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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF AMADOR

IONE VALLEY LAND, AIR, AND WATER DEFENSE ALLIANCE, LLC, Petitioner, v. COUNTY OF AMADOR, Respondent. NEWMAN MINERALS, LLC; WILLIAM BUNCE, an individual; FARALLON CAPITAL MANAGEMENT; JOHN TELISCHAK, an individual; EDWIN LANDS, LLC; GREENROCK RANCH LANDS, LLC and DOES 1 to 10; Real Parties in Interest.	CASE NO.: 12-CVC-08091 **PETITIONER'S OPENING BRIEF** (California Environmental Quality Act; Surface Mining and Reclamation Act) Hearing Date: July 23, 2013 Judge: Hon. J.S. Hermanson Dept.: 2 Petition Filed: November 7, 2012

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I. INTRODUCTION.

Petitioner Ione Valley Land, Air, and Water Defense Alliance (Ione Valley LAWDA) challenges the County of Amador's approval of a large 278-acre open pit quarry called the Newman Ridge Quarry and a hot asphalt, concrete, and aggregate processing plant on a 113-acre area called Edwin Center North (collectively, "the Project"). The Project would adversely impact the numerous small family ranches that are located adjacent to, or in close proximity to, the Project site. It would also adversely affect the residents of the nearby City of Ione, including a new residential subdivision called Castle Oaks and the Mule Creek State Prison facility that are within two miles of the Project.

The County's approval process failed to meaningfully involve affected members of the public and public agencies by providing accurate, complete information. The environmental impact report (EIR) for the Project prepared pursuant to the California Environmental Quality Act (CEQA) concluded that it would cause significant, unavoidable impacts to air quality and traffic but did not provide an adequate explanation of these impacts. While the EIR identified potentially significant impacts to biological resources including wetlands and animal species, aesthetics, cultural resources, noise, hazardous materials, water supply and quality, and other areas, it alleged these impacts would be less than significant with mitigation measures included. Various state and local agencies that reviewed the EIR found it lacked key information and contained misinformation. The EIR for the Project failed to meet the standards of thorough investigation, completeness, and a good faith effort at full disclosure set by CEQA. Instead, in a process apparently largely controlled by the Project applicant, the County's investigation of various impacts was superficial, important information about significant impacts and ways to mitigate them was omitted, and the disclosure of impacts was misleading or inaccurate.

The County also violated the Surface Mining and Reclamation Act as it failed to respond adequately to the Office of Mining and Reclamation's identification of shortcomings in the proposed reclamation plan.

There are other feasible alternatives for the Project that would meet most of the project objectives and completely avoid or reduce the damaging consequences of the proposed Project. Amador County's long history of mining and its desire to improve the area's economy do not justify it violating CEQA, the Surface Mining and Reclamation Act, the Health and Safety Code, and the County Code. The County cannot approve an aggregate quarry and hot asphalt processing plant that has significant and unmitigated adverse impacts on the surrounding community by adopting a statement of overriding considerations when there are feasible, less damaging alternatives to the Project that would obtain most of the County's objectives.

II. STATEMENT OF FACTS.

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

After Amador County staff received the Newman Ridge Project application from Newman Minerals, LLC (AR 11:6311), a Notice of Preparation/Initial Study was released to various State and local agencies for a 30-day public review period beginning on July 18, 2011. (AR 3:843.) A Scoping Meeting was held by the Planning Commission on August 9, 2011 to take agency and public comments. (AR 4:1848.) The County notified selected residents near the Project site, but not everyone who would be affected by the Project. (AR 7046; AR 3037-3038 ["The EIR stated people of lone were notified of this project. I know from asking people on West Marlette, I was the only one contacted, besides Jim Scully"].)

The Newman Ridge Project includes two components: the proposed 278-acre Newman Ridge Quarry and the 113-acre Edwin Center. (AR 2:367.) The Newman Ridge Quarry ("Quarry") is a proposed quarry with a production level anticipated to be five million tons of

rock per year, to be extracted for approximately 50 years. *(Ibid.)* Final reclamation of the Newman Ridge Quarry would occur after all mineral extraction is completed, which would be in approximately 2063. (AR 2:999.) Various material processing facilities, including an aggregate plant, hot asphalt concrete plant, ready-mix concrete plant, an asphalt and concrete recycling plant, and a rail loading facility for finished products would be located at the Edwin Center. (AR 2:367.)

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

The Project included the following land use entitlements: Newman Ridge Quarry Conditional Use Permit and Reclamation Plan; Edwin Center North General Plan Amendment, Zone Change, Asphaltic Concrete (AC) Plant Conditional Use Permit; and Use Permits to exceed the 45 foot maximum height limit of the "M" zone district for the AC Plant and ready-mix concrete plant to allow structures to be built to heights of 72 feet and 49 feet respectively. (AR 2:458.) The Project was proposed in the context of the County's outdated General Plan, some components of which are over 40 years old. (*See, e.g.,* AR 6:3638 et seq.; 6:3675 et seq.; 6:3741 et seq.) The proposed zoning change for the Edwin Center North site would convert land currently designated as "single family residential-agricultural" to "manufacturing." (AR 2:457.)

The Project initially included the Newman Ridge Quarry and a hot asphalt and concrete plant operation at the Edwin Center. (AR 2:367.) An alternative was developed to have the hot asphalt and concrete plant at a location called the Edwin Center North, which moved the location of the Edwin Center north and west so its eastern boundary was approximately 500 feet from its originally proposed location. (AR 2:424 and 425.) The Newman Ridge Quarry portion of the proposed Project would remain the same under the Edwin Center North Alternative (AR

2:457) and hot asphalt plant operations would remain the same in a slightly different location (AR 2:646). When the site of the proposed Edwin Center was moved to the north, the County claimed impacts to visual character and from toxic air contaminants would be reduced below a level of significance, while admitting impacts to long-term operational air quality impacts, cumulative impacts to regional air quality, impacts related to greenhouse gas emissions, and cumulative impacts to City of Ione intersections remained significant. (AR 2:383.)

The Project applicant reached agreement with a handful of neighbors, but not all affected residents, near the Edwin Center site so the hot asphalt and concrete plant was moved slightly to the Edwin Center North site. (AR 12:7702-7706.) In return, the objections to the Project from a few households were withdrawn. (*Ibid.*) The Newman Ridge Quarry and its boundaries remained the same so impacts from the Quarry were not mitigated at all. No agreement was made with many other neighbors and communities affected by the Quarry, as evidenced by later objections to the Project signed by over 364 people and submitted to the County. (AR 5:2797 et seq.)

The Newman Ridge Project Draft EIR was released for a 45-day public review period. (AR 12:7297.) A public meeting to receive public comments on the Draft EIR was held by the Planning Commission. (AR 4:1851.) In addition to the verbal comments submitted at the Draft EIR comment meeting, a total of 11 written comment letters were submitted on the Newman Ridge Project Draft EIR. Numerous agencies and individuals were among the commenters. (AR 1:178-188; 1:168-173; 1:201-204; 1:268-272.) Among other agencies, the California Department of Transportation (Caltrans) commented extensively on the shortcomings in the draft EIR. (AR 1:178-188.) Caltrans concluded:

> In summary, the DEIR, both on its face and through its reliance on the TIS [Transportation Impact Study] prepared for the project, does not adequately evaluate or mitigate for impacts to the State Highway System and the transportation system as a whole. There are significant flaws in the data, assumptions, and analysis in the TIS which underestimate the transportation impacts of the project.

(AR 1:184.)

Petitioner Ione Valley LAWDA was formed during the closing week for public comment. (AR 12:7597-7598.) Some founding members of Ione Valley LAWDA experienced health issues during the comment period. (AR 12:7256-7257; 12:7598). Therefore, it was difficult for them to organize and participate in the public review process earlier. Nonetheless, the group rapidly expanded and began submitting individual comment letters. After it was formed, Ione Valley LAWDA submitted a formal comment letter prior to the release of the Final EIR. (AR 12:7596-7603.)

When the Final EIR was released (AR 1:118), significant alterations to the analysis were made after the comment period closed. However, the County claimed none of the revisions to the Draft EIR resulted in the identification of new significant Project impacts or produced other information or changes that would trigger the requirement to recirculate the Draft EIR. (AR 1:124-126.) In a very strongly worded letter, Caltrans unequivocally asserted "the FEIR fails to adequately identify, disclose, and mitigate for potentially significant impacts to the [State Highway System] that the Department has identified to the lead agency from the beginning of the CEQA process. The Department recommends that the lead agency not certify the EIR for the project." (AR 12:7667.) Ione Valley LAWDA, representing many people affected by the Project, objected to its approval. (AR 6:3367.) Among other objections, LAWDA protested that despite the significant air pollution impacts that would be caused by the Project, there was no evidence in the EIR that the Amador Air District had been consulted. (AR 6:3371.)

The Planning Commission heard the application on August 28, 2012. (AR 6:2990.) The Planning Commission debated including additional mitigation measures in the Project. However, after discussion and objection from the Project applicant, the Planning Commission rejected the addition of any mitigation measures other than those set forth in the EIR and approved the Project with a vote of 3-1. (AR 6:3417-3418.) One Commissioner voted against certifying the EIR, stating that he believed the EIR was inadequate. (AR 6:3416; 6:3418.) The Planning Commission certified that the EIR adequately addressed the Project's environmental impacts and approved the Project.

Ione Valley LAWDA appealed the Planning Commission's approval to the Board of Supervisors. (AR 6:3450.) After filing its appeal, Ione Valley LAWDA use the Public Records Act to obtain documents from the Amador Air District related to the Project that had not been made publicly available through the EIR review process. (AR 5:2723.) Among these documents was a memorandum dated February 22, 2012 from a company called Air Permitting Specialists, who apparently were the air quality consultants[1] to the Air District that evaluated the proposed Project. (AR 13:8158-8160.) The memorandum had not been previously disclosed to the public and was not disclosed by the County. The consultant noted because "the proposed project is located near another source of emissions [the ISP quarry] ... the cumulative impact would be higher than suggested by the [emissions rates set forth for the Project]." (AR 13:8159.) This memo continued "This cumulative impact would affect homes east of the quarry and Edwin Center." (AR 13:8159-8160.)

Ione Valley LAWDA and others submitted comments opposing approval of the FEIR, including a petition with 340 signatures opposing the Project. (AR 6:3507.) LAWDA noted the Project would have significant, unavoidable impacts to air quality, aesthetics, greenhouse gases, and traffic. (AR 6:3490; 6:3495; 6:3499.) Additionally, it would also have significant adverse impacts to biological, water, and cultural resources, but the EIR failed to identify or mitigate them. (AR 6:3498; 6:3499.) LAWDA pointed out there are other, feasible alternatives, such as creating a visitor-serving park area, or letting existing quarry businesses expand legally to meet most of the Project objectives and thus avoid or reduce the damaging consequences of the proposed Project. (AR 6:3499-3500; 6:3501.) LAWDA objected that the project goals were set by the Project applicant without explaining the need for the Project. (AR 6:3530.)

The Department of Corrections' Facilities Division, which is in charge of the Mule Creek State Prison near the Project site, submitted a letter to the County stating it had not

[1] Although it is not clear from the record that Air Permitting Specialists were consultants for the Amador Air District or for the Project applicant, Petitioner infers from the context and content of the letter that they were consultants for the District.

received notice of the availability of the EIR. (AR 13:8021.) The Project would severely impact traffic on roads used by prison staff. It would adversely affect the health of both inmates and prison staff since the Prison is located approximately 6000 feet from the Project site. On the morning of the hearing before the Board of Supervisors, Cal Terhune, the former warden of a now-closed maximum security youth facility adjacent to Mule Creek prison and retired director of the California Department of Corrections and Rehabilitation, signed the petition opposing the approval of the Project and stated, "I strongly oppose this proposal for health and quality of life reasons." (AR 6:3507; 13:8281.)

