Case No. C088130

COURT OF APPEAL FOR THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

SIERRA WATCH
Petitioner and Appellant

v.

PLACER COUNTY and
PLACER COUNTY BOARD OF SUPERVISORS
Respondents

SQUAW VALLEY REAL ESTATE, LLC
Real Party in Interest and Respondent

Appeal from the Superior Court of California, County of Placer
Case No. SCV0038777
Hon. Michael W. Jones, Judge of the Superior Court

REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C088130
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 130972 NAME: Whitman F. Manley FIRM NAME: REMY MOOSE MANLEY, LLP STREET ADDRESS: 555 Capitol Mall, Suite 800 CITY: Sacramento STATE: CA ZIP CODE: 95814 TELEPHONE NO.: (916) 443-2745 FAX NO.: (916) 443-9017 E-MAIL ADDRESS: wmanley@rmmenvirolaw.com ATTORNEY FOR (*name*): Real Party in Interest Squaw Valley Real Estate, LLC	SUPERIOR COURT CASE NUMBER: SCV0038777
APPELLANT/ Sierra Watch PETITIONER: RESPONDENT/ REAL PARTY IN INTEREST: Placer County, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Real Parties in Interest Squaw Valley Real Estate, et al.

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

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

Full name of interested entity or person	Nature of interest (*Explain*):
(1) KSL Capital Partners, LLC	Ownership interest of 10% or more in Squaw Valley Real Estate, LLC
(2) ASC Next, LLC	Ownership interest of 10% or more in Squaw Valley Real Estate, LLC
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

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

Date: 09/23/2019

Whitman F. Manley
(TYPE OR PRINT NAME)

Whitman F. Manley
(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

In November 2016, after five years of planning, environmental review and scores of meetings, the Placer County Board of Supervisors (Board) certified an environmental impact report (EIR) and approved the Village at Squaw Valley Specific Plan (Village or Project) to modernize development envisioned for Squaw Valley (Valley), host of the 1960 Winter Olympics.

The Project reduces the number of residential units allowed in the 1983 Squaw Valley General Plan and Land Use Ordinance (SVGPLUO) from up to 3,554 bedrooms (with no height limits) to 1,493 bedrooms (with height limits). The Project envisions completing the unfinished Intrawest Village, and includes employee housing, Squaw Creek restoration and trail improvements, among many other public benefits. (AR:3:1741-1743, 1790-1794, 1:371-375, 17:9877-9878.)[1]

Most development will occur on a paved parking lot. (AR:3:1743, 17:9872.) Over 36 acres of open space—compared to 20 acres under the SVGPLUO—is preserved. (AR:13:7789.)

[1] "AR:3:1741" refers to Administrative Record, volume 3, page 1741. The same citation format is used throughout this brief.

Appellant Sierra Watch (Appellant) opposed the Project, claiming it would harm Lake Tahoe. The Project is located miles outside the Tahoe Basin (Basin). Its sole impact is that some visitors will—like anyone in the region—visit the Tahoe Basin. The EIR disclosed this fact. The County imposed extensive mitigation, much of it aimed at reducing traffic. Squaw Valley Real Estate, LLC (SVRE) even agreed voluntarily to contribute substantial funding to the Tahoe Regional Planning Agency (TRPA).

Appellant nevertheless claims that the County had to comply with TRPA standards for projects located *within* the Basin. No court has ever embraced such a sweeping theory. Appellant also attacks the EIR's extensive analyses of wildland fire risk, construction noise, greenhouse gas emissions and transportation. These claims likewise fail.

FACTUAL AND PROCEDURAL HISTORY

In 1983, Placer County (County) adopted the SVGPLUO to "guide development and growth within the Squaw Valley area." (AR:90:53030, 53021-53096.) The SVGPLUO "envisioned development of additional lodging to implement a four-season destination resort." (AR:16:9443.)

In 2011, SVRE submitted a draft Village at Squaw Valley Specific Plan. (AR:15:8826, 17:9793.)

In 2012, the County launched its review process. (AR:5:2505.) Based on community input, SVRE steadily reduced the Project from 3,187 bedrooms to the approved 1,493 bedrooms. (AR:15:8826, 78:46388,

2:1092, 1102, 1107, 13:7789, 17:9868-9869.) SVRE also incorporated extensive Design Review Committee recommendations. (AR:15:8860-8861.)

Appellant opposed the Project (AR:5:2646-2652), launching a publicity campaign that a former employee characterized as "distorted." (AR:75:44019.)

On August 11, 2016, the Planning Commission recommended approval. (AR:15:8813.) On November 15, 2016, the Board heard from opponents and supporters (AR:16:9459-17:9711), voting four to one to certify the EIR and approve the Project. (AR:17:9775-9781.)

On December 15, 2016, Appellant filed a petition to overturn the County's decision, alleging that the County violated the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). (JA:1:7-35.) Following a May 24, 2018, hearing, trial judge Honorable Michael W. Jones denied the petition. (JA:2:429-445.) Appellant appealed. (JA:2:476-477.)

Appellant filed another petition alleging that, in approving the Project, the County violated the Brown Act. Judge Jones denied that petition. Appellant appealed that one, too. (Related Case No. C087892.)

STANDARD OF REVIEW

To show an "abuse of discretion" in a CEQA case, the petitioner must demonstrate that the agency has not proceeded as required by law or its determinations are not supported by substantial evidence. (Pub. Resources Code, §§ 21168, 21168.5.) The court "adjust[s] its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Review of an EIR involves a "mixed question" of law and fact; "[t]he ultimate inquiry… is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (*Friant Ranch*), quoting *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 405 (*Laurel Heights I*).)

Appellant has the burden of proof. (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 919 (*Gilroy Citizens*).) To carry this burden, Appellant must present the evidence supporting the County's decision and explain why it is lacking. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1064 (*Treasure Island*).) Appellant must also

show prejudice. (Pub. Resources Code, § 21005, subd. (b) ["there is no presumption that error is prejudicial"]; *Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 463 (*Neighbors for Smart Rail*) [same].)

ARGUMENT

A. The EIR's discussion of impacts to the Lake Tahoe Basin satisfied CEQA.

Appellant claims that the EIR "essentially ignored" impacts on the Tahoe Basin and failed to describe the Project's regional setting." (Appellant's Opening Brief (AOB), pp. 24-46.) The trial court rejected this claim. (JA:2:458-460.) It was right to do so.

1. The EIR's description of the environmental setting complies with CEQA.

Appellant argues that the EIR's description of the environmental setting did not adequately describe environmental conditions in the Tahoe Basin, and asserts that the Court reviews this claim "de novo." (AOB, p. 22.) That is not the correct standard of review. The issue focuses on facts: the physical characteristics of the environment surrounding the Project. "[A]n agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010)

48 Cal.4th 310, 328; see *Neighbors for Smart Rail*, *supra*, 57 Cal.4th at pp. 447-449 [substantial evidence standard applies to description of setting].)

Appellant claims the County argued, and the trial court agreed, that the EIR could limit its description of the environmental setting to the Project site. (AOB, p. 28.) The County never took that position. As the trial court noted, an EIR must "include a description of the physical environmental conditions in the vicinity of the project … from both a local and regional perspective." (JA:2:458, quoting Guidelines, § 15125, subd. (a).)[2] The EIR did that. Cases cited by Appellant that criticize an agency for wearing geopolitical blinders (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 575 (*Goleta*); *City of Marina v. Bd. of Trustees of Cal. State Univ*. (2006) 39 Cal.4th 341, 359-360 (*City of Marina*); *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 961 (*City of San Diego*)) are therefore inapposite.

The geographic scope of analysis "falls within the lead agency's discretion, based on its expertise." (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 338 (*SOMCAN*).) The description of the setting "shall be no longer than is necessary to an understanding of the significant effects of the proposed

[2] The State CEQA "Guidelines" appear at Cal. Code Regs., title 14, section 15000 et seq. This brief refers to the Guidelines as they existed in November 2016, when the Board approved the Project.

project and its alternatives." (Guidelines, § 15125, subd. (a); see *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 219 (*Clover Valley*).) Here, the EIR provided enough information to understand Project impacts. Appellant fails to meet its burden to demonstrate otherwise.

The Draft EIR's (DEIR's) traffic and air quality analyses extended into the Tahoe Basin, precisely because some Project-related vehicles will venture there, just like other travelers in the region. (AR:4:1979-1980.) The transportation study evaluated corridors within the Tahoe Basin using standards established by the Tahoe Regional Planning Agency (TRPA). (AR:4:1979-1980, 2005-2009, 8:4381.) Similarly, the air quality analysis included Tahoe Basin data. (AR:4:2045, 8:4381, 4:2056-2063.)

The EIR evaluated Project impacts both outside and within the Tahoe Basin where relevant to the Project's potential impacts, as CEQA requires. (AR:7:4016, 4033, 4076.)[3] Thus, the EIR did not describe Tahoe Basin visual resources because the site is not visible from there. (AR:8:4394; see AR:8:4382, 4393 [EIR focused on resource areas where impacts may occur].)

[3] Due to a record-preparation error, a fragment of this response appears at AR:7:4033. The response continues at AR:7:4076. The full response is at AR:69:40421-40422.

Appellant argues that the EIR's air and water quality analyses omitted necessary information. (AOB, pp. 31-34.) This argument fails.

a. The EIR's discussion of the water quality setting complied with CEQA.

The DEIR's Hydrology and Water Quality chapter (AR:4:2126-2209) noted that Lake Tahoe is a significant geographical feature in the region, but stated correctly that the site's location – the "Squaw Creek watershed, a tributary to the middle reach of the Truckee River (*downstream of Lake Tahoe*)" – is outside of the Tahoe Basin (AR:4:2126, italics added.) The DEIR did not discuss at length TRPA's efforts to improve Lake Tahoe's water quality. But there was no reason to expect such a discussion. The Project did not propose development in the Tahoe Basin (AR:4:2129) and would not result in stormwater runoff or other pollutants draining into the lake. (AR:7:4076; see AR:4:2143 [DEIR description of storm drainage].) Notably, TRPA's comments to the County focused on transportation; TRPA never asked the County to evaluate impacts on Lake Tahoe's water quality. (AR:7:4128-4131.)

Appellant argues that the EIR ignores other ways the Project could affect the lake's water quality. The only example Appellant cites, however, is the Project's contribution to "vehicle miles traveled" (VMT) within the Basin. (AOB, p. 31.) As explained below, the EIR addressed this issue at length.

b. The EIR's discussion of the air quality setting complied with CEQA.

The DEIR's Air Quality chapter (AR:4:2043-2066) described the Mountain Counties Air Basin, including data from four nearby monitoring stations, three of them in the Tahoe Basin. (AR:4:2045-2046 [including data from Tahoe City and South Lake Tahoe].) Table 10-3 listed air quality standards and attainment status for various air pollutants. (AR:4:2048-2049.) Mobile-source emissions were estimated based on Project-generated vehicle trips and VMT. (AR:4:2054.)

