

**Attachment 22**  
Court of Appeal Decision

Filed 9/30/19

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

LIVING RIVERS COUNCIL et al.,

Plaintiffs and Appellants,

v.

COUNTY OF NAPA et al.,

Defendants and Respondents;

HALL BRAMBLETREE ASSOCIATES,  
L.P.,

Real Party in Interest and  
Respondent.

A154253, A154300, A154314

(Napa County  
Super. Ct. Nos. 17CV000055,  
17CV000060, 17CV000063)

After preparing an environmental impact report (EIR) and holding public hearings, the County of Napa (County) approved a vineyard-conversion project proposed by real party in interest, Hall Brambletree Associates, L.P. (Hall). Environmental analysis of the project dates back to 2008. The administrative record exceeds 60,000 pages, the EIR exceeds 5,000 pages, and the County's decisions rejecting various challenges and approving the project exceed 200 pages.

Living Rivers Council (LRC), Center for Biological Diversity (CBD), and Circle Oaks County Water District and Circle Oaks Homeowners Association (Circle Oaks) (collectively, plaintiffs) challenged the environmental review by filing related petitions for writ of mandate in the superior court. The trial court denied relief. Plaintiffs<sup>1</sup> contend

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<sup>1</sup> On our own motion, we ordered the appeals consolidated for purposes of oral

that the EIR violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)<sup>2</sup> (CEQA) by failing to apprise the public of the full nature and extent of the vineyard-conversion project’s impacts on groundwater resources, streams, roads and infrastructure, endangered species, and the climate. We affirm the judgments as to Circle Oaks and LRC and reverse in part as to CBD.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Hall owns Walt Ranch, a 2,300-acre site comprising 35 contiguous parcels, located within the Howell Mountains on the east side of the Napa Valley, approximately seven miles northeast of the City of Napa. Walt Ranch is zoned for agricultural watershed use, which allows a wide range of land uses without a permit, including construction of “one single family dwelling per each legal lot,” as well as construction and operation of “small residential care facilities, antennas, telecommunications facilities, hunting clubs, recreation vehicle parks, campgrounds, and floating docks.” There are no residences located on Walt Ranch. The Circle Oaks subdivision is located to the southeast of Walt Ranch and contains the nearest residential land uses.

Hall initially proposed the development of 397 net vineyard acres on Walt Ranch (the Project). The Project included the development of 65 vineyard blocks on sloped terrain, which required an Erosion Control Plan (ECP) from the County.

In May 2008, the County released a Notice of Preparation (NOP) and Initial Study for Hall’s proposal to develop 397 net vineyard acres within 538 gross acres. Following a revised ECP, the County issued a second NOP and Initial Study in October 2012, reflecting a reduced area of 356 net vineyard acres within 507 gross acres.

The Napa County Department of Planning, Building, and Environmental Services (Planning Department), as the lead agency responsible for administering environmental review of the Project, released its draft EIR (DEIR) in July 2014. The DEIR

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argument and decision. Where appropriate, the groups will be individually referenced by name.

<sup>2</sup> All further statutory references are to CEQA provisions as codified in Public Resources Code sections 21000–21177, unless otherwise indicated.

analyzed potential impacts to surface water, groundwater, biological resources, greenhouse gas (GHG) emissions, and more. The DEIR determined that the Project, as mitigated, would have no significant impacts. The County received over 3,700 pages of public- and agency-written comments on the DEIR.

The Planning Department held a public hearing regarding the adequacy of the DEIR in November 2014. In March 2016, the Planning Department published its responses to public comments, which, together with the DEIR, made up the final EIR.<sup>3</sup>

Following a noticed public hearing, the Planning Department certified the EIR as complete, finding it to be adequate, accurate, and objective. The Planning Department (1) adopted CEQA findings, a statement of overriding considerations, and an updated mitigation-and-monitoring report program; and (2) approved the Project with a reduced-intensity alternative that would provide for “the avoidance of approximately 100 gross acres of developed area which have been targeted to further protect special-status species and associated habitats; preserve individual trees that are identified as specimen or notable trees; enhance sensitive biotic communities; and enhance wildlife movement on the project site.” The Project, as approved, was reduced to 209 net acres of vineyard within 316 gross acres of overall land disturbance.

LRG, CBD, and Circle Oaks filed appeals with the Napa County Board of Supervisors (Board), challenging the Project’s approval and the certification of the EIR. After holding three hearings, the Board unanimously voted to deny the appeals and to uphold the Planning Department’s decision. The Board also adopted numerous conditions of approval. The Board certified the EIR and approved the Project on December 20, 2016.

In January 2017, LRG, CBD, and Circle Oaks filed petitions for writ of mandate in the trial court. The parties stipulated to relate the cases. Following extensive briefing, the court heard argument and denied all three petitions.

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<sup>3</sup> Unless otherwise indicated, all further references to the EIR are to the final EIR.

## DISCUSSION

### I. CEQA Principles and Standard of Review

“ “ “The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced. [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.” ” ” (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 88–89.) CEQA is designed to compel the government to make decisions with environmental consequences in mind. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*).) “[A] public agency is not required to favor environmental protection over other considerations, but it must disclose and carefully consider the environmental consequences of its actions, mitigate or avoid adverse environmental effects if feasible, explain the reasons for its actions, and afford the public and other affected agencies an opportunity to participate meaningfully in the environmental review process.” (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 466–467.)

If an agency determines that a project is not exempt from CEQA and it may have a significant effect on the environment, the agency must prepare an EIR before approval of the project. (See §§ 21100, subd. (a), 21151, subd. (a), 21080, 21084, subd. (a).) The EIR “is the heart of CEQA” (Guidelines,<sup>4</sup> § 15003, subd. (a)), and it protects both the environment and informed self-government. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The agency notifies the public that a draft EIR

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<sup>4</sup> “Guidelines” refer to the Guidelines for Implementation of CEQA, which are found in the California Code of Regulations, title 14, section 15000 et seq. All subsequent citations to Guidelines are to title 14 of the California Code of Regulations.

is being prepared (§§ 21092, 21092.1) and evaluates the draft EIR in light of public comments. (Guidelines, §§ 15087, 15088.) The lead agency then prepares a final EIR, incorporating comments on the draft EIR and the agency's responses to significant environmental points raised. (*Id.*, §§ 15090, 15132, subds. (b)–(d).) An EIR must include a detailed statement summarizing (1) all of a project's significant effects on the environment, (2) any unavoidable or irreversible significant effects on the environment, (3) mitigation measures, (4) alternatives to the proposed project, and (5) the growth-inducing impacts of the proposed project. (§ 21100, subd. (b).) The lead agency must certify that the final EIR has been completed in compliance with CEQA and that the information therein was considered by the agency before approving the project. (Guidelines, § 15090.)

“An appellate court’s review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court’s: [We] review[ ] the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is *de novo*.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 (*Vineyard Area Citizens*)). The court reviews the administrative record for prejudicial abuse of discretion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132–1133; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 (*Sierra Club*).) “[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.’” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935.)

The California Supreme Court recently addressed this procedural/factual-issues dichotomy and explained, “‘Judicial review of these two types of error differs significantly: While we determine *de novo* whether the agency has employed the correct procedures, “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s

approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,” for, on factual questions, our task “is not to weigh conflicting evidence and determine who has the better argument.”’’’ (*Sierra Club, supra*, 6 Cal.5th at p. 512.)

“In most cases, the question whether an agency has followed proper procedures will have a clear answer. Did the agency provide sufficient notice and opportunity to comment on a draft EIR? [Citations.] Did the agency omit the required discussion of alternatives? [Citation.] As to these legal requirements, the agency has no discretion, and courts will invalidate an EIR that fails to meet them. In that sense, judicial review is *de novo*. [¶] But the question whether an agency has followed proper procedures is not always so clear. This is especially so when the issue is whether an EIR’s discussion of environmental impacts is adequate, that is, whether the discussion sufficiently performs the function of facilitating ‘informed agency decisionmaking and informed public participation.’’’ (*Sierra Club, supra*, 6 Cal.5th at pp. 512–513.)

After reviewing several of its own decisions and those of the Court of Appeal, the Supreme Court summarized three “basic principles” regarding the standard of review for claims challenging the adequacy of an EIR: “(1) An agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR. (2) However, a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘‘ ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’’’ [Citation.] (3) The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (*Sierra Club, supra*, 6 Cal.5th at pp. 515–516.)

“The ultimate inquiry, as case law and the CEQA guidelines make clear, 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, supra*, 6 Cal.5th at p. 516.) Generally, that inquiry is a mixed

question of law and fact subject to de novo review, but to the extent factual questions (such as the agency’s decision which methodologies to employ for analyzing an environmental effect) predominate, a substantial evidence standard of review will apply. (*Ibid.*)

Substantial evidence “includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact,” but it does not include “argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.” (§ 21080, subd. (e)(1), (2).) Substantial evidence is defined by the Guidelines as “information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines, § 15384, subd. (a).) In reviewing for substantial evidence, we may not set aside the approval of an EIR on the ground that a different conclusion would have been equally or more reasonable. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 435.)

In reviewing claims challenging an EIR’s adequacy, courts “do not require technical perfection or scientific certainty: ‘ ‘ ‘ [T]he courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure.’ ’ ’ ” (*Sierra Club, supra*, 6 Cal.5th at p. 515.) Because an EIR is presumed to be adequate, project opponents bear the burden of proving otherwise. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 329 (*SOMCAN*); see § 21168.5.) “ ‘ ‘ ‘ The overriding issue on review is thus ‘whether the [lead agency] reasonably and in good faith discussed [a project] in detail sufficient [to enable] the public to discern from the [EIR] the “analytic route the . . . agency traveled from evidence to action.” ’ ’ ’ ” (*SOMCAN*, at p. 331.) Moreover, “ ‘ [i]nsubstantial or merely technical omissions are not grounds for relief. [Citation.] “A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” ’ ” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463 [160

Cal.Rptr.3d 1, 304 P.3d 499]; *id.* at pp. 464–465 [160 Cal.Rptr.3d 1, 304 P.3d 499], [failure to comply with CEQA’s informational mandate ‘did not deprive agency decision makers or the public of substantial information relevant to approving the project and is therefore not a ground for setting that decision aside’].)’ (SOMCAN, at p. 331.)

With these principles in mind, we turn to the merits.

## **II. Specific Environmental Impacts and Mitigation Measures**

### *A. Impact of the Project on Future Development*

CBD argues that the EIR should have analyzed the impacts of future residential development on Walt Ranch. According to CBD, the development of 35 large residences or estates is reasonably foreseeable because: (1) the zoning enables “by right” such development without any future discretionary approvals; and (2) the Project’s expansion of water rights and road improvements will facilitate this development. CBD maintains that the County’s failure to analyze the reasonably foreseeable impacts of the Project violates the rule against “piecemealing” a project.

“There is no dispute that CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358 (*Berkeley Keep Jets*).) Rather, CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283–284.)

Courts have found that agencies improperly piecemealed environmental review of projects in various situations. “First, there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223 (*Banning Ranch I*); see, e.g., *Laurel Heights I*, *supra*, 47 Cal.3d at p. 398 [agency, when evaluating lease of 100,000 square feet of a building, should have also examined lease of remaining square footage that would soon become available for lease].) Additionally, “there may be improper piecemealing when the reviewed project legally

compels or practically presumes completion of another action.” (*Banning Ranch I*, at p. 1223; see, e.g., *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231 [agency improperly piecemealed review of home improvement center development and road realignment because realignment was condition precedent to development].)

