SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST DISTRICT

SCOPE (SANTA CLARITA ORGANIZATION FOR PLANNING AND THE ENVIRONMENT, FRIENDS OF THE SANTA CLARA RIVER, HOMEOWNERS FOR NEIGHBORHOOD PRESERVATION, Petitioners, vs. **CITY OF SANTA CLARITA, SANTA CLARITA CITY COUNCIL AND DOES 1 TO 10,** Respondents. **VISTA CANYON RANCH, LLC, AND DOES 11 TO 20,** Real Parties in Interest.	CASE NO. **BS 132487** **TENTATIVE DECISION AND STATEMENT OF DECISION**

Introduction

Petitioners are SCOPE (Santa Clarita Organization for Planning and the Environment), Friends of the Santa Clara River, and Homeowners for Neighborhood Preservation. They are referred to as Petitioners unless otherwise specifically noted.

Respondents are the City of Santa Clarita and the Santa Clarita City Council. Real Party in Interest is Vista Canyon LLC. The respondents and the real party in interest have filed separate briefs, but each has specifically joined in the arguments of and briefs filed by the other. They are collectively referred to herein as Respondents.

The matter having been tried and argued, and post-argument briefs having been filed, and the matter having been submitted, and the Court having considered the matter, the Court now issues this Tentative Decision and Statement of Decision. As the matter was concluded in less than 8 hours, and no party requested a statement of decision and specified the issues to be contained therein prior to the submission of this matter, this Tentative Decision is also the Statement of Decision.

The scope of this proceeding; adequate exhaustion of administrative remedies

Respondents have objected to certain of the Petitioners' arguments, asserting Petitioners did not exhaust their administrative remedies. After a few introductory comments, the Court will address that and other issues necessary to resolve this case.

Public Resources Code section 21177(a)[1] places a condition precedent upon issues which may be raised in a petition under CEQA, requiring that "the alleged grounds for noncompliance with [CEQA]" must have been presented to the public agency during the public comment period prior to the close of the public hearing *or* prior to the issuance of the notice of determination. This limitation is not as severe as it may first appear: viz., so long as any party raises the issue in the administrative proceeding, another party may pursue it in litigation. Section 21177(a); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1263-1264. The scope of notice (the sufficiency of the form in which the issue must be raised) is also flexible, but not infinitely expandible. *See, e.g., Planning and Conservation*

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[1] All further statutory references are to the Public Resources Code unless otherwise specified.

League v. Castaic Lake Water Agency (2009) 180 Cal.App.4th 210, 251;[2] *see also, City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 381 at fn. 6.

Further, as is well-established generally, if a party has not either briefed or argued a matter raised in its petition (or complaint) or provided evidence to support either a petitioner's allegation or a respondent's defense, that omitted matter is also waived. On the other hand, if a party has briefed a matter, it need not have argued it so long as it is otherwise not waived (and in most circumstances [but not here, as noted in footnote 2] not omitted from the statement of issues of that (or of any other) party.

In this case, Respondents contend that Petitioners had not raised below the issue of the consistency of the California Regional Water Quality Control Board's Water Control Plan, Los Angeles Region (June 13, 1994; the Basin Plan). Petitioners point out (Post-Hearing Brief, filed February 19, 2013) that they raised the "consistency" argument below and that the "inconsistency" examples raised in Petitioners' Reply brief are not new, but were made in response to arguments made in Respondents' briefing. As expressed, that is correct — at least to the extent that the Court now rules that a party raised the issue below, preserving it for argument in this proceeding. The merit, if any, to that claim is discussed below.

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[2] While this condition precedent applies, there is an additional statutory provision, which neither party has cited, which the Legislature also intended as a restriction on the scope of CEQA litigation. Section 21167.8(f) requires that each party timely file a "statement of issues which [that party] intends to raise in any brief or at any hearing or trial" within a specified number of days following the filing of notice of certification of the administrative record and following the mandatory settlement meeting required of the parties. It is clear that the statute is intended to exclude from consideration any issue not listed in the statement of issues even if it had been presented, whether by a party to a proceeding or by another participant in the hearings below.

Statements of issues were filed in this case long after that statutory deadline (on March 19, 2012 by Petitioner and, separately, on March 29, 2012 by Petitioners and by real party in interest), rather than according to the statutory timetable. Those statements were more general and generic than specific in nature. Moreover, no party has cited or appears to rely on this statute. The failure to do so can only be construed as a waiver of any limitation imposed by section 21167.8(f) by each party.