Appellant faults the EIR for not providing "contextual information." (AOB, p. 33.) Appellant never identifies what information was missing. The EIR included the best available data, and this data accurately portrayed regional air quality. (AR:4:2045; see AR:85:49691 [TRPA report noting limited monitoring stations in Tahoe Basin].) At best, Appellant simply disagrees about how much data is enough. That is insufficient reason to overturn the EIR. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 639-643 (*NCRA v. MMWD*).)

2. The EIR was not required to address the Project's consistency with TRPA's policies; moreover, the record showed no inconsistencies.

Appellant argues that the EIR violated CEQA because it did not include enough information on TRPA's plans to restore Lake Tahoe. (AOB, pp. 24-27.)[4] Appellant is wrong.

An EIR must "discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, … regional land use plans for the protection of the … Lake Tahoe Basin." (Guidelines, § 15125, subd. (d).)

"Because EIRs are required only to evaluate 'any *inconsistencies'* with plans, no analysis should be required if the project is *consistent* with the relevant plans." (*NCRA v. MMWD*, *supra*, 216 Cal.App.4th at p. 632; see *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 918-919 (*City of Long Beach*) [same].) Moreover, an EIR must address "inconsistencies" only if those plans are "applicable." (Guidelines, § 15125, subd. (d).) A plan is "'applicable'" when "'it has been adopted and the project is subject to it[.]'" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 544.)

[4] The Guidelines refer to Lake Tahoe as having "regional or area wide significance." (Guidelines, § 15206, subd. (b)(4)(A).) Although Appellant hints otherwise (AOB, p. 27), this designation simply meant that the County had to follow certain procedures (Guidelines, §§ 15082, subd. (c)(1), 15205, subd. (b)(3)), which it did. (E.g., AR:2:692-693, 7:4129, 8:4381-4382.)

Here, TRPA's plans were not "applicable" because the Project proposed no development in the Tahoe Basin and did not need a permit from TRPA. (AR:7:4016-4017, 8:4343, 69:40421-40422.)[5] As the EIR explained:

> Even if the thresholds were applicable, most of the issue areas addressed by the TRPA [thresholds] would be unaffected by the proposed project. The project, for example, would not alter the amount of impervious surface or grading within the Basin and would not result in stormwater runoff that would drain into the Basin due to the distance and geography separating the project area from the Basin as defined. Therefore, most of the impact areas addressed by the TRPA thresholds, including water quality, soil conservation, vegetation preservation, wildlife, and fisheries would be unaffected by the proposed project.
>
> (AR:7:4076, 69:40422.)

The County's determination that the Project was consistent with *applicable* plans is entitled to deference. "'[I]t is, emphatically, *not* the role of the courts to micromanage' such decisions." (*NCRA v. MMWD*, *supra*, 216 Cal.App.4th at p. 632, quoting *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.)

Nonetheless, Appellant argues the County had to use TRPA's "environmental threshold carrying capacity" for VMT. (AOB, pp. 24-27, 32.) Appellant is wrong.

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[5] Appellant claims that the County and SVRE first raised this issue at trial, as a lawyerly response to Appellant's arguments. (AOB, pp. 31-32.) This claim is false. SVRE's trial brief raised this issue and cited the record. (JA:2:256-257.)

TRPA maintains multiple threshold standards for various environmental resources. (*Sierra Club v. Tahoe Regional Planning Agency* (E.D. Cal. 2013) 916 F.Supp.2d 1098, 1105 (*Sierra Club v. TRPA*).) TRPA's thresholds are aimed at restoring Lake Tahoe. (AR:30:17610-31:17627, 69:40421-40422; see AR:2:611-616, 85:49683-49740.) The Tahoe Regional Compact directs TRPA to "improve environmental quality, in some instances dramatically, by commanding setting and attaining environmental thresholds." (*League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (E.D. Cal. 2010) 739 F.Supp.2d 1260, 1295 [distinguishing between CEQA, which focuses on mitigating a particular project's impacts, and the Compact, which focuses on restoring Lake Tahoe by improving existing conditions], affd. in part, vacated in part and remanded, (9th Cir. 2012) 469 Fed.Appx. 621; see *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 562, 565 [CEQA focuses on project impacts, not on restoring past harm].) Appellant thus demands that the County import into its CEQA analysis a "threshold standard" adopted by another agency, under Federal law, to achieve a different purpose, in an area that does not encompass the Project site.

Appellant cites no authority supporting this striking claim. Guidelines section 15086 provides that a lead agency must consult with agencies that "exercise authority over resources which may be affected by

the project." The County consulted repeatedly with TRPA. (AR:2:692-693, 7:4129, 8:4381-4382, 39:22736-22824.) TRPA never stated that the County had to use TRPA's threshold standards. This "lack of comment … was in itself evidence." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380 (*Gentry*).)

Appellant's reliance on *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918 (*Banning Ranch*) (AOB, pp. 44-45) is misplaced. There, the project was within the coastal zone and required a permit from the Coastal Commission. Environmentally Sensitive Habitat Areas (ESHA)—resources provided express protection by the Coastal Act—were present on the site. The Court held that the EIR should have identified where ESHA might be located. (*Id*. at pp. 935-939.)

Here, by contrast, the Project site was not within the Tahoe Basin, TRPA had no permitting authority, and—although there is no dispute that Lake Tahoe is a significant environmental resource—the EIR considered whether the Project would have significant impacts there, concluding that, other than for traffic, the answer was "no" (AR:69:40421-40422.)

Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments (2017) 3 Cal.5th 497 (*Cleveland I*) undermines Appellant's claim. There, the Supreme Court held that the lead agency did not need to evaluate a project's consistency with a GHG emission reduction target established by an executive order (*id.* at p. 504), finding that the EIR did

not obscure the importance of the executive order's target, and explained why the agency did not use the target as a CEQA threshold. (*Id.* at pp. 515-516.)

Here, as in *Cleveland I*, the EIR acknowledged TRPA's threshold standards, and explained why the County did not use them as a CEQA threshold, stating: "the proposed project would not be located in the Basin and is not under the jurisdiction of TRPA, so effects on the TRPA thresholds are not used as standards of significance in this EIR (although, physical effects on the Basin are evaluated, where applicable)." (AR:7:4016.)

The sole TRPA threshold cited by Appellant pertained to VMT and, as the EIR explained, there was no way to translate a single project's VMT into impacts on Tahoe's air or water quality. Instead, TRPA monitors VMT basin-wide, focusing on peak traffic congestion on a summer day. (AR:2:613; see AR:4:2006-2007 [TRPA monitors VMT "for the entire basin"], 7:4016-4017.) The EIR described accurately the role VMT plays in TRPA's regulatory scheme, noting that even TRPA had not consistently applied a VMT threshold to individual projects. As the Supreme Court observed, an EIR is adequate if its responses to comments explain why, "given existing scientific constraints," further analysis is not possible. (*Friant Ranch*, *supra*, 6 Cal.5th at p. 521.) With respect to VMT and Lake Tahoe, that was the case here.

Appellant states that TRPA's plans "provide vital information about the Basin's environmental condition." (AOB, p. 32.) The record shows, however, that the Project was not inconsistent with those plans. TRPA adopted its "Regional Plan Update" (RPU) in 2012, finding that the RPU would attain and maintain its threshold standards as required by the Compact. (AR:80:47466; *Sierra Club v. Tahoe Regional Planning Agency* (9th Cir. 2016) 840 F.3d 1106 [upholding 2012 RPU].) The EIR explained that, even with the addition of Project-related VMT, basin-wide VMT would remain below TRPA's threshold. (AR:7:4016, 4129, 4132.)

Appellant points to research indicating that vehicles trips degrade air and water quality in the Tahoe Basin, and "indisputabl[e]" evidence that the Basin was dangerously close to reaching TRPA's cumulative threshold for VMT. (AOB, p. 26.) The County provided detailed responses to comments raising this concern. (AR:8:4343, 4380-4386, 4393-4394, 4738.) Where comments asked for information on VMT, the County provided that information. (AR:7:4016-4017, 8:4382-4383, 69:40421-40422; see AR:2:611-618, 834-835 [responses to late comments].)

The record shows that the relationship between VMT and physical impacts on the lake is tenuous. TRPA acknowledged that its "original supposition that there is a relationship between VMT and air and water pollutant loads needs to be further evaluated." (AR:85:49732; see AR:2:614-615 [due to improved vehicle emissions controls, VMT threshold

may require reevaluation].) In fact, the record showed that: (1) VMT was below TRPA's threshold since at least 2007, (2) the trend was downward, and (3) TRPA itself had questioned the efficacy of the VMT threshold to evaluate potential air and water quality impacts on the lake. (AR:2:613-616, 7:4016, 4132, 36:21011, 85:49731-49732.)[6] Appellant ignores this information, fails to "lay out the evidence favorable to the [County] and show why it is lacking" (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 (*Defend the Bay*)), and thus fails to meet its burden to show "based on all of the evidence in the record, the [County's] determination was unreasonable." (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 (*Pfeiffer*).) "'A reviewing court will not independently review the record to make up for [an] appellant's failure to carry his burden.'" (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330 (*South County*), quoting *Defend the Bay*, *supra*, 119 Cal.App.4th at p. 1266; see *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749-750 [failure to cite relevant evidence forfeits argument].)

[6] Appellant suggests the EIR was required to evaluate the Project's consistency with all of TRPA's threshold standards. Appellant's argument, however, focuses solely on VMT. (AOB, pp. 24-46.) Arguments pertaining to TRPA's other threshold standards are therefore waived. (*Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 206-207 (*Mission Bay Alliance*).)

The cases cited by Appellant are inapposite. In *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74 (*Cadiz*), the EIR concluded that the risk that a proposed landfill would contaminate the aquifer was insignificant, but did not provide enough information to determine whether this risk was worth taking. "[T]he public ha[d] a right to know whether a large source of water, which may be used for drinking water and other domestic uses, is being subjected to potential contamination." (*Id*. at p. 94, footnote omitted.) The EIR thus failed to disclose "critical information necessary to evaluate the significance of the [project's] impact on a valuable resource…." (*Id*. at p. 95.)

In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 1111-1113 (*Protect the Historic Waterways*), the EIR contained a "bare conclusion" that reduced stream flows were insignificant; elsewhere, the court upheld the EIR's brief statement explaining why reduced flows would not harm riparian habitat. In S*antiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831, no data or analysis supported the conclusion that a gravel mine would not affect water supplies.

Here, by contrast, the EIR described existing traffic levels, quantified the volume of traffic that the project would generate (including the proportion that would venture into the Tahoe Basin), and evaluated the resulting impacts. The study area included corridors within the Tahoe Basin

(AR:8:4380-4381), and the EIR used TRPA's standards to determine whether Project traffic there would be "significant." (AR:4:2006-2007.) The EIR also estimated VMT. (AR:4:2050, 2054, 2057-2059, 2289, 6:3361-3362, 3417-3419, 3432-3434.) VMT was not relevant to evaluating traffic impacts because the analysis focused on level of service (LOS) and potential for delay, not trip length. (AR:4:2004-2009, 8:4393, 69:40421-40422, 2:611 [explaining VMT versus LOS].)

Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215 is similarly distinguishable. The Board of Forestry believed that it lacked the authority to require the applicant for two timber harvesting plans to submit information concerning the plans' effects on sensitive species. Based on this mistaken view of the legal limits on the Board's authority, "[the] record contained no site-specific data regarding the presence of four old-growth-dependent species…." (*Id.* at p. 1236.)

