EIR for the Project"]; SAR 1:123 [response to California Department of Transportation (Caltrans) comments 1-5, 1-6, 1-7, and 1-8 [referring to scope of comments]; SAR 1:134 [response to City of Galt comments 3-3 to 3-6].)

The courts have articulated, and CEQA Guidelines have restated, six separate policy grounds justifying the requirement that agencies seek and respond to comments: (1) "Sharing expertise; (2) Disclosing agency analysis; (3) Checking for accuracy; (4) Detecting omissions; (5) Discovering public concerns; and (6) Soliciting counter proposals." (CEQA Guidelines § 15200.) The procedures the County employed in this case effectively negated each of these benefits of meaningful public participation. CEQA's policy of inviting effective, informed public

participation was wholly derailed by the process adopted by the County in this case.

Because the trial court voided the entire EIR certification and all project approvals, rather than a limited portion of them, the County may not rely on the certification of the original EIR or litigation of issues related to it to prevent scrutiny of issues related to the 2015 EIR. Even if the analysis of impacts, alternatives, and mitigation measures were limited to new comments or information identified during the 2015 review process, the County failed to comply with CEQA as discussed below.

C. Water Supply and Water Quality Issues Were Not Properly Addressed.

Respondents incorrectly assert that claims related to water supply and water quality are blocked by res judicata or collateral estoppel. (ROB, p. 29.) However, the original EIR and revised EIR are factually distinct attempts to satisfy CEQA's mandates, which are subject to separate challenges. (*Planning & Conservation League, supra,* 180 Cal.App.4th 210, 228.) Thus, the County's failure to adequately address water supply and quality issues in 2015 is separate and distinct violation of CEQA from its failure to do so in the 2012 decertified EIR.

LAWDA's claims regarding water supply and water quality issues address the 2015 EIR's failure to adequately disclose and analyze the Project's impacts on groundwater aquifers and users and water quality. These claims are based in part on new information and changed circumstances including the increasingly severe California drought (SAR 2:453; SAR 1:145 [wells ran dry in prior six months]), new information about the drying of adjacent wells (SAR 2:453 ["Wells have been running dry throughout the county and state"]), and the Central Valley Regional

Water Quality Control Board's 2013 letter (SAR 1:230-231) and October 2014 letter (SAR 1:125-127) following up on its 2011 letter (AR 11:7058). As the claims of defects in the 2015 EIR are based on new information, they are not barred by res judicata or collateral estoppel. Accordingly, the EIR's treatment of water supply and water quality issues must be addressed on its own merits.

1. Water Supply Shortfalls That Adjacent Groundwater Users Would Suffer Were Not Assessed.

Respondents do not dispute that 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." (CEQA Guidelines § 15125 subd. (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 ("SGMA") includes the requirement for planning agencies to consider "the adoption of" regional groundwater management plans. (Gov. Code § 65350.5.) The County's failure to address the Project's groundwater usage in the larger context of regional groundwater plans to meet groundwater needs of all potential groundwater users violates both CEQA and SGMA.

Respondents argue the EIR analyzed groundwater data from the area underlying the Project. (ROB, p. 30, citing AR 3:1449 and 1461.) This is incorrect: one cited page (AR 3:1449) addresses the Cosumnes Subbasin, but notes "Data for the Ione Basin portion are not separated out from the Cosumnes Subbasin." (*Ibid.*) The Project is located over the Ione basin.

(AR 2:654.) Without separation of the Ione Basin data, there is no way to evaluate effects on the Ione Basin. The other page cited by Respondents (AR 3:1461) does not address conditions in the Ione Basin but instead states "it is apparent that the Cosumnes sub-basin has sufficient groundwater to meet regional demands during non-drought conditions." This page states project-specific water availability is "based on the project area" but there is no data provided about groundwater conditions in the Project area. Additionally, the analysis of groundwater supply on the Project site (*ibid*) using a single test bore (Test Boring #1) in an unspecified location was conducted prior to the Governor's Drought Proclamation in 2014 [SAR 1:145, SAR 1:236], and the drying of local wells discovered in the summer of 2015 (SAR 1:145; SAR 2:453). The test would not have accounted for ranchers or other water users in the area who lost water from their wells finding new sources to replace the lost supply. Thus, the baseline for groundwater analysis was defective.

The County seeks to recast the misinformation quoted from its EIR, stating neighboring water users "instead rely on aquifers in the Merhten Formation, which is geologically separate from the Ione Formation." (AOB, p. 21, citing AR 2:668.) The County shifts focus to argue local wells are isolated from Project groundwater sources because local wells are shallow. (ROB, p. 31.) The County does not account for the impacts of deeper wells that would have to be dug because local wells have gone dry.

The County defends its reliance on undisclosed confidential well logs to assert supplies would be adequate. (ROB, p. 31.) While the County is entitled to withhold the information in the well logs, it may not rely upon that information, impossible for the public to examine, to assert that surrounding wells would not be impacted by the Project's extensive

groundwater extraction from a groundwater basin that is already in overdraft.[1] Instead, the County should have conducted tests that it could disclose to the public, such as well pump tests, to support its assertions that local wells would not be affected. The intent of CEQA is not just to protect the environment but to assure the public that it is being protected. (*Laurel Heights I, supra,* 47 Cal. 3d 376, 392.) The Final EIR approved by the County dismissively asserted "surrounding users are not pulling groundwater from the same source as the project." (SAR 2:466.) However, the County did not sufficiently address the comments that questioned the basis for this assertion.

Respondents incorrectly assert LAWDA failed to exhaust administrative remedies with regard to its claim that local wells running dry required examination of groundwater availability. (ROB, p. 31.) Contrary to Respondents' argument, a comment letter directly stated, "Wells have been running dry throughout the county and the state." (SAR 2:453.) Specific wells were identified as running dry, and the County provided no contradiction of this detailed factual information. (SAR 1:145 ["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 develop new sources of water. This situation

[1] "Overdraft" of a groundwater basin is a condition where groundwater extraction rates exceed infiltration rates thus permanently depleting the groundwater basin. (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 330.) Overdraft is discussed further infra in section III.C.3.b.

was not present in 2012 when the original EIR was approved. The County did not update its analysis to address the new conditions nor rebut the evidence that nearby wells were newly running dry in the previous six months. Instead, the County chose to overlook the comment and repeat its refrain that responses were unnecessary and outside the scope of the EIR. (SAR 1:236; SAR 1:96.)

