AMADOR SUPERIOR COURT 500 ARGONAUT LANE JACKSON, CA 95642 209-257-2603	FOR COURT USE ONLY FILED AMADOR SUPERIOR COURT FEB - 6 2014 Clerk of the Superior Court By: _____
PLAINTIFF: IONE VALLEY LAND AIR AND WATER DEFENSE ALLIANCE LLC vs DEFENDANT: COUNTY OF AMADOR	
PROOF OF SERVICE BY MAIL **CCP §§1013 & 1013a**	CASE NUMBER: 12-CVC-08091

B. COCKERHAM, Clerk of the Court, County of Amador, State of California, and not a party to the within entitled action, served the attached.

ORDER FILED FEBRUARY 6, 2014

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon addressed as shown, for collection and mailing pursuant to the ordinary business practice of the office which is that mail is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.

DOUGLAS P. CARSTENS, ESQ.
2200 PACIFIC COAST HIGHWAY, STE. 318
HERMOSA BEACH, CA 90254
ATTORNEY FOR PLAINTIFF

MICHAEL ZISCHE, ESQ.
COX, CASTLE & NICHOLSON LLP
555 CALIFORNIA STREET, 10TH FLOOR
SAN FRANCISCO, CA 94104
ATTORNEY FOR DEFENDANT

BRADLEY JOHNSON, ESQ.
HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP
980 9TH STREET, STE. 1400
SACRAMENTO, CA 95814
ATTORNEY FOR DEFENDANT

GREGORY GILLOTT, ESQ.
AMADOR COUNTY COUNSEL
810 COURT STREET
JACKSON, CA 95642
ATTORNEY FOR DEFENDANT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Jackson, California on February 6, 2014.

B. COCKERHAM, CLERK

By _____
DEPUTY

AMADOR SUPERIOR COURT 500 ARGONAUT LANE JACKSON, CA 95642 209-257-2603	FOR COURT USE ONLY FILED AMADOR SUPERIOR COURT FEB – 6 2014 Clerk of the Superior Court By: _____
PLAINTIFF: IONE VALLEY LAND AIR AND WATER DEFENSE ALLIANCE LLC vs DEFENDANT: COUNTY OF AMADOR	
PROOF OF SERVICE BY MAIL **CCP §§1013 & 1013a**	CASE NUMBER: 12-CVC-08091

B. COCKERHAM, Clerk of the Court, County of Amador, State of California, and not a party to the within entitled action, served the attached.

ORDER FILED FEBRUARY 6, 2014

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon addressed as shown, for collection and mailing pursuant to the ordinary business practice of the office which is that mail is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.

DOUGLAS P. CARSTENS, ESQ.
2200 PACIFIC COAST HIGHWAY, STE. 318
HERMOSA BEACH, CA 90254
ATTORNEY FOR PLAINTIFF

MICHAEL ZISCHE, ESQ.
COX, CASTLE & NICHOLSON LLP
555 CALIFORNIA STREET, 10TH FLOOR
SAN FRANCISCO, CA 94104
ATTORNEY FOR DEFENDANT

BRADLEY JOHNSON, ESQ.
HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP
980 9TH STREET, STE. 1400
SACRAMENTO, CA 95814
ATTORNEY FOR DEFENDANT

GREGORY GILLOTT, ESQ.
AMADOR COUNTY COUNSEL
810 COURT STREET
JACKSON, CA 95642
ATTORNEY FOR DEFENDANT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Jackson, California on February 6, 2014.

B. COCKERHAM, CLERK

By _____
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF AMADOR

IONE VALLEY LAND, AIR, AND WATER DEFENSE ALLIANCE, LLC. Petitioner, v. COUNTY OF AMADOR, Respondent.	CASE NO: 12-CVC-08091 ORDER
NEWMAN MINERALS, LLC; WILLIAM BUNCE, an individual; FARALLON CAPITAL MANAGEMENT; JOHN TELISCHAK, an individual; EDWIN LANDS, LLC; GREENROCK RANCH LANDS, LLC and DOES 1 to 10; Real Parties in Interest.	