The County never took the position that it lacked the authority to gather information on Tahoe Basin VMT. Indeed, the County gathered precisely that information, based on data, plans and analyses obtained from TRPA. (AR:2:611-616, 7:4016-4017, 4132, 36:21011, 85:49731-49732.) Even if Appellant had cited contrary data (which it fails to do), the County had discretion to rely on this information. (*NCRA v. MMWD*, *supra*, 216 Cal.App.4th at pp. 625-628; *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 (*AIR*).)

The other cases cited by Appellant (AOB, pp. 27-31) all involved resources directly threatened by proposed projects, where the EIR provided no description of those resources. For example, *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859 involved a proposal to increase the agency's diversion of river water. The EIR failed to disclose the extent to which historic diversions had harmed protected fish species, or a Federal agency's contemporaneous proposal to reduce diversions as a result of that harm. (*Id*. at pp. 873-875; see *Banning Ranch*, *supra*, 2 Cal.5th at pp. 935-936 [EIR omitted information regarding ESHA on project site]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1219 [EIRs for two proposed shopping malls, located 3.6 miles apart, did not address the malls' combined effects]; *Cadiz*, *supra*, 83 Cal.App.4th at pp. 91-93 [EIR omitted information on aquifer beneath proposed landfill]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122-1123 [EIR mischaracterized agricultural operations in vicinity of proposed dam]; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 [on-site wetlands and adjacent wildlife preserve ignored].)

In this case, the EIR disclosed the Project's proximity to Lake Tahoe, analyzed the impacts of Project traffic travelling into the Basin, discussed the ways in which TRPA regulated traffic and VMT, and

addressed whether the Project would interfere with those efforts. (E.g., AR:7:4016-4017, 4132; see AR:2:611-618, 36:21011, 85:49731-49732.) The EIR's description of the setting was adequate. (Guidelines, § 15125, subd. (d); *NCRA v. MMWD*, *supra*, 216 Cal.App.4th at pp. 644-645.)

Appellant asserts that "prejudice is presumed" when an EIR contains insufficient information on the setting. (AOB, p. 29.) Not so. Appellant must show the lack of information was prejudicial. (Pub. Resources Code, § 21005, subd. (b); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 709 ["'Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown' [Citation.]"]; *Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 463 ["Insubstantial or merely technical omissions are not grounds for relief."].) Appellant does not attempt to meet its burden.

3. The EIR's analysis of Lake Tahoe impacts is amply supported.

Appellant argues that the standards used to assess the Project's impacts on Tahoe is reviewed "de novo." (AOB, p. 22.) Appellant misstates the standard of review. "A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant …." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111, disapproved on other grounds by *Berkeley Hillside Preservation*

v. City of Berkeley (2015) 60 Cal.4th 1086.) An agency has discretion to determine the standards used to make this determination. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068 (*Save Cuyama Valley*); *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 204-205 (*Mount Shasta*); *Clover Valley*, *supra*, 197 Cal.App.4th at pp. 243-245 [agency has discretion to make "policy decision" regarding threshold]; *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336 (*CREED*) [same]; Guidelines, § 15064, subd. (b).)

Appellant claims the DEIR did "not discuss" the Project's individual or cumulative impacts on Lake Tahoe's air or water quality. (AOB, p. 36.) This portrayal of the EIR is inaccurate. The air quality analysis evaluated whether the Project would cause or contribute to violations of air quality standards inside or outside the Tahoe Basin. (AR:4:2056-2063 [less than significant with mitigation].) Project runoff would not affect lake water quality directly or cumulatively. (AR:4:2126-2209, 7:4076 [less than significant with mitigation].)

Appellant asserts that TRPA informed the County that the DEIR's approach was inadequate. (AOB, p. 36.) This assertion is false. To quote TRPA's letter:

> Our respective staffs have engaged in productive discussion on how to address these Lake Tahoe Region impacts (referred to herein as "in-basin" impacts). We greatly appreciate the cooperation and collaboration with Placer County and the time and attention expended to explain proposed mitigation and other mechanisms that could be applied to address the in-basin impacts.

(AR:7:4129.) TRPA endorsed impact fees and assessments to support regional transit, pledged to help expand transit, and asked the County to clarify how transit resources would be allocated. TRPA did not question the DEIR's air or water quality analyses. (AR:7:4128-4133.) As the agency responsible for ensuring Tahoe's threshold standards are met, TRPA's silence is telling. (*Gentry*, *supra*, 36 Cal.App.4th at p. 1380.)

The EIR explained that even though the County did not use TRPA's VMT standard as a separate threshold, the Project would not cause an exceedance of that standard, using the same information and approach that TRPA applied to projects *within* the Basin. (7:4016-4017, 69:40421-40422.) The EIR estimated that, on a peak day, the Project would cause an increase of 23,842 VMT. (AR:7:4016-4017, 7:4132, 8:4382-4383, 11:6532-6549.)

Appellant argues the County had to find this increase significant. (AOB, p. 37.) As the EIR explained, however, TRPA applies its "VMT threshold" basin-wide, as a limit on total traffic in the Basin. The EIR presented data on existing VMT, added Project VMT, and compared the sum to TRPA's threshold. To wit:

Existing (baseline) + Project (pre-mitigation) = Existing + Project

1,937,070 VMT + 23,843 VMT = 1,960,913 VMT

The sum was below TRPAs basin-wide limit of 2,030,938 VMT. (AR:2:611-616, 7:4016, 85:49690, 85:49731-49732.) This remained true even if other proposed projects were added to this total. (AR:2:615-616.) Indeed, all record evidence points to the same conclusion: The Project will neither cause nor contribute to exceeding TRPA's basin-wide VMT threshold.

The EIR noted that TRPA had not consistently applied the VMT threshold to individual projects. Instead, TRPA required payment of TRPA's Traffic and Air Quality Mitigation Program fee to support actions that reduce VMT. The EIR further noted that Mitigation Measure (MM) 9-7 would generate permanent, ongoing funding to expand transit services, including service between Squaw Valley and Tahoe, and thus served the same function as TRPA's fee. (AR:7:4017.)

Appellant advances four arguments attacking this analysis. None has merit.

First, Appellant argues that the DEIR never mentioned TRPA's threshold standards. (AOB, p. 37.) Not so. The DEIR discussed these standards. (AR:4:2006-2007.) The FEIR elaborated. TRPA originally established the VMT threshold to address air quality, but the threshold also served as a surrogate for other environmental conditions, including traffic

congestion and Lake Tahoe water quality due to exhaust deposition. (AR:7:4016-4017.) As the County's expert explained, "a link between a specific number of VMT and attainment of Lake clarity goals is difficult to determine." (AR:2:613.) The consultant provided information regarding cumulative, basin-wide VMT and confirmed the EIR's conclusions. (AR:2:611-616; see AR:7:4016-4017.) Controlling stormwater run-off presented "the greatest opportunity to achieve needed load reductions." (AR:2:612.) Because the Project was outside the basin, however, it did not contribute to the stormwater runoff problem. Instead, the EIR focused, appropriately, on reducing traffic. (AR:2:615.)

Second, Appellant claims that the County was legally compelled to use TRPA's project-specific thresholds for in-basin projects—200 daily trips or 1,150 VMT—rather than the applicable traffic LOS threshold. (AR:4:2004-2009.) This claim is incorrect. Differentiating between significant and insignificant impacts necessarily involves agency discretion. (Guidelines, § 15064, subd. (b); *Save Cuyama Valley*, *supra*, 213 Cal.App.4th at p. 1068; *CREED*, *supra*, 197 Cal.App.4th at p. 336 ["lead agencies are allowed to decide what threshold of significance [they] will apply to a project."]; *Sierra Club v. City of Orange*, *supra*, 163 Cal.App.4th at pp. 541-544 [upholding traffic thresholds]; see *Friant Ranch*, *supra*, 6 Cal.5th at p. 514 ["a decision to use a particular methodology and reject another is amenable to substantial evidence review"].)

The Project EIR summarized the approaches used to assess VMT for projects located within and outside the Basin. (AR:7:4016-4017, 2:615-616.) Two in-Basin projects that used the 200-trip threshold (including the Homewood project cited by Appellant) were mitigated through payment of TRPA's Traffic and Air Quality Mitigation fee, which TRPA uses to support transit. (AR:7:4017; see *Sierra Club v. v. TRPA*, *supra*, 916 F.Supp.2d at pp. 1137-1142 [describing and upholding fee program as CEQA mitigation].) Although the Project is not subject to TRPA's fee, the EIR identified, and the County approved, mitigation requiring SVRE to fund the same things. (AR:7:4017.)

Third, Appellant argues that the County did not estimate cumulative VMT. (AOB, p. 38.) This argument is false. "Cumulative development, including the [Village] project, the Tahoe Basin Area Plan and Tahoe City Lodge project, Martis Valley West, Truckee (general plan buildout), and other cumulative development in the Squaw Valley/Alpine Meadows area (same projects as considered in the [Village] EIR), was dynamically modeled using the 'TRPA TransCAD' model." (AR:2:616.)[7] Appellant criticizes the analysis as "unreliable." (AOB, p. 41.) As the County explained, however, even if every possible contributor to VMT were added

[7] Appellant argues the County erred by analyzing VMT only in the cumulative context. (AOB, pp. 37-38.) But TRPA itself applies its VMT "cap" only basin wide. (AR:7:4016-4017.)

together, the total remained below TRPA's threshold of 2,030,938 VMT. (AR:2:615-616, 4:2348-2353.)

Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421 (*Ojai*), cited by Appellant, is inapposite. There, the Court found that the EIR should have "set forth … the basis for any conclusion that analysis of cumulative impact of offshore emissions was wholly infeasible and speculative." (*Id.* at p. 430.) Here, the EIR explained why cumulative air quality impacts were insignificant. (AR:4:2375-2378; see AR:2:616.) An "EIR need not contain a full-blown cumulative impacts discussion if the impacts are found to be insignificant." (*Ojai*, *supra*, 176 Cal.App.3d at p. 429.)

Fourth, Appellant dismisses MM 9-7. (AOB, p. 39.) This measure required SVRE to fund transit and thereby reduce VMT (AR:2:636, 7:4017-4019), even if its effectiveness "cannot be easily quantified." (AR:2:615; see AR:7:4017.) Even TRPA, in imposing its fee on in-Basin projects, does not quantify the VMT reductions that will result. (AR:2:613-616.) Appellant's argument therefore amounts to a demand that the County quantify something that cannot be quantified, and that not even TRPA quantifies. In any event, fee-based programs like this are adequate mitigation under CEQA. (*City of Marina*, *supra*, 39 Cal.4th at p. 364; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 136-141 (*Save Our Peninsula*) [traffic fee upheld].)

Appellant cites *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 653-654 and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264, to argue that an agency cannot cite mitigation measures as an excuse for foregoing analysis. (AOB, p. 39.) But the County did not simply cite MM 9-7 and stop. Rather, the County analyzed traffic and transit impacts and noted, correctly, that MM 9-7 would fund transit and thereby reduce traffic. (AR:2:636, 7:4017-4019; see AR:89:52273-52274 [TRPA endorsement].)