Improper piecemealing, however, does not occur when “projects have different proponents, serve different purposes, or can be implemented independently.” (*Banning Ranch I, supra*, 211 Cal.App.4th at p. 1223.) *Laurel Heights I* instructs that “an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 396.)

“The key term here is ‘consequence.’ ” (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 282 (*Aptos Council*).) Thus, the issue is whether residential development is a reasonably foreseeable *consequence* of the County’s approval of the vineyard conversion. We do not believe it is.

A consequence is not reasonably foreseeable simply because the project under consideration makes that consequence a *possibility*—even when the public agency is subjectively aware of that possibility (that is, even when it is “a gleam in [the] planner’s eye”). (*Laurel Heights I, supra*, 47 Cal.3d at p. 398; see *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1450–1451 (*Save Round Valley*) [when evaluating residential development project, agency need not evaluate impact of future owners’ decision to build second units on each lot because, while possible, there was no evidence this would occur]; see also *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1362 [when evaluating airport development plan, agency not required to consider expanded runway capacity that was merely possible]; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 575–576 [when adopting waste management plan,

agency need not evaluate impact of future landfills where plan identified 10 tentative landfill sites, when there was no evidence any other site would be developed]; *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188, 195–196 [when considering project to restore beach to natural state, agency not required to consider impact of future residential development on nearby properties that might seek to capitalize on pristine beach absent any evidence such development would occur].)

Moreover, a consequence is not reasonably foreseeable when it is entirely independent of the project under review. (See, e.g., *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 42–44) [when considering expansion of landfill, agency need not consider “independent” landfill projects]; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 75–76, 100–101 (*CBE v. Richmond*) [when considering expansion to refinery’s gasoline output, agency not required to consider expansion to refinery’s hydrogen pipeline because the two “are not interdependent”].) Indeed, the Guidelines require an agency to consider an “indirect physical change” “only if that change is a reasonably foreseeable impact which may be *caused by the project.*” (Guidelines, § 15064, subd. (d)(3), italics added.) Thus, even if a future phase is imminent, where the future development is not a consequence caused by the project, an EIR need not analyze the current project and the later phase as a single project. (See, e.g., *Banning Ranch I, supra*, 211 Cal.App.4th at pp. 1225–1226 [although park access road was “consistent” with adjacent residential development, it would be “a stretch” to say the development was “a consequence of the access road”]; *Aptos Council, supra*, 10 Cal.App.5th at p. 282.)

Here, the County approved a vineyard-conversion project. The construction of the vineyard does not compel or presume residential development. (See, e.g., *Banning Ranch I, supra*, 211 Cal.App.4th at p. 1223 [review of consequence required when “reviewed project legally compels or practically presumes completion” of that consequence]; see, e.g., *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829–830 [agency, when evaluating sand-and-gravel mining project, must also analyze water delivery system necessary for operation of the mining

project]; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729–733 [agency, when evaluating residential development, must also analyze the sewer expansion necessary for that development].) Similarly, the improvements to the roads and water supply are not catalysts for future development. The upgraded roads will not provide any new access to the parcels, and the water expansion will not create capacity beyond what the vineyards require. The pending water applications, which were filed by the previous owner of Walt Ranch and transferred to Hall upon its purchase of the property, are for two on-stream reservoirs related to recreational use and fire protection. The two on-stream reservoirs would not involve any consumptive uses of water and would be subject to independent environmental review.

*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 (*Stanislaus Audubon Society*), cited by CBD, does little to advance its position. First, *Stanislaus Audubon Society* was not concerned with the sufficiency of an EIR, but with the adequacy of a negative declaration. The court stressed that the petitioner’s only burden in that posture was to show evidence in the record supporting a *fair argument* that the project *might* have a significant growth-inducing effect. (*Id.* at pp. 150–153.) In contrast, the question in this case is whether there is substantial evidence supporting the EIR’s conclusion that the project will not have a growth-inducing impact. (*Banning Ranch I, supra*, 211 Cal.App.4th at p. 1230; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 626 (*North Coast*) [“[w]here, 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”].) Second, in *Stanislaus Audubon Society*, at pp. 153–156, there was significant evidence—including from the County’s own planning department—that the proposed country club in a basically uninhabited area would likely be a “catalyst” that would “trigger[] requests for residential development” and thereby induce growth. No such evidence exists here.

In further support of its argument that the EIR should have considered the development of dozens of residential homes as a growth-inducing impact of the vineyard,

CBD also relies on *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325. That case, too, is distinguishable. Like *Stanislaus Audubon Society*, and unlike this case, *City of Antioch* involved a negative declaration. (*Id.* at p. 1328.) In *City of Antioch*, the “sole reason” for the proposed road and sewer project was to “provide a catalyst for further development in the immediate area,” (*id.* at p. 1337) making it “virtually certain that additional development [would] result” (*id.* at p. 1335). Here, there is no evidence that Hall plans to build houses or estates on Walt Ranch, and the construction of the vineyard does not “presage” the development of residential homes. (*Id.* at p. 1336 [“[c]onstruction of the roadway and utilities cannot be considered in isolation from the development it presages”].) CBD’s speculation that development will occur on Walt Ranch because Hall has previously developed estates on a different vineyard in another county does not constitute substantial evidence. Substantial evidence does not include “[a]rgument, speculation, unsubstantiated opinion[,] or narrative.” (§ 21082.2, subd. (c).) “ ‘Complaints, fears, and suspicions about a project’s potential environmental impact likewise do not constitute substantial evidence.’ ” (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690.)

Moreover, the fact that single-family residences *may* be developed at some point in the future does not mean that the Project is likely to induce growth. In *Save Round Valley, supra*, 157 Cal.App.4th at pp. 1450–1451, the court rejected a similar challenge. There, an EIR was not insufficient for failing to discuss the speculative possibility that future owners of subdivided lots would someday seek to build second dwelling units. The record disclosed no substantial evidence that possible expansion of the project was “ ‘a reasonably foreseeable consequence of the initial project.’ ” (*Id.* at p. 1451.)

CBD argues that *Save Round Valley* is distinguishable because there, unlike here, any future development required a conditional use permit. According to CBD, future residential development is all but certain to occur due to the expansive nature of the agricultural zoning on Walt Ranch. While we understand CBD’s concern that future development on Walt Ranch may occur without further review, this contention is essentially a zoning challenge—not a viable CEQA claim. In sum, we reject CBD’s

assertion that the County engaged in prohibited “piecemeal” environmental review and improperly ignored growth-inducing impacts when it evaluated the vineyard-conversion project.

#### *B. Impact of the Project on Biological Resources*

The EIR states that several special-status<sup>5</sup> amphibians and reptiles “occur or have the potential to occur” on the property “either seasonally or year round.” The EIR acknowledges that the development and operation of the Project could pose potentially significant impacts to the western pond turtle, the California red-legged frog, and the foothill yellow-legged frog. According to the EIR, however, impacts to special-status amphibians and reptiles will be reduced to less-than-significant levels after implementation of various mitigation measures. Plaintiffs assert a variety of challenges to the EIR’s analysis of the Project’s impact on biological resources.

##### 1. Baseline Environmental Setting

CBD and LRC each challenge the adequacy of the description of the baseline environmental setting regarding the California red-legged frog.<sup>6</sup>

“Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined. (Guidelines, §§ 15125, 15126.2, subd. (a).)” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) CEQA requires that the EIR describe the environmental “baseline,” which is normally “‘the physical environmental conditions in

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<sup>5</sup> “Special-status species” are those that have been: (1) listed as endangered, threatened, or a candidate for such listing under the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) or the California Endangered Species Act (Fish & G. Code, § 2050 et seq.); and (2) designated as a species of “special concern” by the California Department of Fish and Wildlife.

<sup>6</sup> CBD purports to challenge the baseline analysis for the foothill yellow-legged frog and the western pond turtle. However, CBD’s arguments in its opening and reply briefs focus solely on the California red-legged frog. Accordingly, claims regarding the baseline information for the foothill yellow-legged frog and the western pond turtle are forfeited. (See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [issues do not have a life of their own].)

the vicinity of the project, as they exist at the time the notice of preparation is published.’” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320–321 (*CBE v. South Coast Air*); Guidelines § 15125, subd. (a).)

“[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.” (*CBE v. South Coast Air, supra*, 48 Cal.4th at p. 328.) “Because the chief purpose of the EIR is to provide detailed information regarding the significant environmental effects of the proposed project on the ‘physical conditions which exist within the area,’ it follows that the existing conditions must be determined, to the extent possible, in the EIR itself. [Citations.] On the other hand, the agency has the discretion to resolve factual issues and to make policy decisions. If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence.” (*Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120.)

The EIR reflects that in 2007, between March and September, WRA Environmental Consultants conducted protocol-level surveys on the entire property. Biologists spent more than 80 hours surveying the Capell Creek watershed. The surveys did not locate any California red-legged frogs in the Capell Creek watershed or anywhere else on the property. The results of the surveys were forwarded to the United States Fish and Wildlife Service (USFWS). Based on feedback from the USFWS, additional surveys were conducted in 2008 and 2012, focusing on the Milliken Creek watershed. Further surveys of the Capell Creek watershed were not conducted because, in light of its supportive habitat, the California red-legged frog was presumed in the Capell Creek watershed.

In 2008, Analytical Environmental Services (AES) conducted protocol-level surveys consisting of eight separate multi-day surveys during the breeding (January,

February, and March) and non-breeding (July) seasons at 25 separate survey sites on the Milliken Creek watershed portion of the property. California red-legged frogs were not observed at any site. In 2012, AES conducted one day survey and one night survey during the non-breeding (August) season. As in past surveys, California red-legged frogs were not located.

*a. Capell Creek*

LRC argues that presuming the presence of the California red-legged frog in the Capell Creek watershed without additional protocol-level surveys renders the baseline analysis “informationally deficient.” Here, unlike the cases cited by LRC, the record reflects an intense effort to locate the California red-legged frog. (Cf. *Galante Vineyards v. Monterrey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122–1123 [no information on dam’s impact on adjacent vineyard]; *Santiago Water Dist. v. County of Orange*, *supra*, 118 Cal.App.3d at pp. 829–831 [no estimate of project’s water demand or impact of water services]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 661–664 [no information on groundwater use during typical operations].)

Presuming the presence of this sensitive species, despite the fact that no California red-legged frogs were ever observed during the studies, did not skew the baseline information. If anything, this conservative estimate triggered additional environmental review, not less. Based on the potential presence of the California red-legged frog, the EIR identifies possible impacts to the species and proposes mitigation measures to avoid them.

*b. Milliken Creek*

CBD and LRC argue that the baseline analysis was inadequate because the surveys conducted in the Milliken Creek watershed failed to adhere strictly to USFWS protocols regarding the time and number of the surveys and the qualifications of the surveyors.

Legally, CEQA does not require “protocol-level” surveys. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396–1397 (*AIR v. County of Madera*); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1124–

1125 (*Gray*.) The choice of methodology is up to the agency. (*North Coast, supra*, 216 Cal.App.4th at pp. 642–643.) Biological surveys need only provide “ ‘adequate information to ensure that “decisions be informed, and therefore balanced.” ’ ” (*AIR v. County of Madera*, at p. 1347.)