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

III. STANDARD OF REVIEW.

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

Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to adequately analyze the Project, omitting information necessary for informed public review, and failure to mitigate the Project's significant adverse impacts, are subject to a less deferential standard than challenges to an agency's substantive factual conclusions. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) In reviewing these claims, courts must "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements.'" (*Ibid.*, quoting *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52

Cal.3d 553, 564.) In deciding whether the agency proceeded in the manner required by CEQA, the court must determine whether the EIR is sufficient as an informational document. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal. App. 4th 20, 26.)

A lead agency must provide a complete and accurate assessment of potential environmental impacts. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.) The detailed statements in an EIR are reviewed for "adequacy, completeness, and a good-faith effort at full disclosure." (Tit. 14, Cal. Code Regs. (hereinafter "Guidelines"), § 15003, subd. (i).) In reviewing the adequacy of EIR studies, a reviewing court is not to "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409, fn. 12; accord *Berkeley Keep Jets Over the Bay Committee, supra,* 91 Cal.App.4th at 1355.)

Where necessary information is omitted or inaccurate, a lead agency fails to comply with the procedures required by law, and thus its error or omission is presumptively prejudicial. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236.) A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *County of Amador, supra,* 76 Cal.App.4th at 946.)

Further, agency findings under CEQA must be supported by substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Pub. Resources Code §21082.2(c).) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous is not substantial evidence. It is an abuse of discretion to reject alternatives or mitigation measures that would reduce adverse impacts without substantial evidence. (Guidelines §§ 15043, 15093(b).)

CEQA contains a substantive mandate to protect the environment, requiring that each lead agency "*shall* mitigate or avoid the significant effects on the environment of projects that it

carries out or approves whenever it is feasible to do so." (Pub. Resources Code §21002.1, italics added; *see also* § 21002.) Thus, no public agency shall approve a project for which an environmental impact report has been certified which identifies one or more significant environmental effects unless specific economic, legal, social, technological, or other considerations make the mitigation measures or alternatives identified in the EIR infeasible. (Pub. Resources Code § 21081.) "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible." (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368–369.) Mitigation measures to reduce significant impacts must be enforceable. (Pub. Resources Code § 21081.6(b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445.)

ARGUMENT

IV. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S SIGNIFICANT ADVERSE IMPACTS.

Various state and local agencies and members of the public that reviewed the Draft EIR found it lacked key information on important subjects and concluded that it contained misinformation and inaccurate information. Public agencies criticizing the lack of information in the Draft EIR included the California Department of Transportation (Caltrans) (AR 1:178-188), the Office of Mine Reclamation (AR 1:168-173), the Central Valley Regional Water Quality Control Board (AR 1:201-204), and the California Department of Fish and Game[2] (AR 1:268-272). These comments, and those of members of the public, identified the extensive flaws and omissions in the EIR that rendered the document misleading or uninformative. However, the County failed to remedy the shortcomings.

[2] The name of the Department of Fish and Game changed to the Department of Fish and Wildlife as of January 1, 2013. This brief refers to the Department using the former designation for ease of reference to the Department's comment letter submitted under the former name.

A. Air Quality Impacts Were Not Adequately Disclosed and Mitigated.

A public agency has a duty to find out and disclose all that it reasonably can with regard to potentially significant environmental impacts. (Guidelines § 15144.) With regard to air quality impacts, addressing health effects is especially important. (*Bakersfield Citizens for Local Control* v. *City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.) Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, among other things, "health and safety problems caused by the physical changes" that the proposed project will precipitate. A public agency must disclose details about how significant impacts will be and where they will occur, not just that they will occur. (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 720 ["'There is a sort of grand design in CEQA: Projects which significantly affect the environment *can* go forward, but only after the elected decision makers have their noses rubbed in those environmental effects, and vote to go forward anyway.'"]) While the County disclosed some information in the EIR's air quality section and acknowledged some significant impacts that it claimed were unavoidable (AR 2:506-527), the County failed to conduct a thorough investigation, to respond to public agency and public requests for specific information, and to mitigate impacts as much as it feasibly could have. The County is already a designated non-attainment area for its failure to meet existing air quality standards for ozone. (AR 2:509; AR 2:510.) These standards "represent safe levels that avoid specific adverse health effects." (AR 2:506-507.) Approval of the Project will make Amador's unhealthy air quality situation worse.

1. The EIR Did Not Disclose the Extent of Adverse Human Health Impacts Caused by the Project.

The EIR concluded that the Project would have significant and unavoidable adverse impacts on air quality with regard to nitrogen dioxide and particulate matter (PM_{10}). (AR 2:520.) The EIR did not disclose information about potential $PM_{2.5}$ emissions. It is well known that air pollution adversely affects human health. (AR 12:7684; AR 2:940.) However, the EIR does not acknowledge the health consequences that necessarily result from the identified adverse air quality impacts. (AR 12:520-521.) The EIR does not disclose where the likely highest

concentrations of nitrogen dioxide and PM_{10} pollutants would occur. There is no acknowledgement or analysis in the FEIR of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. A statement of the Court of Appeal in another context requiring a legally adequate air quality analysis applies equally well here: "After reading the EIR[], the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.)

The Amador Air District's consultants identified that significant health impacts could be expected from the Project for a two-mile radius around it, but the County never shared that information with the public through the EIR. In private correspondence to the Amador Air District, Air Permitting Specialists stated,

> The proposed Newman Ridge Quarry project would lead to significant air quality and public health impacts. Air quality impacts would affect regional ozone (smog) concentration and PM-10 concentrations . . . *Adverse health impacts would be most significant at locations within 1 to 2 miles from the project sites. Cumulative impacts would also be significant for both air quality and public health.*

(AR 5:2642, emphasis added; 13:8158.) Despite the unequivocal statements of the consultants, the EIR fails to acknowledge the significant impacts for "air quality and public health" as identified by Air Permitting Specialists.

Numerous small family ranches are located within the two-mile zone of most significant impacts. (AR 2:716-717.) The DEIR incorrectly states, "The closest residence is located approximately 1,000 feet from the mining limits, approximately 900 feet from the Edwin Center site, and approximately 2,000 feet from the Edwin Center North Alternative site." (AR 2:716; accord AR 717 [map of nearby residences].) Notably, based upon their review of the air quality section of the EIR, Air Permitting Specialists incorrectly understood "that the nearest home is located 5,650 feet . . . from the project site." (AR 5:2540.) In reality, the nearest homes are actually within 700 feet of portions of the Edwin Center North and the Newman Ridge Quarry. (AR 425.) Thus, Air Permitting Specialists' understanding of the proximity of sensitive receptors based on the EIR's analysis was understated by a factor of eight, thus undercutting the

entire analysis of impacts. Furthermore, the Castle Oaks subdivision, a new development west of the City of Ione, is located within two miles of the Project site. (AR 2:425 [scale map of surrounding land], 2:471, 2:982 ["project lies 1.2 miles to the west of the city limits of Ione"].) The Mule Creek State Prison, with an inmate population of 3,065 and an employee population of 1,242, is located less than 6,000 feet from the Project boundary. (AR 2:425; 12:7686.) Neither residents in Castle Oaks, nor the administration of the Mule Creek State Prison were notified of the proposal of the Project or its significant adverse health impacts in a two-mile radius so that they might comment on the Project. (AR 13:8021; *see* 6:3510.)

Particulate matter and nitrogen dioxide, which is a precursor of ozone, have profoundly negative human health impacts including "[d]ecreases in lung function, resulting in difficulty breathing, shortness of breath, and other symptoms; [and] Respiratory symptoms, including bronchitis, aggravated coughing, and chest pain. . ." (AR 4:2184.) California and federal standards have set exposure concentration levels for one hour, 24 hour, and annual average concentrations. (AR 2:509.) However, the EIR never disclosed the concentrations of respirable particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$), or nitrogen dioxide that would be expected at the Project's property boundaries or in the surrounding areas. This occurred despite specific requests from the public that dispersion modeling of dust particles be presented in the EIR. (AR 2:941.) The EIR disclosed the regulatory health based standards, but not how the Project's emissions were expected to compare to those standards. The EIR disclosed thresholds of significance for emissions of the pollutants, and that the expected emissions rates exceeded two of those thresholds of significance. (AR 2:518, 2:520). However, the EIR never disclosed what expected concentrations of various pollutants would be, where those concentrations would be reached, or what the health impacts of the high concentrations of pollutants would be. The EIR did not state typical existing concentrations of pollutants in the area to establish a baseline from which to analyze the Project's impacts.[3] Thus, the public was unable to evaluate the

[3] The EIR stated the number of times existing particulate matter pollutants exceeded state and federal standards for a monitoring station located in Calaveras County (AR 2:511) but provided no such information for Amador County or the area around the Project.

health impacts of the pollutant emissions from the Project within the two-mile radius around the Project identified as suffering significant impacts.

A Health Risk Assessment (HRA) was prepared for the Project. (AR 3:1111.) However, it only addressed annual averages of silica and diesel particulate matter, but did not address other respirable or fine particulate matter such as PM_{10} or nitrogen dioxide or daily averages of any pollutant. The Health Risk Assessment only addressed chronic health impacts of silica and diesel particulate matter. (AR 3:1111.) The Health Risk Assessment only disclosed annual average concentrations of diesel particulate matter and silica (AR 3:1116-1119), even though health based safety standards are set for a single day of exposure to air pollution (AR 2:509 [24-hour standard for PM_{10} respirable matter is 50 ug/m^3]; AR 2:501 [24-hour state and federal standards for PM_{10}.) Thus, the Health Risk Assessment did not adequately address their acute impacts that could occur within a matter of days or hours of exposure. The Health Risk Assessment did not disclose either daily or annual average concentrations of PM_{10}, $PM_{2.5}$, or nitrous oxides. (AR 3:1116-1119.)

Even if the Health Risk Assessment had included all the pollutants that would be generated by the Project including respirable particulates, fine particulates, and nitrogen dioxide, or analyzed compliance with the 24 hour standard, it failed to inform the public of the impacts because the basis of the assumptions in the assessment was not disclosed. There was no disclosure of the wind analysis based on the actual direction and effect of prevailing winds in the area. (AR 6:3377-3378 [stating plume would blow straight into the City of Ione].) Although the EIR supplied projected concentrations of silica and diesel particulate matter in annual averages (AR 3:1116-1119), it did not disclose evidence supporting its implication that the concentrations stated would be areas of highest concentration or that any wind direction studies were taken into account. A portion of the EIR states that wind blows from the Project site toward adjacent ranches, the City of Ione, and the Mule Creek State Prison eight months of the year. (AR 2:725.) Topographical effects such as nearby hills to the east trapping pollution over populated areas were not considered either.

Shortly before the Board of Supervisors' approval of the Project in October 2012, the Air District provided information to the County that showed that the air quality impacts of the Project could be worse than what was disclosed in the EIR. Specifically, the Amador Air District's consultant stated Toxic Air Contaminant risks would be "high" for people within 820 feet of the proposed asphalt batch plant. (AR 5:2540.) However, it also found that elevated risks existed, but downplayed them as insignificant with a "medium" prioritization of risk for residents between 250 and 1000 meters (or 820 and 3280 feet). (AR 5:2542.) There was no statement of the baseline rate of cancer that existed without the Project, so the public could not evaluate how much the Project would increase the rate. The public was not advised of this analysis from the Air District since the County did not consider medium cancer risks to be significant. These risks thus were not disclosed in the EIR since this analysis was not available for public review in the EIR.