The primary case relied upon by Appellant—*Banning Ranch*—provides a counterpoint. There, the project was in the coastal zone and required a coastal development permit. The site contained ESHA, where development was generally prohibited. Coastal Commission staff asked the city to identify potential ESHA. The city declined. The city violated CEQA by failing to integrate its CEQA process with the Coastal Act. (2 Cal.5th at pp. 936-938.)

Here, the Project required no permit from TRPA, and there was no parallel permitting process to "integrate." (AR:69:40421-40422, 8:4343, 4381-4382.) The County consulted with TRPA (AR:2:692-693, 698, 7:4129, 8:4381-4382, 39:22736-22824), and disclosed the Project's potential effect on TRPA's basin-wide VMT threshold. (AR:2:611-616, 7:4016, 85:49690, 85:49731-49732.) The *Banning Ranch* Court noted that courts "must be careful not to second-guess good faith efforts to coordinate

environmental review." (*Id.* at p. 942, fn. 10.) Here, the EIR estimated in-basin VMT and responded in detail to comments. (E.g., AR:7:4016-4017, 4132, 4033, 4076, 8:4382-4383; see AR:2:807-811, 2:831-832.) The record reflects precisely the sort of good-faith effort called for by *Banning Ranch*.

Appellant dismisses SVRE's voluntary commitment to pay $440,862 to TRPA. (AOB, p. 41 fn. 6.) This commitment arose out of a late letter submitted the California Attorney General (AG). (AR:2:619-627.) The AG's letter and subsequent consultations culminated in SVRE's request to include this commitment—calculated based on TRPA's fee program applied to the proportion of Project traffic arising in the Tahoe basin—in the development agreement, even though the Project was not subject to TRPA's fee program. (AR:2:634-636, 7:4017, 16:9427-9429, 16:9452-9457 [AG acknowledgment of payment], 36:21006-21013, 41:23671, 42:24759-43:24810; see AR:16:9450-9452 [TRPA payment is in *addition* to $3 million contribution to transit].)

Appellant disparages this commitment even though it provides the same mitigation applicable to projects *within* the Basin. Consider the perversity of Appellant's argument. The AG submitted a belated, critical comment. Rather than ignoring it, SVRE met with the AG, reaching agreement regarding how to address its concern. As a result, SVRE will provide significant funding for the programs that Appellant purports to champion. Appellant argues that none of that matters. If the Court accepts

Appellant's argument, then there will be little incentive to reach out to stakeholders as occurred here.

4. The County's responses to late comments confirmed the EIR's conclusions.

Appellant argues that responses prepared by the County's consultants after the FEIR was published are irrelevant. (AOB, pp. 39-42.) The argument fails both legally and factually.

These responses addressed comments submitted *after* the County released the FEIR. (AR:2:620-624, 634-636, 681-686, 692-694, 748-750, 834-835.) The County was not required to respond to late comments (*Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 972 (*RASP 380*).) That the County responded is hardly cause for criticism. Nor was there anything wrong with citing these responses to confirm the EIR's analysis. (*Goleta*, *supra*, 52 Cal.3d at pp. 568-570.)

Under Appellant's theory, an agency's only response when faced with such belated criticism—even to letters submitted on the eve of the agency's final hearing (AR:38:21995-21996, 22058-22060)—would be to re-open the EIR process. The cases cited by Appellant do not support that theory. In *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 400-406, the EIR was inadequate because it omitted *any* analysis of project alternatives, even though the Guidelines expressly required the EIR to contain such an

analysis; the agency could not cite internal memoranda to plug this gap. Similarly, in *Save Our Peninsula*, *supra*, 87 Cal.App.4th at pp. 130-131, the EIR never described impacts from a proposed water transfer, even though the transfer was intrinsic to the project; the agency's internal "erratum" could not supply this missing information.

Here, by contrast, information on Tahoe and VMT was in the EIR; the further responses elaborated on and confirmed that information; and there was nothing obscure or inaccessible about either the EIR or the consultant's further responses. Under such circumstances, the real issue is whether the further responses required recirculating the DEIR. (*Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Trans. Auth.* (2015) 241 Cal.App.4th 627, 664-666; *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 904-906 (*WPCARE*).) Because the responses did not change the EIR's conclusions, recirculation was not required. (AR:1:235-237.)

Appellant's theory is also bad policy. It would allow project opponents to submit late comments, and then demand that the agency reopen the CEQA process. The courts reject this view. (*Laurel Heights Improvement Assn. v. Regents of the University of Cal.* (1993) 6 Cal.4th 1112, 1132 (*Laurel Heights II*) [recirculation requirement "not intend[ed] to promote endless rounds of revision and recirculation of EIRs"]; *South*

County, *supra*, 221 Cal.App.4th at p. 328 [recirculation is "'an exception, rather than the general rule,'" citation omitted]; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 528 [criticizing opponent for last-second submittals].)

B. The EIR provided ample information regarding wildland fire risks and evacuations.

The Board found that the Village, as mitigated, would not interfere with adopted emergency evacuation plans, and that people or structures would not be exposed to a significant risk from wildland fires. (AR:1:354-356, 3:1597-1599.) Appellant attacks these findings (AOB, pp. 46-55), but misstates the applicable standard of review. "Disagreements regarding the adequacy of an EIR's impact analysis will be resolved in favor of the lead agency if any substantial evidence supports the lead agency's determination." (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 243; see *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-935 (*Tracy First*) ["substantial evidence" test applies to challenge to agency's conclusion that energy impact will not be significant]; *Friant Ranch*, *supra*, 6 Cal.5th at p. 516 ["to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation.]"].)

CEQA includes an "environmental checklist form" that directs the lead agency to consider whether the project will "[i]mpair implementation of or physically interfere with an adopted … emergency evacuation plan," or "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires…." (Guidelines, Appendix G, ¶¶ VII(g), (h); see *id*., § 15126.2, subd. (a) [EIR must address "health and safety problems caused by the [project's] physical changes"].)

The Village EIR addressed these issues. (AR:5:2580-2583, 2741, 4:2268.) The County had discretion to rely on Appendix G to guide its analysis. (*City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 841 (*City of Hayward*).)

As the EIR noted, the State has designated much of the region and Project site a "very high fire hazard severity zone." (AR:4:2257-2269.) Appellant emphasizes this designation. The actual risk, however, is not what this designation suggests. (See *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193-195 (*Clews*) [school site's designation as "very high fire hazard severity zone," standing alone, was not substantial evidence that fire or evacuation impacts were significant].)

As Squaw Valley Fire Department (SVFD) Fire Chief Pete Bansen stated, "Squaw Valley is pretty favorable in terms of fuels and topography and the unlikely host event for a large wildland fire." (AR:17:9832.) The facts bear out this statement. The site is mostly a paved parking lot.

Surrounding terrain consists mainly of ski runs and bare rocks. (AR:3:1743, 17:9832-9833 [Chief Bansen describes setting], 21:12176-12179 [surrounding terrain is open rock, cleared ski runs and healthy forests and meadows], 18:10308-10309 [few fires have occurred, and fires have been small and quickly extinguished], 21:12187 [project site already mostly paved or developed].)

One large, regional fire—2014's King Fire—came within six miles of the valley, but that event showed that SVFD's system works: an event was canceled, and SVFD's communication system was successfully deployed. (AR:7:4013-4014, 21:12179, 21:12184-12185, 18:10308-10309.)

Squaw Valley Road, which connects to State Route (SR) 89, provides access. (AR:4:2220, 4:2274.) Appellant claims that Squaw Valley Road and SR 89 are "gridlock[ed] at peak periods." (AOB, p. 47.) The EIR acknowledged that the Project will add to existing, peak congestion along these roads. (AR:4:2030-2039.) Appellant neglects to point out, however, that most congestion occurs in winter, when skiers are visiting the site, inclement weather disrupts traffic, and—to state the obvious—wildland fire risk is zero. (AR:4:2030-2034.) Summer and fall traffic is much lighter. (AR:4:2041.) Both roads flow freely 99% of the time. (AR:18:10278-10280.)

The DEIR described and attached SVFD's adopted "Wildland Fire Evacuation Plan" (AR:4:2268, 4:2274, 7:3860-3863), which identifies

evacuation routes, establishes communications and evacuation protocols, and provides guidance to reduce risk. The plan calls for using the Village's existing parking lots as a gathering place if evacuation routes are blocked. (AR:7:3863.)

The Project will not impede this plan: the same evacuation routes would be used, and Village parking structures would continue to serve as refuge for visitors and residents. (AR:3:1766-1767, 4:2274, 2:1152-1153.)

The EIR noted that temporary road closures during construction could hinder evacuation (AR:4:2274) and recommended a Construction Traffic Management Plan (CTMP). (AR:4:2274; see AR:4:2042 [CTMP must "preserv[e] [] emergency vehicle access"].) The Board adopted this measure. (AR:1:315-317, 354-355, 460-461, 2:1042-1043.)

The EIR also acknowledged that the Project would bring additional people to the area. The EIR proposed, and the County adopted, MM 15-6a, which requires compliance with CalFire standards regarding defensible space, emergency access, and fire flows. (AR:4:2275-2276; see Cal. Code Regs., title 14, §§ 1270-1276.03; AR:4:2267-2268 [SVFD performs annual inspections to ensure compliance], 2:1062-1063 [MMRP].)

SVFD commissioned a study to determine whether SVFD had enough capacity to serve the Village. Citygate—the consultant—analyzed this capacity considering the "unique characteristics, topography, weather, and population present and proposed in the Olympic Valley."

(AR:28:16187; see AR:110:65018-65022 [consultations with SVFD].) Citygate reviewed plans and standards, interviewed staff, and toured the site. (AR:28:16187.) As Citygate noted, Village access is generally good, except during inclement winter weather when wildland fire risk is nonexistent. (AR:28:16194.) Citygate recommended that SVRE augment fees and property tax revenue to add staff and construct a new substation at the valley's western end. (AR:28:16196-16199.) The EIR incorporated these recommendations (AR:3:1766-1767, 4:2219-2220, 2252-2253, 2274-2276, 5:2427), and the Board adopted them. (AR:2:1061-1062 [MMRP].) Appellant ignores both the analysis and mitigation.