Factually, the surveys sufficed. CBD asserts that, according to USFWS guidelines, the “best survey period” is between January 1 and February 28. However, USFWS guidelines provide that this date range is the best period for conducting “egg surveys” to detect egg masses. USFWS guidelines in fact state that surveys “may begin anytime during January and should be completed by the end of September.” The USFWS guidelines explain that “adult frogs are most likely to be detected at night between January 1 and June 30, somewhere in the vicinity of a breeding location, whereas sub-adults are most easily detected during the day from July 1 through September 30.” The August 2012 daytime survey during non-breeding season was an acceptable methodology within the parameters established by the USFWS guidelines.

CBD and LRC also attack the competency of the biologists conducting the surveys based on the purported inability to differentiate between a tadpole and a subadult, by referring to a “subadult/tadpole” in a survey. They also criticize the methodologies utilized to identify the species.

First, the professional resumes attached to the surveys reflect that the biologists were more than qualified to conduct the surveys; all four biologists had several years of prior training and experience, with three of the four having previously conducted protocol surveys for California red-legged frogs. The reference to “subadult/tadpole” in one of the handwritten surveys does not demonstrate that the biologists were incapable of identifying the life stages of the California red-legged frog, particularly where the survey in question explains that the creature “moved under overhanging ledge and out of sight,” and notes that “[h]ind legs [were] present on tadpole.” Second, the critique of the methodologies employed ignores the substantial evidence standard of review. “The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a

substantial evidence review.” (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1148.) Pointing to evidence purportedly casting doubt on the biologists’ qualifications and attacking the methodology used by the County are not enough to carry CBD’s and LRC’s burden of showing a lack of substantial evidence to support the baseline determination. (*North Coast, supra*, 216 Cal.App.4th at p. 643.)

The issue is not whether other methods might have been used, but whether the agency relied on evidence that a “ “reasonable mind might accept as sufficient to support the conclusion reached” ” in the EIR.” (*North Coast, supra*, 216 Cal.App.4th at p. 642.) Ultimately, it comes down to whether the surveys were “sufficiently credible” to provide a substantial basis for an informed decision. (*Laurel Heights I, supra*, 47 Cal.3d at p. 409.) We conclude they were. The numerous surveys, containing three years of data, were “more than adequate.” (*North Coast*, at p. 640.) “The fact that additional studies might be helpful does not mean they are required.” (*AIR v. County of Madera, supra*, 107 Cal.App.4th at p. 1396.)

## 2. Adequacy of the Impacts Analysis Regarding the Foothill Yellow-legged Frog

CBD argues that the EIR failed to analyze or mitigate the potentially significant impacts on the foothill yellow-legged frog due to vehicle traffic. Relying on a report from the Sierra Club, CBD contends that vehicle traffic on the Project’s network of roads and stream crossings is likely to kill foothill yellow-legged frogs and destroy their eggs, which may attach to rock crossings.

We conclude, however, that CBD fails to meet its burden in its challenge to the EIR in this respect. In order to succeed, CBD must specify what evidence the County relied upon in making its purportedly erroneous determination that there will be less-than-significant impacts to the foothill yellow-legged frog and that as a result, no mitigation was required. (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 526.) CBD cannot simply rely on contrary conclusions asserted by the Sierra Club. (*Ibid.*)

In any event, substantial evidence supports the County’s finding that the impact of vehicle traffic on the foothill yellow-legged frog would be insignificant. The EIR notes

that breeding season for the foothill yellow-legged frog occurs from March to June. The Project's peak activity, with the potential to generate the most traffic, occurs from August to October and does not overlap with the breeding season. Moreover, there is substantial evidence that the population of the foothill yellow-legged frog within the Project area may always be small due to breeding constraints and robust populations of predatory species. Except in years with high rainfall, the transitory nature of the creeks renders foothill yellow-legged frog breeding unlikely in all but the largest waterways. Milliken Creek, the largest waterway, is heavily populated with predatory non-native species that negatively impact the foothill yellow-legged frog population, especially its eggs, tadpoles, and juveniles. Creek surveys that were conducted at the start of breeding season in March 2007 identified eight separate occurrences of the foothill yellow-legged frog. A few juveniles were reported, but the majority of the foothill yellow-legged frogs observed were adults. No eggs or tadpoles were observed during the surveys. On this record, we conclude that there is substantial evidence that the impact of vehicle traffic on the foothill yellow-legged frog is not significant. (See *North Coast, supra*, 216 Cal.App.4th at pp. 639–643.)

### 3. Adequacy of Impact and Mitigation Analysis

The EIR acknowledges that vineyard operations may include pesticide use that could impact the western pond turtle, the California red-legged frog, and the foothill yellow-legged frog. However, after implementation of integrated pest management (IPM) techniques, riparian buffers, and stream setbacks, the impacts will be less than significant. CBD and LRC claim these mitigation measures are inadequate and fail to consider the effect of pesticide drift.

#### a. IPM Techniques

The goal of IPM is to minimize “the harmful effects of chemical pesticides on humans and natural resources, including wildlife,” by applying chemical pesticides only as a last resort, at the lowest possible toxicity levels and application rates. IPM techniques include a variety of measures to prevent pest infestation, including permanent cover crops, beneficial insects, and minimal to no use of chemical pesticides except when

found necessary from monitoring. The IPM plan included in the EIR requires Hall to use only Category 3 (“Low Toxicity”) and Category 4 (“Very Low Toxicity”) pesticides.

Mitigation Measure 4.5-4 requires use of “IPM techniques where feasible . . . [including] minimal to no use of pesticides except when found necessary from monitoring.” CBD argues that the phrase “where feasible” makes this measure illusory. However, it is important to note that IPM is but one item on a lengthy list of standard operating procedures, which “shall” be followed when applying pesticides in the vineyard. That Hall must implement IPM where “feasible” does not render the entire package of measures illusory. (*City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 854–856 [approving mitigation committing agency to pursue “feasible” strategies to reduce traffic and parking impacts].) CBD’s distrust of Hall’s commitment to use lower-toxicity chemicals does not invalidate the efficacy of the IPM plan as one aspect of the mitigation.

Similarly, CBD’s skepticism about the effectiveness of the IPM plan does not undermine the validity of the EIR. (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620 [“the mere presence of conflicting evidence in the administrative record does not invalidate” EIR’s conclusions]; *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143 [same]; *Laurel Heights I, supra*, 47 Cal.3d at p. 407 [court does not weigh conflicting evidence concerning effectiveness of mitigation].) “[W]hether others might disagree” is immaterial, so long as substantial evidence supports the County’s conclusion that use of IPM techniques (in conjunction with other mitigation measures) will reduce impacts on biological resources to less-than-significant levels. (*North Coast, supra*, 216 Cal.App.4th at pp. 626–627.) Contrary to plaintiffs’ implicit suggestion that IPM is the sole mitigation measure, the EIR analyzed the impacts of pesticide use, concluded that consequences to special-status species are potentially significant, and proposed a range of measures aimed at minimizing these impacts, including that Hall: 1) maintain appropriate buffers (Mitigation Measure (MM) 4.2-1); 2) prepare and follow a hazardous materials plan (MM 4.5-1); 3) follow standard operating procedures for vineyard equipment (MM 4.5-2); 4) follow restrictions on

chemical mixing (MM 4.5-3); 5) follow restrictions on pesticide application (MM 4.5-4); 6) follow restrictions on oil use and storage (MM 4.5-5); and 7) minimize pesticide drift through IPM techniques (MM 4.2-10 & MM 4.2-11). The EIR thus contains substantial evidence supporting the County's conclusion that this array of measures would be effective to minimize impacts.

Citing *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, CBD also argues that the EIR impermissibly relies on compliance with existing regulations as CEQA mitigation. *Californians for Alternatives to Toxics*, however, is distinguishable. There, the court held that an agency's uncritical, unelaborated reliance on a regulatory program was insufficient. (*Californians for Alternatives to Toxics*, at p. 16.) In this case, compliance with regulatory programs is but one of multiple measures designed to mitigate impacts on special-status species. Agencies routinely, and appropriately, cite compliance with regulatory standards to support the conclusion that impacts will not be significant. (Guidelines, § 15126.4, subd. (a)(1)(B); *Citizens for a Sustained Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1059–1060 (*Treasure Island*) [requirement that site cleanup comply with regulatory standards supported conclusion that mitigation would avoid impacts from hazardous substances]; *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 409–413 [cleanup of school site under supervision of regulatory agency supported conclusion that impact would be insignificant]; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236 [requiring compliance with regulations as a common and reasonable mitigation measure]; cf. *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896 (*Oakland Heritage*) [use of regulatory standard to determine significance].)

Finally, contrary to LRC's contention, the EIR does not impermissibly defer development of mitigation measures by failing to specify the IPM techniques to be used. Generally, "it is inappropriate to postpone the formulation of mitigation measures." (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 735 (*POET*.) "However, this general rule against deferring the formulation of mitigation measures is

not absolute.’’ (*Ibid.*) Deferral of selection of mitigation measures is permissible ‘‘for kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process . . . . [T]he agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated.’’ (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1029; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621 (CNPS).)

The IPM techniques described in Mitigation Measure 4.5-4 are incorporated into the mitigation measures designed to minimize the impacts to the western pond turtle (MM 4.2-10) and the California red-legged frog and foothill yellow-legged frog (MM 4.2-11). As noted, these techniques include permanent cover crops, beneficial insects, and minimal to no use of chemical pesticides, except when found necessary from monitoring. The failure to specify the precise techniques that must be used is not fatal. (*Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 955 (*Ebbetts Pass*) [detailed environmental analysis of every precise use that ‘‘may conceivably occur’’ not required]. The specific IPM techniques to be employed will depend on the ‘‘conditions on the ground,’’ such as the amount and type of insect damage and ‘‘other factors that are not known at this time.’’ (*Ibid.*) If conditions require the use of pesticides, the IPM plan sets forth the specific performance standard that ‘‘[a]ll products that will be applied at Walt Ranch will be Category 3 [Low Toxicity] or 4 [Very Low Toxicity] . . . represent[ing] the lowest risk category of chemicals.’’ In addition, the EIR sets forth the standard operating procedures and best management practices (BMPs) that must be followed when applying pesticides to the vineyards.

‘‘CEQA does not define how specific the performance standards set forth in an EIR must be in order to defer formulating mitigation measures.’’ (*Center for Biological*

*Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 242.) What is clear is that “ ‘the rule prohibiting deferred mitigation prohibits loose or open-ended performance criteria. . . . If the measures are loose or open-ended, such that they afford the applicant a means of avoiding mitigation during project implementation, it would be unreasonable to conclude that implementing the measures *will* reduce impacts to less than significant levels.’ ” (*Ibid.*) The IPM and other mitigation measures adopted here comply with CEQA requirements. (See *CNPS, supra*, 172 Cal.App.4th at p. 621 [“when a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project”].)