2. Analysis and Mitigation of Air Quality Impacts is Impermissibly Deferred to the Amador Air District Review Process.

Instead of preparing sufficient information in coordination with consultation with the Amador Air District, which is a responsible agency, the County improperly deferred the analysis and mitigation of significant air quality impacts. As a responsible agency, the Amador Air District is required to rely on the County's EIR, and may not require preparation of additional reports except under very limited circumstances. (Guidelines § 15096; Discussion following Guidelines § 15052.) Thus, with the County's certification of the EIR, the Air District will not have the same ability as the County to analyze impacts and impose mitigation measures to reduce the impacts of the Project. The Amador Air District did not publicly comment at all on the Draft EIR.

In a letter to the Amador Air District, Air Permitting Specialists noted cumulative air pollution impacts would affect homes east of the quarry and Edwin Center and stated, "Since, Amador currently violates ambient standards for both 8-hour ozone and 24-hour PM-10, the proposed project would exacerbate the concentrations of both of these air pollutants." (AR

5:2642.) The 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.) However, the Amador Air District did not submit comments beyond those it had sent on the environmental checklist for the Newman Ridge. (AR 2:916.) The Air District also stated that other items were less than significant with mitigation incorporated, and that objectionable odors were not expected. (AR 2:916.) These comments did not predict the likely significant air quality impacts that would remain unmitigable, nor refer to the nonattainment status of Amador County which requires it to prepare an attainment plan, nor mention that the smell of asphalt that would come from the hot asphalt plant is generally regarded as an objectionable odor.

When the public requested specific information about the air emissions of the plant as designed, the County's response was that such detailed information would be prepared as part of a future review process at the Amador Air District. (AR 4:2225.) However, the deferral of such analysis and mitigation without a discussion of how air emissions can be controlled violates CEQA. "'Impermissible deferral of mitigation measures 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.'" (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.) The fact that responsible agencies must ultimately approve mitigation plans does not cure informational defects when the EIR does not specify performance standards and provide guidelines on how they will be met. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [EIR for aggregate mine and processing operation improperly deferred mitigation for impacts to vernal pool habitat]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.)

Regarding nitrous oxides, a mitigation measure could have been proposed that would require only late model trucks to move products. However, the EIR claimed this measure was unenforceable and would not be implemented because "the future operating company for the proposed project is not known at this time, and the applicant and/or County does not have control over any future company's vehicle or rail fleet." (AR 2:524.) This is false since the County, by permit conditions, could impose requirements no matter who the eventual operator

may be. Even if the truck fleet mix could not be controlled, a measure requiring using an offsite mitigation option (for offsets) should have been required. The County imposed mitigation measure 4.2-2(e) requiring application of emissions offsets (AR 2:522), but there is no information about how emissions reductions would be calculated and applied to the Project to bring it to below the threshold of significance for nitrous oxides. Thus, insufficient information about the identified mitigation measure is provided in the EIR to fulfill CEQA's requirements. Thus, the County failed to impose feasible mitigation measures and instead claimed significant impacts were "unavoidable."

3. The Investigation of Naturally Occurring Asbestos Was Inadequate.

The investigation of the likelihood of naturally occurring asbestos being on the Project site was insufficiently complete to comply with CEQA's requirement for a thorough investigation. As discussed below, the County did not comply with the Surface Mining and Reclamation Act's requirement of a description of the manner in which reclamation will be accomplished with regard to the control of contaminants. (AR 1:170 [Office of Mine Reclamation letter identifying deficiency]; Pub. Resources Code section 2772 subdivision (c)(8)(A).) As stated by the California Department of Conservation's California Geological Survey, asbestos is a "known human carcinogen" so "State and federal health officials consider all types of asbestos to be hazardous." (AR 13:8434.) If made airborne by mining operations, naturally occurring asbestos can thus pose a hazard to human health.

The Project area is part of a type of geological formation called the Ione Formation that is officially recognized as moderately likely to contain naturally occurring asbestos (NOA). (AR 1:170.) The Office of Mining and Reclamation recommended that sufficient surveys or analysis be done to address NOA. (AR 1:170-171.) Members of the public also requested information about the likelihood of NOA. (AR 12:7638-7639.) Despite the importance of this issue, the County relied upon a single bore hole sampled at three different depths to come to the conclusion that naturally occurring asbestos did not occur and was not likely to occur anywhere on the entire 278 acre Project site. (AR 3:1121; 3:1124-1126.) The location of the single bore hole was never disclosed to the public or the Board of Supervisors, despite specific questions about this alleged bore hole at the Board of Supervisors' hearing. (AR 6:3545-3548.) The bore

hole record appears in the record with three samples, each derived from a bore designated as "B1." (AR 3:1125.) No asbestos was detected in these three samples from a single hole at various depths. (AR 3:1126.) No other sampling was conducted for the entire 273 acre site.

Referencing standard industry guidelines that set forth different sampling approaches that are acceptable, professional geologist Jeff Light declared that the investigation undertaken for the EIR relying on a single bore hole and superficial surface evaluation failed to meet regulatory and professional standards. (AR 5:2622-2623.) He stated naturally occurring asbestos studies "in the Gopher Ridge Volcanics [the geologic unit where the Project is located] for other proposed quarries in the region have included over (30) 'targeted' samples to complete the study." (AR 5:2623.) The FEIR's response regarding naturally occurring asbestos concerns stated a consultant for the County visited the site to conduct a surface survey but did not observe any materials "likely to contain NOA [naturally occurring asbestos] in the project area." (AR 3:1123.) Based on this visit, and the single bore hole, the County concluded asbestos did not occur on the entire 278 acre Project site. The Office of Mine Reclamation did not consider this investigation sufficient. (AR 1:170.) This scant investigation fails to comply with CEQA's requirement for a thorough investigation for asbestos and prevented the County from preparing a plan for the control of contaminants as required by CEQA and the Surface Mining and Reclamation Act.

4. The County Failed to Adequately Respond to Comments About Air Quality Impacts.

A lead agency is required to adequately respond to public comments. (Guidelines, § 15088, subds. (a), (c).) That way, important issues are not "swept under the rug." (*Santa Clarita Organization for Planning the Environment, supra,* 106 Cal. App. 4th 715, 732.) However, in this case, comments raising concerns related to the health impacts of the air pollution that would be created by the Project were not answered. Numerous members of the public objected to the significant, adverse air quality impacts of the Project *(see, e.g.,* AR 6:3014, 3024, 3037, 3263, 3514-3516) and objected to the overriding of those impacts on the basis of unsubstantiated claims of economic benefits (AR 6:3268, 3397-3398, 3516).

One comment noted that Amador Air District Rule 207.1 sets a flat ceiling on particulate emissions from asphalt concrete plants and stated its restriction would likely be violated, but this comment was never addressed. (AR 12:7686-7687; AR 6:3623.) Rule 207.1 states "Any asphalt concrete plant constructed or modified after the date of adoption of these Rules shall not emit particulate matter in excess of 0.04 gr./dscf (grains per cubic foot of dry exhaust gas at standard conditions)." (AR 6:3623.) The County responded to other comments in the same letter (AR 12:7727-7729), but not to the comment about Rule 207.1. This Air District Rule is important because if the hot asphalt concrete plant portion of the Project cannot operate within the constraints of this Rule, it would have to be denied, redesigned, or granted some special exception to the Rule by the Air District. Either way, the EIR should have analyzed whether and how the Project would comply with this Air District Rule. Furthermore, the County could have imposed conditions and mitigation measures such as reduced operations to require this rule not be violated. Instead, the County chose to ignore this comment.

5. Cumulative Air Quality Impacts Are Not Adequately Analyzed and Mitigated.

Cumulative impacts include changes in the environment resulting from the incremental impact of a project when added to other closely related present and reasonably foreseeable future projects. (Guidelines §15355(b).) An adequate cumulative impact analysis requires "adequate and relevant detailed information." (*Citizens to Preserve the Ojai v. Board of Supervisors* (1985) 17 Cal.App.3d 421, 431-432.)

The County failed to evaluate how other projects in the region would affect its air quality impacts and how the Project's contribution to them would be cumulatively considerable. Instead, the EIR merely concluded, without disclosing the detailed basis of its conclusions, that cumulative air quality impacts would be significant. (AR 2:526.) Nor was the EIR's conclusion complete. Air Permitting Specialists stated "Not reflected in the above analysis is the fact that the proposed project is near another source of emissions (ISP)." (AR 5:2641.) The consultants were referring to the ISP Mine/Ione Quarry and the ISP Plant. (AR 2:425). The omission of this ISP Plant from the cumulative air quality emissions analysis of the EIR is especially prejudicial because the ISP Plant is on land that is owned by the Project applicant but there is no characterization whatsoever of the current pollutant emissions from the ISP Plant and

Quarry or how they affect local air quality. (*See* AR 2:526-527.) Air Permitting Specialists concluded, "Therefore, the cumulative impact would be higher than suggested by the above [EIR] emissions estimates." (AR 5:2641.) The consultants stated, "Cumulative impacts would also be significant for both air quality and public health." (AR 5:2642.) However, the EIR found cumulative impacts to be significant and unavoidable (AR 2:526) without analyzing how severe such impacts would be, identifying the ISP Plant or other sources contributing to cumulative emissions, or identifying how cumulative impacts could be avoided or mitigated.

6. The County Violated Health and Safety Code and County Code Requirements to Avoid Detrimental Impacts to Nearby Property.

The EIR failed to disclose laws that contain flat prohibitions against a Project emitting particulate matter in levels that would cause significant impacts to its surroundings. As mentioned above, the EIR did not disclose the existence of Amador Air District Rule 207.1. Furthermore, the EIR made no mention of Health and Safety Code section 41700 that states, with limited exceptions,

> a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.

(Health & Safety Code § 41700 subd. (a).) The term "air contaminants" includes dust and particulate matter. (Health and Safety Code § 39013 ["'Air contaminant' or 'air pollutant' means any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof."] There is no mention in the EIR's air quality section of Health and Safety Code section 41700, though the EIR discusses the California Clean Air Act and its prohibition against aggravation of nonattainment status. (AR 2:509.) Petitioner objected that the County may not sacrifice the health of local residents in order to approve the Project. (AR 6:3375.)

While CEQA allows approval of a Project with significant air pollution impacts on the basis of a substantiated statement of overriding considerations (Pub. Resources Code § 21081),

the Health and Safety Code's prohibition does not contain a similar allowance. Furthermore, the Amador County Code contains requirements that before the granting of a Conditional Use Permit the County find that the Project ". . . will not under the circumstances of the particular case be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county." (Amador County Code § 19.56.040.) This finding is contradicted by the statement of overriding considerations that found significant air pollution impacts would occur. (AR 1:106.)

B. Water Quality Impacts of the Project Were Insufficiently Disclosed and Mitigated.

1. The EIR Omits Analysis of the Effects of Wastewater Storage During Operations or Discharge After Operations.

The County denied any potential water quality impacts on the theory that all wastewater from the Project would be contained onsite in holding tanks. According to the EIR, "The project will not discharge wastewater. All process water will be stored in above-ground tanks." (AR 1:206.) The EIR does not specify the lining of the tanks, or how water used for dust control on roads would be contained. Additionally, the EIR does not address how wastewater would be disposed at the end of Project operations.