Appellant's 130-page comment letter demanded, among many other things, further analysis of wildland fires and evacuations. (AR:8:4649-4650, 4694-4695.) The County responded. (AR:7:4011-4014, 8:4795-4798.) The response noted that the CTMP would ensure that emergency access would be maintained during construction. (AR:7:4011.) Appellant scoffs. Plans like the CTMP, however, are appropriate mitigation (*City of Hayward*, *supra*, 242 Cal.App.4th at pp. 851-855 [traffic demand management plan]; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029-1030, 1034-1037 [traffic and parking mitigation]; *Neighbors for Smart Rail*, *supra*, 57 Cal.4th at pp. 465-466 [parking plan]), and the CTMP's requirement is unambiguous: "preserv[e] [] emergency vehicle access." (AR:2:1042-1043; see *Clover Valley*, *supra*, 197

Cal.App.4th at pp. 236-237 ["no take" of protected species]; see AR:2:661 [County will monitor and enforce CTMP].)[8]

As requested, a traffic consultant estimated the time to evacuate Squaw Valley using highly conservative assumptions. (AR:18:10297-10307 [100% occupancy throughout valley; full Project buildout; no "shelter in place"; evacuation coinciding with peak summer traffic; all traffic turning left on SR 89 and merging with other northbound traffic (i.e., if Tahoe Basin traffic is diverted from SR 89, there would be more capacity, and the evacuation of Squaw Valley would take less time)].) Under existing conditions, 2.9 hours would be needed to evacuate the Valley. With the Project, 5.0 hours would be needed (6.6 hours under cumulative conditions). Under worst-worst-worst conditions (Project + cumulative conditions + special event), the time would be 10.7 hours. (AR:18:10301-10307, 7:4013-4014; see AR:18:10310 [hotel guests voluntarily evacuate earlier than year-round residents, who are reluctant to leave homes].) Emergency personnel would be able to account for

[8] Appellant raises passing concerns about a propane farm. (AOB, p. 47.) The valley is already served by propane. (AR:3:1766.) The Village would add a second underground "tank farm" at a maintenance facility. (AR:3:1766; see AR:3:1753.) The facility would be regularly inspected, just like existing facilities. (AR:21:12196, 8:4797, 36:21174.) Compliance with regulatory requirements sufficed. (*Tracy First*, *supra*, 177 Cal.App.4th at pp. 932-934 [building energy standards].)

evacuation times in deciding whether and when to issue an evacuation order. (AR:7:4013-4014.)

Appellant argues the memorandum is irrelevant because it was not in the FEIR. (AOB, p. 51.) The argument is unpersuasive. The FEIR cited the memorandum (AR:11:6123) and summarized its assumptions and findings. (AR:7:4013-4014; Guidelines, § 15148 [EIR references to other studies permitted].)

Appellant does not even mention the west-end substation, even though it will provide emergency responders with direct access to both ends of the valley, thus addressing Squaw Valley Road congestion. (AR:7:4011-4012, 18:10310.) As County staff summarized, SVRE must "support a 24-hour a day full-service fire station that would be completely funded, dedicated, constructed, staffed and equipped, dedicated to [SVFD] at no cost to the district." (AR:17:9794; see AR:1:28-29, 133, 351-352, 458-459, 2:661-662, 17:9676, 9887-9888.)

Appellant scoffs at shelter-in-place as "cryptic" and ineffective, but cites no expert evidence supporting this view. (AOB, p. 53.) In fact, shelter-in-place at the Village has long been part of SVFD's emergency planning (AR:7:3862-3863); the Project fits into that plan. As SVFD Fire Chief Bansen (an expert, as opposed to Appellant's lawyer) stated, "sheltering in place is a very, very favorable way of approaching the situation in Squaw Valley in our opinion." (AR:17:9834; see AR:36:21145 [peer review fire

consultant describes "shelter in place" as a "common tactic"; consultant's recommendations incorporated into Project].)

The FEIR stated that SVRE would prepare an Emergency Preparedness and Evacuation Plan (EPEP), listed the EPEP's required contents, and noted that the EPEP would integrate with existing County and SVFD plans. (AR:7:3969-3970, 7:4012-4013; see AR:27:15339-15362 [County-adopted "East Side" evacuation plan].)

Appellant suggests this expanded analysis does not count because it appeared in the FEIR, not in the DEIR. This suggestion is false. Responses to comments and revised analysis are part of the EIR. (*Cleveland I*, *supra*, 3 Cal.5th at pp. 516-517; *Defend the Bay*, *supra*, 119 Cal.App.4th at p. 1273.) So are appendices. (*City of Maywood v. Los Angeles Unif. School Dist.* (2012) 208 Cal.App.4th 362, 423-424 (*City of Maywood*).)

Appellant places much emphasis on a May 16, 2016, letter from SVFD Chief Bansen. (AOB, pp. 51-52.) Chief Bansen stated that the FEIR glossed over the unpredictability of wildfires and the difficulty of evacuations, and that maintaining emergency access along Squaw Valley Road has been challenging. (AR:2:657-660.)

Appellant ignores the response to Chief Bansen's concerns, which noted that SVRE had prepared the EPEP and engaged in further consultations with SVFD regarding the west-end substation, increased staffing and equipment. (AR:2:661-662.)

With a gift for understatement, Appellant concedes that the EPEP is "helpful." (AOB, p. 54.) It is. The EPEP provided a comprehensive inventory of existing conditions, fire-related threats, applicable plans and regulations, mitigation measures, defensible space and building standards, communication and training requirements, and evacuation plans, including shelter-in-place. (AR:21:12168-12303; see AR:17:9823-9826 [County Planner Alex Fisch describing EPEP at Planning Commission hearing].)

Appellant claims the EPEP is irrelevant because it was not in the EIR. (AOB, p. 54.) The claim fails. The EPEP elaborated on information in the EIR. (AR:4:2219-2220, 4:2252-2254, 4:2257-2259, 4:2267-2268, 4:2274-2276, 7:3969-3970, 7:4011-4014, 8:4795-4797, 18:10297-10311.) In determining whether evidence supports the County's conclusions, the Court is not restricted to the EIR; rather, the issue is whether information in the record *as a whole* supports the County's conclusions. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 222 [city could rely on "additional responses" prepared after EIR publication]; *Goleta*, *supra*, 52 Cal.3d at pp. 568-570 [agency could rely on all record evidence, not merely EIR, in evaluating alternatives]; *Protect the Historic Waterways*, *supra*, 116 Cal.App.4th at p. 1013 [challenge to finding regarding significance of impact turns on whether conclusion was supported by substantial evidence "*in the record*," italics added].)

City of Maywood, *supra*, cited by Appellant (AOB, p. 49), is distinguishable. There, the record "[did] not contain any evidence that the [school district] considered or otherwise addressed" the city's concerns about pedestrian safety at a proposed school. (208 Cal.App.4th at p. 395.) Here, by contrast, the EIR addressed fire risk and evacuation; the EPEP and supplemental responses elaborated; and the information was publicly available and discussed. (AR:17:9824-9826 [description of EPEP at Planning Commission hearing], 16:9344-9361 [power-point presentation to Commission]; see *City of Maywood*, *supra*, 208 Cal.App.4th at pp. 423-424 [expert's finding that students would not traverse rail line supported conclusion that no significant safety impact would occur].)

A far better analogue is *Clews*, *supra*, 19 Cal.App.5th 161, which Appellant unsuccessfully struggles to distinguish. (AOB, pp. 54-55.) In that case, the city adopted a negative declaration and approved a school at a high-risk location. The school's location did not, by itself, constitute a "fair argument" that the school would have significant impacts on fire risk or evacuations. Instead, the issue was whether, "[v]iewing the record as a whole," there was a "fair argument" that the project would "materially affect evacuation routes in the area." (*Id*. at p. 194.) The answer was no, citing the school's modest size, its adherence to fire codes, and the availability of evacuation routes. (*Ibid*.)

Clews involved the "fair argument" standard of review, under which the Court shows no deference to the lead agency's conclusions. "Where, as here, the agency prepares an EIR, the issue is whether substantial evidence supports the agency's conclusions, not whether others might disagree with those conclusions." (*NCRA v. MMWD*, 216 Cal.App.4th at pp. 626-627 [distinguishing negative declarations from EIRs].)

The facts here differ, but they too amply support the Board's conclusions. Almost the entire site is paved and developed; surrounding terrain is "favorable" (AR:17:9835); the Project augments SVFD's existing staffing and facilities; and the County approved an EPEP that builds on existing plans, designates evacuation routes and procedures, and allows visitors and area residents to continue to use the Village as a place of refuge. All fire professionals endorsed SVRE's commitments. (AR:17:9833-9835, 10073-10075.) None objected.

Appellant believes any increased risk is necessarily significant. (AOB, pp. 49-50.) Appellant cites no support for this view, other than its own lay opinion. But "[a] less than significant impact does not mean no impact at all." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 899; see *National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1359 (*National Parks*) [CEQA "allow[s] for a finding of an insignificant degree of impact, not necessarily a zero impact. [Citation.]"]; *City of Long Beach*, *supra*, 176 Cal.App.4th at

pp. 912-916 [consultants' reports supported conclusion that project would not cause significant hazards].)

Appellant's argument, if accepted, would usurp the Board's discretion. The County acknowledged that wildland fires and mass evacuations are not "zero risk" events. (AR:16:9356.) As Chief Bansen stated at the Planning Commission hearing, however, "my feeling is that a mass evacuation of Squaw Valley is a very, very, very unlikely event." (AR:17:9833.) He concluded:

> I think the evacuation and emergency preparedness plan that has been developed for the project is very good [and] appropriate. We're in a very favorable situation in Squaw Valley. … Thanks to nature and the configuration of the mountains and the prevailing wind and the [EPEP]…works well with the plan that we have already developed, the Squaw Valley fire plan that the Placer Office of Emergency Services has developed for the east side of the county. I think it is safe to say we're confident of our ability to effectually communicate the nature of the threat. And we think we will be even more capable of doing that in the future and to direct the respon[se] in an appropriate and timely manner.
>
> (AR:17:9835; see AR:17:10073-10075 [peer review by Meeks Bay Fire Protection District Fire Chief John Pang, endorsing EPEP]; 36:21140-21151 [consultant peer review endorsing EPEP].)

Appellant cites none of this.

"CEQA allows, if not encourages, public agencies to revise projects in light of new information revealed during the CEQA process." (*Treasure Island*, *supra*, 227 Cal.App.4th at p. 1062.) The same is true here. SVRE collaborated with Chief Bansen and other experts and prepared the EPEP,

the County approved it (AR:2:1067, 1077), and the Project improved. In short, "[t]his is a case where CEQA worked." (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 206, footnote omitted.) The trial court's decision to reject this claim (JA:2:460-461) was correct.

C. The EIR's analysis and mitigation of construction noise complies with CEQA.

Appellant argues that the EIR fails to disclose construction-related noise impacts. (AOB, pp. 55-62.) The trial court rightly disagreed. (JA:2:466-467.) The Court reviews the EIR's construction noise analysis for substantial evidence. (*Friant Ranch*, *supra*, 6 Cal.5th at p. 512; *Banning Ranch*, *supra*, 2 Cal.5th at pp. 934-936.) Appellant must show no substantial evidence supports the County's findings. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.)

The EIR analyzed Project noise impacts (AR:4:2067-2099, 2378-2380, 7:3804-3859), finding that construction noise could have a significant impact on sensitive receptors (AR:4:2083-2087) due to the relatively large scale of construction occurring over a lengthy period in a "relatively quiet mountain environment." (AR:4:2379.)[9] The EIR also found that nighttime construction—although "relatively rare, occurring only at most a few days

[9] Appellant cites *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123, claiming the EIR must take the setting into account in determining the significance of noise impacts. (AOB, p. 58.) The EIR did that, acknowledging that existing noise levels vary seasonally but are generally quiet. (AR:4:2072-2076, 2379.)

per year and only in some years, when such activities are unavoidable" (AR:8:4783)—may increase noise levels by 5 decibels (dB). (AR:1:260, 271, 4:2083; AR:7:4030 [explaining need for sporadic nighttime construction].) The EIR identified, and the County adopted, mitigation (AR:4:2086-2087, 2:1047-1051), concluding that construction noise would nevertheless remain significant. (AR:1:262-263, 271.)