Omission of evidence or argument as to the third cause of action

There is an additional restriction on matters that can be adjudicated, albeit a restriction of a different type: When no evidence has been adduced by the party with the burden of proof, that matter cannot be determined "in favor of" that party. In this case, although Petitioners' third cause of action alleges a violation of section 33207(b) (failure by Respondents City and City Council to comply with the requirement to offer any "surplus" land first to the Santa Monica Mountains Conservancy), Petitioners have not presented any evidence with respect to this matter, nor have they briefed or argued it.

The fact that the petition is verified does not convert its allegations, here, of the third cause of action, into admissible evidence. Generally, allegations of a complaint may be used by an *opposing party* and only as judicial admissions against the party making them, not as affirmative evidence of the maker's case in chief. *See, e.g., Castillo v. Berrera* (2007) 146 Cal.App.4th 1317, 1324; *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7 [parties cannot rely on verified pleadings as evidence in support of or in opposition to summary judgment].

Thus, this claim must be, and is, deemed waived.

Petitioners' Request for Judicial Notice (filed September 11, 2012)

Petitioners request that the Court take judicial notice of three documents: (1) the official zoning map of the City of Santa Clarita, (2) portions of the Newhall Ranch Specific Plan, adopted by the County of Los Angeles in 2003, and (3) Minutes of the Los Angeles County Board of Supervisors for May 27, 2003 (referenced only in the Walldraff Declaration accompanying the Request, as pointed out by Respondents).

Respondents object on the grounds that the evidence in a CEQA case is limited to the administrative record. The principal exceptions to this rule are discussed in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559. The Court resolves these contentions as follows.

RJN Exhibit 1: This zoning map is already part of the record in this case. Thus,

there is no basis to exclude this iteration of it — other than that this map by itself is next to unintelligible: There is little that can be discerned from this exhibit without explanation, explanation that is not advanced by the proponents of its admission. As the document cannot be understood, it cannot be probative. The objection is overruled, but the probative value of this document is dependent on other arguments advanced and record evidence cited in connection with those arguments.

RJN Exhibit 2: Newhall Ranch Specific Plan: Respondents' contention that adoption of a specific plan is not a legislative act is contrary to an express holding of *Yost v. Thomas* (1984) 36 Cal.3d 561, 564-570 (adoption of specific plan and amendments to general plan are legislative acts [subject to referendum]) and later cases, such as *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 75. The Newhall Ranch Specific Plan is also referenced and discussed in other documents which are in the record in this case; however, except as so discussed and referenced, it is not part of the administrative record. The request is, therefore, denied except as to those portions that are in this administrative record.

RJN Exhibit 3: Board of Supervisors resolutions: The document is not part of the administrative record; request denied.

Specific Contentions

The Specific Plan. Petitioners' contentions with respect to the Specific Plan (Petitioners' Opening Brief [hereafter, POB] pp. 10-16) cannot be sustained. At no place in the April 26, 2011 letter which Petitioners filed with the lead agency is there any reference to any defect in the Specific Plan, nor is it discussed at all (other than being mentioned in the "Re" line of the letter (AR 14433-35).

As Respondents point out, exhaustion of administrative remedies is a jurisdictional prerequisite to judicial relief with respect to general and specific plan procedures. *E.g., Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 237. Even had the issues been properly raised,

Petitioners would have had a significant, and unmet, burden. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 920-921 [petitioner has the burden of demonstrating prejudice, substantial injury and probability of a different result]; *Barthelemy v. Chino Basis Mun. Water Distr.* (1995) 38 Cal.App.4th 1609, 1617 [scope of petitioner's burden to adduce challenger's position]; *Sequoyah Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.3d 704, 719 [City Council could properly find that the modified project was consistent with the general plan, even though it did not fully comply with all of the plan's goals and policies].

April 2011 Meeting Notice. Petitioners' contention that the notice given for the April 2011 hearing was incomplete must fail as there is no evidence that, assuming arguendo a defect in that notice, the error was prejudicial and that a different result was probable had this error not occurred. Govt. Code. Section 65010 (b); *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 919. As Respondents point out, the April meeting was the final meeting in a series, for which proper notice had been provided, at least as to prior meetings, leading to the reasonable conclusion that any defect in the notice for this meeting resulted in no demonstrated prejudice.