This is an action for a writ of mandamus brought under the California Environmental Quality Act [CEQA], the Planning and Zoning Law [PZL], and the State Mining and Reclamation Act [SMARA]. Petitioner seeks to require respondent, Amador County [County], to set aside and vacate its certification of the Environmental Impact Report [EIR], Findings and Statement of Overriding Considerations Supporting the Project [Findings], and any approvals of the Project based on the EIR and Findings, including the General Plan Amendments, Reclamation Plan and other approvals. Petitioner also seeks to have respondent prepare and certify a legally adequate EIR, and to have this Court enjoin respondent and the real parties in interest from taking any action to construct any portion of the Project, or to develop or alter the Project site in any way that could result in significant adverse impact on the environment unless and until approval is obtained from respondent after the preparation and consideration of an adequate EIR.

Jurisdiction

In their pleadings, the parties have agreed that this Court has jurisdiction over this writ action under Code of Civil Procedure sections 1085 and 1094.5, and sections 21168 and 21168.5 of the Public Resources Code, that the site is located entirely in Amador County, and that petitioner submitted a notice of intention to commence the action, and a notice of election to prepare the record.

Statement of the Case

The following facts are not in dispute based on the pleadings of the parties.

The Project

The Newman Ridge Project includes two components: the proposed 278-acre Newman Ridge Quarry and the 113-acre Edwin Center. The Newman Ridge Quarry is a proposed quarry with a production level anticipated to be five million tons of rock per year to be extracted over 50 years. Final reclamation of the Newman Ridge Quarry would occur after all mineral extraction is completed, which would be approximately 2063. The Edwin Center would host various material processing facilities, including an aggregate plant, asphalt concrete plant, ready-mix concrete plant, an asphalt and concrete recycling plant, and a rail loading facility for finished products.

The Project site lies within the foothills of the Sierra Nevada, contains areas of open space and lands used for cattle grazing, and that the Project site is part an historic site called Arroyo Seco Ranch.

The Project includes the following land use entitlements: Newman Ridge Quarry Conditional Use Permit and Reclamation Plan; and Edwin Center North General Plan Amendment, Zone Change, Asphaltic Concrete (AC) Plant Conditional Use Permit, and Use Permits to exceed the 45 foot maximum height limit of the "M" zone district for the AC Plant and ready-mix concrete plant to allow structures to be built to heights of 72 feet and 49 feet respectively.

Although the Project initially included the Newman Ridge Quarry and Edwin Center, in response to public comments during the public Project Scoping Meeting on

August 9, 2011, the County analyzed the Edwin Center North Alternative at an equal level. Under the Edwin Center North Alternative the location of the Quarry remained as originally proposed, and included the same processing facilities as the originally proposed Edwin Center, but in a different location farther from residences. The Project as approved includes the Newman Ridge Quarry and the Edwin Center North Alternative.

The Parties

The petitioner is Ione Valley Land, Air, and Water Defense Alliance, LLC, an incorporated association of concerned landowners and citizens of Ione Valley. The respondent is Amador County, and the real parties in interest include investors and property owners.[1]

Amador County [County], is a political subdivision of the State of California, and it approved the Newman Ridge Project North Alternative [Project], located in the Ione Valley near the City of Ione.

Newman Minerals, LLC [Newman] is a Delaware Limited Liability Company qualified to do business in California, and is named as one of the real parties in interest who received approval for the Project from the County.

---

[1] Newman Minerals, LLC, received the permit approvals for the Project. Farallon Capital Management and John Telischek, are major investors in the Project, and William Bunce is an individual and the Project applicant. He is also a major investor in Castle Oaks community in Ione and in Sutter Creek Gold Rush Ranch. Edwin Lands, LLC is the owner of property to be used for Edwin Center, and Greenrock Ranch Lands, LLC is the owner of property to be used for the Quarry.

Farallon Capital Management, LLC [FCM], and John Telischak, William Bunce, Edwin Lands, LLC, Greenrock Ranch Lands, LLC, are named as real parties in interest.

William Bunce is an investor in the Castle Oaks Community.

Edwin Lands, LLC, is the owner of a portion of the property that would be used for the Edwin Center North Alternative.

Greenrock Ranch Lands, LLC, is the owner of the property that is the site of the Newman Ridge Quarry.