Appellant argues that construction may disrupt residents "daily for 25 years." (AOB, p. 57.) As the EIR explained, however, construction would not occur all at once over 25 years (AR:7:4030, 4045-4046, 68:40374, 40378), but would "vary day-to-day" during the construction season (May 1 to Oct. 15) depending on construction activity (AR:3:1777, 4:2084-2085) with "sequence and pace" driven by the market. (AR:3:1772, 1777; 4:2084-2085, 5:2401.) The Specific Plan echoes these realities. (AR:3:1214, 1217.) Night-time construction would be rare and occur only when unavoidable. (AR:7:4030.)

The EIR included data on existing noise levels (AR:4:2072-2076, 7:3854-3855; JA:2:466) and identified nearby sensitive receptors (AR:4:2072-2074, 2:849-850), including residences near Squaw Valley Road, the East Parcel, and the existing parking lot. The EIR recognized that, at times, construction activities could occur within 50 feet of sensitive receptors (AR:4:2085) with potential effects including sleep disturbance. (AR:4:2068-2069, 4:2084, 8:4783-4784; see AR:4:2070 [10dB nighttime

penalty; 5dB evening penalty].) The EIR conservatively estimated daytime and nighttime construction noise. (AR:4:2082-2087, 7:3806-3811.)

Appellant relies on *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019 (*LAUSD*). (AOB, p. 58.) There, the EIR ignored the cumulative effects of incremental increases in project noise and concluded traffic noise would be insignificant because existing ambient noise already exceeded recommended levels. (*Id*. at pp. 1024-1028.) Conversely, here, the EIR identified existing noise levels and estimated both project and cumulative noise. (AR:4:2072-2076, 2083-2086, 2378-2380.)

Appellant claims the EIR had to identify noise levels and durations at specific locations throughout the plan's 25-year build out (AOB, pp. 56-58.),[10] but ignores both the nature of seasonal construction and the programmatic nature of specific plan approvals. (*California Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 271, fn. 25 [level of specificity of EIR determined by nature of project]; Guidelines, §§ 15145, 15146].) A detailed construction schedule spanning 25 years simply does not exist. (AR:2:1099, 8:4784; RT, pp. 115-116.) Appellant relies on *Cleveland Nat'l Forest Foundation v. San Diego*

[10] Appellant says it alerted the County to this issue (AOB, p. 58.), citing a short passage (AR:8:4673-4675), devoid of expert support, in its 130-page comment letter.

County Assn. of Gov. (2017) 17 Cal.App.5th 413, 444-445 (*Cleveland II*) where the EIR had "known data gaps" that ignored over half the agricultural land threatened by the project. (AOB, p. 57.) Here, no such gaps existed in the data. (AR:4:2067-2087.)

Appellant ignores the County's responses explaining that the analysis requested involved nonexistent information (AR:2:849-850, 68:40373-40384); accordingly, the EIR focused on a "worst-case" scenario (AR:4:2083-2085, 1:271, 4:2378-2379, 8:4782), modeling peak noise generated during the "single most active possible construction year." (AR:3:1772, 1777, 4:2084-2085 [20% build-out/300 bedrooms], 5:2401-2402 [cumulative construction noise impacts].) The County required future map applications to include a "Subsequent Conformity Review." If future maps trigger potential inconsistencies (i.e., exceeding 45 dBLdn for interior nighttime noise), additional review is needed. (AR:3:1206-1209; 2:1050-1051 [MM 11-4b]; see *RASP 380*, *supra*, 9 Cal.App.5th at pp. 966-967 [upholding requirement for follow-up studies].)

Appellant claims the EIR erred by focusing on receptors located within 50 feet of construction activities. (AOB, p. 57.) This approach is standard. (See *Pfeiffer*, *supra*, 200 Cal.App.4th at p. 1578 [average noise levels at 50 feet]; AR:7:3808-3809 [FTA standard]; *Mount Shasta*, *supra*, 210 Cal.App.4th at p. 209.) It is also a methodological issue entitled to deference. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 419-422.)

Appellant points to the site-specific information regarding the Academy, claiming the County could do the same analysis for all receptors. (AOB, p. 59.) The East Parcel is relatively small (just 8.8 acres), with limited flexibility to accommodate the proposed buildings. (RT, p. 117-118; AR:2:1105, 1117.) In responding to comments, the County realized it *could* provide more detail about the effects on the Academy, so it did. (AR:8:4783, 7:3956-3958, 4045-4047.) Such precision was impossible for the Village. (AR:7:4029-4031, 3:1751, 1269, 1504, 4:2092.) The County rightfully refused to speculate. (Guidelines, § 15145; *AIR*, *supra*, 107 Cal.App.4th at p. 1396.)

Appellant argues the EIR erred in not analyzing the potential health effects from construction noise. (AOB, p. 58.) Appellant is wrong. An EIR need not "apply a separate health-based threshold in determining the significance of noise impacts." (*Mission Bay Alliance*, *supra*, 6 Cal.App.5th at pp. 194-196.) Here, the EIR appropriately identified maximum daytime and intermittent nighttime/weekend construction noise (AR:3:1777, 4:2083-2085), and disclosed and mitigated occasional nighttime construction that may disrupt sleep (AR:4:2084-2088, 2096, 3:1571 [MM 11-4b]). The EIR explained the impossibility of providing site-specific noise levels at every conceivable sensitive receptor based on yet, unknown, construction details. (AR:2:849-850; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 396; *Sierra Club v. TRPA*, *supra*, 916 F.Supp.2d at pp. 1146-1150

[distinguishing *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344].) Appellant barely hinted at this issue in the record or at trial (AR:8:4675; JA:2:231, 306) and cites no evidence linking intermittent construction noise to health effects.

Friant Ranch, *supra*, 6 Cal.5th at pp. 519-521, cited by Appellant, is inapposite. That EIR, for a 2,500-unit, age-restricted community in a polluted air basin, failed to link estimated project emissions to health effects and offered no explanation why doing so was infeasible. *Berkeley Keep Jets* is also inapplicable. There, an airport expansion included increased nighttime cargo plane flights; yet, the EIR omitted any analysis of nighttime single-event noise despite expert opinion of potential health effects from sleep disruption. (91 Cal.App.4th at pp. 1377-1382.) Here, the EIR disclosed maximum nighttime noise levels from occasional construction, noted the potential for sleep disturbance, identified mitigation, and explained why site-specific analysis for all sensitive receptors was infeasible. (AR:4:2083-2086, 20986, 3:1571, 7:4045-4046, 8:4783-4784.) The record contained no evidence linking occasional nighttime construction noise with foreseeable health impacts.

Lastly, Appellant dismisses the County's noise ordinance (AOB, p. 62.), despite its relevance. (AR:4:2080 [Article 9.36.030].) Under the ordinance, the County could have found daytime construction noise exempt and therefore insignificant. (See *National Parks*, *supra*, 71 Cal.App.4th at

pp. 1358-1359; *Sierra Club v. TRPA*, *supra*, 916 F.Supp.2d at pp. 1146-1150.)[11] Instead, the County found construction noise significant and imposed mitigation, requiring SVRE to locate staging areas away from sensitive receptors, to maintain construction equipment, and to protect receptors with noise-attenuating buffers. (AR:4:2086, 1047-1051 [MMs 11-1a-11-5].) For construction occurring outside the Ordinance-exempt time frame that may generate more than 45 dBALeq/65 dBALmax at 50 feet, SVRE must apply for an exception and provide notice to adjacent landowners (AR:2:1047-1048), and prepare site-specific noise studies showing compliance with County standards before building residential units. (AR:3:1571.) At 30% buildout, SVRE must install a rubberized hot mix asphalt overlay or equivalent treatment on Squaw Valley Road. (AR:2:1051 [MM 11-5], 1:329-330 [traffic noise reduced by 4 to 6 dB], 2:1042-1043 [MM 9-8].) These measures are adequate. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 34-36; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 418; *RASP 380*, *supra*, 9 Cal.App.5th at pp. 966-967.)[12] As in *Pfeiffer*, *supra*, 200 Cal.App.4th at pp. 1577-1578

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[11] *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281 is distinguishable. (AOB, p. 62.) That EIR omitted the factual basis for concluding that compliance with General Plan traffic standards sufficed to avoid congestion impacts. Here, by contrast, the EIR cited the noise ordinance then analyzed construction noise impacts.

[12] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281 (*Preserve Santee*) is inapposite. (AOB, p. 60.) There, the city improperly deferred mitigation by relying on "an unformulated plan's

[upholding mitigation for construction noise that restricted hours, located equipment away from sensitive receptors, and deployed noise buffers]), and unlike *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1170 (AOB, p. 61); here, the County acknowledged that mitigation would not entirely avoid construction noise impacts and explained why additional mitigation was infeasible. (AR:1:260-263, 2:849-850, 8:4784; *RASP 380*, *supra*, 9 Cal.App.5th at p. 972 [upholding decision not to impose more construction noise mitigation]. Compare *City of San Diego*, *supra*, 61 Cal.4th at pp. 962-963 [agency rejected mitigation based on legal error] [AOB, p. 60].) Substantial evidence supports the EIR's construction noise analysis.

D. Revisions to the DEIR's analysis of greenhouse gas emissions did not require recirculation, and the County's adopted mitigation was adequate.

1. Substantial evidence supports the County's decision not to recirculate.

Appellant argues the County violated CEQA by not recirculating the DEIR. (AOB, pp. 62-70.) The substantial evidence standard applies. (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135; *San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 630 ["disagreement with the FEIR's analysis is insufficient"].)

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eventual directives" and the preserve manager's "discretion to implement the plan" to protect a listed butterfly. Neither occurred here.

Appellant argues that, under *Friant Ranch*, *supra*, 6 Cal.5th 502, review is de novo where the EIR is "fundamentally and basically inadequate." (AOB p. 23.) *Friant Ranch* did not overrule *Laurel Heights II*. The substantial evidence test continues to apply. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 224 [substantial evidence supported decision that EIR was not "fundamentally and basically inadequate"].)

Recirculation is required where "significant new information" is added to the EIR prior to certification. (Pub. Resources Code, § 21092.1.) This standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs." (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1132.) Recirculation is "an exception, rather than the general rule." (*Ibid*.)

"The Guidelines describe the types of 'significant new information' requiring recirculation of a draft EIR. [Citation.] These include disclosure of '[a] new significant environmental impact,' '[a] substantial increase in the severity of an environmental impact,' and the addition of a 'feasible project alternative or mitigation measure considerably different from the others previously analyzed'" that project proponents decline to adopt. (*Treasure Island*, *supra*, 227 Cal.App.4th at p. 1063, quoting Guidelines, § 15088.5.) Recirculation is also required where "[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (Guidelines, § 15088.5, subd. (a)(4).)