Adoption by Ordinance. Petitioners' contention that specific plans can be adopted only by ordinance was withdrawn after Petitioners pointed out the relevant section was Government Code section 65453 rather than section 65850, and the existence of Ordnance 11-10 (AR 15-30) in which the pre-zoning was accomplished for this project.

Failure to proceed in the manner required by law. Petitioners make several contentions that they argue constitute failures to proceed in the manner required by law — the consequence of which would require rejection of the EIR. (Case citations for this principle are omitted as this general principle is fundamental and well-established.)

Notice to required agencies - State Lands Commission. The first of these claims is Petitioners' contention that the State Lands Commission is a trustee agency and that

notice was not properly given to it. *See* section 21070 and CEQA Guidelines sec. 15386(b). [*See* Petitioners' Opening Brief at 22 et seq.]

The party advancing a contention has the obligation to marshal the evidence in support of that contention by appropriate citation to the record below. *E.g.*, *Defend the Bay v. City of Irvine* (2004) 1198 Cal.App.4th 1261, 1266. Yet, Petitioners have provided no evidence supporting this contention; indeed, the record is clear that notice was given to the State Clearinghouse and that it gave notice to the State Lands Commission. AR 3888-90, 1312, 3995-4001, 11422, 11366-70 (but see AR 11380-82).[3]

There are some additional defects in Petitioners' contention in this regard, based on Petitioners' corollary contention that the State Lands Commission had an obligation in this case to have filed objections to the portions of the Project that arguably affect the Santa Clara river basin -- on the theory that the area is subject to the public trust or to a navigational easement. These contentions are based on the circumstances that the State holds title to the beds of non-tidal bodies of water which were navigable on admission of California to the Union in 1850 (in addition to ownership of the beds of tidal bodies and the coastline) and has a navigational easement as to certain other bodies of water, and that these ownership and easement interests are generally administered by the State Lands Commission. However, there is no evidence cited (and none was found) in this administrative record that supports state ownership or easement interests in this case. As there is no evidence in this record of the condition of this river on the date of California's admission to the Union, the State Lands Commission's interest must be bottomed on the existence of an easement for navigation (broadly construed to include recreation, boating and fishing). *See People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040 and *Hitchings v. Del Rio Woods*

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[3] Petitioners' argument (in their opening brief at 23 and in their final brief at 11) is not evidence.

Recreation and Park Distr. (1976) 55 Cal.App.3d 560, 570-572. Yet, the record contains scant if any evidence of use of this reach of the river for these purposes; nor is there any significant (let alone substantial) evidence of the number of days in a year (let alone months, weeks, or days) during which the river is navigable within the meaning of *Hitchings*, other than the reference that, in essence, the river is dry most of the year but flows during, and for an unstated period after, it rains. This is not evidence that the river is capable of use for any navigational easement purpose. Petitioners' claims that a portion of the river is subject to the public trust or easement are without any factual basis. Thus, State Lands had no obligation to make any claim here.

Petitioners' claim that the Project would affect the river downstream are not supported by any citations to evidence in this record; the only evidence in the record is that there would be no downstream impact from the Project (*e.g.*, AR 2576-2577). Thus, there is no evidence adverse to the characterization of the (non)impact of the Project on the river downstream.

There is no contention (and no citation to the record) that the City's ownership of fee title to parts of the land that happen to be within the Project area arose as a consequence of public trust principles. Thus, that doctrine cannot bar their sale. On the facts in this record, Petitioners' citation of Save the *Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003 is inapposite; viz., there is no evidence of any public trust benefitting the city-owned land at issue in this case. As is argued at Real Party In Interest's Opposition Brief at pp. 25-26, this issue was not raised below, and is barred by the rule of failure to exhaust administrative remedies.