The Central Valley Regional Water Quality Control Board's (hereinafter "Regional Water Board") DEIR comment letter explained that the EIR failed to provide the information the Regional Water Board previously requested – namely which operations generate wastewater, the projected quality and daily volume of wastewater, and the methods and locations of wastewater treatment, storage, and disposal. (AR 1:201.) The FEIR's response to comments fails to provide this information and merely restates the unsubstantiated claims made in the DEIR that no wastewater would be discharged. (*See* AR 1:205-206.) Even if not discharged offsite, the EIR should have addressed how wastewater would be created and contained onsite.

Professional geologist Jeff Light identified the likelihood of the Project creating a year round water feature, such as a large open pit with water at the bottom, which could pose a

danger to people or animals (AR 5:2627-2628.) He states, "Safe reclamation conditions must be addressed." (AR 5:2628). Geocon, the County's geological consultant, responded to Mr. Light's letter but did not respond to this point. (*See* AR 13:8277). Months earlier, the County's Director of Environmental Health expressed skepticism that the Project pit would remain dry:

> Despite reaffirmation that the pit will essentially remain a dry hole due to evaporation exceeding water intrusion I remain skeptical this will be the case. Most abandoned mining pits in the area hold water. Authors of the WSA [Water Supply Assessment] appear confident that water well yields in the vicinity would be relatively high, [so] the pit would be in essence an extremely large open well.

(AR 12:7221.) The Director of the County Environmental Health Department stated he did not understand how "Mule Creek, Dry Creek, and Sutter Creek, which drain an area much larger than the pit or the land upon which it sits, would not have the potential to contribute significantly via subsurface water infiltration or [] perhaps via surface flow particularly when the floor of the pit is much deeper than the adjacent stream beds." (AR 12:7221.) The EIR failed to disclose the County Environmental Health Department's considered opinion in the EIR that water could move from adjacent creeks and would collect and remain at the bottom of the quarry so the public could independently evaluate his opinions.

2. The EIR Improperly Defers Development of Wastewater Discharge Mitigation Measures.

The Regional Water Board called upon the applicant to submit information necessary to prepare waste discharge requirements:

> *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*].) Since waste will be stored and disposed on the Project site, Waste Discharge Requirements are required. Waste Discharge Requirements are mitigation measures that are developed to control and prevent potential adverse impacts of onsite storage and disposal. Such measures have been required of other aggregate quarries with similar

operations as the Project. (AR 5:2493 et seq. [Waste Discharge Requirements for Hogan Quarry in Calaveras County].) However, the applicant refused the Regional Water Board's request to apply for Waste Discharge Requirements. After first claiming that "the Project will not discharge water," the FEIR states, "If the project will discharge waste water, a Report of Waste Discharge would be submitted to apply for the waste discharge requirements for activities subject to waste discharge requirements." (AR 1:206.)

The activities requiring waste discharge requirements (WDR's) should have been identified in the EIR, disclosed, and mitigation measures provided to reduce the adverse effects of issuing the WDR's. Deferral of analysis and development of mitigation measures for wastewater violates CEQA. (Guidelines §15126.4(a)(1)(B); *San Joaquin Raptor Rescue Center, supra,* 149 Cal.App.4th 645, 668.)

The need to provide detailed information in an environmental impact report is identified in an EPA guidance document about hardrock mining. (AR 7:3839.) This document identifies items that are necessary as part of "Preliminary Design Needs" for adequate environmental review: a facilities layout, waste disposal plans showing overburden storage areas with tailings impoundments and piles and "Process water flow chart; Storage ponds; Conveyance structures; water balance." (AR 7:3879). The EIR fails to provide this type of information, despite the requests that it do so, both from the public, and from the Regional Water Board responsible for protecting water resources. (AR 12:7681-7682.) The EIR also failed to set forth the testing that is required including solid waste characterization and water quality characterization. (AR 7:3878.)

C. Water Supply Impacts of the Proposed Project Are Inadequately Analyzed.

Analysis of surface water and groundwater supplies is critical to the legal sufficiency of an EIR. The Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard Area Citizens*) stated:

> An EIR evaluating a planned land use project must . . . analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. [Citation.]

(*Id.* at 431.) *Vineyard Area Citizens* held that the EIR prepared by the City of Rancho Cordova in that case was inadequate because it failed to identify the long-term water sources for a project and failed to analyze the environmental impacts of providing water to the project from the anticipated sources. (*Id.* at 441.) Where groundwater is a potential source of water for a project, the impact of the increased groundwater pumping at peak production on other water users must be analyzed. (*San Joaquin Raptor Rescue Center, supra,* 149 Cal.App.4th 645, 663.)

1. The County Omitted Information That Groundwater Supply Would Be Available for the Project Without Detrimental Impacts to Adjacent Ranchers.

The EIR indicates that the Project would primarily utilize groundwater from on-site wells. (AR 2:743.) Available groundwater supply is projected based on yield estimates from a test boring, estimates of the volume of groundwater within the Basal Ione Aquifer Sand underlying the Project site, and published yield estimates for the Consumnes subbasin. (AR 2:752.) The Project Site is located in the Ione Basin. (AR 2:654) However, the EIR uses data from the larger Cosumnes Subbasin to estimate groundwater yield, not data for the Ione Basin. (*Ibid;* AR 2:657.)

The County's Environmental Health Department expressed concern that the published specific yield estimates for the Consumnes Subbasin would not be representative of groundwater supplies to the Project site: "Generalized groundwater trends for the Consumnes Subbasin as presented [in] DWR [Department of Water Resources] Bulletin 118 may not [be] representative of groundwater trends or expected aquifer behavior in the Ione Basin, which is a small basin semi-isolated from the Consumnes Subbasin." (AR 5:2863.) The EIR refers to Department of Water Resources Bulletin 118 as its source for groundwater information. (AR 2:657). However, despite the Environmental Health Department's criticism of the use of the information from this bulletin, and the EIR's reference to it, Department of Water Resources Bulletin 118 was not circulated to the public, submitted to the County, or contained in the County's files

since it is absent from the administrative record. Since the EIR does not use yield estimates for the Ione Basin, and bases groundwater estimates on a document not available to the County or public, the groundwater yield estimates in the EIR omitted necessary information from public review.

The EIR states there is an annual drawdown of over 4,000 acre-feet per year of groundwater supply in the basin from which the Project would draw water. (AR 2:744.) The EIR recognizes that there is an annual drawdown of groundwater in the basin serving the Project site (AR 2:657), yet the applicant proposes to remove an additional 182 acre-feet annually (AR 2:751-752.) Thus, drawdown of groundwater would occur even without the Project pumping groundwater, and overdraft would be exacerbated by the Project. However, the EIR argues without support that the actual groundwater loss is lower because groundwater extraction for agricultural purposes has "likely decreased." (AR 2:744.) The EIR provides no evidence supporting this statement. A local family rancher, Jim Scully, objected to the lack of information, 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 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.) The effect of the exacerbation of the loss of groundwater was not analyzed.

Well testing information was not requested from nearby neighbors nor disclosed in the EIR. As stated by professional geologist Jeff Light, there was no attempt in the EIR to "identify the location and depths of local water wells that might be impacted by the excavation of this project." (AR 5:2627.) Simple local well drawdown tests were not done. (AR 5:2627.) The EIR asserts, "The aquifer that would be utilized by the project is in the Ione Formation which is not generally used for water supply in the project region." (AR 2:657.) Without evidence to support the assertion, the EIR asserts that local wells draw from the Mehrten Formation. (*Ibid.*) However, the Mehrten formation is depicted at some distance from the Project site, and to its west. (AR 2:668-669.) The adjacent ranches, which would be most likely to be affected, are

located to the east of the Project site. (AR 2:425 [map of surrounding land showing nearly all nearby residences to the east of the Project]; AR 11:7044 ["My home is only a few hundred yards east of the proposed quarry site"].) Thus, according to the aquifer schematic in the EIR, they would overlie the Ione Formation. (AR 2:669.) There is no map showing the location of local wells, so there is no information provided about their location relative to either the Mehrten Formation or the Ione Formation.

2. The EIR Fails to Analyze the Effect of Additional Water Production Wells on the Project Site.

Since the immediate surrounding area of the Edwin Center site is owned by the Project applicant, the EIR states that water production wells could "potentially" be placed on the land and used for the proposed Project. (AR 2:752.) As a result, an additional 100 acres was used in the calculations for the water supply assessment for the Project. (*Ibid.*)

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

3. The EIR Fails to Provide Evidence that the Project's Water Wells Will Not Adversely Affect Surrounding Domestic Water Wells.

An EIR that does not address potentially significant problems in declining water levels of neighboring wells is inadequate. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116 [in challenge to a quarry on agricultural land, the court concluded evidence was insufficient to support the determination that mitigation measures found in an EIR were feasible or effective in remedying potentially significant problem of decline in water levels of neighboring wells].)

The EIR's Water Supply Assessment states that neighboring wells will not be impacted. (AR 3:1460.) The EIR claims, "The aquifer from which groundwater would be extracted for

Project use (i.e., Ione Formation) is not tapped by neighboring water users, who instead rely on aquifers in the Mehrten Formation." (AR 2:668.) However, the EIR fails to provide evidence that the Project's use of groundwater would not impact neighboring water users. The Environmental Health Department explained:

> The method of projecting the influence of groundwater extraction and determining that the pumping impacts would not extend beyond the development boundaries *is not presented*. The combination of long term extraction from a limited confined aquifer with little or no recharge could be expected, at a minimum, to reduce the hydrostatic pressure of the confining aquifer and, possibly over time, dewater the aquifer.

(AR 2:915, emphasis added.) Additionally, approval of the Project has the effect of limiting the groundwater resources available for other users. (*Ibid.*) The Environmental Health Department's comments were not addressed. (AR 2:912 [EHD Director stated, 'I don't recall seeing responses to requests for clarification in my attached memo"].)

The FEIR's response to the assertion that withdrawals from the Ione Formation could draw down the water from within the Mehrten Formation is that 100 feet of clay separate the aquifers used. (AR 5:2538.) However, there is no discussion of the possibility that aquifer separation would be broken down by the excavation operations or production well drilling. (AR 5:2628 [pump tests only investigated "the top 64-255 feet of a potentially 450 foot deep excavation"].) Confidential well completion reports and confidential boring logs are cited as part of the evidence for the conclusion that neighboring wells will not be affected. (AR 5:2538.) However, owners of neighboring property report never having been contacted about well drilling information on their property or any other portion of the environmental review process. (AR 7046; AR 3037-3038.) Thus, alleged information in the undisclosed confidential reports is contradicted in public comments. The EIR violates CEQA by failing to disclose critical information.

D. Traffic Impacts Are Inadequately Analyzed and Mitigated.

1. The EIR Fails to Adequately Analyze and Inform the Public of Significant Traffic Impacts.

The California Department of Transportation's (Caltrans) comment letter emphatically recommended against certification of the EIR because of its defective and inaccurate analysis. Caltrans stated:

> In summary, the DEIR, both on its face and through its reliance on the T[raffic] I[mpact] S[tudy] prepared for the project, *does not adequately evaluate or mitigate for impacts* to the State Highway System and the transportation system as a whole. There are *significant flaws in the data, assumptions, and analysis* in the TIS which *underestimate the transportation impacts of the project.*

(AR 1:184, emphasis added.) While the County attempted to address some of the flaws identified by Caltrans, many of them were not remedied. Even after release of the Final EIR, Caltrans maintained its view that the EIR should not be certified until additional analysis and mitigation of impacts was included. (AR 4:1905.)

a. The Inaccuracies in the DEIR's Traffic Analysis Were Extensive.