The Timeline of Events

Amador County staff received the Newman Ridge Project application on May 31, 2011 from Newman Minerals, LLC, and on June 28, 2011, the staff deemed the application complete. Following the acceptance of the application, staff worked with an environmental consultant for the Project to prepare a Notice of Preparation and Initial Study, both of which were released to various State and local agencies for a 30-day public review period beginning on July 18, 2011. A Scoping Meeting was held by the Planning Commission on August 9, 2011, to take agency comments.

Prior to approval, the General Plan designation of the Project site was MRZ, Mineral Resource Zone, and A-G, Agricultural General, and its zoning designation was R1-A, Single Family Residential and Agricultural.

Edwin Lands, LLC reached an agreement with twelve county residents to address their concerns with the Project.

The Newman Ridge Project Draft EIR [DEIR] was released for a 45-day public review period on April 24, 2012. A public meeting to receive public comments on the

DEIR was held by the Planning Commission on May 22, 2012. In addition to the verbal comments submitted at the DEIR comment meeting, a total of 11 written comment letters were submitted on the Newman Ridge Project DEIR within the 45-day public review period. Numerous agencies and individuals were among the commenters.

The California Department of Transportation, the County Environmental Health Department, the Office of Mine Reclamation, the Central Valley Regional Water Quality Control Board, the California Department of Fish and Game, and the Amador Air District's [AAD] consultant submitted comments on the Project. AAD commented on aspects of the Project in a Memorandum dated February 22, 2012.

Caltrans also submitted comments on the project.

Petitioner submitted comments on the DEIR and the County extended the public comment period for all commenters from June 7 to June 12, 2012.

The Final EIR [FEIR] was released in August 2012.

The Planning Commission first heard the application on August 28, 2012.

Petitioner offered comments before the Planning Commission, and the Planning Commission approved the Project by a vote of 4-1.

Petitioner appealed the Planning Commission's approval to the Board of Supervisors.

The Amador Air District [AAD] commented on aspects of the Project in a memorandum dated February 22, 2012.

Petitioner and other members of the public submitted comments on the FEIR.

Petitioner commented that the Project should be utilized as a nature park.

The California Department of Corrections [CDCR] submitted a comment letter to the County.

The County Board of Supervisors voted unanimously to approve the Project.

The County filed a Notice of Determination that reflected the Project approval on October 10, 2012.

Petitioner submitted a comment letter to the County.

Petitioner attached a letter to the Attorney General as Exhibit A to the Petition.

Petitioner attached a notice of intention to commence the action as Exhibit B to the Petition.

Petitioner attached a notice of election to prepare the record as Exhibit C to the Petition.

The CEQA Cause of Action

The framework for analyzing a CEQA claim is fundamental. The EIR is the "heart of CEQA." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [*Goleta Valley II*]. see also Guidelines, § 15003, subd. (a).) The purpose of the EIR is "to inform the public and its responsible officials of the environmental consequences of their decisions before they are made." (*Goleta Valley II, supra,* 52 Cal.3d at p. 564.) Public participation is an "essential part of the CEQA process." (Guidelines, § 15201; see also *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936, and *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 [*Laurel Heights II.*)

The standard of review in an action to set aside an agency's decision under CEQA is whether there was a prejudicial abuse of discretion. An abuse is shown where the agency has not proceeded in a manner required by law, or where the agency's decision is not supported by substantial evidence as defined by the Guidelines:

> Section 21168.5 provides that a court's inquiry in an action to set aside an agency's decision under CEQA "shall extend only to whether there was a prejudicial abuse of discretion. 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." The Guidelines define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).)
>
> " 'The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, 407 [253 Cal.Rptr. 426, 764 P.2d 278] (*Laurel Heights I*).) "We 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." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [276 Cal.Rptr. 410, 801 P.2d 1161] (*Goleta II*).) Furthermore, "[t]he appellate court reviews 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 [53 Cal.Rptr.3d 821, 150 P.3d 709] (*Vineyard Area Citizens*).)

(*South County Citizens for Smart Growth v. County of Nevada* (October 8, 2013), 2013 Cal.App. LEXIS 900, 10-12.)