Failure to Summarize Documents Incorporated by Reference. Petitioners contend that the Draft EIR failed to summarize or describe documents which it incorporated by reference, in violation of Guidelines section 15150(c), citing six sections of the draft EIR which allegedly make arguably insufficient reference to a total

of 87 documents (POB 26:31-27:26).[4] Petitioners argue that these 87 documents are referenced in the body of the Draft EIR — but not otherwise addressed — and rely on section 15150(c) to argue that this treatment, or non-treatment, violates mandatory principles applicable to preparation of EIRs (Petitioners' Opening Brief at 27:15-23). In their Reply, Petitioners argue that the EIR's citation and incorporation of 95 documents[5] without complying with section 15150(c) means that a total of 17,468 pages of other documents have been relied on in formulating the conclusions reached in the EIR without explanation in support of their argument that this "mass incorporation of documents" into the EIR is improper and constitutes a prejudicial abuse of discretion (Petitioners' Reply Brief at 12:26-29).

Respondents err in their claim that this was a "belated issue" (Real Party in Interest's Opening Brief at 27:11). This issue was timely raised by Petitioners prior to certification of the Final EIR. Additionally, Respondents contend that City substantially complied with the requirements for composition of an EIR, and that Petitioners have not satisfied their burden to demonstrate they were prejudiced (Real Party in Interest's Opening Brief at 26:13-14). In support of this contention Respondents argue that several of the referenced documents were appended to the EIR (Id., at 28:7-8) and that others were discussed in the EIR (Id., at 28:8-13).

The cited section of the Guidelines states: "Where an EIR ... uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be

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[4] The relevant portion of Guidelines section 15150(c) is set out in the text, post.

[5] The two briefs have different totals. In the body of the EIR there is a mass listing of documents — to which Petitioners' argument would appear to apply with considerable force. In Petitioners' final brief, the cited portion of the record is the series of documents attached as appendices. The Court focuses its analysis on the 87 document listed in the body of the EIR as argued in the first of Petitioners' briefs, as to which there are some — but the Court concludes, insufficient — references and insufficient discussion to comply with the mandate of the Guidelines.

summarized. *The relationship between the incorporated part of the referenced document and the EIR shall be described*" (emphasis added).

Respondents' argument relies on Guidelines section 15150(a), which permits incorporation by reference of other documents on certain conditions and according to certain procedures set out in the subsections of section 15150 (including subsection (c)). Those references are appropriate, but the question remains, as Petitioners note, whether there has been compliance with the regulatory standard: "whether the public or decision making process was prejudiced" and whether the Petitioners have demonstrated prejudicial error. *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1600.

The Court has reviewed the references to the record presented by the parties in connection with this contention. Respondents' arguments characterizing the various documents as either being "summarized or described" (e.g., Real Party in Interest's Opening Brief at 27:23 et seq.), does not appreciate the plain language of the cited Guideline in many instances, or the chronic lack of compliance therewith. Some discussion of some of the cited documents appears in various sections of the EIR. However, in the great majority of instances where there is a citation, there is only a passing reference, a reference that is plainly insufficient to meet the requirements of law, or an overwhelming silence. In most cases, there is only the briefest allusion or citation to the particular document -- and no discussion of any relationship of that document to the EIR -- only the inference that the citation is appropriate. This is particularly the case for those documents upon which Respondents base their assertion of compliance -- most of these are "discussed" (read: listed, or referenced) only in the sense that they are listed in the various consistency tables. The references only in these tables constitute particularly apt illustrations of the Petitioners' objections. The only reasonable conclusion is that citation in these tables, or the EIR itself, of the documents in Petitioners' list does not provide the discussion of the environmental effects of the project "organized and written in a manner that will be meaningful and

useful to decision makers and to the public, as required by section 21003(b).

In addition, the omission of the fluvial study (which omission originally was likely to have been an oversight) complicates Respondents' defense. While Petitioners eventually recognized the omission and "published" this study, its late publication is not helpful to Respondents' opposition to Petitioners' contention that material studies were not disclosed and discussed as required by law.

The treatment — viz. non-treatment — of the documents cited by Petitioners is also of interest as a contrast to what was included in the EIR. There are pages of discussion of the state water project in the EIR. While water from the state water project is an important aspect of the analysis, much of the discussion of the state water project is beside the point, viz., the considerable depth of discussion of the state water project in this EIR when contrasted with the lack of proper consideration of scores of documents not even summarized as required by Guidelines section 15150(c), suggests that the EIR had a formulaic element to it; viz., rather than being tailored to the studies and data important to *this project*, materials were included of a generic nature to the exclusion of discussion of other materials that relate specifically to the issues presented in this particular case.[6]

To oversimplify the matter, it is akin to a math problem. Here, the regulations make clear that one is required to "show one's work", viz., to describe the relationship between the "incorporated" part of the referenced document (the part that is important to the analysis of the current EIR) and this EIR (Guidelines section 15150(c))[7] — yet

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[6] Again, that is not to say that discussion of the state water project is not important, but to emphasize that much of the history of the struggle over it was not germain to this particular project. Instead, given the location of this project, the discussion of that matter could have been shorter — giving the authors of the EIR more time and space to devote to site and project specific issues.

