C090840 (related Case No. C091012)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

WE ADVOCATE THOROUGH ENVIRONMENTAL REVIEW, INC.; and WINNEMEM WINTU TRIBE
Plaintiffs/Appellants
v.

COUNTY OF SISKIYOU; and SISKIYOU COUNTY BOARD OF SUPERVISORS,
Defendants/Respondents

CRYSTAL GEYSER WATER COMPANY, INC.
Real Party in Interest/Respondent

APPELLATE CASE NO. C090840
Siskiyou County Superior Court Case No. SCCV-CVPT-2018-41
Honorable Karen Dixon

APPELLANTS' OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C090840
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 153721 NAME: Donald B. Mooney FIRM NAME: Law Office of Donald B. Mooney STREET ADDRESS: 417 Mace Boulevard, Suite J-334 CITY: Davis STATE: CA ZIP CODE: 95618 TELEPHONE NO.: 530-758-2377 FAX NO.: 530-212-7120 E-MAIL ADDRESS: dbmooney@dcn.org ATTORNEY FOR (name): We Advocate Through Environmental Review, et al	SUPERIOR COURT CASE NUMBER: SCCV-CVPT-2018-41
APPELLANT/ PETITIONER: We Advocate Through Environmental Review, et al RESPONDENT/ REAL PARTY IN INTEREST: County of Siskiyou, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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

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

1. This form is being submitted on behalf of the following party (*name*): We Advocate Thorough Environmental Review

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

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

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

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

Date: April 16, 2021

Donald B. Mooney
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

TO BE FILED IN THE COURT OF APPEAL **APP-008**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (*name*): WINNEMEM WINTU TRIBE

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
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Date: April 16, 2021

Donald B. Mooney
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(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

This case, brought by We Advocate Thorough Environmental Review ("WATER") and the Winnemem Wintu Tribe ("Tribe"), challenges Siskiyou County's approval of a massive groundwater extraction and beverage bottling project. As Appellants WATER and the Tribe demonstrate, the approval violated the California Environmental Quality Act ("CEQA"), Public Resources Code ("PRC") section 21000 et seq. and the State Planning Laws. Govt. Code § 65300 *et seq*.

WATER and the Tribe filed their mandamus action in the public interest to challenge the December 12, 2017 certification of the Environmental Impact Report ("EIR") to support the County's approval of a "caretaker's residence" for the Crystal Geyser Water Company ("CGWC") bottling facility ("Project"). The County did not actually approve the groundwater extraction nor the bottling facility and insists that the County does not have any authority over those operations. In a most confusing series of actions, the County prepared an EIR that reviewed the groundwater extraction and bottling facility, assuring the public that the operations will not have any significant impacts. AR

1195.[1] In certifying the EIR and approving the Project without any upper limit on the amount of water CGWC may pump out of the ground for consumptive use, the County violated fundamental mandates of California law and its own land use plans and ordinances.

Significant environmental problems with the Project stem from its location in a pristine mountain area, adjacent to a quiet, residential neighborhood. The area surrounding the bottling facility is also within aboriginal territory of the Winnemem Wintu Tribe, near natural springs that are sacred and have significance in Tribal culture. AR 56120-56124.[2]

The proposed bottling facility's significant impacts to water supply, water quality, noise, air quality, aesthetics, and land use, were not adequately addressed in the EIR process. Among significant problems explained by WATER and the Tribe, the Project will have *unknown* impacts to the groundwater supply for two reasons: (1) the County refused to do groundwater studies on the actual aquifer

[1] References to the administrative record of proceedings are to "AR" and the page number.

[2] Assembly Bill 52 arguments raised in the trial court have not been included on appeal. Because of the evolving nature of the laws and policies surrounding Tribal consultation requirements Appellants do not seek review of the Assembly Bill 52 issues.

impacted by the Project, and (2) because there is no upper limit on extraction of groundwater. CGWC may pump as much groundwater as it wishes for any purpose and there is nothing in the conditions of approval for the caretaker's residence limiting extraction.

The County purports to have no authority over CGWC's groundwater extractions, and yet it prepared an EIR, assuring concerned citizens and County decision makers that the impacts of the Project could and would be mitigated. For the "project" reviewed by the County, the County issued a conditional use permit ("CUP") for a "caretaker's residence" that will likely never be constructed because of the health risks associated with occupying the residence. AR 230-231. The conditions of approval are enforceable only through the CUP, and so will essentially be unenforceable. The assurance to the public was hollow, and the EIR is deeply flawed.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

The Project description is unclear when viewed in light of the whole of the administrative record. The County's actions on December 12, 2017 include the following: (1) Certification of EIR (ostensibly prepared for the CUP for a "caretaker's residence"), while the Project

description contained in the EIR includes a massive water extraction and beverage bottling project that includes production of sparkling water, flavored water, teas and juice beverages (SCH# 2016062056); and (2) approval of the CUP for a caretaker's residence at 210 Ski Village Drive, Mt. Shasta, California (APN 037-140-090), Permit UP-16-03. AR 7-8. The approvals did not include any development agreement or mitigation agreement, as has previously been the practice of the County in authorizing use of the bottling facility. *See* AR 1624, 55378-55386.