Respondents cite assertions that groundwater is not considered to be "immediately affected" in drought years. (ROB, p. 32, citing 2:744.) However, this does not address the long term impacts on nearby groundwater users. Respondents cite an assertion that the basin is considered "drought-resistant" (ROB, p. 32, citing 2:753) but this reference is to the entire Cosumnes Sub-basin and does not reflect conditions specific to the Ione Basin. Ione Basin conditions have been worsening. (SAR 145, 453.)

Respondents fault LAWDA's comments identifying nearby well owners whose wells have run dry for not mentioning "whether nearby water users would seek out new groundwater sources in the future, much less whether these new sources would be the same water source that would serve the Project." (ROB, p. 32.) Substantial evidence includes reasonable inferences based on facts. (Pub. Resources Code § 21082.2, subd. (c); Guidelines, § 15384.) In the factual situation of a well drying it is a reasonable inference that a well owner will seek new water sources. Since the most readily available new water source is a deeper well, it is also a reasonable inference that well owners will dig deeper wells.

Overlying ranches and farms have as much right to use the groundwater underlying them as the Project proponent, if not superior rights, because their ranches and farms pre-dated the Project. (AOB, p. 23-

24.) Many of the ranches and farms rely on the groundwater for their livelihood and existence. Relegating discussion of proportionate fair shares to a footnote (ROB, p. 33, fn. 7), Respondents do not attempt to rebut the principle that "When 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.) The County did not calculate the Project proponent's "proportionate fair share" and instead granted it the right to use as much water as it wanted. In *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74**,** the court found an EIR inadequate where it did not calculate the total groundwater available. (*Id.* at 94 ["As the years pass, it is anticipated that the public's demand for water will increase and the potable water contained in the aquifer, if any, will increase in value."])

Respondents' efforts to dismiss the reasonably foreseeable activity of adjacent water users drilling to obtain potable water as "speculative" is misdirected. Unlike in the cases cited by Respondents, well users deepening their wells after they run dry is a reasonably foreseeable activity. Unlike in *Union of Medical Marijuana Patients v. City of Upland* (2016) 245 Cal.App.4th 1265, 1275-1276 where impacts were not reasonably foreseeable because future activities of patients were unpredictable, activities of users deprived of groundwater are predictable. Unlike in *Marin Municipal Water District v. KG Land California Corporation* (1991) 235 Cal.App.3d 1652, 1662-1663 where potential future development outside a district's service area was not reasonably foreseeable, ranchers digging deeper wells are reasonably foreseeable. This activity is analogous to the reasonable foreseeability of a laboratory expansion in *Laurel Heights, supra,* 47 Cal.3d 376, 396–97. There, the Court rejected a claim

that future expansion was unclear and required analysis of the activity. (*Id.* at 397.) Because there is little or no doubt current groundwater users will deepen their wells when their wells go dry, the County should have analyzed their shared use of the groundwater basin underlying both the Project and adjacent ranchers.

In *Vineyard*, the Supreme Court faulted an EIR for failing to address how a finite water supply for an area would meet a project's demands as well as other projected demand in the area:

> On the factual question of how future surface water supplies will serve this project as well as other projected demand in the area, the project FEIR presents a jumble of seemingly inconsistent figures for future total area demand and surface water supply, with no plainly stated, coherent analysis of how the supply is to meet the demand.

(*Vineyard, supra,* 40 Cal.4th at 445.) Likewise, the EIR in the present case addresses how groundwater supplies are expected to be sufficient for the Project's needs. However, the EIR does not account for how other projected demand by users in the area who also rely on groundwater would be met.

2. The Water Board's Letters to the County and Project Proponent Requiring Analysis of Onsite Disposal of Wastewater to Protect Water Quality Were Not Addressed.

Respondents argue a Central Valley Regional Water Quality Control Board (Water Board) comment letter about the EIR "relates to matters outside the scope of the Partially Recirculated EIR." (ROB, p. 33.) Because the prior EIR was completely decertified, the "scope" of the EIR is the full range of impacts required for analysis by CEQA. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal. 4th 439, 452 [EIR must analyze significant effects of entire project.]) The EIR is

not a supplemental, subsequent, focused, or any other type of EIR that might have a limited scope of analysis. Rather, although the County terms it "Partially Recirculated" the EIR must stand on its own merits as any other EIR certified for the first time.

The County argues a lead agency may limit responses to only portions of an EIR that are revised. (ROB, p. 33, citing Guidelines §15088.5(f)(2).) However, an overriding principle of CEQA is that a lead agency may not fail to respond to a public comment that raises the possibility of a significant issue, in order that serious criticism not be "swept under the rug." This Court has held:

> Comments are an integral part of the EIR. ([Citation].) The importance of the requirements of input from the public and other agencies, and of inclusion of the lead agency's responses thereto, was spelled out in *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67]
>
> . . .
>
> 'Finally, and perhaps most substantively, the requirement of a detailed statement [in response to comments] helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug. . . . . Moreover, 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*.' (Italics added.)

(*Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 820.) Failure to respond to a single comment is sufficient to invalidate approval of an EIR. (*Flanders Foundation v. City of Carmel by-the-Sea* (2012) 202 Cal.App.4th 603, 617.)

This concept of responding to all significant comments is embodied in the very guideline that the County cites, CEQA Guidelines section 15088.5: "*In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues*." (CEQA Guidelines § 15088.5 subd. (f), emphasis added.)

Respondents claim the Water Board's comment was a "general comment" (ROB, p. 34) but the Water Board's comments were very specifically addressed to the Project and stated:

> When waste is stored on or disposed to land, Waste Discharge Requirements (WDRs) are required. *This applies to aggregate wash water, concrete wash water, returned/rejected concrete, and uncured concrete in recycling piles*.

(AR 11:7058, emphasis added.) The Water Board noted the Project site size of 216 acres open pit quarry and the components including the asphalt plant facilities and concrete recycling. (AR 11:7058.) The Water Board could hardly have been more specific. Respondents try to avoid the impact of the Water Board's specific follow up letter, provided along with LAWDA's comments, by claiming no mention was made of Waste Discharge Requirements (WDRs). (ROB, p. 34.) It is clear from the context and series of letters that the Water Board was specifically commenting about the need for WDRs. The County denied the need, never addressing the Water Board's point that even if water were stored onsite, and not discharged, WDRs were still required. The Water Board specifically asked for information to evaluate WDRs in its 2013 letter. (SAR 1:230-231.)