[7] The final sentence of the cited section of the regulation states: "The relationship between the incorporated part of the referenced document and the EIR shall be described."

that is not done in most of the cases cited by Petitioners. Without discussion (and Petitioners do not argue that the entirety of the individual referenced document needed to have been incorporated) of the "relationship between the incorporated [here, of the "cited document"] part of the referenced document and [this] EIR" (Guidelines section 15159(c)), there cannot be a properly prepared EIR.[8]

The failure to follow the law in this regard is clearly a failure to proceed in the manner required by law and, if prejudice is shown, would require invalidation of the EIR if there is prejudice.

Is prejudice shown? Section 21005(a) declares it to be the policy of the state that "noncompliance with the information disclosure provisions of [Division 13 of that Code, which deal with environmental protection] which preclude relevant information from being presented to the public agency, or noncompliance with the substantive requirements of [that] division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency complied with those provisions."

Subsection (b) of the same section states that "there is no presumption that [any] error is prejudicial."

See also section 21168.5, which provides: ".... Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."

Respondents argue that the holding of *Fort Mojave Indian Tribe v. Department of Health Services, supra,* 38 Cal.App.4th 1574, should guide this Court's interpretation of the applicable statutes and regulations (Real Party in Interest's Opposition Brief at 26-27). The *Fort Mojave* court reasoned that a petitioner must establish that the "lack of a summary for some of the documents incorporated by reference resulted in prejudicial

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[8] And, if the document is not important to the EIR, why was it cited? Was it merely to give gravitas to the document, as appears with the extensive discussion of the state water project?

error" (id., at 27:1-2).

Respondents' contention is wrong, both factually and legally. First, contrary to Respondents' assertion, the fact that documents may be available at a cental location or on the "web" does not substitute for the mandatory summarization or brief description mandated to be contained in the EIR; nor does it substitute for the mandatory discussion of "[t]he relationship between the incorporated part of the referenced document and the EIR ...." Here, as noted, where a document is referenced, it is almost never accompanied by a description of its relationship to this EIR. Second, the requirement is mandatory, not permissive. This is clear from the following cases, which are better reasoned than *Fort Mojave*: *Mass v. Board of Education* (1964) 61 Cal.2d 612; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674; and *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931. *Mass v. Board of Education* and *State Water Resources Control Bd. Cases* hold that the word "may" is mandatory when used in a statute imposing an obligation on a public agency — as is the purpose and function of the Guideline section cited by Petitioners in this case. As the *Mass* court explains: "Although the word 'may' customarily implies permissiveness [citation], words must be construed in their textual context. [Citation.] The word 'may' here occurs in a statute defining a public duty. ' "Words permissive in form, when a public duty is involved, are considered mandatory." *Mass, supra*, at pp. 616, 622–623, quoting *Harless v. Carter* (1954) 42 Cal.2d 352, 356; cited in *State Water Resources Control Bd. Cases, supra*, at 731-732.

That the language here is in a section of the Guidelines is not sufficient to detract from the analysis when the central role of the Guidelines in CEQA litigation is given proper weight.

Here, the challenge goes to the fundamental question: Did the agency proceed in the manner required by law and is there substantial evidence to support the determination made (sections 211668 and 21168.5). The failure to properly explain how these decisions were reached, by omitting such significant portions of the analysis

— by not "showing one's work" — fatally obscures the decision-making process. CEQA is clearly not about taking shortcuts, as was done here. Good faith compliance with the Guidelines, in particular with section 15150, might be sufficient, but it was not achieved in this case. Failure to do so has an adverse consequence for the EIR and for determinations made in this case at this time.