LRC compares the EIR in this case to the ones found inadequate in *CBE v. City of Richmond* and *POET*. Those cases are inapposite and do not compel a contrary conclusion. For example, in *CBE v. City of Richmond, supra*, 184 Cal.App.4th at p. 75, Chevron sought permits to allow its Richmond refinery to process additional types of crude oil. A different panel of this division concluded the EIR improperly deferred mitigation measures to reduce GHG emissions where the “centerpiece” of its mitigation plan gave Chevron a year *after* project approval to submit a plan to achieve “ ‘complete reduction of greenhouse emissions’ ” up to 898,000 metric tons per year. (*Id.* at p. 91.) The city proposed only a general goal of no net increase in GHG emissions and then “set[ ] out a handful of cursorily described mitigation measures for future consideration,” with no effort to calculate what, if any, reductions in GHG emissions would result from each measure. (*Id.* at p. 93.) Indeed, the measures were “nonexclusive, undefined, untested and of unknown efficacy.” (*Ibid.*)

Similarly, in *POET, supra*, 218 Cal.App.4th at p. 740, the agency improperly deferred formulation of mitigation measures for possible increase in nitrogen oxide emissions that could result from the implementation of low-carbon fuel regulations. The EIR’s reliance on future rulemaking to ensure that there would be no increase failed to

establish objective performance criteria for measuring whether the goal would be achieved. (*Ibid.*)

Here, in contrast, the IPM plan commits to using permanent crop cover, beneficial insects, and minimal to no use of pesticides. The IPM plan further commits Hall to using the lowest-toxicity pesticides (Categories 3 & 4), and only as a last resort. Beyond the IPM plan, the EIR requires Hall to comply with all applicable regulations, standard operating procedures for vineyards, and BMPs. That is enough. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1276; *Engineered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 795–796 (EHL) [BMPs required to address water quality impacts; mitigation upheld].)

*b. Buffers*

To minimize impacts on aquatic habitat for the California red-legged frog, the foothill yellow-legged frog, and the western pond turtle, the County adopted Mitigation Measure 4.2-4. In compliance with County Code section 18.108.025, this measure requires riparian buffers and stream setbacks to act as filters preventing sediment and agrichemicals such as nitrogen from reaching drainages that support habitat for these species. According to various peer reviews, riparian buffers are able to trap as much as 75 to 100 percent of sediment and agrichemicals found in runoff. Mitigation Measures 4.2-10 and 4.2-11 require IPM techniques and BMPs to provide further protection.

CBD, citing a critique by an LRC biologist, argues that riparian buffers are “plainly inadequate” to protect special-status species. Disagreement regarding the efficacy of buffer zones does not render the EIR inadequate. (See *North Coast, supra*, 216 Cal.App.4th at pp. 626–627.) Moreover, the record reflects that buffer width is only one factor in determining the effectiveness of agrichemical mitigation, which “may be more directly influenced by soil type, watershed hydrology . . . and subsurface biogeochemistry.” Based on published recommendations from the Natural Resources Conservation Service and the University of California, Division of Agricultural and Natural Resources, the EIR appropriately concluded that a 50-foot buffer is “generally adequate . . . to provide enough vegetation to entrap sediments and soils, and filter

chemicals.” This guidance provides ample support for the conclusion that 50-foot-minimum setbacks would protect aquatic habitats from sedimentation and agrichemicals. That plaintiffs disagree with this conclusion does not render the EIR inadequate.

In light of the substantial evidence that 50-foot buffers would adequately protect aquatic habitats, the EIR is not required to address the efficacy of still larger buffers. (§§ 21002, 21100 [measures that “substantially lessen” otherwise potentially significant impact comply with CEQA]; *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 336–338 [no mitigation required for less-than-significant impacts]; *North Coast, supra*, 216 Cal.App.4th at pp. 649–650 [EIR need not address purchase of energy credits as mitigation, where energy impacts insignificant].)

In sum, substantial evidence supports the County’s conclusion that mitigation by use of buffer zones will avoid significant impacts from sediment and agrichemical runoff. (*EHL, supra*, 131 Cal.App.4th at pp. 795–796 [BMPs as mitigation]; *Sierra Club v. Tahoe Regional Planning Agency* (2016) 840 F.3d 1106, 1117–1119 [BMP implementation to address water quality impacts].)

#### *c. Pesticide Drift*

CBD and LRC argue that the EIR failed to address the potential impact of pesticide drift on sensitive species. The EIR identifies the potential impact of pesticides on aquatic habitat (including from airborne drift), summarizes applicable regulations, and identifies mitigation to reduce this risk. Mitigation Measure 4.2-10 requires the use of IPM techniques to minimize impacts from pesticide drift on the western pond turtle. Mitigation Measure 4.2-10 is incorporated into Mitigation Measure 4.2-11, which in turn serves to minimize impacts from pesticide drift on the California red-legged frog and the foothill yellow-legged frog.

Citing *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645 (*Lotus*), LRC claims that the County “unlawfully ‘compresse[d]’ the impact assessment with the identification of mitigation measures.” *Lotus* bears little resemblance to this case. In *Lotus*, the court identified two errors in the EIR that are not present here: the failure to apply any identifiable standard of significance to analyze impacts on old growth redwood

trees, and the mischaracterization of mitigation measures as part of the project itself. (*Id.* at pp. 654–656.) In the face of those two defects, the court explained that the EIR improperly “shortcut” CEQA requirements: “Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered. . . . Simply stating that there will be no significant impacts because the project incorporates ‘special construction techniques’ is not adequate or permissible.” (*Id.* at pp. 656, 658.)

Unlike the situation in *Lotus*, the EIR discloses that pesticide drift is a potentially significant impact, and then proposes mitigation to reduce that impact. The EIR’s responses to comments point the reader to the specific location where pesticide drift is discussed and describe the measures to minimize those impacts. (See *Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1040–1041 [upholding responses to comments].) In short, the EIR fulfills its informational purpose concerning pesticide drift. (See *Ebbetts Pass, supra*, 43 Cal.4th at pp. 953–954 [upholding discussion of pesticide use and related impacts].)

### *C. Impact of the Project on Groundwater*

The EIR states that the Project would rely solely on groundwater to irrigate the proposed vineyards, which would be a significant impact. The proposed vineyards would extract water from three existing active irrigation wells and up to three proposed wells; the groundwater would be stored in four proposed reservoirs. The EIR concludes that the proposed wells and reservoirs, combined with the existing wells, and a groundwater monitoring program would reduce the impacts to less-than-significant levels. CBD and Circle Oaks raise numerous challenges, individually and collectively, regarding the adequacy of the EIR’s groundwater analysis.

#### 1. EIR’s Analysis of Groundwater Supply and Demand

Groundwater available at the project site exists primarily in the fractured volcanic-rock aquifers beneath the property that are known as the Sonoma Volcanics (volcanic

aquifer). The three main users of the volcanic aquifer are Walt Ranch, Circle S Vineyard,<sup>7</sup> and the Circle Oaks County Water District (COCWD).

There are a total of five existing wells drilled on Walt Ranch—three functional irrigation-supply wells (WR-3, WR-4, and WR-5) and two inactive wells (WR-1 and WR-2). The nearest known off-site well is a private well (Gale Well), located 1,000 feet south of the property boundary and approximately 3,500 feet from WR-5. There are four wells on the Circle S Ranch. COCWD also owns four wells located in the Circle Oaks neighborhood.

Hall retained Richard C. Slade & Associates LLC (RCS), a hydrogeological consulting firm to compile information regarding the Project site and related area geology, precipitation data, and aquifer characteristics. RCS performed a pump test in June 2009 and issued a report in October 2009. RCS updated its report in February 2013 and April 2014. The April 2014 report is included in the DEIR and is attached as Appendix D. The pump test included (1) gathering five days' data in all wells prior to the pump test to establish baseline conditions; (2) performing a 96-hour constant rate pumping test, using WR-3 as the pumping well, pumped at or above the rate the vineyards would need; and (3) monitoring all wells for another five days afterwards to determine the rate at which water levels recovered. In addition to WR-3 (the pumping well), RCS monitored WR-4 and WR-5 on Walt Ranch, four irrigation wells on Circle S, and the Gale Well to the south.

RCS noted that, based on public information, COCWD had at least two wells on its property. RCS contacted COCWD to inquire about these wells but received no response. As little was known about those wells, RCS did not monitor them during the pump test. Instead, RCS selected three monitoring points to estimate the cumulative theoretical water-level drawdown on the COCWD wells.

RCS pumped WR-3 at a higher rate than will occur during operations. According to RCS, “[a]fter pumping WR-3 at a rate of 153 [gallons per minute] for a continuous

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<sup>7</sup> The Circle S Vineyard is yet to be built on the Circle S Ranch but is considered as part of the cumulative groundwater analysis.

period of 96 hours, no definitive water level drawdown attributable to the pumping of WR-3 was observed in any of the seven other observation wells monitored during the subject pumping test.” In particular, no detectable drawdown occurred at WR-4, the well closest to WR-3 (the pumping well).

RCS relied on the June 2009 pump test, together with other information on the aquifer’s characteristics, to estimate groundwater elevations, flow direction, and transmissivity (the rate at which groundwater flows through the aquifer system). RCS then constructed an aquifer model and calibrated the model to match data obtained during the pump test. This model, in turn, enabled RCS to estimate groundwater contours and to simulate whether drawdown in WR-3 would affect other nearby wells.

Taking into account worst case-scenario conditions (which were not realistic, in that they assumed pumping at Circle S and Walt Ranch 24 hours a day for the entire irrigation and/or frost season), RCS’s modeling led to the following conclusions: (1) monitoring points (which estimated the unknown location of COCWD wells) might experience temporary minor effects, but not enough to affect operations; and (2) annual precipitation recharge more than sufficed to replenish the aquifer. RCS also concluded that any observed effects could be avoided by altering the pumping regime on Walt Ranch. RCS concluded: “[C]umulative effects for the Walt Ranch and Circle S Ranch vineyard development projects will not have a significant impact on the groundwater production of others in the area.”

## 2. Baseline Environmental Setting

CBD, joined by Circle Oaks, argues that the EIR lacks sufficient information regarding groundwater conditions. According to CBD, the County failed to use the current average precipitation rate, which created an inflated groundwater recharge rate. CBD insists that the inflated groundwater recharge rate will allow Hall to pump too much groundwater.

“ ‘When a challenge is brought to studies on which an EIR is based, “the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part*

of the total evidence that supports the “agency’s decision.”” (*Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 349 (*Town of Atherton*).) The petitioner “ ‘bears the burden of demonstrating that the studies on which the EIR is based “are clearly inadequate or unsupported.”’ ” (*Id.* at p. 350.) The issue is “whether substantial evidence supports the agency’s conclusions, not whether others might disagree with those conclusions.” (*North Coast, supra*, 216 Cal.App.4th at p. 626.)

*a. Annual Precipitation Rate*

Based on RCS’ calculations, the DEIR concluded that the project site receives an estimated 35 inches of precipitation annually. The County received comments stating that RCS should have relied on data from a Napa State Hospital rain gage, which recorded an average rainfall of roughly 25 inches per year. The EIR responded that the Napa State Hospital data was unrepresentative of the Project site, and that RCS’ long-term average precipitation calculation, which spanned several decades, encompassed both drought and rainy periods. The EIR presents “additional sets of precipitation data,” including the Atlas Peak rain gage, Walt Ranch rain gages, and the United States Geological Survey rainfall maps. The EIR concludes that this additional information corroborates “the fact that the average rainfall that occurs at . . . Walt Ranch . . . is much higher than the long-term average rainfall recorded at the Napa State Hospital [g]age and show[s] that an annual average rainfall estimate of 35 inches is a conservative estimate for the Walt Ranch area.”