Respondents claim the analysis of wastewater may not be challenged because of res judicata or collateral estoppel. (ROB, p. 35, citing 3 CT

704-06 and 3 CT 786-91.) The current claim is different from the claim presented in the 2012 action because the facts are different, rendering the EIRs different: the Waste Board's 2013 letter (SAR 1:230-231) did not exist in the 2012 action. Additionally, in October 2014, the Water Board stated that a WDR permit was required for the Project. (SAR 1:125, 1:127.) Therefore, Respondents' failure to meaningfully respond to issues raised and information requested in the Waste Board's 2013 and 2014 letters renders its 2015 EIR inadequate.

As if the 2013 and 2015 Water Board letters did not exist, the County adhered to its view that WDRs are unnecessary on the theory that wastewater would not be discharged from the Project site (AR 1:206). The Water Board's 2011 letter made it clear that even if water were merely stored on the site, WDRs are required. (AR 11:7058.) The Water Board's 2013 letter stated, "[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 1:230-231.) The County may not fail to obtain and disclose this necessary information.

3. The Groundwater Management Act Required Consideration of Allocations of Groundwater to All Potential Groundwater Basin Users.

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 ("SGMA") includes the requirement 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 SGMA.

a. Appellant Sufficiently Exhausted Groundwater Management Claims.

Respondents argue they did not violate SGMA. First, they claim the issue was not sufficiently exhausted by comments that did not specify violation of Government code section 65350.5's requirement to consider adopting a groundwater management plan. (ROB, p. 35.) Appellant and other members of the public made comments regarding groundwater which were sufficient to alert Respondent to the issue of groundwater management legislation, the EIR's faulty analysis, and the need to proactively manage groundwater resources. (SAR 1:145, 2:453.) One such letter stated "Rather than passively allowing such dire effects [nearby wells being sucked dry by mining activity] to happen to your constituents we urge you to proactively anticipate the problem and ensure it will not occur." (SAR 145.) Citation of particular sections of applicable codes is not required:

> We conclude that the comments set out above, as well as other similar comments in the administrative record, were sufficient to alert appellants to the issue raised in the trial court because the Board was alerted to the fact that its method of analysis was faulty and should be expanded to include analysis of long-term impacts, traffic and safety. *The fact that the above comments do not refer to specific statutory language is not dispositive*.

(*East Pen. Ed. Council, Inc. v. Palos Verdes Pen. Unified School Dist.* (1989) 210 Cal.App.3d 155, 176-77, emphasis added.)

b. The County's General Plan Amendment for the Project is a Substantial Amendment.

Respondents argue that the County did not violate SGMA because the general plan amendment at issue was not a "substantial amendment" of

its general plan. (ROB, p. 36.) Interpretation of Government Code section 65350.5 appears to be a question of first impression. Respondents advocate an interpretation of the term "substantial amendment" that requires a "large-scale" change such as a general plan update rather than an amendment affecting one portion of a single project. (*Ibid*.) There is no limitation in the statute to apply only to general plan updates. The Legislature plainly could have used the word "update" if that were the Legislature's intent, since the Legislature addresses general plan revisions in other contexts. (Gov. Code § 65588 [requiring revision of the housing element every five years].) Rather, the word "substantial" must be given its ordinary plain meaning. (*Fluor Corp. v. Superior Court* (2015) 61 Cal. 4th 1175, 1198.) "Substantial" means "of ample or considerable amount, quantity, size, etc." (Substantial. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. http://www.dictionary.com/browse/substantial (accessed: January 26, 2017).) A general plan amendment redesignating 121 acres of land for an asphalt plant located on land previously designated for agricultural use within the County is substantial in extent. Changing the general plan designation of it must be regarded as a substantial general plan amendment.

An alternative definition of "substantial" that also applies in this case is "worthwhile; important." (*Ibid*.) Under this definition too the general plan amendment in this case must be considered "substantial" since it and the Project it allows are of such great importance to the County that the County adopted a statement of overriding considerations explaining its importance despite the significant impacts the Project would cause. (SAR 1:80-81.)

Court use of the term "substantial" in addressing the large size of a

parcel captures both of these concepts of size, and importance of the change being made as a policy matter:

> [A]ppellant ignores the *substantial size* of the parcel in question (480 acres) and the extremely controversial use to which it seeks to put it. . . . As the Supreme Court stated in *Arnel Development Co. v. City of Costa Mesa, [citation]*, "The size of the parcel ... has very little relationship to the theoretical ... distinction between the making of land-use policy, a legislative act, and the asserted adjudicatory act of applying established policy. The rezoning of a 'relatively small' parcel ... may well signify a fundamental change in ... land-use policy."

(*Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 959–60, emphasis added.) The general plan amendment in the present case involves both a large parcel of property and a controversial land use change (from agricultural to industrial for the asphalt plant portion of the Project), as in *Land Waste Management*. General plan amendments that change land use policy are substantial because general plans are the constitution for future growth for an area. (*Id.* at 957.) Under state law applicable to counties such as Amador, general plan amendments are limited to only four times a year. (Gov. Code § 65358, subd. (b).) Therefore, any general plan amendment changing fundamental land use policy for a large parcel of land, even at the behest of a single project developer, must be regarded as "substantial."

The County would interpret Government Code section 65350.5 to require consideration of a groundwater management plan only if one has already been adopted and exists. (ROB, p. 37.) However, the Government Code itself states planning agencies such as the County must consider "*An adoption of*, or update to, a groundwater sustainability plan." (Gov. Code. § 65350.5, emphasis added.) If the Legislature only intended planning

agencies to consider adopted plans, it could have stated the agency shall consider groundwater sustainability plans without reference to "An adoption of" such a plan. Plainly, the statute requires consideration of the adoption of a groundwater sustainability plan but the County failed to do so. Instead, the County said it did not need to so until some future point.