The consequence of a failure to meet the fundamental informational requirements of CEQA (well-established since *Friends of Mammoth v. Board of Supervisors* [1972] 8 Cal.2d 247 and *County of Inyo v. Yorty* [1973] 32 Cal.App.3rd 795) is a failure to proceed in the manner required by law. There is no other effective means for the public to demonstrate to an apprehensive citizenry that the lead agency has, in fact, analyzed and considered the ecological implications of the proposed actions. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842. Or, as the court in *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, held, "the failure to comply with the law results in a subversion of the purposes of CEQA...." *Id.*, at 1022-23; cited in Petitioners' Reply Brief at 10:3-12. As Petitioners also point out, this holding of *Rural Landowners* was cited with approval by our State Supreme Court in *Environmental Protection Information Center v. California Dept. Of Forestry & Fire Protection* (2008) 44 Cal.4th 458, 485.

Moreover: "The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. '[I]nformation scattered here and there in EIR appendices' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis.' " (*California Oak, supra,* 133 Cal.App.4th at p. 1239, 35 Cal.Rptr.3d 434, quoting *Santa Clarita, supra,* 106 Cal.App.4th at pp. 722–723, 131 Cal.Rptr.2d 186.)" *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 20 Cal.4th 412, 442.

Failure to comply with mandatory procedures — failure to proceed in the manner required by law — has a mandate of its own: the reviewing court must set aside the

decision adopting the EIR at issue. *Environmental Protection Information Center v. California Dept. Of Forestry & Fire Protection, supra,* 44 Cal.4th 458, 484-85. This is the correct result because the failure to include the information required as indicated above means that the EIR fails its "sufficiency as an informative document." *E.g., Laurel Heights v. Regents* (1988) 47 Cal.3d 376, 404-405 [EIR must contain information from which the general public can evaluate and respond to conclusions reached]; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189. As required by the above authorities, this Court does set aside the determinations adopting this EIR.

Analysis of consistency of the EIR with various plans. Petitioners contend the EIR does not analyze the consistency of this EIR with the California Regional Water Quality Control Board's Water Control Plan, Los Angeles Region (June 13, 1994; the Basin Plan; AR 1773-17944), citing CEQA Guidelines section 15125(d). Petitioners state that the Basin Plan is the state's "principal water-policy planning document for the region...," citing AR 1774-45. Petitioners do note that there is a discussion of conductance at AR 3104, but "the EIR is devoid of any overall discussion of the Project's consistency with the Basin Plan" (Petitioners' Opening Brief 27-28).

The opposition to this contention appears in the Real Party In Interest's Opening Brief, beginning at page 28. There, Respondents argue that only *inconsistencies* need be discussed, and that section 15125(d) does not require discussing *consistencies* as Petitioners contend, citing *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145.

Citation of *Chaparral Greens* in this case is inapposite. That case held something quite different, that a plan is not applicable prior to its adoption. *Chaparral, supra* at 1145, fn. 7; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 544. The plan referenced by the Petitioners here, the Basin Plan, was adopted and preexisted the preparation of even the Draft EIR in this case by over a decade.

On the other hand, Respondents correctly point to EIR section 4.8.1, and

specific pages in the water quality section of the plan to demonstrate that the EIR does discuss the Basin Plan. Review of this section of the EIR shows that there are multiple references discussing the Basin Plan. While it is true that there is no citation to a specific statement that the EIR concludes that "the Project is consistent with the Basin Plan" (see Petitioners' Reply Brief, 17:11-13), at AR 3075, section 4.8 of this EIR concludes that " the proposed project does not result in or contribute to any significant unavoidable cumulative impact on Santa Clarita Valley water supplies." In addition, the September 2010 Water Supply Assessment for the Vista Canyon Specific Plan Project (AR 6721 et seq.) addresses water supply issues, as do other documents. Because of the holding above, however, the Court only notes this issue for further consideration when the overall matter is addressed.

Use of the entire watershed as a basis for analysis. There is an additional, and fundamental, reason requiring granting relief to Petitioners.

Petitioner Friends of the Santa Clara River (Friends) timely filed written comments on the Draft EIR (Letter dated November 9, 2010; AR 000793-794). At page 2 of that letter (AR 000794) Friends specifically objected that "[t]hese cumulative impacts are not adequately addressed in the DEIR. We especially object to the use of the entire area of the watershed in evaluating cumulative impacts. It may be true that projects in the Santa Clarita area occupy only 4%[9] of this vast, 1,620-square-mile (One Million Thirty-Six Thousand, Five Hundred Seventy-One acres [1,036,571 acres] [AR

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[9] The project at issue here is one of several included in this 4% figure. This individual project, covers an area of .0001784% of the Santa Clara River Watershed.