CBD contends that the County should have relied on 2012 data because that is when the County issued its NOP. The County actually issued two NOPs, one in 2008 and the other in 2012. In any event, the County had “discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured,” subject to substantial evidence review. (*CBE v. South Coast Air, supra*, 48 Cal.4th at p. 328; see *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, 728–729 [substantial evidence supported EIR’s description of existing level of operations at refinery, where operations fluctuated over time and refinery closed during bankruptcy proceedings]; *North County Advocates*

v. *City of Carlsbad* (2015) 241 Cal.App.4th 94, 102–106 [agency had discretion to determine historic traffic levels at vacant shopping center].)

It is not for CBD to define the parameters of the methodology that the County relied on in measuring the existing physical conditions. Substantial evidence supports the County’s conclusion that the project site receives a long-term average precipitation of approximately 35 inches of precipitation per year.

*b. Recharge Rate*

CBD further argues that the County’s failure to use the current average precipitation rate resulted in the adoption of an inflated groundwater recharge rate, which allows Hall to extract an unsafe amount of groundwater. According to CBD, once the project pumping is added to the amount regularly pumped from the COCWD-owned wells, the combined extraction will withdraw virtually all of the estimated recharge rate. CBD argues that the EIR failed to present any evidence to support the conclusion that extracting up to the average recharge rate is sustainable. The record belies this claim.

RCS estimated that groundwater demand for the vineyard project is 187 acre-feet per year (AFY) (147 AFY for irrigation and 40 AFY for frost protection). RCS estimated Circle S Vineyard’s demand to be 189.9 AFY. RCS also considered COCWD’s reported annual groundwater demand of 56.7 AFY. RCS conservatively estimated the combined groundwater demand of the three primary users of the volcanic aquifer to be 433.6 AFY.

In estimating the average annual recharge of groundwater within the volcanic aquifer beneath Walt Ranch, RCS considered the long-term average rainfall and the estimated amount of deep percolation<sup>8</sup> of rainfall. RCS estimated the acceptable recharge range to be from 161.3 to 276.5 AFY, with 207 AFY representing the best estimate based on conservative assumptions. Based on numerous studies and reports, RCS used a conservative 7 percent percolation rate—well below the accepted 9 percent to 10.5

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<sup>8</sup> Deep percolation refers to the movement of surface water by downward gravity through soil to groundwater. (See Jennifer L. Cordua, *The Search for New Supplies: Salvaging the Remains of Agricultural Water Conservation in California* (1998) 31 U.C. Davis L.Rev. 591, 623, fn. 41.)

percent range—which yielded a recharge rate of 161 AFY. RCS also considered the average groundwater recharge rate at neighboring Circle S (325 AFY), for a combined annual recharge rate of 486 AFY.

Using conservative projections, RCS estimated the volume of groundwater currently stored in the volcanic aquifer to be 4,301 AF. The Project, which sought to extract 187 AFY for vineyard irrigation and frost protection, would extract less than 5 percent of the groundwater available for extraction. The County subsequently imposed a 144.5 AFY cap on groundwater pumping on Walt Ranch, which results in the Project extracting just under 3.5 percent of the available groundwater. Using the groundwater cap of 144.5 AFY for the Project, the combined groundwater demand is reduced to 393.1 AFY, which is significantly below the combined annual recharge rate of 486 AFY, and which represents only 9 percent of the available groundwater resources beneath the Project site.

Substantial evidence thus supports the conclusion that sufficient groundwater resources are available beneath the Project site, and that the conservative demand and recharge estimates are sustainable.

*c. Pump Test*

CBD and Circle Oaks argue the above-described RCS pump test was not reflective of baseline conditions. RCS conducted a 96-hour constant rate pumping test at WR-3 and monitored water levels at wells WR-4 and WR-5, four irrigation wells on the adjacent Circle S property, and the Gale Well to the south. RCS also modeled theoretical drawdown at these wells. The analysis assumes that only 2 percent of groundwater is available. The EIR conservatively assumes that all neighboring wells draw from the same aquifer. RCS repeatedly updated its analysis as the Project (and groundwater demand) shrank, and as additional data (e.g., precipitation, groundwater levels) became available. The EIR also includes extensive information regarding geology, aquifer size, recharge rates, and precipitation.

That CBD and Circle Oaks disagree with the methodology is not enough to invalidate the EIR. (*AIR v. County of Madera, supra*, 107 Cal.App.4th at p. 1396.) “It is

well established an agency has discretion in selecting the methodology to be used in evaluating environmental impact, subject to review for substantial evidence.”

(*SOMCAN, supra*, 33 Cal.App.5th at p. 337.) LRC’s complaint that RCS should have done an additional pump test based on the new information relating to Circle Oaks’ well locations (rather than merely re-running its modeling to incorporate the new data) does not compel reversal, as the issue is not whether studies are irrefutable or could have been better. (*Laurel Heights I, supra*, 47 Cal.3d at p. 409.) We conclude the EIR’s description of groundwater conditions is supported by substantial evidence, and that CBD and Circle Oaks have failed to sustain their burden of showing that the studies on which the EIR was based were “ ‘clearly inadequate or unsupported.’ ” (*State Waters Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795 (*State Waters*)).

### 3. Adequacy of Impacts Analysis

CBD and Circle Oaks challenge the adequacy of the EIR’s groundwater impacts analysis. CBD focuses on the EIR’s discussion of the potential impacts of groundwater extraction on stream flows. Circle Oaks, for its part, argues that the EIR failed to adequately address the impacts to the COCWD-owned wells. As we shall explain, neither contention has any merit.

#### a. Stream flows

CBD claims the EIR does not address the potential impact of pumping on Capell Creek and Milliken Creek stream flows and the effects of reduced stream flows on special-status species.

The EIR explains that the only well in the Capell Creek watershed (WR-2) is not functional and will not be used to irrigate the vineyard. Accordingly, there was no impact to analyze. Nevertheless, CBD asserts that the EIR should have analyzed possible future use of WR-2. The EIR identifies locations of future wells, if needed. No such wells would be located in the Capell Creek watershed. Thus, pumping of WR-2 is not “reasonably foreseeable.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 396.) No further analysis was required.

The EIR concludes that pumping at Walt Ranch will not affect creek flows in the Milliken Creek watershed because the groundwater aquifer is not connected to Milliken Creek. CBD challenges this conclusion as an “unsubstantiated assumption.” The record reflects that WR-5 is roughly 1,000 feet from Milliken Creek. RCS explained that even when the creek is dry, the groundwater surface elevation in WR-5 is higher than the bottom of the creek; thus, RCS concluded that Milliken Creek is not connected to the groundwater table by a continuous saturated zone in the vicinity of WR-5. RCS explained that if the two were connected, then water would have been observed in Milliken Creek. Based on these observations, RCS concluded that there is no connection between Milliken Creek and the groundwater table.

CBD dismisses this conclusion but cites no data or analysis. Rather, CBD cites to a comment letter suggesting that more information is needed. “A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not, however, for them to design the EIR. That further study [ ] might be helpful does not make it necessary.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 415.) Substantial evidence supports the conclusion that Milliken Creek is not connected to groundwater and, as such, groundwater pumping will not adversely affect the stream flow. By reason of this conclusion, there is no need to address CBD’s claim that the EIR failed to analyze the impacts of groundwater extraction on special-status species and other wildlife in the Milliken Creek watershed.

*b. COCWD Wells*

Circle Oaks offers a lengthy recitation of the DEIR’s failure to include meaningful information about the Project’s impacts on COCWD-owned wells. Suffice it to say, after the County issued the DEIR, RCS obtained additional, albeit limited, information from COCWD regarding three of its four wells.

COCWD provided location coordinates for its horizontal well and for two of its three vertical wells (Well No. 1 and Well No. 3). Of the four COCWD-owned wells, the horizontal well, which is 2,100 feet from WR-4, is the closest to the Project site. The horizontal well is located between volcanic rocks and landslide deposits. As COCWD did

not provide construction details for the horizontal well, it was assumed that the horizontal well is drilled in the volcanic rocks. COCWD Well No. 1 is located in landslide deposits and is approximately 3,180 feet from WR-4. COCWD also did not provide any construction details for Well No. 1.

COCWD reported a total annual groundwater demand of 56.7 AFY. COCWD Well No. 1 supplies 40.5 AFY and the horizontal well supplies the remaining 16.2 AFY. Given its location and geology, RCS determined that it was unlikely that COCWD Well No. 1 draws from the volcanic aquifer. Nevertheless, RCS included COCWD Well No. 1 in its revised analysis, which is attached to the EIR as Appendix Q. In its revised analysis, RCS found that the modeled drawdown at the COCWD wells' actual locations tracked the results for the well locations RCS estimated in its earlier report. Having conducted the revised analysis, RCS again concluded that the Project will not adversely affect COCWD wells.

Circle Oaks' disagreement with this conclusion “ ‘does not make an EIR inadequate.’ ” (*Town of Atherton, supra*, 228 Cal.App.4th at p. 349, quoting Guidelines, § 15151.) And again, Circle Oaks' challenge to the methodologies used by RCS does not invalidate the EIR, as they have failed to sustain their burden of demonstrating that the RCS modeling is clearly inadequate or unsupported. (*AIR v. Madera County, supra*, 107 Cal.App.4th at p. 1396; *State Waters, supra*, 136 Cal.App.4th at p. 795.)

#### 4. Adequacy of Mitigation Measures

Mitigation Measure 4.6-4 requires the development of a groundwater monitoring and mitigation plan (GWMMP), which has been developed and presented to the County for review and approval. The GWMMP provides methodology for the ongoing monitoring of designated wells (both on- and off-site) and trigger points, as well as a range of mitigation options if impacts to offsite wells occur. In addition, Conditions of Approval Nos. 15 and 18 were added to the Project. Condition of Approval No. 15 was added to require that groundwater monitoring efforts be consistent with other County approved projects and as required by the GWMMP. Condition of Approval No. 18 was added to acknowledge that the Project will be developed over four phases that allow

groundwater monitoring data to be collected and assessed by the County in consultation with a qualified hydrogeologist before each phase of development may occur.

CBD and Circle Oaks argue that mitigation measures and conditions of approval adopted by the County are inadequate in various respects. According to CBD and Circle Oaks, the mitigation measures “primarily consist of monitoring water levels, which is not mitigation; unlawfully defer analysis and development of mitigation measures until after Project approval; fail to specify performance standards; provide only ‘potential mitigation measures’; and any mitigation is first premised on [Hall’s] own determination that the impacts to groundwater resources are due to the operation of Walt Ranch before any mitigation would begin.” Applying the substantial evidence standard, we conclude the mitigation measures and conditions of approval comply with CEQA. (See *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 407–408.)

An EIR may rely on a resource-management plan as an element of mitigation as long as the agency has committed to reducing impacts to less-than-significant levels. (*CNPS*, *supra*, 172 Cal.App.4th at p. 621.) Mitigation Measure 4.6-4 and the GWMMP unequivocally commit the County to a robust monitoring program. Such monitoring is an appropriate component of mitigation. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 412; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070–1071 (*Save Cuyama Valley*) [ongoing monitoring at gravel mine for signs of river erosion]; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 208 [noise complaints trigger mitigation].)