The DEIR's traffic analysis was gravely misleading. One of the reasons for this, as acknowledged by the FEIR, is that the DEIR's traffic analysis included erroneous information that was not supported by information in the final Traffic Impact Study. (AR 1:194.) The DEIR's misinformation included the claim that existing peak hour traffic at all seven studied intersections was uncongested, identifying them as Level of Service (LOS) "A" – the best level of service. (AR 2:770.) Then, in a dramatic revision, the FEIR changed the publicly disclosed analysis so that the Level of Service at six of the seven studied intersections was restated as Level of Service "B," "C," or "E" - far worse levels of service than level "A." (AR 1:150.) At one intersection, the anticipated Level of Service with the Project was changed from "A" in the draft EIR to "E" in the final EIR. (*Ibid.*)

While asserting that Levels of Service at intersections were much better than they actually were, the DEIR indicated that the relevant policies in effect for this Project, including

those of Caltrans and the Regional Transportation Plan, required maintenance of a minimum Level of Service of "C" or "D". (AR 2:775-776.) The EIR incorrectly stated "Caltrans policy is to maintain LOS C for the Inter-Regional Route System (IRRS) in rural areas (i.e., SR 49 and 88) and to maintain LOS D for non-IRRS routes (i.e., SR 104 and 124) and routes in developed areas." (AR 775-776.) Caltrans corrected the EIR's misinformation by stating, "This statement is incorrect. A LOS D would be accepted in urban areas, however for rural segments of non-IRRS routes, such as SR 104, and SR 124 [East Plymouth Highway], a LOS C would be the target level of service." (AR 2:179-180.)

In fact, the Project's peak hour impacts on Levels of Service at intersections were inaccurately stated for every one of the studied intersections in the draft EIR. Disclosures in the draft EIR were changed in the Final EIR to show more congested conditions, including a change at one intersection from Level of Service "D" (possibly meeting minimum standard) to Level of Service "F" (substandard). (AR 1:154.) The FEIR disclosed that this intersection would require a traffic signal as a result of the proposed Project because the warrant for it was met. (*Ibid.*)

For cumulative impacts, the FEIR stated that "with the addition of traffic from approved projects all but four of the study intersections would continue to operate at LOS C or better." (AR 1:155.) However, since there were seven intersections studied, more than half of the intersections would operate at Level of Service "E" or "F," thus operating below minimum standards. (AR 1:158.) One intersection's Level of Service was changed from "A" in the draft EIR to "E" in the Final EIR and another was changed from "A" to "F." (AR 1:158.) The FEIR was revised to show that three intersections would require a traffic signal under the Project because the signal warrant was met (AR 1:158), whereas for these intersections the DEIR showed substantially shorter delays and did not indicate the signal warrant was met (AR 2:793).

In the response to Caltrans' comments, the FEIR acknowledged that the DEIR had provided erroneous information to the public with regard to traffic. The FEIR states, "The segment volumes were developed based on traffic data collected for the TIS [Traffic Impact Study] and *it* is *acknowledged that some are less than what is reported in the annual report*

provided by Caltrans Traffic Data Branch." (AR 1:194, emphasis added.) The FEIR seeks to downplay the significance of this misinformation by asserting, "[I]t is important to note that even if the volumes were increased substantially and the project exceeded the LOS standards, the conclusions about the project's impacts still would not change." (*Ibid.*) However, providing erroneous information to the public is prejudicial per se. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1062-63.) The public and public agencies reviewing the Draft EIR should have been given clear, understandable, and accurate information in order to be able to provide meaningful comments. The Draft EIR should have been recirculated with the corrected traffic analysis and mitigation measures to address the impacts. (Guidelines § 15088.5 (a) (2).)

b. The County Failed to Adequately Disclose, and Incorrectly Stated, the Number of Truck Trips Generated by the Project or Their Impact.

The DEIR states that 495 vehicle trips would be generated daily. (AR 2:780.) The Traffic Impact Study confirmed the figure of 495 daily trips. (AR 3:1568.) These 495 daily vehicle trips were distributed on various roads and highways for purposes of the EIR's analysis. (AR 2:784.) Commenters such as Caltrans relied on the disclosure of 495 vehicle trips in commenting on the Project. (AR 1:183.) Caltrans also stated that rezoning for the Project will "more than double the trips of the project" but the "impacts of these trips are not quantified." (*Ibid.*) However, after the draft EIR had circulated for review and a month after the Final EIR was released, a County consultant with Abrams Associates stated in a memorandum that was not made part of the EIR his assumption there would only be 47 on-road (as opposed to rail) vehicle trips total, thus providing a statement of on-road vehicle trips *more than 10 times less than the number of daily vehicle trips* reported and analyzed in the EIR. (AR 4:2266.) The memorandum assumed that only 5% or 250,000 tons of the quarry's 5 million ton output, would be "trucked." (*Ibid.*) The memorandum's sum total of vehicle trips only added up to 45 daily trips per day in four different directions - Ione, Galt, Sacramento, and Plymouth. (*Ibid.*) This total of 45 trips contrast markedly with the Project application's statement that there would be

495 vehicle trips per day (AR 4:2027) and the DEIR's listing of the 495 daily trip figure (AR 2:780 ["Based on this data, the estimation was made that the project would generate approximately 495 trips per day with 95 trips in the AM peak hour and 106 trips during the PM peak hour."]) This unpublicized consultant memorandum assumed a routing of traffic from the Project that included only 19 truck trips through the City of Ione. Thus, the County completely changed the traffic analysis on which it would rely after the FEIR was already released.

County officials then proceeded on the basis of the lower daily vehicle trip numbers used in the unsubstantiated memorandum, without accounting for the impacts that movement of 95% of the Project's output by rail would produce. Despite the EIR's disclosure of 495 daily trips, the Project applicant's representative Tom Swett stated in a public hearing that only 47 truck trips would be generated and only 19 daily truck trips would travel through Ione. (AR 6:3482 ["It's been put forth that the project would seen (sic) 200 trucks a day through downtown Ione. It might have even been put forth that it would send 400 trucks a day through downtown Ione. This is false. At full production, the traffic study estimates 47 trucks leaving the site area."]) Bill Bunce, representing the Project applicant, asserted only 19 trucks would go through downtown Ione, based on "47 trucks leaving the site area" and going in different directions. (AR 6:3482.) In response to a Supervisor's question, Tom Swett specifically said only 19 trucks would utilize Main Street in the City of Ione. (AR 6:3563.) Supervisors relied upon this erroneous verbal assertion (AR 3556 [Supervisor Plasse stating "the 47 number has been used, but that's leaving the site"]), without reference to the actual information in the EIR or Traffic Impact Study stating 495 daily trips would be generated (AR 4:2027.) On hearing the drastically revised traffic analysis numbers, a member of the public questioned the accuracy of the truck generation figure and objected to their being changed "at the last minute." (AR 6:3526.)

c. The County Failed to Adequately Disclose the Amount of Rail Traffic From the Project or Safety Impacts Associated With this Rail Traffic.

The Abrams Associates traffic consultant for the County assumed that 95% of quarry output would leave the Project site by rail, thus resulting in fewer truck trips. (AR 4:2266.) However, there was no analysis in the EIR of the impacts of movement of 4.5 million tons of quarry material annually by rail. Instead, the EIR stated, "Truck freight transport, which is more common than rail transport, uses the local highway." (AR 2:769.) The Traffic Impact Study makes exactly this same statement about rail transport, as well as noting only three rail movements per week. (AR 3:1556.) There is no explanation in the EIR or Traffic Impact Study of how 95% of Project output would be transported by rail. Caltrans objected that with an increase in trains from 1 per week to 1.88 per day (a 13 fold increase), "increased train traffic will result in a substantial increase in vehicle delays on SR 104; however the transportation section of the EIR does not discuss or address this project impact." (AR 1:181.) The Final EIR stated, "Significant safety or operational problems were not identified and, as a result, additional analysis was not performed." (AR 1:190.) Thus, the Final EIR failed to address Caltrans' concern that increased train traffic would "result in a substantial increase" in vehicle delays on State Route 104. This omission is especially critical because State Route 104 and Ione Michigan Bar Road are the two main roads into Ione to and from Sacramento, and State Route 104 is used as access to the nearby Mule Creek State Prison and City of Ione. (AR 2:764-765; AR 2:425). Substantial increases in trains crossing both main highways shortly before they intersect close to Edwin Center North (AR 2:425) would significantly increase delay, as Caltrans predicted but the EIR failed to analyze.

d. The County Failed to Adequately Disclose the Safety Impact of Truck Trips Generated by the Project.

Truck traffic from the Project was important to accurately quantify, especially since it could create safety impacts. (AR 1:183.) As predicted by Caltrans, these safety impacts would occur both at the access point for the Project, and on the streets in downtown Ione. (AR 1:179.)

In its comment letter, Caltrans identified increased impacts to State Route 104 traffic due to trucks from the Project decelerating to enter the Project site and accelerating while exiting the Project site. (AR 1:180.) Caltrans emphasized the importance of considering the effect of these trucks on traffic safety, in addition to LOS operational issues. (*Ibid.*) The FEIR responded, "The TIS included a detailed analysis of potential safety impacts at the project's main entrance on SR 104 (see p. 23 of the TIS, which is Appendix O of the Draft EIR)." (AR 1:190.) However, this "detailed analysis" only stated the main entrance intersection on State Route 104 "already exists and can safely accommodate large trucks." (AR 3:1572.) No evidence or data is provided to support this conclusion, and thus this is an inadequate analysis of the traffic safety impacts of the Project's additional truck traffic.

Caltrans also explained that "40 percent of the project truck traffic will travel through downtown Ione," yet in the EIR "[n]o assessment is made of the significance of this impact, and no mitigation is proposed." (AR 1:179.) Caltrans noted that these highway facilities are listed as California Legal Advisory Routes and that use of the roadways by Project trucks "is a potentially significant safety impact." (AR 1:179.) The FEIR non-responsively answered, "The advisory conditions in downtown Ione are an existing condition that would persist with or without the proposed project." (AR 1:191.) The County failed to acknowledge that the Project would make these conditions worse.

2. The County Failed to Adequately Mitigate the Project's Significant Traffic Impacts.

The FEIR claimed that impacts to downtown Ione were reviewed and mitigated in the Transportation Impact Study. (AR 1:191.) Amador County Unified School District Superintendent Dick Glock specifically requested additional mitigation in the form of a left-hand turn lane to protect against traffic impacts "by the elementary school there on [State Route] 104." (AR 6:3365.) However, his request was rejected.

Despite recognizing the existence of the Project's impacts to the Preston Avenue/East Plymouth Highway intersection that qualifies as being a "significant

impact" the FEIR nonetheless concludes that "impacts to study intersections would be less-than-significant." (AR 1:159-160.) Apparently, this incorrect conclusion is based on the City's alleged decision not to construct improvements to the Preston Avenue/East Plymouth Highway intersection. (AR 1:159.) The FEIR provided no evidence to support its claims that "the City of Ione has determined that the existing levels of service at this intersection are acceptable" or that "the City has chosen not to construct improvements to the intersection" as the EIR asserts. (AR 1:159.) In a response to Caltrans' comment, the FEIR alleges that "in the City of Ione's comment letter (Comment Letter 5), the City of Ione has elected not to make traffic improvements in Downtown Ione and is instead requiring a contribution to the West Ione Roadway Improvement Strategy (WIRIS)..." (AR 1:191.) However, the City of Ione comment letter includes no such statements concluding that the existing unacceptable levels of service are in fact acceptable, nor refusing to make traffic improvements in Downtown Ione. (*See* AR 1:209-210.) Ione stated it supported mitigation. (AR 2:805; AR 1:210.)