It is described generally in the Santa Clara River Watershed (SCRW) study as follows: "The SCRW drains approximately 1,036,571 acres (1,620 square miles) of natural and urban areas north and east of Los Angeles in Southern California (*Figure 1*). The watershed is divided into 14 sub-basins shown in *Figure 2*. These sub-basins range in size from 7,433 acres (Sisar in the western part of the watershed) to 291,730 acres (Eastern). Most of the 14 sub-basins are relatively small, and only three sub-basins have more than 100,000 acres—Eastern, Upper Piru, and Topa Topa—accounting for 60% of the total watershed." AR 005567

005567]) watershed.[10] However, the cumulative impacts that must be analyzed are those impacts to the riparian zone and uplands of the Santa Clara River, a vastly smaller region. The Santa Clara is the last major natural river remaining in Southern California, a region that has lost all but 3-5% of its pre-settlement riparian woodlands. The DEIR must reexamine cumulative impacts of Santa Clarita projects as they affect the riparian zone." (Emphases in original omitted.)

This issue is expressed in corollary language in paragraph 74 of the First Amended Petition and Complaint, and was argued and briefed by all parties.

To focus the contention, it may be expressed as: Why is a study that concerns an area of 1,620 square miles (1,036,571 acres) the appropriate base against which to measure the environmental impacts of this project, which comprises an area of less than .3 square miles (185 acres)?

Section 21060.5 and Guidelines section 15360 define "environment" as "the physical conditions which exist within the area which will be affected by a proposed project...." Guidelines section 15125(a) mandates that "[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project... from both a local and regional perspective." Subsection (c) mandates consideration of "significant effects of the proposed project to be considered in the full environmental context."

Section 21060.5 was applied in *Muzzy Reach Co. v. Solano Airport Land Use Comsn.* (2007) 41 Cal.4th 372, in which our Supreme Court held that the lead agency is required to consider geographically remote impacts of a project (*Id.*, at 387-388). It is not true, however, and the holding of *Muzzy Ranch* dies not suggest, that analysis of

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[10] The 185 acre project at issue in this litigation is infinitesimal (see footnote 9 above) when compared to the size of the Santa Clara River Watershed. That circumstance does not inevitably lead to a conclusion that nothing done in this project has a significant or substantial environmental impact. Rather, it highlights the fundamental breach of CEQA obligations by using such a measure as the base for analysis of environmental impacts.

the environmental impact of a project may be diluted by determining environmental effects of a project against an immensely larger universe.

How large is "too large"? Petitioners point out that using the entire 1,620-square-mile watershed as the baseline to assess the cumulative biological impacts of this project is improper because "the Project's effects would be greatly diluted, instead of [measuring the impacts of this project based on] a smaller, more appropriate area." (Petitioners' Post-Hearing Brief, 5:26-27).

It is manifestly improper to analyze the biological and non-biological effects of this .3 square mile project against the entirety of the 1,620-square-mile watershed (described in Dudek, Santa Clara Watershed Study, 2008, AR 5556 et seq.). The record tells us that at least 71% of watershed is undeveloped, and much of it is remote. Using such a large area as the base for comparison for this project constitutes a fundamental flaw in analysis. Further, as summarized in footnote 9, above, there are 14 sub-basins in the watershed; certainly one (or perhaps a [small] number of them) would be a more appropriate base against which to analyze the issues presented by this project.

Section 21060.5 requires that the comparison must focus instead on *the area that will be affected by the project*, including impacts "in the vicinity of the project" (Guidelines section 15125(a)). See for example, in addition to *Muzzy, supra*, *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, in which a commercial development EIR was reversed, inter alia, because it was improperly compared to the hypothetical development of the maximum buildable area under existing zoning and planning designations for the region (*Id.*, at 707). That area was far smaller than the area of comparison used in the present study. The appropriate base for comparison of this project is clearly less than the 1,620-square-mile entire watershed area that was used here.[11] It is manifestly an abuse of discretion

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[11] If the Court's math is correct, the 185 acre project is less than one square mile.

to make the comparison of this 185 acre/.3 square mile project against the 1,602 square mile watershed and to use that comparison to conclude that there are no significant environmental impacts or consequences.