Based on the monitoring program, the County, not Hall, will determine whether pumping at Walt Ranch has adversely affected groundwater resources, and if so, the County decides what to do about it. For example, if monitoring shows that the productivity at the COCWD wells is declining, and that decline is at least partly attributable to pumping at Walt Ranch wells, then the County must take appropriate steps until the problem is resolved. The GWMMP sets forth specific mitigation measures, which vary depending on the magnitude of the observed impact, and include the following: (1) reducing the instantaneous pumping rate in all or in selected project wells

(the specific wells will be determined by the RCS geologist after determining which project wells may be causing the impact); (2) reducing the volume of groundwater pumped in each irrigation season by all or by selected project wells (the specific wells will be determined by the geologist after determining which project wells may be causing the impact; (3) shifting of the rates and/or volumes of groundwater extraction by existing project wells to different portions of the subject property; (4) ceasing production from certain onsite wells and replacing that lost production by constructing new onsite wells at the project property; (5) lowering the pump, if possible, in an offsite well that has been shown to have been impacted; (6) constructing a new water well to replace an offsite well that has been shown to have been impacted; and/or (7) providing an alternative source of water to the owner of the impacted well in order to allow the owner to maintain the quantity and quality of the groundwater that has been otherwise lost by the impacts.

The details of exactly how mitigation measures will be achieved under the confines of the GWMP can properly be determined at a later date within the confines of the plan. (See *North Coast*, *supra*, 216 Cal.App.4th at p. 629 [agency may establish specific performance criteria and determine details of how mitigation will be achieved pending completion of future study]; *Oakland Heritage*, *supra*, 195 Cal.App.4th at p. 906 [seismic studies]; *CNPS*, *supra*, 172 Cal.App.4th at p. 621 [wetlands design]; see also *Save Cuyama Valley*, *supra*, 213 Cal.App.4th at pp. 1070–1071 [if erosion is observed at gravel mine, mine operations must be modified; mitigation upheld].) CEQA does not require numerical standards. (*Gray v. County of Madera*, *supra*, 167 Cal.App.4th at p. 1116 “[t]he fact that the mitigation measures require replacement water sufficient for consumptive use is sufficiently specific for the mitigation measures to be legally enforceable”]; *Save Cuyama Valley*, at p. 1070 [“adverse hydraulic impacts” was sufficiently specific performance standard for CEQA purposes]; *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 838 [deferred mitigation upheld where mitigation measure required pre-permit submission of a drainage plan that would ensure that runoff from the project site was “‘released at a rate no greater than that of the pre-development condition’”].)

In sum, we conclude that substantial evidence supports the County’s finding that, as mitigated, impacts to groundwater resources will be less than significant.<sup>9</sup>

#### *D. Impact of the Project on Watershed Resources*

The EIR states that development of the Project would alter the existing drainage pattern of the project site, which is a potentially significant hydrological impact. However, the Project as mitigated would create an overall decrease in the volume and rate of runoff, resulting in a less-than-significant impact on the drainage system.

LRC argues that the EIR is informationally deficient regarding watershed resource impacts. According to LRC, the Project will result in increased stormwater runoff, which will cause downstream transport of sediment that will negatively impact salmonids and their habitat. LRC challenges two aspects of the EIR’s analysis: (1) whether “deep ripping” of certain vineyard soils will permanently change the volume and runoff rate from those soils; and (2) whether the modeling studies in the EIR properly accounted for drainage facilities incorporated into the ECP. Once again, the substantial evidence standard applies. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898 (*Long Beach*).)<sup>10</sup>

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<sup>9</sup> To the extent CBD contends the EIR is deficient for failing to consider the environmental consequences of using alternative water sources *if* Mitigation Measure 4.6-4 is applied, “[c]rystal ball’ inquiry is not required. . . . An agency need not devote itself to an extended discussion of the environmental impact of alternatives remote from reality such as those which are of speculative feasibility. [¶] . . . [a]bsolute perfection is not required.” (*Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286–287.)

<sup>10</sup> In its briefs and at oral argument, LRC relied on *Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1, to support its position that the “fair argument” standard, rather than the substantial evidence standard, applies to these contentions. *Visalia Retail* is inapposite, as that case involved an EIR’s complete failure to analyze a land use policy’s potential to cause a phenomenon known as “urban decay.” (*Id.* at p. 5.) Where an EIR entirely omits discussion of a possible significant impact, the fair argument standard applies. (*Id.* at pp. 13–14.) Here, by contrast, the EIR discussed runoff as well as the potential impact of deep ripping and engineered drainage facilities; LRC simply disagrees with the EIR’s scientific analysis and implementation of its methodology. Thus, the substantial evidence standard applies.

LCR launches its attack on the EIR by summarizing the inherent problems associated with the installation of engineered drainage facilities for hillside vineyard conversions in general. This is not a valid challenge to the EIR, as it merely represents LRC's view on this type of engineered drainage generally. (See *Laurel Heights I, supra*, 47 Cal.3d at pp. 392–393.)

LCR next argues that the EIR omits essential information for assessing the significance of changes in peak runoff. LRC contends that the EIR erroneously assumes that “deep ripping” the soil will *permanently* increase soil moisture and, as a result, the EIR fails to include key information to analyze the effect of deep ripping on soil infiltration. The EIR, citing to a 2014 letter from Ken Oster, a Natural Resources Conservation Service (NRCS) scientist, explains that “ripping *could* result in a change in the infiltration rate of a soil.” (Italics added.)

LCR asserts that the EIR failed in its informational purpose because the 2014 Oster letter differs from how it was characterized in the EIR, as shown by a June 2016 follow-up letter from Mr. Oster that the County did not address until August 2016, after circulation of the final EIR in March 2016. LRC submitted the June 2016 letter (which was addressed to the Napa County Resource Conservation District) as an attachment to an August 26, 2016 letter from LRC’s consultant in connection with LRC’s appeal to the Board of Supervisors). In the June 2016 letter, Mr. Oster explained that deep ripping’s effects may be temporary and that field testing is required to verify that a theoretical change in soil permeability is in fact permanent, as required by the 2009 NRCS National Engineering Handbook.

Preliminarily, we note that the 2014 Oster letter explains that ripping soil from a depth of less than 20 inches to a depth of more than 20 inches would change the hydrological soil group<sup>11</sup> even without regard to changes in saturated hydrological

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<sup>11</sup> Hydrological soil groups are classifications based on the rate at which rainwater infiltrates soil and the potential for runoff. Soils are classified into four hydrologic soil groups (A, B, C, and D), ranging from a high infiltration rate and low runoff potential (soil group A) to very slow infiltration rate and a high runoff potential (soil group D).

conductivity (referred to as “Ksat,” which is essentially the rate at which water moves through soil). It explains that ripping may only temporarily change the soil’s Ksat but contrasts that temporary effect with the effect of increasing soil depth: “Nevertheless, the deepening of the soil alone would change the HSG.” We also note that unlike the June 2016 letter, the 2014 Oster letter cited in the EIR does not mention the need for field testing to verify changes associated with deep ripping.

In any event, the field testing recommended in the June 2016 Oster letter was performed under Oster’s supervision in October 2016. Mr. Oster himself verified that undisturbed soils outside the vineyard were in hydrological group D (i.e., the most impermeable and highest potential for runoff), whereas the adjacent vineyard soils that had been ripped to increase their depth to greater than 20 inches were properly classified in hydrological soil group B. The field testing thus confirmed the EIR’s discussion of deep ripping and the validity of its reliance on the June 2014 Oster letter.

Although LRC is correct that the EIR did not specifically mention the need for field testing the effects of deep ripping (a requirement that was not mentioned in the June 2014 letter cited in the EIR), the County responded to LRC’s post-EIR comments by conducting the very field testing LRC contended was necessary. That testing confirmed the soundness of the EIR’s analysis with respect to the effects of deep ripping and the associated change in hydrological soil group. On this record, the EIR’s failure to mention the need for field testing constitutes, at best, an “[i]nsubstantial or merely technical omission” that does not afford grounds for relief. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, *supra*, 57 Cal.4th at p. 463.) As courts have frequently explained, CEQA does not require technical perfection or exhaustive analysis; it requires a good faith effort at full disclosure. (E.g., *Long Beach*, *supra*, 176 Cal.App.4th at p. 898.) As the omission here “did not deprive agency decision makers or the public of substantial information relevant to approving the project,” it does not provide a basis for reversal. (*Neighbors for Smart Rail*, at pp. 464–465.)

LRC also asserts that the EIR inadequately analyzed and improperly omitted the effects of the Project’s engineered drainage facilities on runoff. Contrary to LRC’s

assertion, the EIR provides an in-depth evaluation of the Project's effect on runoff, including by analyzing the Project's engineered drainage facilities. LRC disagrees with the way in which the runoff analysis was performed, asserting that the methodology chosen improperly failed to include most of the Project's engineered drainage facilities. Substantial evidence supports the EIR's analysis of this issue.

A quantitative watershed hydrology study was completed by RiverSmith Engineering (RiverSmith) in 12 subwatersheds, eight in the Capell Creek and four in Milliken Creek. The EIR explains that runoff potential of different land uses was determined by assigning land use curve numbers to different land uses. Runoff curve numbers indicate the runoff potential of a soil and are based on ground cover type, the hydrologic condition of the land, and the hydrologic soil group. The higher the curve number, the higher the potential for runoff. RiverSmith used the NRCS Soil Survey for Napa County to assign hydrological soil groups for the entire watershed.

RiverSmith included runoff curve numbers for each of the 12 subwatersheds, both under existing conditions and after the installation of proposed vineyard, finding “a consistent reduction for the developed condition within the Milliken drainage and a mix of small increases and decreases within the subwatersheds that drain to Capell Creek.” The report describes the results within each subwatershed, identifying the change in runoff curve number and the reasons for the observed changes.

RiverSmith incorporated this information into the “HEC-HMS” computer model developed by the United States Army Corps of Engineers, focusing on points at which runoff exits each subwatershed and leaves the property. The model allowed RiverSmith to estimate changes in peak and total flows under various precipitation scenarios. The report lists the results for two-, 10- and 100-year storms under existing and proposed conditions and estimates peak flows at particular junctions and reaches of Milliken and Capell Creeks, accounting for combined flows from all of the subwatersheds. The modeling shows “a consistent pattern of a modest reduction in rainfall runoff within the Milliken watershed . . . for the proposed vineyard blocks and the associated vineyard development practices. This is consistent for all modeled storm frequencies, 2-yr through

the 100-yr event. . . . [¶] The reduction in the runoff peaks and associated runoff volumes is due to an increase in soil infiltration rates, primarily associated with the deep ripping practice. However, credit for the increased rate was only taken in the rocky soil groups where the ripping practice effectively changes the soil classification from Hydrologic Group D to Group C (higher infiltration rate).”

Despite this in-depth analysis, LRC contends that the modeling improperly failed to account for actual peak runoff of the vineyard’s engineered drainage facilities that do not lie along the longest hydrological paths within the 12 subwatersheds studied. LRC accuses the County of “gerrymandering” but cites to no evidence that RiverSmith manipulated boundaries to achieve a desired outcome. Instead, LRC argues that a smaller scale of subwatersheds should have been studied individually rather than as part of the 12 larger groups that were analyzed.

As part of its peak runoff analysis, RiverSmith assessed runoff “lag time,” meaning the delay between when runoff begins and when runoff reaches its maximum peak. RiverSmith also calculated the time of concentration, defined as the time required for runoff to travel from the most distant location in a watershed to its outlet or measurement point. RiverSmith noted that the time of concentration for each of the 12 analyzed subwatersheds is “by definition the longest hydrological flow path,” and explained that peak runoff occurs only when the entire watershed is contributing from the most hydraulically distant point. Accordingly, RiverSmith explained that engineered drainage facilities that are not on the longest hydrological path will not increase the peak runoff: “An improved drainage in itself does not create more water and, if it is off the longest hydrologic path, does not increase the peak flow within the analyzed unit [i.e., the subwatershed].”