The EIR failed to analyze other feasible mitigation measures for reducing the impacts to intersections. Caltrans informed the County that it should "consult with [Caltrans] to discuss other options for acceptable mitigation or consider project alternatives," including "operational improvements beyond signalization." (AR 1:182.) This could include, for example, altering the Project's operating hours so as to mitigate the Project's traffic impacts. In its response to comments, the FEIR did not address Caltrans' concern and did not provide any justification for its failure to analyze feasible alternative mitigation measures. (AR 1:189-191.)

At the Planning Commission, Commissioners expressed concern with the significant impact that Project-related traffic would have on schoolchildren at Ione Elementary School. (AR 6:3410; AR 6:3429-3430.) One Commissioner proposed the mitigation measure of limiting the Project's operating hours so that truck operations would start after 9:00 a.m. when school was in session. (AR 6:3429-3430.) However, the Project applicant opposed this condition

because "construction starts early, construction moves in the morning and that's just that's (sic) what happens." (AR 6:3432-3433.) The Planning Commission dropped the suggestion. (*See* AR 6:3433.) Also, Commissioners discussed a left turn lane for the elementary school (AR 6:3365; 6:3430) and rejected it under the theory that the City of Ione did not want a traffic light (AR 6:3429). However, there is no evidence of this opposition in the record. Furthermore, Caltrans called for further mitigation measures in its letters to the County. (AR 1:182.) Under CEQA, when a feasible mitigation measure is identified but rejected after the EIR has been circulated, that information must be added to the EIR and the EIR recirculated. (Title 14, Cal.Code Regs. § 15088.5 (a) (3).) Where feasible alternatives or mitigation measures are proposed but rejected by the project applicant, the EIR must be recirculated. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993), 6 Cal.4th 1112, 1130.)

The potential feasible mitigation measure of reduction in Project hours of operation was also raised at the Planning Commission and in public comments. (*See, e.g.,* AR 6:3495, 6:3560, 2:935.) This measure would have mitigated the Project's air quality, traffic, and noise impacts. However, this measure was rejected because the Project applicant opposed it. (AR 6:3560-3561; AR 1:11 [Conditions of approval permit hours of operation until 10 p.m. on weekdays and authorize operations at nighttime or even 24 hours/day "to maximize power supply management.") This was despite not knowing who the quarry operator would be (AR 2:524), and whether that operator could operate with the limitations. Instead, Tom Swett, a representative of the applicant, opposed any restrictions at all. (AR 6:3561 ["ideally the hours of operation will be 24/7, 7 days a week to provide us with ultimately (sic) flexibility"].) The failure of a lead agency to require feasible mitigation measures to reduce significant impacts violates CEQA. (*City of Marina, supra,* 39 Cal.4th at 369.)

E. Biological Impacts Are Not Sufficiently Analyzed Or Mitigated.

The County failed to adequately analyze or mitigate impacts of the Project on riparian areas, wetland habitat, and the wildlife that inhabits them. The Project site and its surroundings

are home or foraging grounds for golden eagles and Swainson's hawks (AR 2:543) and amphibians such as the California tiger salamander (AR 2:542). With quarrying operations, impacts to the vernal pools and the riparian habitat of the nearby Dry Creek are likely to occur but are not explained in the EIR. Because of these potential impacts, the California Department of Fish and Game (CDFG) submitted extensive comments concerning the Project's potential impacts on wildlife and natural watercourses. However, the County failed to provide the information or mitigate the Project's impacts as CDFG requested.

1. Impacts to Dry Creek Were Not Adequately Disclosed or Mitigated.

CDFG asked for information about the Project's potential impacts to the 459 linear feet and 1.5 acres of Dry Creek that pass through the Project site. (AR 1:268.) Dry Creek drains into the lower Mokelumne River, and eventually into the San Joaquin River (AR 2:654), both of which are listed as impaired water bodies under the Clean Water Act, in part due to pollution from resource extraction activities. (AR 4:2191; AR 7:4381; AR 7:4276.) According to the FEIR, Dry Creek is only relevant to the Project with regard to the bridge that must be constructed across it to provide vehicular quarry access. (AR 1:273.) The construction of the bridge across Dry Creek has the potential to cause environmental impacts, including fill that results in increased flood risk and sedimentation. Even so, and despite comments requesting such information (1:172), the EIR provides no information about the proposed bridge, its size, materials, or construction, aside from noting that it will use only a single pier. (AR 2:678.)

In response to CDFG's query, the FEIR claimed that impacts to Dry Creek will not occur because mining will not occur in Dry Creek. (AR 1:273.) This response omits consideration of the potential for accidental releases of sediment by the Project and runoff from mining activities. The reclamation plan for the Project states "runoff from the Edwin Center will either be conveyed north towards an unnamed stream or south to Dry Creek." (AR 2112.) EPA's Hardrock Mining Guidance document states mine drainage, process water, and storm water runoff can impact surface and groundwater quality. (AR 7:3882 ["Historically, the most problematic discharges occur from major mine components that are exposed to the atmosphere,

such as mine pits, waste rock dumps, tailings impoundments, and leach facilities."]) (AR 7:3882.) Runoff would also be created by the extensive water application that would be necessary for dust control. However, the impacts of this runoff on Dry Creek were not analyzed.

2. Impacts to Onsite Wetlands Were Not Adequately Disclosed or Mitigated.

The EIR claims impacts to wetlands will be mitigated by a requirement that the Project would be designed in the future to "avoid and/or minimize the filling of . . . jurisdictional waters. . . . within the project area, to the extent feasible." (AR 2:566.) This is impermissibly deferred mitigation. CDFG objected to the EIR's failure to describe and analyze the Project's potential impacts to wetlands, and asked for the imposition of "specific, enforceable mitigation measures" beyond merely requiring that the Project seek required permits from government agencies. CDFG explained, "Simply requiring the project applicant to obtain a permit from the DFG does not reduce significant impacts to a level that is below significant under CEQA." (AR 1:269.) The County made no changes to the EIR nor imposed any new mitigation measures in response to this request but instead reiterated its earlier stated mitigation measures. (AR 1:273.)

The EIR assumed that all on-site wetlands would be impacted (AR 2:566) – but does not state how – and proposed to mitigate these undisclosed impacts by requiring a "formal" jurisdictional delineation for wetlands in the future, then avoiding wetlands that could feasibly be avoided. (AR 2:566.) An informal wetlands delineation was included in the EIR, though apparently in view of the mitigation measure requirement for a formal wetlands delineation, it was not conducted pursuant to Army Corps regulations. (AR 3:1217-1294.) Use of the United States Army Corp's Wetlands Delineation Manual is necessary to comply with Clean Water Act regulations. (*Fairbanks North Star Borough v. U.S. Army Corps of Engineers* (9th Cir. 2008) 543 F.3d 586, 590.) Thus, by failing to require a formal delineation as part of the EIR analysis, the County failed to ensure wetlands were adequately identified.

Even if it had adequately identified wetlands, the informal delineation in the EIR was not used to redesign the footprint of the Project to avoid impacts to wetlands. Instead, various

habitat features were shown in the footprint of the Newman Ridge Quarry and Edwin Center. (AR 3:1229.) As noted by CDFG, CEQA requires the disclosure of a Project's impacts before they can be mitigated. This requires a description of the existing conditions of the wetlands, the species present, and the roles of these wetlands for those species. If any impacts to onsite wetlands would occur, they should have been disclosed. The EIR proposes only to avoid impacting wetlands "to the extent feasible." (AR 2:566.) This is effectively unenforceable because it is subject to a future determination made by the Project applicant and the County without public scrutiny and without objective standards for what "feasible" would mean.

3. Impacts to California Tiger Salamander Are Not Analyzed or Mitigated.

Surveys revealed the presence on the Project site of the California tiger salamander, a state species of special concern and a listed species under the Federal Endangered Species Act. (AR 2:576; AR 1:270.) As noted by CDFG, despite the presence of the California Tiger Salamander, the EIR does not describe mitigation measures that will prevent significant impacts in the form of a "take" of this species. (AR 1:270.) CDFG stated that "without a clear project description of the activities that will occur. . . it is difficult to evaluate the direct and indirect impacts of the project." (AR 1:270.) The loss of habitat for the tiger salamander will remain "a substantial adverse effect...through habitat modifications" on a species of special concern, a significant impact on biological resources that is defined by the EIR as a significant effect. (AR 2:561).

The EIR fails to include an option for mitigation through reconfiguration of the Project to avoid sites populated by the California tiger salamander. CDFG noted that analysis, proposed mitigation measures, and mitigation monitoring plans should have been fully developed prior to Project approval. (AR 1:270.) The FEIR is nonresponsive to CDFG's comment, declaring that CDFG's comments merely "pertain[] to DFG permitting processes and does not address the adequacy of the Draft EIR." (AR 1:274.) To the contrary, Comment 13-9 explicitly calls out the

inadequacy of the analysis of impacts to listed species and the corresponding inadequacy of mitigation and mitigation monitoring programs proposed for the species. (*See* AR 1:270-271.)

4. Impacts to Raptors Were Not Adequately Mitigated.

The EIR fails to include sufficient, enforceable mitigation measures for Project impacts to nesting raptors such as the state listed Swainson's hawk. CDFG commented that "[a]ll measures to protect raptors . . . should be performance based," noted 500 foot buffers might not be sufficient for some birds, and suggested the following specific mitigation measure:

> Should operations cause the nesting raptor to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, operations shall be moved back from the nest *far enough to stop this agitated behavior and that a temporary disturbance buffer at this distance be initiated.*

(AR 1:271-272, emphasis added.) However, instead of adopting this effective, enforceable measure, the County responded by merely changing its proposed measure stating smaller buffers could be prescribed to state a "larger" buffer could be prescribed. (AR 1:277-278.) It did not identify the conditions under which larger buffers would be necessary nor require any action if nesting raptors were disturbed. The County's failure to respond completely to CDFG's recommendation is both a failure to respond to the public agency's comment, and a failure to adequately mitigate impacts to raptors.

V. THE COUNTY FAILED TO CONSULT WITH RESPONSIBLE OR TRUSTEE AGENCIES OR SUFFICIENTLY RESPOND TO THEIR COMMENTS.

A lead agency is required to obtain the comments of responsible agencies as part of the DEIR review process. (Pub. Resources Code § 21080.3, subd. (a).) The comments of responsible agencies, which are those agencies that are required to issue permits for a project after the lead agency approves a project (Pub. Resources Code § 21069), are important to the public's understanding of potentially significant impacts since responsible agencies may possess specialized expertise that the lead agency may not have (Guidelines, § 15097, subd. (d)).

A. The County Failed to Disclose its Consultation with the Amador Air District.

The County failed to adequately consult with the Amador Air District or disclose its consultation in the EIR. The Air District received opinions from Air Permitting Specialists that included the fact that significant public health and air quality impacts would occur in a 2 mile radius around the Project. (AR 5:2642.) The County's Environmental Health Department did not comment in writing about the Project EIR. Instead, its director referred questions and comments to the Amador Air District. (AR 4:2225 ["Regarding concerns about ozone and particulates, these issues would be addressed by the Amador Air District and I am confident that the Planning Department will assure that the District is informed of your concerns.])