As the trial court found (JA:2:465-466), substantial evidence supports the County's conclusion that revisions to the GHG analysis did not require recirculation. (AR:1:235-237.) The DEIR measured the significance of GHG emissions using thresholds recommended by the Placer County Air Pollution Control District (PCAPCD). (AR:4:2286, 2291.) Under this guidance, emissions above 1,100 metric tons of CO_2 equivalent per year ($MTCO_2e$/year) were significant. (AR:4:2293-2295, 113:66810.) An efficiency analysis, based on the California Air Resources Board's "Scoping Plan," was used to determine Project consistency with Assembly Bill (AB) 32. (*Ibid*.) The DEIR recognized, however, that the efficiency analysis alone—assuming full build-out by 2020—was "unrealistic," and analyzed emissions after 2020, when most development would occur. (AR:4:2291-2295.) The DEIR did not base its conclusions on this efficiency metric. Rather, the DEIR concluded that GHG emissions were significant because they would be substantial and might not be consistent with future GHG reduction targets. (AR:4:2295.)

After the DEIR was published, *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch*) held that the numeric threshold—1,100 $MTCO_2e$/year—was permissible (*id*. at pp. 230-231), but that an efficiency analysis requires an evidentiary basis translating the Scoping Plan's statewide goals into a locally applicable target. (*Id*. at pp. 225-229.) Following *Newhall Ranch*,

the FEIR acknowledged that the Scoping Plan lacked information necessary to forge an evidentiary link between the Scoping Plan and Project GHG efficiency. (AR:7:3972, 3974, 4083.) "The DEIR's significance conclusions remain[ed] unchanged." (AR:7:4083.) As the FEIR explained: "the DEIR ultimately relied upon the PCAPCD numeric threshold of 1,100 $MTCO_2e$/year as the basis for significance conclusions, and this threshold approach was expressly noted by the Supreme Court as permissible. . . ." (AR:7:4084, 2:844, 4:2292-2296, 7:3978, 4088, 4092-4098; see *Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 228 [air district's approval of GHG analysis was substantial evidence of its adequacy].)

Appellant claims that the DEIR's significance threshold "assumed that climate impacts would be insignificant if the Project met AB 32's statewide [GHG] reduction target … in 2020" and that the EIR concluded that that "the Project 'may be less efficient than needed' [citation] after 2020." (AOB, p. 64.) Appellant mischaracterizes the record. The DEIR compared GHG at full buildout to PCAPCD's numeric threshold, performed the efficiency analysis based on a hypothetical 2020 buildout, and discussed GHG significance at full buildout, concluding that the impact was significant because the Project would generate substantial GHG emissions and may not be consistent with future GHG reduction targets. (AR:4:2291-2296, 2:844, 7:3970-3980, 4079-4098.)

Appellant argues the FEIR "revealed that the Project's climate impacts were different and more severe than previously acknowledged." (AOB, p. 64.) This argument fails. Although the FEIR revised the GHG emissions estimate, the estimate went down, not up, and the EIR explained why. (AR:7:3971, 3975-3977, 2:845.) The County also broadened recommended mitigation (MM 16-2) to apply throughout the Project's life, not just after 2020. (AR:7:3978-3979.) The GHG conclusion did not change; "emissions would exceed the PCAPCD Tier I mass emissions threshold … and compliance with future targets is unknown" (AR:7:4088)—the same conclusion reached in the DEIR. (AR:4:2295.) Nor did the FEIR "abandon" the DEIR's significance threshold. (AR:7:4084.) Rather, the FEIR updated the GHG analysis based on *Newhall Ranch* and the revised emissions estimates. (AR:2:844-845, 7:3970-3980, 4082-4088.)

Appellant's cases are inapposite. In *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, the significance conclusions were "effectively meaningless" because the agency "provided no analysis or explanation to show how it reached" them. (*Id.* at p. 252.) In *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1075-1081, a shopping center expansion would increase traffic in ways the previous negative declaration had not considered. In *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 108, a project's

inconsistency with general plan air quality measures revealed new impacts. Here, the DEIR and FEIR both estimated GHG emissions; the Final EIR simply updated the analytic path based on *Newhall Ranch* and reached the same conclusions. (AR:2:844-845, 4:2278-2296, 7:3970-3980, 4082-4088.)

Appellant dismisses the evidence relied upon by the County as "excuses." (AOB, pp. 66-67.) Appellant ignores its "burden of proving a double negative, that the County's decision not to revise and recirculate the [FEIR] is not supported by substantial evidence." (*South County*, *supra*, 221 Cal.App.4th at p. 330.) The FEIR specifically noted that the DEIR's thresholds and conclusion were unchanged. (AR:7:4088; see AR:1:235-237 [findings].) Appellant fails to carry its burden. (See *WPCARE*, *supra*, 144 Cal.App.4th at p. 905.)

2. The County adopted feasible, enforceable climate mitigation.

Appellant argues the County had to reevaluate its GHG mitigation. (AOB, pp. 67-68.) The substantial evidence test applies. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 393.) Even if analyzed as a question of law, however, the result is the same: The County did not abuse its discretion in adopting MM 16-2 to mitigate climate impacts.

Appellant mischaracterizes this measure. (AOB, p. 68.) MM 16-2 included a comprehensive suite of GHG reduction tools, including acquiring offsets. (AR:7:3979-3980, 12:6730-6739.) The measure provided the County with "discretion to modify or substitute the adopted mitigation

with equally or more effective measures in the future." (*Friant Ranch*, *supra*, 6 Cal.5th at p. 524.) Compliance was tied to subdivision map submittal. (AR:2:1063-1064; see *Friant Ranch*, at pp. 525-526 [upholding mitigation enforced through future "permit conditions"].)

The flexibility in MM 16-2 is appropriate. "Mitigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels." (*Friant Ranch*, *supra*, 6 Cal.5th at p. 523; see *Neighbors for Smart Rail, supra*, 57 Cal.4th at pp. 465-466 [parking mitigation].) The County found MM 16-2 feasible, and to "lessen, though not to a less than potentially significant level, the [Project's] significant environmental effects." (AR:1:264.)

The County recognized that more stringent GHG reduction targets would likely be adopted during the projected 25-year build out (AR:2:848, 8:4780-4781), and crafted MM 16-2 accordingly, without speculating about what those future targets might be. (AR:4:2294-2296, 7:3977-3980.) Nevertheless, the County committed to do everything feasible to mitigate GHG impacts. (AR:1:263-264, 2:1063-1064; see *City of Hayward*, *supra*, 242 Cal.App.4th at p. 854.) MM 16-2 will be enforced by the County and PCAPCD—not SVRE—through the MMRP. (AR:2:1063-1064; Pub. Resources Code, § 21082.1, subd. (b); *Treasure Island*, *supra*, 227 Cal.App.4th at p. 1059.)

The County did not rely on MM 16-2 to conclude that GHG impacts would be insignificant. (AR:1:263-264, 4:2296, 7:3980.) "The inclusion of a mitigation measure that reduces an environmental impact is permitted even if the measure will not reduce the impact to a level below the threshold of significance." (*Friant Ranch*, *supra*, 6 Cal.5th at p. 525; see *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.)

Appellant argues the County did not consider proposed mitigation. (AOB, pp. 69-70.) The record does not support this argument:

- A passage in Appellant's 130-page comment letter (AR:8:4668-4671) received detailed responses, noting that the Project already incorporated the suggested measures. (AR:8:4780-4781, 7:4087-4088, 4096-4098; see AR:12:6730-6771 [FEIR appendix listing GHG reduction measures available under MM 16-2].) This response sufficed. (*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1054-1059 (*SCOPE*) [city not required to respond in detail to every GHG reduction proposal]; *SOMCAN*, *supra*, 33 Cal.App.5th at p. 345 [agency not required to respond to alternative proposed by project opponent].) Appellant ignores this response.
- Late letters from the AG (AR:38:22218-22221) and Appellant (AR:38:22275-22277) criticized the EIR but did not propose

> GHG mitigation. The County was not required to respond (*RASP 380*, *supra*, 9 Cal.App.5th at p. 972) but did anyway (AR:2:636-644, 848). Appellant ignores these responses, as well as SVRE's additional commitments to address the AG's concerns. (AR:41:23671.)

Other excerpts cited by Appellant were prepared by County consultants and *support* the feasibility of MM 16-2. (AR:2:1063-1064, 12:6732-6733.) In these respects, this case bears no resemblance to *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95, in which the city erred by citing unspecified mitigation to conclude that a refinery's GHG emissions would not be significant. (See also *Cleveland II*, *supra*, 17 Cal.App.5th at p. 433 [mitigation did not require any agency action to reduce GHG emissions].)

E. The County's analysis of, and mitigation for, traffic and transit impacts complied with CEQA.

Appellant argues that the County did not address the Project's traffic and transit impacts. (AOB, pp. 70-76.) The trial court disagreed. ((JA:2:462-465.) Its ruling was correct.

Appellant asserts that its argument presents a question of law. (AOB, p. 23.) The case Appellant cites—*City of Marina*, *supra*, 39 Cal.4th 341—confirms that the "substantial evidence" standard applies. (39 Cal.4th at pp. 355-356 ["de novo" standard of review applies where mitigation is rejected

as "legally" infeasible; otherwise, "much deference" is warranted].)

Appellant also contradicts its position at trial, where Appellant conceded that the "substantial evidence" test applied. (JA:2:215.) Appellant was right then and is wrong now. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 407-408 [substantial evidence test applies to mitigation]; *Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 466 [same].)

1. The County responded to proposed traffic mitigation.

Appellant's account of the County's analysis of traffic impacts and mitigation (AOB, pp. 70-71) is woefully incomplete (*South County*, *supra*, 221 Cal.App.4th at p. 330 [failure to describe all evidence is "fatal" to claim]), particularly where, as here, the Court must evaluate mitigation based on the entire record, rather than on isolated snippets. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 407-408.)

The DEIR's transportation analysis was encyclopedic. (AR:4:1979-2042, 6:3130-3347.) As the DEIR noted, ass proposed the Village already included circulation improvements. (AR:4:2012-2014 [transit center; bicycle and pedestrian paths and facilities; traffic management; preferred carpool parking].) The Village would nevertheless add traffic during peak periods. (AR:4:2014-2026.) The analysis identified those instances in which traffic "level of service" (LOS) would not meet the County's adopted standards. (AR:4:2030-2039, 8:4590-4596.) Overall, "[t]he impact on travel times will be relatively modest." (AR:18:10405; see

AR:18:104305-10408, 18:10278-10280 [data shows roads operate at acceptable LOS 99% of the time].)

The DEIR identified measures to lessen these impacts, including:

- Squaw already manages traffic on peak winter days. (AR:4:1985-1986, 2031; see *Center for Biological Diversity v. California Department of Fish & Wildlife* (2015) 234 Cal.App.4th, 214, 246 [prior similar measure supports future compliance].) MM 9-1a required expanding this program to include a Traffic Management Plan (TMP) identifying days when traffic will exceed road capacity, so that cones, signage, and personnel can be deployed, enabling the resort to add a third lane to Squaw Valley Road and redirect traffic. (AR:7:4019, 8:4600, 11:6056, 4:2031-2033; see AR:36:21171-21173 [TMP strategies for peak days].) The expanded program would improve "both existing and project traffic." (AR:8:4259; see *City of Hayward*, *supra*, 242 Cal.App.4th at p. 855 [demand management plan for traffic].)
- Real-time information must be disseminated concerning traffic conditions and parking availability.
- A traffic signal must be installed at the intersection of State

Route 89 and Alpine Meadows Road.[13]

- If approved by Caltrans, turn lanes at SR 89/Squaw Valley Road must be lengthened.