Even if the County was not required to develop a groundwater management plan or seek a groundwater adjudication, it should have "considered" how its decision allowing Project proponents a vested right to take at least 182 acre feet per year from a groundwater basin in overdraft might affect a future groundwater management plan or adjudication for the basin. The County chose not to "consider" the impact of its decision on current or future groundwater users or their rights. In this way, the County failed to "consider" a groundwater management plan or adjudication as required by Government Code section 65350.5.

This County failure is a critical omission because the basin from which the Project would extract groundwater is already in overdraft. Overdraft is "a condition wherein the total annual production from a [g]roundwater [b]asin exceeds the [s]afe [y]ield thereof." (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 330.) Even before the County changed the Project area's general plan designation to industrial, the EIR noted an annual drawdown of about 4,294 acre-feet per year of groundwater supply in the basin from which the Project would draw water. (AR 2:744, AR 2:657). The EIR states "A tabulation of inflow and outflow estimates result in a net loss of 4,294 AF [acre feet]." (AR 2:657.) However, the Project proponents plan to remove an additional 182 acre-feet annually. (AR 2:751-752.) Thus, the existing overdraft would be exacerbated by the Project. However, the EIR argued

without any evidentiary support that the actual groundwater loss is lower because groundwater extraction for agricultural purposes has "likely decreased since 1995." (AR 2:744.) A local family rancher objected to the lack of supporting evidence for the EIR's assertion, asking, "On what information is the report basing the contention that water use in the immediate area has dropped since 1995? Where does that information come from?" (AR 1:241.) The FEIR responded that the alleged decrease was "not intended to completely offset the drop in groundwater levels, but is included merely as a note." (AR 1:251.) In other words, there was no evidence to support the County's assertion in the EIR that overdraft was not severe and worsening even in 2012 when the draft EIR was initially written. In subsequent years, California's drought became worse and local citizens, ranchers, and farmers near the Project site have felt the effects of the drought as wells have gone dry. (SAR 2:453, 1:145.)

The County's failure to consider how the Project's extraction of 182 acre feet annually of groundwater from an overdrafted basin (AR 2:657) violates both CEQA's requirement to analyze the impacts of a Project's use of groundwater on other groundwater users (*Vineyard, supra*, 40 Cal. 4th at 430; *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 830) and SGMA's requirement for the County to consider *adoption* of a sustainable groundwater management plan before approving a substantial general plan amendment.

D. The Recirculated EIR Omits Important Information Regarding the Project's Traffic Impacts.

Respondents argue that certain claims related to traffic may no longer be raised. (ROB, pp. 38, 42.) Contrary to this claim, the original

EIR and revised EIR are distinct violations of CEQA. (See *Planning & Conservation League , supra,* 180 Cal.App.4th 210, 228.)

Appellant's claims regarding traffic and circulation impacts include safety impacts to State Route 104 (SAR 5:1373-74), increased traffic from the Mule Creek State Prison expansion (SAR 3:660-61), the failure to update the County's traffic study from the 2012 EIR (SAR 1:96-97, 1:140-44, 1:233-36, 2:448, 2:459), and impacts of railroad crossings and intersections in the City of Galt (SAR 1:131-34). These claims arise out of new information contained in the revised traffic and circulation analysis of the 2015 partially recirculated EIR and are properly raised in the current case.

The writ and judgment in the 2012 Action required the County to revise and recirculate the EIR's analysis with regard to traffic, generally. The trial court's order specifically referenced the EIR's misleading disclosure of impacts to seven intersections and its omission of rail impacts. (SAR 3:648-49, 651.) Thus, any claims based on a revised disclosure of traffic impacts at the seven intersections are permissible, as are all claims relating to the Project's rail-induced impacts. Moreover, all of these claims are impacted by the Mule Creek State Prison expansion (SAR 3:660) and the County's approval of the Jackson Valley Quarry (SAR 2:446), which will generate traffic and exacerbate any traffic impacts caused by the Project.

1. The County's Response to Caltrans' Concerns Was Inadequate.

Caltrans concluded that the 20-foot-wide existing project entrance for agricultural use described in the 2012 EIR was infeasible. (SAR 5:1373-74.) In 2014, the applicant sought approval for a 70-foot-wide Project entrance 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.) Despite this request for approval, Respondents erroneously claim "no change has been made to the proposed access point, and therefore all of these issues could have been substantively asserted in the 2012 Action." (ROB, p. 38.) Not so. Respondents fail to explain how this significant change could have been addressed in the 2012 Action when the application occurred in 2014.

Respondents assert the 70-foot-wide project entrance "would provide additional, safe access to the proposed Project" (ROB, p. 38) and that the reason for the larger project entrance is "to meet Caltrans' safety standards" (*id.* at 39). However, this assertion is unsupported since the County has not analyzed of the impacts of this project change.

The County argues that the additional 70-foot-wide project entrance and accompanying highway changes are merely a "minor change" and "slight relocation" that do not constitute significant new information (ROB, pp. 39-40), despite Caltrans' conclusion to the contrary. Flatly contradicting the County's position, Caltrans' October 2014 comment letter specifically stated:

> As described in the PRDEIR, the project access is infeasible; the Department cannot support this proposal for access to SR 104 . . . The Department has consistently recommended that the EIR should fully address impacts at the project driveway, and *it considers the proposal for shared use of the driveway to be new information of substantial importance.*
>
> 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 proposed shared driveway.*

(SAR 1:101-102, emphasis added.) Caltrans' strong objections confirm the County failed to address potential safety impacts as well as level of service and operational impacts from the newly proposed shared use driveway.

The County's reliance upon *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065 is misplaced since the 70-foot wide project entrance with additional lanes and significant lowering of the highway was not, as the County stated in its summary of the *Bowman* case, "essentially the same as had been evaluated in [the] EIR." (ROB, p. 40.) In *Bowman*, as here, there was a modification to the project's vehicular access. (*Bowman*, *supra*, 185 Cal.App.3d at 1076.) However, in *Bowman*, "Access to [the new street] was contemplated from the very beginning of the project and was assumed in the analysis adopted by the original EIR." (*Id.* at 1079.) In contrast here, the 70-foot-wide project entrance and associated highway modifications were not contemplated from the beginning of the project, and the associated traffic and traffic safety impacts were not analyzed in the 2012 draft EIR or 2015 final EIR. The County utterly failed to properly address Caltrans' well-reasoned comments.

2. The County Traffic Consultant's Conclusion that the Mule Creek State Prison Expansion Would Not Change Any of the Project's Cumulative Traffic Impact Conclusions Is Unsubstantiated Speculation.