B. The County Failed to Consult with the Department of Corrections.

The County must also consult with trustee agencies. (Guidelines § 15086 subd. (a)(2).) A trustee agency is an agency with jurisdiction over a resource that could be adversely affected by the Project. (Pub. Resources Code § 21070.) In this case, the Department of Corrections is a trustee agency, with jurisdiction over prisoners incarcerated at Mule Creek State Prison. The failure to follow the procedural requirements of CEQA, such as providing notice to responsible and trustee public agencies, is presumptively prejudicial. (Guidelines 15082, subd. (a): "[T]he lead agency shall send to … each responsible and trustee agency a notice of preparation …"]; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492 [county's failure to send notice to trustee agency constituted prejudicial abuse of discretion].) The Department of Corrections was not notified about the Project despite the fact it is a "close neighbor to the project." (AR 5:2647.) Therefore, it had no opportunity to provide input, comments or objections. (*Ibid.*) The population of the prison, including staff, is over 4,200. (AR 2566). Mule Creek State Prison is not mentioned in the EIR, except in the context of fire protection. (AR 2:747.)

C. The County Failed to Meaningfully Respond to the Comments of Caltrans.

A lead agency must respond to the comments of sister agencies with particular areas of expertise. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1367 ["where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*"]) In this case, as discussed above, the County failed to respond sufficiently to the comments of Caltrans and stated its disagreement with Caltrans. (AR 1:200; AR 4:1922.)

VI. THE COUNTY FAILED TO ADEQUATELY ANALYZE POTENTIALLY FEASIBLE ALTERNATIVES.

The Legislature has declared it to be the policy of the state that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...." (Pub. Res. Code § 21002.) Just as the EIR is the "heart of CEQA," the alternatives analysis is the "core of the EIR." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564.) The public agency bears the burden of affirmatively demonstrating that the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Without an honest assessment of alternatives, the EIR is deficient as an informational document, no matter how lengthy or detailed. (*Laurel Heights Improvement Ass'n, supra,* 47 Cal 3d at 404.) Numerous cases have set aside EIR's on the ground that they do not analyze a reasonable range of alternatives. (*See San Joaquin Raptor Wildlife Center v. Stanislaus* (1994) 27 Cal.App.4th at 608, 735-39; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733; and *San Bernardino Valley Audubon Soc'y, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-51.)

A. The Range of Alternatives Is Unreasonably Narrow.

An EIR must "[d]escribe a *range of reasonable alternatives* to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives." (Guidelines, § 15126, subd. (d), emphasis added.) The discussion must "focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, § 15126, subd. (d)(3).) In developing alternatives, CEQA applies a "rule of reason" that the EIR should "permit a reasoned choice" among alternatives "that would avoid or substantially lessen any of the significant effects of the project." (Guidelines §15126.6(f).)

The County thus had a duty to evaluate a reasonable range of alternatives to the Project, in light of the acknowledged significant adverse impacts. (*See* AR 2:822.) Here the range of alternatives is unreasonably narrow. The EIR only considered (1) the "no project" alternative; (2) a reduced production alternative; and (3) an Edwin Center North Alternative. (AR 2:825.) Thus, aside from the mandatory "no project" alternative, the EIR only analyzed one alternative for the Newman Ridge Quarry at full operation and one alternative location for the Edwin Center. The EIR fails to describe a range of reasonable alternatives.

B. The Unreasonably Narrow Project Objectives Lead to Rejection of Alternatives.

CEQA requires a statement of project objectives to "help the Lead Agency develop a reasonable range of alternatives." (Guidelines §15124(b).) Since CEQA is to be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259), the statement of project objectives must be reasonably broad and flexible, lest the project objectives be used to impermissibly narrow the range of alternatives that are considered feasible. The reasonableness of alternatives is considered in light of the nature of the project, the nature

and extent of the project's impacts, and other material facts. (*San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738 at 750.) Reasonable alternatives should only be eliminated from consideration in the EIR if the alternative would not meet most of the basic project objectives, is infeasible, or would not avoid significant environmental impacts. (Guidelines § 15126.6(c).)

Contrary to CEQA's requirements, the EIR incorporated unreasonably narrow project objectives with "associated goals" that lead inevitably to rejection of any alternative except for the applicant's Project. The EIR explained that Objective #1 is to "Establish a hard rock quarry to produce high quality construction aggregate materials to meet local and regional market demand." (AR 2:821.) However, the EIR then included an "Associated goal" to "Permit anticipated production level of five million tons (Mtons) per year for a period of approximately 50 years, subject to fluctuations in market demand." (AR 2:821.) This extremely narrow "associated goal" of producing five million tons of aggregate for a period of approximately fifty years results in the rejection of the Reduced Production Alternative since it results in producing only 2.5 million tons per year. (AR 2:828.) Despite recognizing that the Reduced Production Alternative would result in fewer impacts than the proposed Project in three resource areas, the EIR rejects the Reduced Production Alternative on the ground that it "would not meet the project objective of a production level of five Mtons per year for a period of approximately 50 years." (AR 2:613.)

This narrow "goal" within Objective #1 rules out any development that does not include the applicant's preferred Project elements, in violation of CEQA. California courts have elaborated on the significant restrictions on a project applicant's ability to use project objectives to dictate what constitutes a feasible project alternative. (*Preservation Action Council v. City of San Jose* (2006) 141 Cal App. 4th 1336, 1355 [EIR could not reject smaller alternative that would have met all project objectives except for size, and would have allowed for preservation of a historic building on site] and 1360 ["the project objectives in the DEIR appear unnecessarily restrictive and inflexible"].)

Federal case law supports the CEQA principles emphasized in these cases.[4] In *Citizens Against Burlington, Inc. v. Busey* (D.C.Cir.1991) 938 F.2d 190, the federal court said "an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action." In *Simmons v. US Army Corps of Engineers* (7th Cir 1997) 120 F. 3d 664, the defendant agency defined the project objective as providing one new water source to two end users, and rejected alternatives that did not involve one new source. The court rejected this use of narrow project objectives because of the impermissible effect on the alternatives analysis:

> One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will.

(*Id.* at 669.)

In this case, the EIR has created the Project's purpose as being production of five million tons of aggregate per year for a period of fifty years. Since the EIR fails to provide any rationale why production must be at this specified level, one can only assume that the County rejected the reduced production alternative because it failed to maximize profits. However, an alternative is not rendered infeasible because it does not maximize profits. (*Preservation Action Council*, supra, 141 Cal. App. 4th at 1356.) "The fact that an alternative may be . . . less profitable is not sufficient to show that the alternative is financially infeasible." (*Citizens of Goleta Valley, supra,* 197 Cal.App.3d at 1181; *Uphold Our Heritage, supra,* 147 Cal.App.4th at 599.) Since the EIR impermissibly requires the applicant's specific "goals" be met and any alternative that does not meet the applicant's unreasonably narrow objectives is rejected, the EIR's alternatives analysis violates CEQA.

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[4] Federal cases interpreting National Environmental Policy Act (NEPA) provide persuasive authority for interpretation of CEQA: "Since the California act was modeled on the federal statute, judicial and administrative interpretation of the latter enactment is persuasive authority in interpreting the California act. " (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.)

C. The EIR Did Not Analyze a Reasonable Alternative – An Off-Site Development.

The alternatives analysis must normally analyze off-site alternatives:

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

(Guidelines, § 15126.6 (b), emphasis added.) Whether the location of the project is the proposed location "or elsewhere depends upon the relative merits and demerits remaining after maximum amelioration of environmental impacts. Serving the public purpose at minimal environmental expense is the goal of CEQA. *Ownership of the land used and the identity of the developer are factors of lesser significance.*" (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179, emphasis added.)

Public commenters requested analysis of off-site alternatives, including expansion of operations at quarries owned by other companies that could meet the project objectives. (AR 2:940; AR 5:2718.) The public suggested and the EIR should have considered the George Reed, Inc. Clements Plant in San Joaquin County, the Granite Construction Plant, Teichert Aggregates, and Jackson Valley Quarry in Amador County. (AR 2:940; AR 5:2718.) When the public offers reasonable alternatives to the Project, the agency must provide a meaningful analysis of them. (See Pub. Resources Code § 21091(d)(2)(B); Guidelines § 15088(c); *Berkeley Keep Jets Over the Bay Committee, supra,* 91 Cal.App.4th at 1371.) The County failed to analyze these off-site alternatives that feasibly could meet the Project's objectives with fewer or less severe impacts.

The EIR rejects alternatives to the Edwin Center on the basis that the "project applicant does not own a comparable property to the Edwin Center other than the Edwin Center North Alternative..." (AR 2:825.) However, the Supreme Court recognized that consideration of alternative sites to that selected by a private developer may be necessary and proper. "The

private developer may own or control feasible alternative sites, *may have the ability to purchase or lease such properties*, or may otherwise have access to suitable alternatives." (*Citizens of Goleta Valley, supra*, 52 Cal.3d at 575, emphasis added.)

The EIR also rejects all off-site alternatives for the Quarry on the basis that "Newman Ridge is where the mineral resource deposits are located." (AR 2:825.) The EIR has not provided any evidence that mineral resource deposits for aggregate mining are exclusively located at the present Project site. The presence of numerous other aggregate mining operations in the nearby vicinity – especially the ISP Quarry owned by the same owner as the Newman Ridge Project property (AR 2:845 [the ISP plant is located on the same parcel as the Edwin Center, which is owned by Edwin Lands, LLC, as is a portion of the quarry]; AR 2:511 [ISP mine and plant located immediately west of Edwin Center]; AR 6:3549 [ISP mining the same formation]) – demonstrates that the particular location of the Project is not essential in order to conduct aggregate mining operations. Nor has the EIR analyzed whether the developer owns alternative sites or could purchase or lease such properties. The EIR states, "The project applicant does not own a comparable property to the Edwin Center" (AR 2:825), but fails to acknowledge that the Project applicant's owners control other property beyond the Project site. (AR 2:845; AR 2:425; 2:431.)

The EIR failed to conduct an in-depth analysis of alternative sites, despite the fact that another private developer also seeks the County's approval of aggregate mine and processing operations. In addition to the County reviewing the proposed Newman Ridge Quarry, there is also a pending application with the County from George Reed, Inc. for expansion of the Jackson Valley Quarry, which is an already well-established and operating business. (AR 5:2718; AR 5:2634-2638.) The Supreme Court explained, "In-depth analysis of alternative sites may also be appropriate where *two or more private developers are seeking the approval of a local agency for the same type of development at different locations.*" (*Citizens of Goleta Valley, supra*, 52 Cal.3d at 575.) This is precisely the case here, but the County failed to provide an in-depth analysis of alternative sites in the EIR.

VII. THE STATEMENT OF OVERRIDING CONSIDERATIONS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. Legal Requirements for a Statement of Overriding Considerations.

CEQA states that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (Pub. Resources Code § 21002.) A public agency may not adopt a statement of overriding considerations when there is a feasible way to lessen or avoid a significant effect. (Guidelines § 15043; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597.) Thus, the requirements for a statement of overriding considerations create a two-step process under Public Resources Code Sections 21081 and 21002. First, a public agency must have evidence that all mitigation measures and alternatives that would reduce impacts are infeasible. Second, the public agency must have evidence to substantiate the benefits allegedly provided by the Project, notwithstanding its adverse impacts. (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 149 Cal.App.4th 892, 719.)