(AR:4:2030-2039.) Other measures addressing air quality would also reduce private vehicle trips and alleviate congestion. (AR:4:2060-2061 [discounted transit service, preferential parking, shuttle service, bicycle amenities and incentives, employee transit], 8:4764 [noting link between traffic measures and improved air quality].) Although these measures would address most impacts, congestion along certain segments north on SR 89 and east on SR 28 would remain significant because Caltrans had no plans to widen them. (AR:4:2030-2039, 98:57760.)

Appellant argues the County ignored proposals to further reduce traffic. (AOB, pp. 71-72.) The record shows otherwise.

A traffic consultant hired by Appellant fly-specked the EIR. (AR:8:4576-4589.) The FEIR responded. (AR:8:4590-4601.) Appellant cites neither these comments nor the responses.

Instead, Appellant cites comments tucked in its lawyer's 130-page, single-spaced letter. (AR:8:4602-4731.) The comments included a list of measures. (AR:8:4654-4656.) The County could have ignored this

[13] The traffic signal was subsequently installed. (AR:7:3951; see http://cwwp2.dot.ca.gov/vm/iframemap.htm?long=-121.4944&lat=38.5816&zoom=24 [Caltrans webcam].)

unelaborated laundry list. (Guidelines, §15204, subd. (c) [reviewers must provide data or other evidence supporting comments]; *SCOPE*, *supra*, 197 Cal.App.4th at pp. 1054-1059 [agency need not respond to every proposal].) But the County responded, noting that the Village already included many of the commenter's suggestions, and that the efficacy of Appellant's proposals was speculative. (AR:2:843-844, 847, 988-989, 8:4600-4601, 4764-4765.)

Appellant cites its "regional shuttle," carpool and bike amenity proposals (AOB, p. 72), but ignores the FEIR's responses. (AR:7:4018-4019 [due to low ridership, 2012-2013 regional shuttle program was ineffective at reducing traffic].) Moreover, SVRE must contribute to regional transit (AR:7:4018-4019), operate a shuttle connecting with Alpine Meadows (AR:8:4259, 4385, 4735, 4799), and provide employee shuttles within the valley and beyond. (AR:8:4345 [employee shuttle connecting with Reno], 2:1155-1156 [employee transit, shuttles and charter buses], 2:988-989 [response to late comment on charter buses].) The Project already included bike trails and bike parking, a transportation coordinator for employees, a transit center, bulletin boards for employees, subsidized transit fares, and preferential parking. (AR:8:4799 [existing bike trail extended to Village], 2:1155 [same], 3:1751, 1760, 1758-1761, 4:2012-2013 [bike trails and facilities, employee shuttle and transportation coordinator], 3:1753 [location of transit center], 2:1126, 3:1761, 2040

[description of transit center], 8:4380, 4735, 2:1154 [subsidized transit fares for employees; ongoing transit funding], 1:131 [$75,000/year paid to Tahoe Truckee Area Reginal Transit (TART) for employees' fare-free service], 2:1044 [employee bulletin boards].) The FEIR explained why further measures would have little benefit. (AR:8:4764-4765.) These responses sufficed. (*Gilroy Citizens*, *supra*, 140 Cal.App.4th at p. 935; see *Bay Area Citizens v. Association of Bay Area Gov.* (2016) 248 Cal.App.4th 966, 1020-1021 (*Bay Area Citizens*) [good-faith responses upheld]; *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 550 (*City of Irvine*) [same].)

In *SCOPE*, *supra*, the EIR concluded that a hospital expansion plan would cause significant GHG emissions. An opponent's letter attached 50+ suggestions to reduce emissions. The FEIR responded that the project already incorporated some of these suggestions. The opponent's "position that its request required the city to explore in writing further mitigation measures—although which specific measures were never articulated—regardless of their feasibility, is simply not supportable under the law." (197 Cal.App.4th at pp. 1055-1056.) Indeed, it would be "unreasonable to impose on the city an obligation to explore each and every one" of the proposals. (*Id*. at p. 1055.)

The same is true here. Appellant's generic list could apply to any proposal. (AR:8:4654-4656.) The County responded that many items

duplicated measures already incorporated into the Project, while others were ineffective or speculative. (AR:8:4764-4765.)

The Flanders Foundation v. City of Carmel-by-the-Sea (2012) 202 Cal.App.4th 603, cited by Appellant (AOB, p. 73), is distinguishable. There, the city received a comment proposing to reduce the size of the parcel to be sold. The city's own analysis showed that this reduction was feasible and would lessen the loss of parkland. Yet, the FEIR "provided no response whatsoever" to this proposal. (202 Cal.App.4th at p. 616; see also *LAUSD*, *supra*, 58 Cal.App.4th at pp. 1028-1030 [FEIR ignored proposal to provide air conditioning and filtration systems to schools affected by project air pollutants].)

The distinctions here are four-fold. First, Appellant's proposed mitigation consisted of a laundry list of ideas, many of them already part of the Project. Second, the list was buried in a voluminous letter penned by a non-expert lawyer hired by an opponent. (*City of Irvine*, *supra*, 238 Cal.App.4th at p. 549 [opponents can abuse CEQA's comment-and-response requirement].) Third, the County provided good-faith responses explaining why some suggestions were incorporated and others were not. Fourth, Appellant provided no evidence that its proposals would substantially reduce impacts. The responses sufficed. (*Bay Area Citizens*, *supra*, 248 Cal.App.4th at p. 1020; *City of Irvine*, *supra*, 238 Cal.App.4th at p. 550.)

2. Transit mitigation complied with CEQA.

Appellant states the project would "greatly intensify demand on the already strained [TART] system." (AOB, p. 74.) Here, as elsewhere, Appellant's hyperbolic adverbs and adjectives distort the record. The EIR described existing transit, including summer and winter survey transit data for visitors and employees. (AR:4:1994-2002, 2:844, 7:4018.) The only potentially significant contribution to transit demand would be from Village employees in the winter, mostly from Tahoe's north shore. (*Ibid.*; see AR:4:2014-2015, 2040-2041 [30 additional TART riders during peak winter conditions], 7:4018-4019.) MM 9-7a required SVRE to provide funding for expanded transit service, with TART determining how best to use this money. (AR:7:4018 [adding buses during peak periods], 2:1041-1042.)

Appellant argues this approach violates CEQA. (AOB, pp. 74-76.) Not so. The only open issue is the final funding amount. (AR:2:1041-1042, 7:3951-3952, 8:4385-4386; see AR:7:3917-3918 [MM 9-7a revised per request from Truckee North Tahoe Transportation Management Association (TNT/TMA)], 4129-4130 [TRPA letter endorsing mitigation], 9:4928-4930 [letter from TNT/TMA, plus response].) Appellant feigns confusion about the "Engineer's Report." As the EIR explained, however, the report—which the County must approve—will determine the precise amount of SVRE's fair-share contribution. (AR:7:4133, 8:4259.)

Appellant argues that MM 9-7a is too uncertain. False. The development agreement committed SVRE to pay $97,500 per year to support TART. (AR:1:131.) The County did not pluck this figure out of thin air. It was calculated by the same consultant who prepared TART's master plan. (AR:2:1010-1012, 36:21152-21153; see AR:58:34017-34103 [adopted TART Systems Plan Update (2016)].) Once an assessment district is formed, that assessment will apply. SVRE also agreed to contribute $85,000 for TART capital costs. These commitments are in *addition* to MM 9-7. Together, they will provide TART with the resources needed to expand service to meet demand. (AR:1:131, 4:2041 [longer hours and/or additional routes], 7:4018 [added buses during peak periods], 8:4385 [TART standards], 18:10407 [additional buses]; see *City of Hayward*, *supra*, 242 Cal.App.4th at p. 854 [upholding traffic mitigation plan].) Paying fees to support TART's plan is appropriate mitigation. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 818; *Save Our Peninsula*, *supra*, 87 Cal.App.4th at pp. 136-141.)

Preserve Santee, *supra*, 210 Cal.App.4th 260—the sole case cited by Appellant—is distinguishable. There, the city relied on "an unformulated plan's eventual directives" to protect a listed butterfly, and on the preserve manager's "discretion to implement the plan." (*CBD v. CDFW*, *supra*, 234 Cal.App.4th at p. 247.) Neither occurred here: TART's plan was adopted, and SVRE must help foot the bill. (AR:2:1041-1042, 7:4018, 8:4385.)

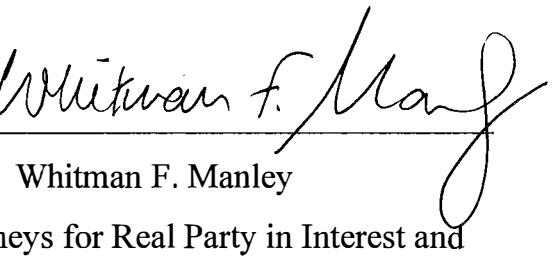
CONCLUSION

The Court should affirm the trial court's denial of Appellant's petition and should award costs to the County and SVRE.

Dated: September 23, 2019

Respectfully submitted,

REMY MOOSE MANLEY, LLP

By: 

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CERTIFICATE OF WORD COUNT

[Cal. Rules of Court, Rule 8.204(c)]

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this **REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF** contains 13,974 words (including headings and footnotes; not including the caption, index, table or certificate of word count), according to the word counting function of the word processing software used to prepare this brief.

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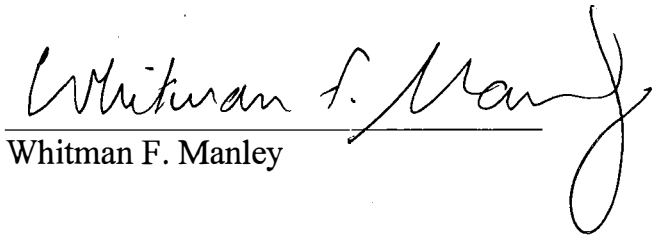

Whitman F. Manley

Sierra Watch v. Placer County et al.
Third Appellate District Case No. C088130

PROOF OF SERVICE

I, Michele Nickell, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is mnickell@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

On September 23, 2019, I served the following:

REAL PARTY IN INTEREST'S/RESPONDENT'S OPPOSITION BRIEF

BY ELECTRONIC TRANSMISSION (TrueFiling) by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below. I did not receive any electronic message or other indication that the transmission was unsuccessful.

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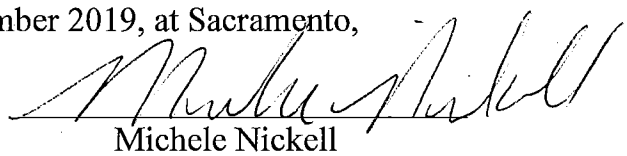
I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of September 2019, at Sacramento, California.



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