The process and analysis used in this case, determining significance of any environmental impacts within this .3 square mile project area by comparison with the entirety of the 1,620-square-mile watershed, is a fatal flaw and clearly constitutes an abuse of discretion and a failure to proceed in the manner required by law.

Chlorides. Petitioners argue there is only a "half-page analysis" of the impact of adding 2.2 tons of chlorides to the river water via urban runoff" and that the defects in the EIR will exacerbate the violation of water quality standards which exists now (Petitioners' Opening Brief, p. 36:19-22), resulting in violation of federal Clean Water Act and of the Porter-Cologne Water Quality Control Act (Petitioners' Opening Brief 36:23-28), citing *Friends of Pinto Creek v. U.S. E.P.A.* (9th Circ. 2007) 504 Fed.3d 1007. As a consequence of the additional chlorides being "illegal," Petitioners argue that the EIR should have concluded — which it did not — that the discharge from the Project would be a significant environmental effect under CEQA, requiring that feasible mitigation be provided — and pointing out that no such mitigation was provided for. (Petitioners' Opening Brief, 7-16).

Focusing on the groundwater recharge issue raised in the Petitioner's opening brief, Respondents argue that there is substantial evidence supporting the City's finding that the Project will not have significant "impacts to groundwater recharge" (Real Party in Interest's Opening Brief, 33:1 et seq). In essence, Respondents dispute both the underlying claim (that the environmental analysis was flawed) and the specific criticisms made in support of Petitioners' claims.

Review of the relevant documentation supports Respondents — with a significant exception discussed below -- this claim. First, Petitioners' citations to the record in support of their claims are limited and incomplete. The record contains considerable discussion of this issue. With respect to Petitioners' citation to the

Newhall Ranch Specific Plan and the argument that that activity will exacerbate the argued poor and diminished water quality in the area (Petitioners' Opening Brief, p. 32), there is no citation to the record to indicate how the groundwater *in the project area* will be affected by something that might occur approximately three miles *downstream*. Without any support in the record for the claim which Petitioners make, they have, literally, an uphill battle, which on this record is unconvincing and cannot sustain their claim in this regard.

Second, based on the materials now in the record, there was careful consideration of the *chlorides* issue.

Petitioners specifically contend that the project will increase the level of chlorides in the river and "[a]ny addition of chlorides will further increase the chloride concentration downstream, causing the River water to be even more out-of-compliance with the chloride regulatory standard than it is now" (Petitioners' Opening Brief, 36:4-7). However, as Respondents argue (*e.g.*, Real Party in Interest's Opposition Brief, 39-54 [with appropriate citations to the record]) and as appears at AR 3174 and 3175, the EIR reaches what must be considered a contrary conclusion. While the matter of the specific level of chlorides in downstream reaches of the river is not specifically addressed, the conclusion reached for Reach 7 of the river is that "[t]he predicted average annual chloride concentration in stormwater runoff from the project area is well below the Santa Clara River Reach 7 Basis Plan water quality objective and TDML waste load allocation for Santa Clara River Reach 5.... Based on the comprehensive site design, source control, and treatment control strategy, and comparison with benchmark receiving water criteria and instead monitoring days, the project would not have significant water quality impacts from chloride." AR 3017-3175.

Petitioners provide no citations to the record that support their contrary argument. There is substantial evidence to support the conclusions in the FEIR. This contention must therefore be rejected.

Conclusion[12]

For the reasons stated the Court grants the Petition, sets aside the approvals of the project and the certification of the EIR, and orders that the respondent City and City Council proceed in the manner required by law. Pending compliance with CEQA, City and City Council shall take no action to implement the project.

A peremptory writ of mandate to implement these orders will issue.

Petitioners are to timely prepare, serve and lodge, the proposed judgment and proposed peremptory writ.

DATED: APRIL 29, 2013

ALLAN J. GOODMAN
JUDGE OF THE SUPERIOR COURT

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[12] The Court has endeavored to address all issues. If an issue raised by the Petitioners has been omitted from this discussion, it may be said to be without merit, subject to the following caveat. Because of the fundamental error in the Respondents' method of analysis — in using the 2008 Santa Clara River Watershed Study (which covers 1,620 square miles) as the base for so many measurements and analyses of impact of this .3 square mile project — one simply cannot tell what the results may be after an appropriate base for comparison is established.