Respondents' Opposition Brief repeatedly proclaims that the County and its consultants provided reasoned responses and analysis. (ROB, pp. 38, 40, 41.) However, the County's analysis of trips associated with the Mule Creek State Prison expansion lacks an underpinning of facts disclosed in the EIR. In its Opposition brief, the County explains its consultant's memorandum evaluated "whether the addition of Mule Creek State Prison traffic to the Project's traffic study would change any of the impact results or conclusions contained in the 2012 EIR." (ROB, p. 41.) The County

states the consultant explains the conclusion of unchanged impacts as follows: those intersections with significant impacts would remain significant, and those with less than significant impacts would, "with certainty," remain far below the significance thresholds. (ROB, p. 41, citing SAR 3:661.)

The County consultant's memorandum relies not on facts in the record but instead upon an opinion, framed as an objective "certainty," that all of the study intersections would remain below the significance thresholds. Despite the County's claim to the contrary, making a conclusion without supporting facts is not substantial evidence. (*Laurel Heights I, supra,* 47 Cal.3d 376, 404-405 [courts cannot "countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials."])

LAWDA pointed out that "[n]o facts or analysis support th[e consultant's] conclusion" that there would be no change to impact conclusions. (AOB, p. 31.) Rather than providing a citation to facts or analysis, the County engages in circular reasoning. Specifically, the County argues there would be no change to the impact conclusions because the traffic consultant "can conclude with certainty that there would be no change." (SAR 3:661.)

In response to LAWDA's contention that the EIR should have analyzed peak hour trip projections that included the Mule Creek State Prison expansion project (AOB, p. 31), the County argues that its decision not to update the original study is unnecessary "[b]ecause the consultant determined that th[e significance] threshold had not been met." (ROB, pp. 41-42.) Since the consultant's determination is unsubstantiated, the County's decision not to update the original study is indefensible.

The County's failure to update its traffic analysis contradicts Caltrans recommendations for updates of traffic analysis at least once every two years (AR 7:3813), even without a supervening major project approval such as the Mule Creek State Prison expansion. Caltrans' "Guide For The Preparation Of Traffic Impact Studies " (AR 7:3809 et seq.) states:

> A TIS [traffic impact study] requires updating when the amount or character of traffic is significantly different from an earlier study. *Generally a TIS requires updating every two years. A TIS may require updating sooner in rapidly developing areas . . .*

(AR 7:3813, emphasis added.) Here, given the major project approvals and the passage of time, the traffic analysis in the EIR does not present an adequate analysis of current conditions or potential traffic impacts caused by the Project.

3. The County Fails to Disclose the Data or Analytic Route It Took In Addressing the Potential Rail and Traffic Impacts Raised by the City of Galt.

The City of Galt ("Galt") argued that impacts to railroad crossings at five intersections in Galt were not addressed in the Recirculated EIR but would be significantly impacted by the Project. (SAR 1:131.) Galt requested an analysis of these potential impacts. Respondents argue that "all of the issues raised by Galt … were addressed in response to similar comments." (ROB, p. 42.) However, the pages cited do not provide a meaningful response to Galt's concerns. Instead, to Galt's request for evidence supporting its analysis of daily trip distribution (SAR 1:131, comment 3-3), the County responded the County previously addressed comments and Galt's comment was beyond the scope of the EIR. (SAR 134.)

The County claimed in the Final EIR that the projection of the 25 percent of daily trips traveling State Route (SR) 104/Twin Cities Road to

Highway 99 was "[b]ased on the market area information and discussions with the applicant." (AR 2:197.) LAWDA questioned the source of the "market area information" and the information the applicant provided to support the 25 percent assumption. (AOB, p. 32.)

The County implies that the "directional distribution" that purportedly comprises the "market area information" was "developed from data on industrial uses contained in the 8th Edition of the ITE Trip Generation Manual." (ROB, p. 44.) However, the County does not provide this data or explain how the County arrived at its 25 percent projection, which was questioned by Galt and Caltrans as understating the amount of traffic that would traverse the road (SAR 1:131). The citation provided by the County is to a quote from the Recirculated EIR, not to the data itself. (*Id.*) Under CEQA, an EIR must disclose the "analytic route the … agency traveled from evidence to action." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Here, the County fails to provide the underlying data, much less the analytic route the agency took in projecting 25 percent of daily trips traveling along SR 104/Twin Cities Road to Highway 99.

E. The County Omitted Analysis of Potential Biological Resource Impacts From Train Bridge Reconstruction.

Respondents contend that Appellant LAWDA's challenge to the EIR's biological resource analysis is barred by res judicata or collateral estoppel. (ROB, p. 44.) Contrary to this view, biological resource issues relate to newly-disclosed information in the 2015 EIR's train traffic analysis. Thus, the original EIR and revised EIR are distinct violations of CEQA. (See *Planning & Conservation League, supra,* 180 Cal.App.4th 210, 228.) Respondents assert the expected train traffic "was disclosed in the 2012 EIR and is unchanged in the Partially Recirculated EIR." (ROB,

pp. 44-45.) This is misleading, because as the trial court found in the 2012 Action, the so-called disclosure of train traffic in the 2012 EIR was "not reasonably calculated to inform the public or the decision-makers as to the effects of increased rail use on traffic delays." (SAR 2:651.) Therefore, the 2015 EIR was the first time the public could meaningfully evaluate the new information about substantially increased rail activity.