The Statement of Overriding Considerations states that the creation of jobs and the other "above-described economic, legal, social, technological, or other benefits or considerations of the Newman Ridge Project outweigh the environmental effects of the project that may remain unmitigated or are considered to be unavoidable." (AR 1:78-79) The Statement then concludes, "These environmental effects of implementing the Newman Ridge Project are, therefore, considered to be acceptable." (*Ibid.*) The County could not legally approve such a statement of overriding considerations because feasible mitigation measures and alternatives existed that would reduce impacts but were rejected by the Project applicant or the County. Even if the County required all feasible mitigation measures, the alleged benefits of the Project are not documented with substantial evidence. A County Supervisor asked for a financial analysis of the Project, but none was provided. (AR 3564.)

B. Feasible Mitigation Measures for Significant Air Quality and Truck Traffic Impacts Existed But Were Not Adopted.

1. Significant Air Quality Impacts Were Not Mitigated To the Extent Possible.

The County acknowledged that significant air quality impacts would result from Project implementation, including long-term operational air quality impacts, impacts related to emissions of toxic air contaminants (TAC's), and cumulative impacts related to regional air quality. (AR 2:380.) Despite the existence of mitigation measures that would reduce these impacts, these measures were not adopted.

a. Operational Hours Restrictions Were Not Adopted.

Air quality impacts and truck traffic safety impacts could have been reduced through operational hour restrictions, by either limiting the hours of operation or the days of operation. Commenters called for operational limitations more restrictive than the Project applicant's desire for the "ability to operate on a 24-hour basis." (AR 2:935.) However, no such limits were imposed, even though there is no evidence in the record that they were infeasible.

b. Annual Production Limits Were Not Adopted.

An additional mitigation measure, which was rejected by the EIR for not achieving the applicant's annual production goal of five million tons, was the reduced production alternative. (AR 2:829.) The reduced production alternative would reduce the number of truck trips and thus air quality impacts. (*Ibid.*) The EIR claimed that "significant and unavoidable impacts would still be expected to occur," even under the reduced production alternative. (*Ibid.*) Clearly, if the production was reduced enough, the air quality impacts would be mitigated to a level that is less than significant. The amount of pollutants emitted depends on the aggregate production rate. At 5 million tons per year, PM_{10} emissions would be 1,744 pounds per day, but at 230,000 tons per year production rate, PM_{10} emissions would only be 314 pounds per day. (AR 2:520.) Thus, this rate would be below the level of significance of 384 pounds per day. (*Ibid.*)

c. Equipment Usage and Standards Were Not Enforceably Restricted.

The amount of air emissions that would be generated by the Project depends to a significant degree on the type of operation that would occur. The DEIR states that it is not possible to predict the type of vehicle fleet that a future operator would use and alleged it could not control future operators' fleet mix. (AR 2:524.) However, even without predicting the type of vehicle fleet, the County could have, but did not, impose a permit requirement that only modern vehicles be used.

2. Truck Traffic Impacts Were Not Mitigated As Was Feasible.

The County acknowledged significant traffic impacts would occur. (AR 2:383.) However, the County did not mitigate these impacts despite recognizing that the reduced production alternative would result in fewer transportation and circulation impacts than the proposed Project. (AR 2:831.) In addition to failing to require the reduced production alternative or to impose operational hours limitations to reduce truck impacts, the County could have, but did not, restrict trucks from passing through the City of Ione.

C. The Finding of Overriding Benefits is Not Based on Substantial Evidence.

In order to approve a project on the basis of a statement of overriding considerations, the alleged benefits of the Project must be real and provable. (*Woodward Park Homeowners Ass'n, Inc., supra,* 149 Cal.App.4th 892, 717.) The asserted overriding considerations must be supported by substantial evidence in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223; Guidelines, § 15093, subd. (b).) An agency's unsupported claim that the project will confer benefits is insufficient. (*Woodward Park, supra,* 149 Cal.App.4th at 717.) Furthermore, a statement of overriding considerations, like an EIR, must make a good-faith effort to inform the public. (*Id.* at 718.) The requirement for a statement of overriding considerations is undermined if it misleads the reader about the relative magnitude of the benefits the agency has considered. (*Ibid.*)

One of the principal benefits cited by the County in its Statement of Overriding Considerations and used to justify the Project despite its significant environmental impacts is the claim that "[t]he project will create approximately 60 full-time positions." (AR 1:117.) Apparently, the source of this claim is the optimistic "Economic Benefit Analysis" report, which was prepared by EnviroMine, Inc., a consultant for the Project applicant. (AR 11:6440.) It describes the purported economic benefits to the County as a result of the operation of the Project. (AR 11:6437-6440; *see also* AR 7742-7743.) The report contends the Project will "directly employ approximately 60 people." (AR 11:6438.) However, the report provides no data or analysis, such as a business plan, to substantiate this claim. (*See* AR 11:6437-6438.) Commenters contradicted the accuracy of this claim, including with specific reference to operations at other nearby quarries that led to the conclusion only 18 new jobs would be created over the 50 year span of the Project. (AR 4:1891.) The 50 year context of the Project is not acknowledged in the statement of benefits. Rather than rebutting this commenter's analysis and substantiating the applicant's claim that 60 jobs would be created, the County responds without answering the merits of the issue raised: "[T]he comment expresses an opinion regarding the project and speculates about the project's economic feasibility . . . The comment has been forwarded to the decision-makers [Board of Supervisors] for their consideration." (AR 4:1912.) Separately, the County stated a consultant's opinion substantiated the job generation estimate of the Project (AR 5:2743), but the basis for this consultant's opinion is not disclosed. An opinion without factual basis, and contradicted by other evidence in the record, is not substantial evidence.

There were numerous unsupported assumptions made in determining the Project's benefits. (AR 11:6437.) Moreover, as the report acknowledges, "[t]his analysis measures the estimated economic benefits once the Project reaches full capacity." (*Ibid.*) However, the Project will not reach full capacity until the thirtieth year of the Project's fifty-year life cycle. (AR 2:434.) Thus, the report does not provide an accurate analysis of the economic benefits of the project and overstates the projected benefits.

VIII. THE COUNTY'S APPROVAL OF THE PROJECT VIOLATED THE SURFACE MINING AND RECLAMATION ACT.

A. Surface Mining and Reclamation Act Requirements.

The Surface Mining and Reclamation Act (SMARA) is a comprehensive statute enacted in 1975 "to create and maintain an effective and comprehensive surface mining and reclamation policy." (Pub. Resources Code, § 2712.) Through SMARA, the Legislature intended to prevent or minimize adverse environmental effects and reclaim mined lands; encourage the production and conservation of minerals while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and eliminate residual hazards to the public health and safety. (Pub. Resources Code, § 2712, subds. (a), (b), (c).) SMARA contains the general requirement that every surface mining operation have a permit, a reclamation plan, and financial assurances to implement the planned reclamation. (Pub. Resources Code § 2770, subd. (a); *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 984.)

B. The County Failed to Comply With the Surface Mining and Reclamation Act Prior to Approving the Project.

1. The Evaluation of Naturally Occurring Asbestos Was Not Adequately Described to Allow Contaminant Control.

Public Resources Code section 2772 subdivision (c)(8)(A) requires a description of the manner in which reclamation will be accomplished with regard to the control of contaminants. (AR 1:170.) The evaluation of naturally occurring asbestos performed for the Project was not sufficient to adequately describe the manner in which control of contaminants would be accomplished. As a professional geologist identified, "The sampling approach in the EIR documents represents neither a random (representative) sampling of the subsurface material nor a targeted sampling of the subsurface material." (AR 5:2623.) The Office of Mine Reclamation reviewed the investigation conducted by the Project applicant's consultant, Geocon (AR 3:1121), and found it was not sufficient (AR 1:170). The Office of Mine Reclamation stated that the Project applicant should conduct a "detailed site-specific geologic investigation to determine if NOA [naturally occurring asbestos] is present at regulated levels at the Newman

Ridge Quarry." (AR 1:170.) OMR made this statement even though it was aware of the level of investigation that had already been done.

2. The County Failed to Require Sufficient Financial Assurances.

SMARA requires the provision of financial assurances as part of a reclamation plan approval to ensure reclamation and mitigation of surface mining operations is performed in accordance with the approved plan. (Pub. Resources Code, § 2773.1; AR 1:173.) Financial assurances may take the form of "any one or a combination of the following: . . . (a) For non-governmental entity operators: (1) Surety bonds; (2) Irrevocable letters of credit; and (3) Trust funds." (Title 14 Cal. Code Regs. § 3803.) However, in violation of this requirement, no evidence of such assurances exists in this case.

Amador County's Code to implement SMARA is similar to state regulations and specifically requires the financial assurances prior to the planning commission's approvals. The County Code states:

> To guarantee mine site reclamation, use permit condition compliance or CEQA mitigation and monitoring, *surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances adopted for use by the state Mining and Geology Board* . . . are required to be approved as part or condition of any reclamation plan and/or use permit required by this chapter. Financial assurance must be submitted by the planning department to the State Department of Conservation for review *forty-five days prior to formal approval by the planning commission.*

(Amador County Code section 7.36.120, emphasis added.)

The Final EIR states that financial assurances will be required "prior to commencement of operations." (AR 1:255; *see* AR 5:2744 and AR 1:9 [requiring financial assurances].) However, the failure to require financial assurance *prior to formal approval by the planning commission* violates the County Code's clear and specific requirement. Since there were no financial assurances, the County did not satisfy SMARA's or its own requirements for provision of financial assurances to ensure reclamation is performed in accordance with the approved reclamation plan.

IX. CONCLUSION.

Despite the County's recognition of the Project's significant and unmitigated adverse environmental impacts, and despite comments from members of the public and public agencies calling for a more environmentally sensitive project and a legally adequate analysis of alternatives, the County proceeded on its determined course to approve the Project. In most areas, the County made only slight changes in the Final EIR and repeatedly failed to provide meaningful responses to legitimate public comments. As a result, the Ione Valley Land, Air, and Water Defense Alliance was forced to bring this suit to require a reasoned analysis of the Project's impacts on air quality, traffic, water quality and supply, and biological resources, ways to mitigate them, and alternatives to creating them.

A reasonable range of alternatives to the Project was never considered. Alternatives that could have dramatically reduced the impacts of the Project, including the Reduced Production Alternative, were rejected based upon the failure to achieve the Real Party's stated annual production goal of five million tons. No justification was provided for why production could not be decreased below this artificial floor. The County's approval of the Statement of Overriding Considerations was erroneous as it lacked any kind of economic analysis or any other type of substantial evidence to support its findings.

Finally, the County failed to comply with the Surface Mining and Reclamation Act as it did not require sufficient investigation of naturally occurring asbestos nor require adequate financial assurances prior to approval.

For the foregoing reasons, the County's certification of the EIR for the Newman Ridge Quarry Project is inadequate, and the approval of the Project should be set aside.

Date: April 25, 2013

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

By: 

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PROOF OF SERVICE

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 . On April 25, 2013, I served the within documents:

PETITIONER'S OPENING BRIEF

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

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

☐ **VIA FEDEX GROUND DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated for FedEx ground 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 ground delivery at an office or a regularly utilized drop box of the FedEx delivery carrier.

☐ **VIA MESSENGER SERVICE.** I served the above-referenced document(s) by placing them in an envelope or package addressed to the person(s) at the address(es) listed below and provided them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)

☐ **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.** Based on a court order or an agreement of the parties to accept service by electronic transmission, 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 April 25, 2013, at Hermosa Beach, California.

Cynthia Kellman

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