Included in its CEQA cause of action are claims that (1) the air pollution impacts were understated and insufficiently mitigated, (2) the water supply and water quality issues were inadequately analyzed or mitigated, (3) the traffic and circulation impacts were inadequately analyzed and mitigated, (4) the revised DEIR should have been

recirculated, (5) the County failed to adequately consult with the California Department of Corrections and Rehabilitation [CDCR] as a trustee agency, and with Caltrans as a responsible agency; (6) substantial evidence does not support the Statement of Overriding Considerations; (7) the County failed to provide a reasoned analysis in response to Caltrans claims that the FEIR failed to adequately identify, disclose and mitigate for potentially significant impacts to the State Highway system.

Petitioner alleged in the writ petition that the County failed to adequately respond to Caltrans' request for information about the scope of work for the TIS, the safety issues due to truck traffic on SR 104, including at the Project entrance, conflicts with the planned alignment of the Ione Western Bypass and the potential rail traffic impacts; that the County failed to consider an alternative that reduced reliance on trucking to reduce impacts to the state highways in the downtown Ione areas, and failed to analyze the type of trucks that would be used and to address any safety issues associated with those vehicles; that the County failed to address the safety impacts, and the level of service, of the SR 104 entrance to the Project and failed to support with evidence or analysis the statement in the FEIR that the Project's use of the nearby rail crossing was not expected to result in any impacts to public safety. Petitioner also alleged that the EIR failed to report the impact at Preston Avenue and East Plymouth Highway as significant and failed to propose any mitigation; that the County failed to identify the exact peak hour trip generation to the Twin Cities/SR 99 interchange, and if significant impacts were identified, to require a fair share contribution to mitigate the Project impacts on this interchange.

Petitioner also alleges in the writ petition that recirculation was required because: (1) the FEIR disclosed new traffic impacts (the DEIR claimed traffic at all seven studied intersections was uncongested, but in the FEIR the analysis was revised so that the Level of Service [LOS] at no less than six of the seven studied intersections was restated to be "B," "C," or "E," and that these changes revealed significantly lower levels of service than LOS "A" as disclosed in the DEIR and requires a new EIR because it was a significant change; that new and more accurate information showed more severe impacts: the FEIR identified a significant impact at the Preston Avenue and East Plymouth Highway intersection, and the additional detail contained in the FEIR with regard to Cumulative Peak Hour Intersection Analysis shows three intersections, Preston Avenue at East Plymouth Highway, at E. Main Street, and at S. Church Street, each would meet traffic signal warrant analysis, all of which would be operating at LOS "F", the worse level of service, often termed gridlock; that the DEIR concluded that all intersections would continue to operate at LOS "C" or better, but that the FEIR identified more severe impacts, including the Preston Avenue at East Plymouth Highway, which would operate at LOS "E" in the PM Peak Hour; that a proposal of feasible mitigation consisting of operational hour restrictions and a left turn lane for the elementary school were raised at the Planning Commission hearing but were rejected, the former based on the Project proponent's opposition to the measure.

Respondents, in their brief, admitted that Caltrans requested certain information, that Caltrans commented on the Project, and affirmatively alleged that the DEIR, the

FEIR, comments related to the FEIR and the approval of the EIR, as well as the CEQA Guidelines, speak for themselves; respondent otherwise denied these allegations.

In its opening brief in support of this contention, petitioner relies on Caltrans' comment letter, dated June 7, 2012, and its recommendation that the DEIR should not be certified until additional analysis and mitigation is included. Specifically, petitioner identifies errors in assessing the Levels of Service [LOS] in the DEIR, in failing to accurately and adequately disclose the number of truck trips that would be generated by the Project and their impact, in failing to disclose the amount of rail traffic and the safety impacts associated with it, and in failing to disclose the safety impact of truck trips generated by the Project. It is in petitioner's claim that the DEIR should have been recirculated due to errors in assessing the LOS and in failing to disclose the impacts to rail crossing from increased rail trips that this Court finds merit.

Levels of Service [LOS] and Recirculation of the EIR

In the first instance, petitioner argues that the DEIR traffic analysis was "gravely misleading" because it included erroneous information that was not supported by information in the final Traffic Impact Study [TIS]. For example, according to petitioner, the DEIR represented that existing peak hour traffic at all seven studied intersections was uncongested, classified as LOS "A." Then, in the FEIR, the Level of Service at six of the seven studied intersections during peak hours was restated at Level of Service "B," "C," or "E" - far worse levels of service than Level "A." The DEIR therefore misstated the baseline for assessing the LOS at these intersections.