Although LRC contends that the analysis should have been done on watersheds of smaller scale (which would then result in more of the engineered drainage facilities falling along differently-defined longest hydrological paths), this disagreement with the methodology and modeling does not support reversal. (Cf. *SOMCAN, supra*, 33 Cal.App.5th at p. 341 [agency’s selection of geographic area studied falls within the

agency's discretion, and we assume discretion is appropriately exercised absent a showing of arbitrary action].) The hydrological studies conducted by RiverSmith and included within the EIR provide substantial evidence supporting the EIR's inclusion of only the engineered drainage facilities on the longest hydrological path when calculating the changes in runoff associated with the Project. (*State Waters, supra*, 136 Cal.App.4th at p. 795 [“When a challenge is brought to studies on which an EIR is based, ‘the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the’ agency’s decision”]; see also *Laurel Heights I, supra*, 47 Cal.3d at p. 415 [“A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study . . . might be helpful does not make it necessary”]; *North Coast, supra*, 216 Cal.App.4th at pp. 642–643.)

LRC further faults the County for adopting Condition of Approval No. 16. Condition of Approval No. 16 applies to those vineyard blocks where, for purposes of modeling, the hydrologic soil group is expected to change from D to C due to deep ripping. For these blocks, field testing must be performed before and after vineyard installation to confirm that the reclassification from hydrologic soil group D to C is correct. If field testing shows that reclassification is not warranted, then the block must be modified and a revised ECP and further CEQA review may be required.

LRC argues that the field verification at an existing vineyard demonstrates that “pre-approval field testing . . . is feasible,” and is a concession that the EIR is legally inadequate. LRC accuses the County of hiding behind Condition of Approval No. 16 to avoid assessing the entire scope of the Project’s impacts. There is nothing improper about incorporating a condition into a project that requires field surveys prior to breaking ground. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 941–947 [surveys did not find sensitive species, but species had potential to occur; mitigation required further, pre-construction surveys; CEQA challenge rejected]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1276–1277

[upholding mitigation measure requiring pre-construction surveys for sensitive species].) LRC’s citation to *Lotus v. Department of Transportation, supra*, 223 Cal.App.4th 645 has no bearing on the EIR’s hydrology analysis in this case. Unlike the EIR in *Lotus*, there is no improper compression of the impacts analysis and the mitigation measure. (*Id.* at pp. 650, 656.) The EIR quantifies the Project’s impacts, identifies the criteria used to assess significance, evaluates the Project’s impacts in light of those criteria, and identifies applicable mitigation measures.

Condition of Approval No. 16 allows the Project to be modified to account for hydrological soil group data obtained through field verification. This condition will allow for additional mitigation measures if and when they become needed, and it should be encouraged. (See *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at pp. 523–524 [recognizing that adoption of future substitutions of adopted mitigated measures is consistent with CEQA and not improper deferral of mitigation.]) Verification of hydrological soil group classifications before and after vineyard installation and the possibility of future Project modifications promote CEQA’s goal of environmental protection. Condition of Approval No. 16 is thus not an impermissible deferral of mitigation. (See, e.g., *Citizens for a Sustainable Treasure Island v. City and County of San Francisco, supra*, 227 Cal.App.4th at p. 1062 [approving condition requiring project redesign if, based on consultations with Coast Guard, proposed buildings would interfere with system for monitoring ship traffic]; *North Coast, supra*, 216 Cal.App.4th at pp. 645–648 [mitigation requiring consultation to address harm to marine life from pile driving]; *Save Cuyama Valley, supra*, 213 Cal.App.4th at pp. 1070–1071 [measure requiring corrective action if needed].)

Finally, LRC argues that the trial court abused its discretion in denying its motion in limine, requesting admission of 28 engineering drawings that had been marked up by one of its experts. In a CEQA case, “the only evidence that is relevant to the question of whether there was substantial evidence to support a quasi-legislative administrative decision . . . is that which was before the agency at the time it made its decision.” (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, fn. 4; see

*O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 596, fn. 11 [court refused to consider extra-record map aggregating six maps that *were* part of the record]; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 366–367 [court declined to consider documents not provided to city]; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 706–707 [post-approval document inadmissible in CEQA case].)

LRC argues that because the *underlying* documents are part of the record, the highlighted versions are admissible as “demonstrative evidence.” Here, however, the evidence is limited to the County’s record. Had the marked-up documents been submitted to the County, they would have been part of the record. (§ 21167.6, subd. (e).) They were not. The documents are therefore irrelevant. The trial court did not abuse its discretion in denying the motion. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 10 [exclusion of irrelevant evidence not abuse of discretion].)

#### *E. Impact of the Project on Roads and Infrastructure*

Circle Oaks argues that the EIR’s analysis of the impacts to roads and infrastructure was deficient in three primary areas: (1) the EIR failed to adequately assess the damage to roads and infrastructure; (2) the EIR failed to propose adequate mitigation for this damage; and (3) the EIR failed to consider alternate routes.

##### 1. Impacts

Circle Oaks contends that the EIR fails to adequately analyze the Project’s impacts on roads and infrastructure. Although the EIR analyzes four road-related impacts, Circle Oaks limits its challenge to the wear-and-tear to area roads from construction traffic and subsequent operational traffic.

Impact 4.7-4 states that the use of trucks to transport equipment and materials to and from the site during construction and worker trips during operation could affect road conditions on State Route 121 (SR-121) and Circle Oaks Drive by increasing the rate of road wear. The EIR concludes that the increase in worker related trips (estimated at a maximum of 60 trips per day during construction and 160 trips per day during operation) would not substantially increase the wear-and-tear of Circle Oaks Drive as the vehicles

are generally not expected to be heavy trucks. The EIR further notes that the small numbers of heavily-loaded trucks anticipated to travel on Circle Oaks Drive (estimated at a maximum of 15 trucks per day during construction and 8 trucks per day during operation) are not considered substantial and would create a less-than-significant impact on Circle Oaks Drive. The EIR references a report from the California Department of Transportation (Caltrans) and the Napa County Street Standards, which identify traffic levels on SR-121 and Circle Oaks Drive as far below capacity. Despite this minor increase in traffic, the EIR recommended Mitigation Measure 4.7-4 to further reduce this impact. This mitigation measure required heavy truck construction traffic to comply with the California Vehicle Code weight and width requirements.

Circle Oaks argues that the EIR fails to address the possibility of road failure and the environmental damage that would result if the underlying water and sewer infrastructure was damaged. Circle Oaks relies on a letter from KC Engineering Company, which concluded that road subsidence was already occurring and that this subsidence would only worsen with the Project's construction and operation. Circle Oaks supports this criticism with a letter from Mark Billings, a certified public infrastructure inspector, who happened to be long-time resident of the Circle Oaks neighborhood. Billings stated that Circle Oaks Drive was on the "verge of failing," as indicated by "several deep longitudinal cracks" that suggest the "subgrade has subsided[.]" According to Billings, repeated transportation of heavy equipment would cause "further damage to the subgrade," which would cause the road to fail and damage the underlying water and sewer utilities. Billings recommended that the County hire an independent engineering firm at Hall's expense to conduct a survey of the road and to determine the underlying subgrade materials. Billings also recommended that the County engage in a street savers program to identify road conditions and needed repairs based on the pavement condition index.

Based on Billings' comments, the County revised the EIR to state that "Circle Oaks Drive is currently in poor condition, with several deep longitudinal cracks and fractures." As revised, and consistent with Billings' recommendations, Mitigation

Measure 4.7-4 requires an assessment by a third party consultant prior to the start of construction and after completion of construction to assess whether damage to roadway and subsurface infrastructure has occurred. Mitigation Measure 4.7-4 further states, “If the third party determines that roadway deterioration, or deterioration of infrastructure located underneath Circle Oaks Drive, has occurred as a result of the construction traffic, the applicant [Hall] shall pay to have the roadway resurfaced . . . and shall repair the identified damage to sub-surface infrastructure.”

“An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.” (Guidelines, § 15151.) Here, the EIR included the comments critical of the DEIR’s analysis, and included the County’s responses, thereby alerting the public decision makers to potential environmental consequences. Although the EIR does not contain a detailed analysis of possible sub-surface infrastructure damage, “courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” (*Ibid.*) We conclude the EIR’s analysis of the Project’s potential impact on roads and infrastructure was adequate.

## 2. Mitigation

Circle Oaks complains that Mitigation Measure 4.7-4 is limited to reducing the Project’s impacts during construction and does not address damage to the road or infrastructure caused during operation.

In evaluating the adequacy of an EIR’s discussion of mitigation measures and alternatives, “ ‘ ‘the key issue’ ’ ” is whether the discussion “ ‘ ‘fosters informed decisionmaking and informed public participation.’ ’ ” (*Laurel Heights I, supra*, 47 Cal.3d at p. 404, italics omitted.) An EIR must only consider “ ‘a reasonable range of project alternatives and mitigation measures.’ ” (*Concerned Citizens of South Central v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 826, 843.)

Here, the EIR concluded that the construction period of the Project represented the most intensive period of heavy equipment entering and exiting the project site. As discussed in Impact 4.7-1, “during vineyard development, assuming peak day construction traffic estimates, there would be a maximum of 60 worker round-trips per day and 15 materials and heavy equipment deliveries per day.” This would occur daily throughout the construction period, which will be during the dry season (approximately five months) for four years. As discussed in Section 3.4.5 and analyzed in Impact 4.7-2, the EIR explained that operation of the proposed vineyard has two peak seasons. During the pruning season from December to March, approximately 45 workers would be required onsite daily. During the harvest/crush season from August to October, the vineyard would require approximately 80 onsite workers and four grape trucks. Based on this evidence, the EIR concluded that the wear-and-tear during ongoing operational activities will be minimal when compared to the construction period (during which twice as many heavy trucks were expected), and that the small number of grape trucks traveling to the property from August to October would not result in a significant impact to the roads. Accordingly, Mitigation Measure 4.7-4’s failure to specify separate mitigation for operations-period impacts is supported by substantial evidence.

Moreover, the ongoing operation of the Project is an agricultural use that is in keeping with the vineyards in the area. The use of the County-maintained roads for agricultural transport is in keeping with the goals and policies of the Napa County General Plan and is not significantly different from the existing vineyards in the area. Hall will pay a fair-share payment for any future wear-and-tear of roads from this typical and expected agricultural use via the ongoing payment of property taxes. Hall is also required to comply with all Caltrans permit requirements and Vehicle Code regulations regarding legal weight and width limits.

In sum, the scope of mitigation measure was reasonable. Substantial evidence supports the conclusion that the Project’s road impacts, as mitigated, would be less-than-significant.

### 3. Alternative Routes

“An EIR need not consider every conceivable alternative to a project.”

(Guidelines, § 15126.6, subd. (a).) Moreover, “alternatives shall be limited to ones that would avoid or substantially lessen any of the *significant effects of the project*.”

(Guidelines, § 15126.6, subd. (f), italics added; see also §§ 21002, 21002.1, subd. (b), 21081, subd. (a) [discussing mitigation of “significant” impacts].)

Here, the EIR concluded that Circle Oaks Drive would provide access during construction and that as mitigated, this access point would not have significant impacts. For this reason, the EIR did not need to discuss alternate access routes as an alternative mitigation measure for the road impacts of the Project. (*North Coast, supra*, 216 Cal.App.4th at pp. 649–650.) That Circle Oaks disagrees and thinks that the impact would be significant does not, however, invalidate the EIR. (*Id.* at pp. 642–643; *CNPS, supra*, 172 Cal.App.4th at p. 626.)