The Mitigation Monitoring and Reporting Program ("MMRP") included with the EIR describes mitigation measures to reduce impacts associated with the groundwater extraction and bottling operations, with just one measure specific to the caretaker's residence. AR 1546-1559. All of the mitigation measures identified in the MMRP are to be implemented by CGWC and overseen by the County. *Id.* The same County that claims to have no authority of CGWC's activities.

The first mitigation measure in the MMRP applies to the caretaker's residence, limiting occupancy to no more than 40 hours per week and only by an adult 18 years of age or older. AR 1547. The remaining mitigation measures apply to construction and operational activities for

the groundwater extraction and beverage bottling facility. AR 1546-1559. The only permit issued by the County in approving the "Project" was the CUP for the caretaker's residence. In other words, the MMRP is unenforceable against CGWC save for the first measure relating to occupancy of the caretaker's residence.

Despite the fact that the County insists it has no authority over the groundwater extraction and beverage bottling operations, the EIR reviewed both of these activities and mitigation measures were included in the MMRP to "mitigate" the impacts of extraction and bottling and made findings of overriding considerations regarding the significant and unavoidable impacts of the activities the County says it has no ability to control. AR 7-8 and 1546-1559.

This Opening Brief refers to the groundwater extraction and bottling operation, as well as the CUP for the caretaker's residence as the "Project". The actual approval by the County was only the CUP for the caretaker's residence.

A. History of environmental review of the proposed bottling facility.

In 2013, CGWC contacted the City of Mt. Shasta regarding their connection to the City's sewer system as part of the proposed reopening of the bottling facility previously operated on the site. AR 55416.

CGWC offered the City up to $3 million in matching Economic Development Administration ("EDA") grant funds. The City then attempted to obtain the grant funds for purposes of funding improvements to the sewer collection system. AR 48296. The City's 2014 EIR effort was abandoned because of a failure in the grant funding to the City. AR 55409 and 55413.

In late 2105, the Siskiyou County Air Pollution Control District ("APCD") reportedly decided to move forward with an EIR for the bottling plant, but there is no evidence that occurred. AR 55411. Thus, despite the County's position that it had no approval authority at all over the bottling facility, CGWC could not begin operations because the City wastewater permits and APCD permits would require a CEQA document to support issuance.

While the County and CGWC had apparently agreed that the County "has no authority" to limit CG's activities at the bottling facility (AR 1624 *and see* 55546 [no County authority over amount of groundwater extracted], 55555 [no requirement for CEQA review of bottling operation]), the County figured out a way to prepare an EIR covering the Project operations to provide a platform for issuance of wastewater and air quality permits. The County accepted an application

from CGWC for a "caretaker's residence" on the bottling facility property. Instead of simply reviewing the potential impacts of the caretaker's residence, however, the County undertook an expensive effort to evaluate a much broader "project." The EIR describes the Project as follows: "The Proposed Project consists of the operation of a spring water bottling facility and ancillary uses within an approximately 118-acre site formerly developed and operated as a water bottling plant. The Proposed Project consists of operational and physical changes to the former bottling plant facilities for the production of sparkling water, flavored water, juice beverages, and teas. This Environmental Impact Report (EIR) analyzes all modifications undertaken and proposed by CGWC [Crystal Geyser] to operate the proposed bottling plant facilities." AR 1624.

To any reader, the EIR appears to evaluate the entirety of the bottling facility operations. The County, however, could not provide a stable project description, because it has no control over the level or method of production, and no development or mitigation agreement was included with the permit for the "caretaker's residence." The result was an EIR that CGWC and the County hoped would provide a platform the City to approve the IWDP, but because there are no limits on water

extraction or production, the EIR is not sufficient to analyze the significant environmental impacts that will result from the whole operation.

B. History of the Project site.

The Project site was used previously as a water bottling facility. Dannon Waters of North American (prior to Dannon becoming Coca-Cola Dannon [these predecessors are referred to herein as "CCDA Waters"]) acquired the property and a draft Initial Study was prepared in March 1998 for the bottling facility ("Plant"). AR 1624 and 32537. In November 1998 the County and the then applicant entered into an agreement regarding mitigation measures identified in the 1998 draft Initial Study ("1998 Agreement"). AR 1624 [language disavowing any County land use authority is inserted in the Final EIR] and 55379. The Plant was subsequently constructed between 1998 through 2000 by CCDA Waters and began operation in January 2001. AR 1624.

In 2001, CCDA Waters sought and received approval from the Central Valley Regional Water Quality Control Board for an on-site leach field for industrial waste process rinse water. AR 26497.