As Appellant stated, the partially recirculated EIR for the first time informed the public that train traffic on the existing rail line would increase 13-fold in frequency and approximately 52-fold in weight of material over the tracks. (AOB, p. 34, citing SAR 1:93, 3:595-569, and SAR 2:395.) Respondents do not deny the mathematical validity of the calculation of these increases. Nor do Respondents dispute that the train track potentially traversed by newly increased Project induced train traffic was built as long ago as 1875. (AOB, p. 34, citing SAR 1:209.) The newly disclosed train traffic analysis resulted in public comments that the Project's use of rail transportation will require the reconstruction of 20 bridges to satisfactorily upgrade the area's rail infrastructure, the biological impacts of which have never been disclosed, analyzed, or mitigated. (AOB, pp. 32 and 34, citing SAR 1:206-207.) Respondents protest that the recirculated EIR "does not actually identify the need" for reconstruction or rehabilitation of 20 bridges. (ROB, p. 45.) Exactly so: even though the EIR failed to identify the need for bridge rehabilitation, public comments identified it based upon specific, credible information from railroad sources. (SAR 1:146, 1:206-207.) The article cited by the public stated "The Ione line in its current condition was considered to be *not physically adequate to handle the proposed tonnage to be shipped by rail*." (SAR 1:206, emphasis added.) If the statement, relied upon by public comment (SAR 1:146) was incorrect, the County could have, but did not, correct the record. However, the County's response to these specific, credible comments was to state the EIR did not identify the

need for bridge rehabilitation. The County's assertion that the railroad track is already in use (ROB, p. 45) does not account for the substantial increase in tonnage that would be caused by the Project. Respondents tout the fact the Union Pacific Railroad (UPRR), the owner of the railway the Project would use, "itself did not comment" or indicate modifications were needed. (*Ibid*.) There is no reason UPRR would have made such a comment since it is not required to comment on the EIR. It is significant that in response to comments the County did not obtain any assurance from UPRR that there was no need for bridge rehabilitation. The only evidence coming from UPRR, albeit indirectly from an unnamed UPRR source, was that bridge rehabilitation was needed for 20 crossings because the crossings were not physically adequate to handle the tonnage proposed to be shipped by rail. (SAR 1:206-207.)

Using phrases such as "statements supposedly made" and that a California Department of Fish and Wildlife (Department) representative "allegedly explained" that the Department needed to be deeply involved in impact analysis, Respondents attempt to imply there was no call from a Department representative or that its contents were mischaracterized. (ROB, p. 46.) This innuendo is false. Respondents did not give the Department a fair chance with adequate notice to participate in commenting upon the potential biological resource impacts that the EIR should have clearly identified. Therefore, a phone call to the County rather than a letter was all the Department of Fish and Wildlife had time and resources to make. (SAR 2:455.) Respondents highlight that the Department did not actually comment on the EIR, seeking to imply the Department had no comment to make. (ROB, p. 46.) The absence of a written comment is explained by the specific circumstances set forth in the letter from a member of the public who spoke with a Department representative, giving the specific date and person (Ms. Amy Kennedy) who was involved. (SAR 2:455.) This

member of LAWDA stated: "CDFW [the Department] were not pleased that their need for involvement was not made clear in a partially recirculated chapter entitled [']Traffic[’], and that they were not given clarity with which to respond, nor enough time." (SAR 2:455.) If the County had evidence this was an inaccurate characterization of the call, one of the County representatives who had spoken with Ms. Kennedy could have set the record straight in the public review process through a response to comments. However, this was not done; instead the County merely said the Department did not submit written comments. (See SAR 468.) The call between LAWDA's member and Ms. Kennedy accurately characterized and reported the contents of the call between the Department and the County. The County did not give the Department sufficient notice or meaningful information for it to comment. As such, the County failed to properly consult with a responsible agency as required by CEQA. (Pub. Resources Code § 21104.)

Public and Department concerns about the Project's analysis of the biological impacts of bridge construction relate to the bridge over Dry Creek as well as newly reconstructed rail bridges and the cumulative impacts of bridge construction. The Opening Brief explained how the Department had raised concerns at the time of the 2012 EIR about a bridge over Dry Creek, requesting more information about such impacts. (AOB, p. 33; AR 1:268.) If the Department had timely been informed of the potential need for 20 bridges to be rehabilitated, not just construction of the single bridge over Dry Creek, it could have addressed its comments to those crossings as well.

F. The County Failed to Disclose and Mitigate The Project's Air Quality Impacts.

Respondents assert air quality arguments are barred by res judicata or collateral estoppel. (ROB, p. 46.) Contrary to this view, the original EIR and revised EIR create distinct violations of CEQA. (See *Planning & Conservation League, supra,*180 Cal.App.4th 210, 228.)

Appellant's claims regarding local and regional air pollution impacts are derived from the changes made in the 2015 EIR's traffic analysis, which disclose greater air quality impacts at seven important intersections (SAR 3:617), higher traffic volumes (SAR 3:601), and changes in the predicted use of trains and trucks at the facility (SAR 3:596). 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 the Jackson Valley Quarry expansion (SAR 2:446). Each of these changes in the circumstances and EIR analysis will affect local and regional air quality. The County argues that LAWDA's claims are barred because the EIR did not include changes to the air quality analysis. (ROB, p. 46.) LAWDA requested that the County update the EIR's air quality analysis based on the changes made to the traffic analysis, but the County refused. (SAR 1:96-97, 1:140-44, 1:233-36, 2:448, 2:459.) Thus, although some of LAWDA's arguments regarding air quality are similar to those raised in the 2012 Action, they are based on new facts: (1) the updated 2015 Traffic Analysis and; (2) the County's 2015 refusal to update the air quality analysis accordingly. Res judicata and collateral estoppel are inapplicable.

1. The County Failed to Update the Air Quality Analysis to Reflect New Disclosures of Increased Project-Generated Traffic.

State protocol requires an air quality hotspot analysis when a Project's traffic contributions would degrade an intersection's level of

service to LOS E or worse to ensure that sensitive receptors are not exposed to harmful concentrations of carbon monoxide. (AR 2:522.) Although the RDEIR's updated traffic analysis admits study Intersection 4 would be degraded to LOS F, which is worse than LOS E, the County did not revise the EIR's air quality analysis with a carbon monoxide hotspot analysis, despite requests from the public for this important public health information. (SAR 2:451.) This amounts to a failure to disclose information about the Project's public health impacts that precludes informed decisionmaking, in violation of CEQA. (CEQA Guidelines § 15002; *Laurel Heights I, supra,* 47 Cal. 3d at 406.)

Respondents claim that the degradation of Intersection 4 does not require hotspot analysis, apparently because the Project alone would not cause the degradation to LOS E. (ROB,p. 47, SAR 1:235.) However, this response overlooks the fact that the Project's trips would be *added* to those causing the future LOS F condition. LOS F indicates "stop-and-go traffic characterized by traffic jams," the most extreme congestion on the scale. (AR 3:1559.) The Project's additional trips are akin to the additional air quality impacts discussed by the court in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, where the court determined:

> The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

(*Id*. at 718.) The County argues that it can hide behind the future baseline of LOS F to avoid conducting hotspot analysis in the EIR, but CEQA's informational disclosure mandate requires that it be conducted. When an environmental impact is already significant, any additional contribution to that impact must be considered significant. (*Los Angeles Unified School*

Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1026.) Since the LOS must be considered significant, carbon monoxide hotspot analysis is required. The County's failure to conduct this analysis is a prejudicial abuse of discretion.