### 4. Response to Comments

Finally, Circle Oaks claims that the EIR failed to adequately respond to Billings’ comment letter regarding his concern that heavy construction equipment could exacerbate preexisting road problems “result[ing] in a total structural failure and loss of the road.” The EIR explained that although the amount of project-related truck and equipment trips would not be significant and would not create significant wear-and-tear on the roadway, Hall recognized that damage may still occur. As noted above, the EIR incorporated Billings’ suggestion that the County hire an independent consultant to survey the underlying infrastructure. The County even went a step further by requiring Hall to repair any damage caused to the sub-surface infrastructure.

We disagree with Circle Oaks’ characterization of the County’s response as “[c]onclusory.” The EIR addressed Billings’ concerns about possible road failure. The EIR provided a response to the general concern that construction traffic, heavy equipment deliveries, and operational traffic would damage the road in the Circle Oaks neighborhood. The City considered Billings’ comments and provided a thoughtful response that incorporated some of his suggestions. Nothing more is required. (See

Guidelines, § 15088, subd. (c); *Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 6 Cal.4th at p. 1124.)

#### *F. Impact of the Project on GHG Emissions*

The EIR concludes that the Project’s GHG emissions would have no significant adverse effect on the environment because emissions from the Project’s construction would be offset by a long-term carbon-sequestration plan that preserves 524.8 acres of woodland habitat. CBD presents three challenges to this conclusion: 1) the EIR failed to use available, site-specific data from an existing tree inventory to calculate the number of trees cut down and their associated carbon-sequestration loss, relying instead on generic emissions factors from a computer model and understating the degree of sequestration loss; 2) the EIR failed to disclose or estimate the amount of GHG emissions that will be released into the atmosphere as result of the disposal of 14,000 trees; and 3) the EIR improperly found that preservation of woodland acreage on the property would reduce the Project’s GHG emissions, thereby constituting adequate mitigation under CEQA. We turn first to CBD’s two challenges to the EIR’s choice of methodology, which we review for substantial evidence. (*City of Long Beach, supra*, 176 Cal.App.4th at pp. 898–899.)

CEQA does not mandate the use of any particular model or methodology to quantify a project’s GHG emissions. Rather, CEQA grants agencies “discretion to determine, in the context of a particular project, whether to:” “[u]se a model or methodology” to quantify GHG emissions resulting from a project, and which model to use and/or “[r]ely on a qualitative analysis or performance based standards.” (Guidelines, § 15064.4, subd. (a), (c).) Utilizing the second method, an agency may adopt an area-wide plan to reduce GHG emissions and determine that a project’s incremental contribution to climate change is not significant, provided it supports its decision with substantial evidence. (Guidelines, §§ 15064.4, subd. (a), 15183.5, subd. (b).)

Here, CBD fails to show that the County abused its discretion in using the CalEEMod to quantify the GHG emissions from the Project. The County exercised its discretion to use the California Emission Estimator Model (CalEEMod) to calculate the Project’s GHG construction emissions, and both the California Air Resources Board

(CARB) and the Bay Area Air Quality Management District (BAAQMD) recommend this air quality software program. To calculate the changes in carbon sequestration associated with development, the CalEEMod assumes carbon-sequestration rates from default values for forest land and trees that generally apply to all areas of California without requiring detailed site-specific information. The emissions factors provided in the CalEEMod and its methodologies are described in detail in an Appendix to the EIR. Further, the emissions factors are based on default values set by the Intergovernmental Panel on Climate Change (IPCC)<sup>12</sup> and the United States Environmental Protection Agency. The County’s election to rely on the CalEEMod is thus supported by substantial evidence.

CBD maintains that to accurately quantify the expected loss of carbon sequestration associated with cutting down thousands of trees, an inventory of the existing tree population by species, age, and size is required. CBD notes that the EIR includes such an inventory, but the County failed to use it. This argument ignores the substantial evidence standard of review. “This standard applies to disagreements concerning ‘the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied.’ [Citation.] ‘The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review.’ [Citation.] The issue is not whether other methods might have been used, but whether the agency relied on evidence that a ‘ “reasonable mind might accept as sufficient to support the conclusion reached” ’ in the EIR.” (*North Coast, supra*, 216 Cal.App.4th at p. 642.) CBD’s disagreement with the County’s chosen methodology is not enough to carry its burden of showing a lack of substantial evidence supporting the County’s finding that the Project would have a less-than-significant impact on the environment. (*CNPS, supra*, 172 Cal.App.4th at p. 626.)

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<sup>12</sup> The IPCC is an intergovernmental body of the United Nations dedicated to providing the world with an objective, scientific view of climate change. (See <https://www.ipcc.ch> [as of September 30, 2019].)

Equally without merit is CBD’s contention that the EIR failed to include an estimate of the GHG emissions from downed trees based on the anticipated method of disposal. According to CBD, the GHG emissions will vary, depending on whether the trees are burned, left to decompose, or disposed of by some other means. The failure to include information regarding biogenic emissions,<sup>13</sup> CBD insists, prejudicially skews the EIR’s analysis of the GHG emissions from the Project.

The EIR explains that the BAAQMD is the regulatory authority for air quality in the San Francisco Bay Area Air Basin (SFBAAB). As a member of the SFBAAB, the County chose to rely on the 2012 BAAQMD Climate Change Guidelines (BAAQMD Guidelines) to analyze the GHG emissions from the Project. The BAAQMD Guidelines do not require the quantification of biogenic emissions in analyzing project GHG emissions. In response to comments, the County sought further clarification from the BAAQMD regarding its position on biogenic emissions. According to the BAAQMD, biogenic emissions encompass a wide-range of materials and processes that are too unreliable to be accurately modeled and often represent a fraction of a project’s emissions.

CBD fails to establish that the County abused its discretion in relying on the BAAQMD Guidelines. The EIR accounts for the loss of carbon sequestration due to tree removal in its GHG analysis. The chosen methodology, however, does not distinguish between burning or decomposing trees. The County was entitled to rely on the methodology set forth in the BAAQMD Guidelines and this decision is entitled to deference. (Guidelines, § 15064.4.) CEQA requires “a careful judgment by the lead agency” in its analysis of GHG emissions, and a “good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of [GHG] emissions resulting from a project.” (*Ibid.*) The County has done just that.

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<sup>13</sup> Biogenic emissions originate from materials that are derived from living cells, as opposed to emissions derived from fossil fuels, limestone, and other materials that have been transformed by geological processes.

Finally, CBD argues that preservation of existing woodlands does not constitute adequate mitigation for GHG impacts. According to CBD, preservation of existing woodland acreage cannot serve as adequate mitigation because it does not reduce the Project's GHG emissions and because there is no evidence the acreage would otherwise be destroyed but for the preservation.

Under CEQA, “ ‘[m]itigation’ includes: [¶] (a) Avoiding the impact altogether by not taking a certain action or parts of an action. [¶] (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. [¶] (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment. [¶] (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. [¶] (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.” (Guidelines, § 15370.) Mitigation measures related to GHG emissions may include: “(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency’s decision; [¶] (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures . . . ; [¶] (3) Off-site measures, including offsets that are not otherwise required, to mitigate a project’s emissions; [¶] [and] (4) Measures that sequester greenhouse gases.” (Guidelines, § 15126.4, subd. (c).)

The County used the CalEEMod to calculate GHG emissions from the Project, including those associated with vegetation activities from the Project’s proposed land-use change. The CalEEMod measures the change in sequestered carbon from land-use change as follows: “Overall change in sequestered CO<sub>2</sub> is the summation of sequestered CO<sub>2</sub> from initial land use type multiplied by area of land for initial land use type subtracted by the summation of sequestered CO<sub>2</sub> from final land use type multiplied by area of land for final land use type.” The model further states, “There is no reduction in GHG emissions associated with preservation of a land.” Preservation of the woodlands at

issue here thus does not directly reduce GHG emissions from the property's existing state or from the Project's proposed GHG emissions.

Although woodland preservation does not reduce the Project's GHG emissions directly, the County contends that it constitutes appropriate mitigation because it lessens the Project's cumulatively considerable impacts on climate change. The County essentially seeks to mitigate the Project's emissions by offset through tree preservation, stating “[t]his approach i[s] consistent with California's approach to reduce GHG emissions in accordance with Assembly Bill 32 and implementation of the Cap-and-Trade system which allows forest conservation to be sold as GHG offset credits on the GHG credit market.” The County accurately points out that California's Cap-and-Trade program and the Compliance Offset Protocol U.S. Forest Projects recognize that forest conservation easements constitute appropriate offsets because of the permanent carbon dioxide sequestration derived therefrom. (See *Our Children's Earth Foundation v. State Air Resources Bd.* (2015) 234 Cal.App.4th 870, 881.)

However, under the Compliance Offset Protocol U.S. Forest Projects, carbon sequestration from permanent conservation constitutes an offset only if the forest conserved was under a significant threat of conversion. Under the Cap-and-Trade program, expressed in terms of “additionality,” an offset credit must represent a GHG emission reduction or GHG removal enhancement that exceeds any GHG reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any GHG reductions or removals that would otherwise occur in a conservative business-as-usual scenario.<sup>14</sup> (17 Cal. Code Regs., §§ 95970, subd. (a)(1), 95802, subd. (a).) Thus, while woodland preservation may constitute appropriate offsets for GHG emissions in certain circumstances, these regulations recognize that the preservation does not have offset value for GHG emissions if the trees would have

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<sup>14</sup> “‘Business-as-Usual Scenario’ means the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.” (17 Cal. Code Regs., § 95802, subd. (a).)

reasonably remained otherwise. We believe that recognition of this concept also ensures that a proposed forest conservation offset measure mitigates the Project’s impact on GHG emissions, although we understand that the Project applicant is not applying to sell a forest conservation offset in the Cap-and-Trade program.

Here, the EIR does not identify the location of the woodland acres that it commits to preserve. The property itself is undeveloped, but over 40 percent of the property is not developable under local regulations.<sup>15</sup> As we previously concluded herein, future development on the property is not a reasonably foreseeable consequence of the project. On this record, CBD has demonstrated a lack of substantial evidence supporting the inference that the trees to be permanently conserved would not reasonably have remained on the property. CBD has accordingly satisfied its burden of showing that substantial evidence does not support the EIR’s conclusion that the project would have a less-than-significant GHG emission impact.

## **DISPOSITION**

We affirm the judgments denying the petitions for writ of mandate as to Circle Oaks and LRC. We reverse the judgment denying CBD’s petition for a writ of mandate, and we remand the CBD matter to the trial court to grant the petition as to the following EIR issue: to ensure that the GHG emissions associated with the Project, as mitigated, constitute a less-than-significant impact, as set forth in Section II.F of this opinion. In all other respects, we affirm the judgment as to CBD. The parties shall bear their own costs on appeal.

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<sup>15</sup> Pursuant to Napa County Code section 18.108.060, 901.4 acres of the property are undevelopable as they contain slopes over a 30 percent grade, and 72.1 acres of tree canopy in the Milliken Reservoir watershed portion are protected from destruction under Napa County Code section 18.108.027, subdivision (B).

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BROWN, J.

WE CONCUR:

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STREETER, ACTING P. J.

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TUCHER, J.