In addition, at one intersection, the anticipated Level of Service with the Project was changed from "A" in the DEIR to "E" in the FEIR.

Moreover, according to petitioner, the DEIR described Caltrans policy as maintaining LOS "C" for the Inter-Regional Route System [IRRS] in rural areas and LOS "D" for non IRRS routes. Caltrans corrected this information by stating that LOS "D" would be acceptable in urban areas, but for rural segments of non IRRS route, such as SR 104 and 124, LOS "C" would be the target level of service.

According to petitioner, the Project's peak hour impacts on LOS at intersections were inaccurately stated for every one of the studied intersections in the DEIR. The DEIR disclosures were changed in the FEIR to show more congested conditions, including a change at one intersection from LOS "D" to "F" (substandard). The FEIR disclosed that this intersection would require a traffic signal, as would two others.

Respondent first points out that the DEIR devoted forty pages to identifying, analyzing and mitigating the potential traffic impacts. In addition, the DEIR included Appendix O, the Traffic Information Study [TIS], which spanned 200 pages. The County responded to all comments received regarding the potential traffic impacts of the Project, including those made by Caltrans, upon which petitioner relies.

Respondent then contends that the FEIR did address Caltrans' comments, but acknowledged the DEIR had provided traffic data, some of which was less than that reported in the annual report provided by Caltrans Data Branch. Respondent also acknowledged that while the FEIR included corrected values of existing and anticipated LOS, those values were calculated from data that had been included in DEIR as raw

data in the TIS, which was part of the DEIR as Appendix O. In the FEIR, the County updated the tables in the DEIR to match the tables in the Traffic Impact Study. Respondent concedes that the DEIR had "inadvertently not updated" the tables to match the final TIS.

Respondent also argued that the data contained in the TIS, Appendix O to the DEIR, was more recent than what Caltrans relied on, and that even if the volumes were increased substantially and the project exceeded the LOS standard, the conclusions about the Project's impacts would not change as they would still remain below the County's impact threshold, which was described as a volume to capacity ratio of 0.05 or more. According to respondent, the updated tables in the FEIR did not show new or more significant impacts than those shown in the DEIR because both the DEIR and the FEIR concluded that the Project's cumulative impacts shown in Table 4.12-14 would be significant and unavoidable because each of three intersections would operate at unacceptable LOS under applicable thresholds of significance and require mitigation. The FEIR found further analysis and discussion of these issues was not necessary because the existing need for traffic improvements in downtown Ione was already identified as a significant and unavoidable impact.

Petitioner counters that the discrepancies between the DEIR and Appendix O were prejudicial per se and should have caused the DEIR to be recirculated with the corrected traffic analysis.

The statutory authority that identifies when an EIR should be recirculated is Public Resource Code section 21092.1, which states:

> When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

(Pub. Resources Code § 21092.1.)

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1119-1120, the California Supreme Court decided that recirculation is required only when the information added to the EIR changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible project alternative or mitigation measure that would clearly reduce such an effect and that the project's proponents have declined to implement. The court also concluded that a decision not to recirculate an EIR must be supported by substantial evidence. (*Id.* at 1120.) CEQA Guideline 15088.5 was originally promulgated in 1994 and was primarily based on this decision. (Remy, Thomas, Moose & Manley, GUIDE TO CEQA (11th Ed. 2007), p. 355.)

The revised 1998 CEQA Guideline, in relevant part, provides that:

> (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. . . .

(e) A decision not to recirculate an EIR must be supported by substantial evidence in, the administrative record.

(Cal. Code Regs., tit. 14, § 15088.5.)

The LOS information the DEIR included was based on data that inaccurately recited from the Traffic Impact Study [TIS], which was Appendix O of the DEIR. Appendix O correctly stated the data. The FEIR explains the County's view of this error:

4.12 TRANSPORTATION AND CIRCULATION

Chapter 4.12, Transportation and Circulation, of the Draft EIR was inadvertently not updated to match the final Traffic Impact Study (TIS). Therefore, the following revisions are made to the Draft EIR in order to make the chapter consistent with the final TIS. The revisions do not change the conclusions made in the final TIS that was provided as Appendix O of the Draft EIR.