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

Respondents claim that pollutant dispersion analysis is not required. However, an EIR must disclose all it reasonably can, and the information was requested by LAWDA. (SAR 1:142.) The EIR included dispersion analysis of diesel particulate matter, but this modeling did not include blown dust. As blown dust will be one of the largest and most noticeable emissions from the Project, which is a combination of an open pit quarry and an asphalt plant, this omission is both a failure to disclose information that precludes informed decisionmaking, as well as a failure to provide a good faith response to comments. (CEQA Guidelines § 15088.)

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

Courts have affirmed that an EIR must disclose "the health consequences that result when more pollutants are added to a nonattainment basin" such as the Ione Valley in Amador County. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.) Despite revisions to the traffic analysis that should have impacted the air quality analysis, the EIR fails to disclose pollutant concentrations or analyze the Project's potential effects on sensitive receptors such as farms, ranches, schools, and retirement communities nearby. (AOB pp. 38-43.)

The County asserts Appellant violates the Rules of Court by citing a case that is pending before the California Supreme Court. On the contrary, *Sierra Club v. County of Fresno* (nonpub. Opn., May 27, 2014, Case No.

F066798, formerly published at 22 Cal.App.4th 704) is included in the Supplemental Administrative Record and is therefore properly cited as a record document. Regardless, Appellant's argument relies on other provisions of CEQA that require an EIR to disclose a Project's potential impacts on health and human beings, as well as *Bakersfield Citizens*, *supra*, 124 Cal.App.4th 1184, 1219-20.

4. The County Did Not Establish an Adequate Baseline Since Its Air Quality Monitors Were at Distant Locations in a Different County.

Since the EIR's air quality analysis relies on air quality monitors located in another county, it fails to establish the baseline for pre-project air quality in the vicinity of the Project site. (AOB p. 43; AR 2:511.) Without an adequate baseline, the EIR cannot demonstrate to an apprehensive citizenry or County decisionmakers what the Project's localized air quality impacts will actually be.

The County argues first that this argument is barred by res judicata or collateral estoppel, but the EIR presents a new traffic analysis that has implications for the Project's air quality emissions. Appellant argued during the administrative process that the County's failure to prepare a new air quality analysis that reflects the changes to the traffic analysis ordered in response to the 2012 Litigation violates CEQA. (SAR 1:96-97, 140-44, 233-36,448, 459.)

The County argues that Appellant failed to raise this claim in the trial court (ROB, p. 51), but it is permissible for Appellant to raise new legal claims on appeal where facts are not in dispute and the issue merely raises a question of law. (*Koch v. Rodlin Enterprises* (1990) 223 Cal.App.3d 1591, 1595.)

On the merits, the County argues that it complied with CEQA by disclosing its nonattainment status under the Clean Air Act and historic data at monitoring sites 12 and 20 miles from the Project site. (ROB, p. 51.) However, CEQA requires that the County disclose all it reasonably can. (CEQA Guidelines § 15144.) The County could have reasonably determined a local baseline for air quality through surveys or other methods requested by the public (AR 2:941; AR 4:1886) yet failed to do so. As a result, the EIR does not inform the public or decisionmakers about the Project's likely impacts on Amador County's nonattainment of Clean Air Act standards for ozone. An EIR must be an adequate, complete, and good faith effort at full disclosure of a project's environmental impacts. (CEQA Guidelines § 15151; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367-68.) Independent air quality experts 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; AR 13:8158.) The EIR does not accurately disclose the Project's impacts on Amador County and Ione-vicinity air quality, in violation of CEQA.

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

CEQA requires the County to adopt all feasible mitigation measures or alternatives to avoid a Project's significant environmental impacts. (Pub. Resources Code § 21002.) The EIR states the Project would have significant and unavoidable impacts on air quality. (AR 2:380.) The EIR admits the Project would have higher traffic volumes than previously disclosed (SAR 3:601), which would translate into increased emissions. Despite this, the County failed to incorporate feasible mitigation measures requested by LAWDA, or to ensure that Project mitigation measures are

concrete and enforceable as required. (Pub. Resources Code § 21081.6(b); *Lincoln Place Tenants Assn v. City of Los Angeles* (2005) 130 Cal.App.4th 1491.) The EIR's new traffic analysis and LAWDA's request in the administrative process for feasible mitigation measures (*see, e.g.*, SAR 6:1606) in the EIR are new facts that defeat the County's claims of res judicata and collateral estoppel.

The County argues that its decision to reject the "Reduced Production Alternative" was supported by substantial evidence because it would not meet the objective of producing 5 million tons of aggregate per year for 50 years. (ROB, pp. 52-53.) However, the County admits the alternative "would meet many project objectives" (*ibid*), and CEQA does not require an alternative or mitigation measure to satisfy all project objectives. In fact, it "is virtually a given that the alternatives to a project will not attain all of the project's objectives." (*Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087.) The County also claims that the alternative would not reduce all air quality impacts to a level below significance (ROB, p. 53), but CEQA only requires that an alternative or mitigation measure "substantially lessen" an impact. (Pub. Resources Code § 21002.) The Reduced Production Alternative would have successfully mitigated PM10 emissions below the threshold of significance (AR 2:520) but the County refused this feasible mitigation measure. CEQA requires the adoption of all feasible mitigation measures before approval of a statement of overriding considerations. (Pub. Resources Code § 21081.)

Contrary to the County's assertions that, LAWDA's claims that the Project's air quality mitigation measures are vague, unenforceable, and improperly deferred are supported "entirely" by a depublished opinion (ROB, p. 52), these claims are supported by published decisions, the Public Resources Code, and the CEQA Guidelines. As cited in Appellant's

Opening Brief (pp. 45-46), mitigation measures must be "fully enforceable through permit conditions, agreements, or other legally-binding instruments." (Guidelines § 15126.4 (a)(2); *see also* Pub. Resources Code § 21081.6(b).)