Figure 4.12-3 on page 4.12-4 of Chapter 4.12, Transportation and Circulation, of the Draft EIR is hereby replaced as shown on page 2-20 of this Final EIR.

> The above change is for clarification purposes only and does not alter the conclusions of the Draft EIR.

(AR00146.)

In support of its claim that the failure to recirculate the DEIR is error and prejudicial per se, petitioner relies on *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1062-63. This reliance is misplaced.

In *Valley Advocates*, the court held that "a prejudicial abuse of discretion occurs when a public agency is misinformed regarding its discretionary authority and, as a result, does not actually choose whether to exercise that discretionary authority." The issue here is not whether the County was misinformed regarding its discretionary authority.

The principle that a failure to recirculate the EIR is prejudicial per se comes not from *Valley Advocates*, but from *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, upon which the *Valley Advocates* court relied as authority for this principle. However, the *San Joaquin Raptor* court explained its holding as follows:

> Although CEQA "requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26 [82 Cal.Rptr.2d 398].) Therefore, noncompliance with CEQA's information disclosure requirements is not necessarily reversible; prejudice must be shown. (*Bakersfield Citizens, supra,* 124 Cal.App.4th at pp. 1197–1198 ; § 21005, subd. (b).) " '[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.' " (*Irritated Residents, supra,* 107 Cal.App.4th at p. 1391.) In such event, the error is deemed prejudicial "regardless whether a different outcome would have resulted if

the public agency had complied with the disclosure requirements." (*Bakersfield Citizens, supra,* 124 Cal.App.4th at p. 1198.)

(*San Joaquin Raptor Rescue Center v. County of Merced, supra,* 149 Cal.App.4th at pp. 653-654.)

Respondent argues that cases finding a prejudicial abuse of discretion all involve factual situations where the omission was not cured prior to certification of the EIR. (See e.g. *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120, where the appellate court found that as to the only mitigation considered, the building of a water system, no feasibility analysis was done, and therefore the portion of the EIR addressing water concerns should have been recirculated.[2])

This Court finds that here, if the data in the DEIR had not been erroneous, but had merely analyzed the correctly-stated TIS data, and the FEIR had offered another analytical approach to the same data, this would not have required recirculation. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1137, where the court declined to order recirculation, even where the data was new, because it did not constitute "significant new information" that altered the analysis in any way.)

---

[2] Respondent's reliance on *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, is misplaced. There, the appellate court, in remanding to correct deficiencies in the mitigation analysis in the certified EIR, did not decide whether recirculation was necessary, but instead directed that it was for "the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification, citing CEQA, § 21092.1; Guidelines, § 15088.5; and *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129-1130.)

But recirculation under section 21092.1 is mandated when the new information reveals, for example, a new substantial impact or a substantially increased impact on the environment. (*Laurel Heights II,* at pp. 1129–1130.) It is in this context that this Court finds the County's view of this error to be unsupported by substantial evidence.

While the LOS at the intersections was concluded to be both significant and unavoidable under the incorrect data set forth in the DEIR and under the correct data set forth in the FEIR, there is no question that the corrected LOS values in the FEIR reflect a substantially increased impact on what was already concluded to be a significant and unavoidable impact in the DEIR. For example, the DEIR did not indicate any intersection required a traffic signal, but the FEIR reported that three would be required. The predicted LOS in the morning peak hour for one intersection was "A" in the DEIR and "F" in the FEIR. Petitioner posits that this also misrepresents the baseline, which then could infect any subsequent analysis based on the baseline.

This Court agrees:

> . . . an EIR must delineate environmental conditions prevailing absent the project, defining a "baseline" against which predicted effects can be described and quantified. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315 [106 Cal.Rptr.3d 502, 226 P.3d 985] (*Communities for a Better Environment*).)

(*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.)

The County's determination that this increased impact is not so "significant" as to warrant recirculation is reviewed only for support by substantial evidence. (*Id.* at p. 1135.)