Mitigation measure 4.2-2(c) states "the project permitee/operator shall obtain permits to operate for all sources," that the operator was required to obtain permits by the Amador Air District (AAD), and that "[t]he permitee/operator must comply with all permit requirements." (AR 2:522.) The County argues that deferral is permissible as a mitigation measure containing specific criteria and performance standards. (ROB, p. 53.) No such criteria or performance standards are contained in the EIR or Project approval, however. (AR 2:522.) On the contrary, this is the type of mitigation was disapproved of in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, where the court held an EIR inadequate when mitigation depended "upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR." (*Id*. at 92.)

Even the case cited by the County favors LAWDA in this situation. In *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 (ROB, p. 53), the court opined, "Impermissible deferral of mitigation occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*Id*. at 236.) Without standards governing this mitigation measure, or even a list of "sources that meet the AAD Rule 500" that would require permits, Mitigation Measure 4.2-2(c) is vague, unenforceable, and impermissibly deferred. "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, supra*, 16 Cal.4th 105, 134.) The County did not carry its burden.

G. The County Failed to Analyze Feasible Alternatives.

Respondents contend that arguments related to alternatives are barred by res judicata and collateral estoppel. (ROB, p. 54.) Neither doctrine applies because the original EIR and revised EIR are distinct violations of CEQA so they involve different causes of action. (See *Planning & Conservation League, supra,* 180 Cal.App.4th 210, 228.)

The County's repeated violation of CEQA rooted in its overreliance on a decertified EIR is clearly illustrated with regards to alternatives. The 2012 EIR provided inaccurate or incomplete information as it denied available alternatives existed. Subsequent events in 2013 revealed the true feasibility of an alternative quarrying project in Jackson Valley as the County approved it and yet the County refused to consider it as an alternative in the EIR.

Respondents argue approval of the expansion of the existing Jackson Valley Quarry is not "significant new information." (ROB, p. 54). Respondents deny the expansion of Jackson Valley Quarry would have achieved the Project's objectives. However, the Project had four objectives: (1) establish a hard rock quarry, (2) establish a processing center, (3) minimize impacts, and (4) create jobs. (SAR 1:75.) The Jackson Valley Quarry expansion could have achieved each of these. Respondents argue it would not minimize impacts (ROB, p. 54.) However, the Project does not minimize impacts either and thus a statement of overriding considerations was required. (SAR 1:74-79.) Among other reasons to reject the feasibility of the expansion of Jackson Valley Quarry, Respondents argue that it does not have rail access. (ROB, p. 54.)

However, rail transport was a subsidiary objective listed under the primary objective of establishing a hard rock quarry. (SAR 1:75.) Respondents argue Jackson Valley is "closer to more residences" (ROB, p. 54, citing AR 5:2738) but the County does not explain how proximity to residences is correlated with impacts such as noise or air quality. Respondents claim Jackson Valley would have "greater environmental impacts" (ROB, p. 54) but this assertion is not explained. Respondents assert Jackson Valley does not have "sufficient reserves" to meet the Project's objectives but no data was presented and the expansion approved by the County was for 30 years' operation. Even with only some aggregate available, that could make the Reduced Density rejected by the County (SAR 1:77) more feasible. The fact that Jackson Valley was "already in the process of expanding" (ROB, p. 54) highlights the invalidity of the County rejecting it as an alternative or mitigation measure to reduce Project impacts; the Jackson Valley expansion does not make it an infeasible alternative.

Citing inapposite cases, Respondents argue CEQA does not require that an EIR discuss alternative locations. (ROB, p. 54.) However, Respondents fail to distinguish or even mention *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457, discussed by Appellant (AOB, p. 49) which stands for the principle that alternative sites must be considered even if they are not owned by the project proponent. *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491 (ROB, p. 55) is inapposite because in that case the proposed project was consistent with planning policies and an adopted redevelopment plan. There were no significant impacts associated with the project: once the City of Oceanside found coastal sage scrub habitat

impacts could be mitigated, it was not required to make findings regarding the feasibility of proposed alternatives. (*Id.* at 490.)

Respondents cite *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal3d 553, 572-573 for the principle that regional land-use policies need not be reconsidered. (ROB, p. 55.) However, the Project in this case required changing regional land use policies from agricultural to industrial designation. Thus, in contrast with both *Mira Mar Mobile Community* and *Citizens of Goleta Valley*, here the Project was inconsistent with existing general plan designation for the Edwin Center site, requiring the County to amend this designation as part of the Project. (AR 5:2408.) Additionally, unlike the project in *Mira Mar Mobile Community*, the Project has several significant unmitigated impacts which necessitated a statement of overriding considerations. (SAR 1:80-81.)

Respondents' argument that the approval of the expansion of the existing Jackson Valley Quarry "demonstrates that it is no longer even a possible alternative" (ROB, p. 55) makes no sense. The County in October 2012 informed the public that the Jackson Valley Quarry was not a feasible alternative. (AR 5:2738.) Subsequently, in August 2013 the County approved the expansion of the Jackson Valley Quarry. (SAR 5:1340, 5:1359.) The subsequent approval demonstrates the fallacy of the County's denial of its feasibility.

H. The Statement of Overriding Considerations Was Not Supported by Accurate Findings of Infeasibility of Alternatives.

In order to adopt a statement of overriding considerations a public agency must first find that there are no feasible alternatives that would avoid the impacts identified as significant. The Statement of Overriding

considerations adopted by the County does not address the Jackson Valley Quarry, let alone properly find that it was infeasible. (See SAR 1:74-79).

IV. CONCLUSION.

Because the County violated both CEQA and the Sustainable Groundwater Management Act, a writ of mandate should be granted. The County must prepare an EIR that adequately responds to public and public agency comments, considers all potential significant impacts of the proposed Project and the means to mitigate them.

Dated: January 27, 2017 CHATTEN-BROWN & CARSTENS LLP

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 Reply Brief is proportionally spaced, has a typeface of 13-point, proportionally-spaced font and contains 13, 980 words, according to the word counting function of the word processing program used to prepare this brief.

Executed on this 27th day of January, 2017, at Hermosa Beach, California.

_____

Douglas P. Carstens

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 January 27, 2017, I served the within documents:

APPELLANT'S REPLY 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 January 27, 2017, at Hermosa Beach, California 90254.

Jasmine Vaca

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