This Court finds that the data contained in the DEIR was not an accurate reflection of the data contained in Appendix O, and, as a result, the DEIR understated the LOS at the seven intersections. This Court further finds that this inaccuracy was significant, and deprived the public of an opportunity to comment. Moreover, the finding in the FEIR, that further analysis and discussion of these issues was not necessary because the existing need for traffic improvements in downtown Ione was already identified as a significant and unavoidable impact, is not supported by substantial evidence. The County admits that the data in the TIS appended to the DEIR as Appendix O was not accurately reflected in the text of the DEIR and, as a result, understated the Project's impact on traffic intersections, and thereby failed to accurately inform the public of the environmental consequence before the decision was made, even if the traffic effects were already determined to be significant and unavoidable.

This Court rejects the claim that because the public had access to the raw data in Appendix O to the DEIR, the data and information corrected in the FEIR is not new. This Court holds that the public should be entitled to rely on the text in the DEIR as an accurate representation of the raw data taken from Appendix O.

> 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, quoting *Santa Clarita, supra,* 106 Cal.App.4th at pp. 722–723.)

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.)

This "truth and accuracy in data" goes to the essential part of the CEQA process: to inform the public and its responsible officials of the environmental consequences of their decisions before they are made.

> "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.

(*South County Citizens for Smart Growth v. County of Nevada* (October 8, 2013) 2013 Cal.App. LEXIS 900.)

Impacts to Rail Crossing from Increased Rail Trips

There is no allegation in the writ petition that the County failed to disclose the amount of rail traffic the Project would generate, or the safety impacts associated with it. However, in its brief in support of the writ, petitioner makes that argument and contends that the August 27, 2012 letter from Abrams Associates assumed that 95% of quarry output would leave the project site by rail.

Respondents point out that the DEIR represented that the Project was designed to transport to market by rail the majority of material produced, and that only 5% would be transported by truck. In the August 27, 2012 letter from Abrams Associates that it was revealed that traffic on SR 104 would be stopped for up to 6.5 minutes and the queues would not exceed 20 car lengths or 400 to 500 feet. Petitioner argues in its reply brief that neither the DEIR or the FEIR disclosed how many trains would operate daily or weekly.

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

Relief

Petitioners have requested that this Court enjoin respondent and the real parties in interest from taking any action to construct any portion of the Project or to develop or alter the Project site in any way that could result in a significant adverse impact on the environment unless and until a lawful approval is obtained from respondent after the preparation and consideration of an adequate EIR.

The statutory authority governing whether this Court should issue an injunction is found in Public Resources Code section 21168.9, which provides:

> (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:
>
> > (1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
> >
> > (2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all

specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

(Pub. Resources Code § 21168.9.)

The California Supreme Court has recognized that section 21168.9 grants the authority to stay all activity until a proper EIR is certified, but questioned whether it should do so. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 423.)

The 1993 amendments to section 21168.9 expanded the trial court's authority and "expressly authorized the court to fashion a remedy that permits some part of the project to go forward while an agency seeks to remedy its CEQA violations. In other words, the issuance of a writ need not always halt all work on a project." (Remy et al., Guide to the Cal.

Environmental Quality Act (10th ed. 1999) p. 647.)

(San Bernardino Valley Audubon Soc'y v. Metro. Water Dist. (2001) 89 Cal.App.4th 1097, 1104-1105.)

Wherefore, this Court grants a peremptory writ of mandate, and orders Respondent:

1. To vacate its certification of the EIR, Findings and Statement of Overriding Consideration supporting the Project;
2. To vacate its approval of the Project based upon the EIR and Findings and Statement of Overriding Considerations supporting the Project;
3. To recirculate for public comment the revised DEIR pertaining to traffic issues. This revised DEIR must summarize the revisions made to the previously circulated DEIR, respond to comments, and provide notice of recirculation as required by Public Resources Code section 21092.1. (See Cal. Code Regs., tit. 14, § 15088.5, subds. (f) and (g).)
4. To decide anew whether to certify the new EIR, Findings and Statement of Overriding Consideration supporting the Project;
5. To decide anew whether to approve the Project based upon the new EIR and Findings and Statement of Overriding Considerations supporting the Project, and
6. To notify this Court, by way of a return to the peremptory writ, that it has complied with the peremptory writ.

7. In all other respects the writ is denied.

This Court shall retain jurisdiction until it determines that respondent has complied.

Dated: February 6, 2014

J.S. Hermanson, Judge,
Amador County Superior Court