CCDA Waters operated the plant from approximately 2000 to 2010 and it has been reported (without specific documentation) that the

facility used a monthly average of approximately 160 gallons per minute. AR 26751; and *see* AR 55996. It has also been reported by surrounding neighbors that plant operations negatively impacted domestic wells in the area. *See* AR 1188, 1260, 1356, 27159, 32690, and 39133.

In 2010, CCDA Waters' plant was closed and the majority of equipment used for the bottling operation was removed. AR 1625. Crystal Geyser purchased the project site in 2013. *Id.* Crystal Geyser is owned by Otsuka Pharmaceuticals, a multi-national conglomerate. *See* AR 55671.

C. The Project

The Project site is bound immediately to the north by residential housing and industrial businesses, to the east by low density residential (LDR) housing, to the south by the Mt. Shasta KOA campground along with a railroad line and single-family housing, and to the west by single family housing, as well as industrial and commercial businesses. AR 1625. Residential land uses in the project vicinity consists of varying lot sizes, generally at a greater density inside the City limits, and range from suburban to rural. *Ibid.*

The County's General Plan designates the Project site as Woodland Productivity and Building Foundation Limitations: Severe Pressure Limitations Soils. The central project site that contains the plant and leach field and is zoned M-H (Heavy Industrial), the northern project site that contains the production well is zoned AG-2 (Non-Prime Agricultural), and the eastern project site is zoned R-R-B-1 (Rural Residential Agricultural District). AR 1631.

The Project consists of the operation of a bottling facility for the production of sparkling water, flavored sparkling water, juice beverages and tea. AR 1632. The bottling plant would use groundwater from the aquifer through an existing production well (DEX-6) in the northern area of the site. "Bottling operations would consist of: (1) water processing (carbonation, tea brewing, juice beverage batching); (2) blow molding of polyethylene terephthalate (PET) plastic bottles from purchased preforms; and (3) filling bottles with product and packaging." AR 1632.

The project description includes a "scenario" for predicting water consumption, wastewater production, traffic and air quality impacts. AR 1632-1633. The assumption is incorrect as there are *no limits* on groundwater extraction, production and/or vehicle trips.

The County set up the following conundrum: it claimed the EIR could not evaluate expansion of the bottling plant because that would be "speculative"; but the EIR *could speculate* that CGWC *would not* expand, even though there is nothing in the Project approval that would prevent it from doing so. *See* AR 1633.

The EIR states that the plant would begin with one bottling line, adding a second later, with no plans for a third bottling line. AR 1632. Evidence in the record suggests that a third bottling line is anticipated (AR 937), and there is nothing in the CUP for the caretaker's residence that would preclude increased water extraction and increased production, including addition of bottling lines. AR 13-17 (no conditions regarding production levels) and 1546-1559 (no mitigation measures limiting production levels/extraction of groundwater). The County claimed that the third bottling line contained in CG's plans was later removed, so should not be considered, but did not address the fact that there is nothing to prevent CGWC from adding the third line. AR 7451.

D. The Administrative Process.

On January 12, 2017, Respondent County issued a Draft EIR ("DEIR") for the Project. Many submitted comments on the DEIR. AR

311-1544. Respondent County issued a Final EIR ("FEIR") for the Project and scheduled a Planning Commission hearing for September 20, 2017. AR 32865-32889. The Planning Commission hearing was continued to September 27, 2017. AR 32890. Appellants and many others submitted extensive comments on the FEIR and during the Planning Commission hearing. AR 32874-32888. On September 27, 2017, the Planning Commission approved the Project and certified the EIR. AR 32856-32859 and *see* 32268-32275. Appellants appealed the decision to the Board of Supervisors. *See* AR 32774.

On November 16, 2017, the Board of Supervisors held a public hearing on the appeal, heard presentations from Appellants, CGWC and County staff, and heard public testimony. AR 32505-32522. The Board closed the hearing on November 16, 2017, and continued the item to December 12, 2017, with a request to County staff to provide clarifications and answers to questions raised at the public hearing. AR 32520 and *see* 31955-32255.

On December 12, 2017, the Board of Supervisors received the report from staff, denied the appeal, approved the Project and certified the EIR. AR 31733-31954 and 32461-32504.

II. PROCEDURAL HISTORY OF THE LITIGATION

On January 11, 2018, Appellant timely filed its Petition for Writ of Mandate, challenging the County approvals under CEQA. AA 6-40.[3]

The trial court held the writ hearing on this matter on May 10, 2019, and issued its statement of decision denying the petition on August 29, 2019. AA 512-533. Judgment was entered on September 18, 2019. AA 534.

On November 7, 2019, Appellants timely filed their Notice of Appeal. AA 558.

STATEMENT OF APPEALABILITY

This is an appeal from a final judgment entered on September 18, 2019. AA 512-533 and 534; and Code Civ. Proc. § 904.1(a)(1) (appeal may be taken from final judgment); *see also* California Rules of Court, Rule 8.104.

STANDARD OF REVIEW

CEQA's dual standard of review is well-settled. When reviewing an agency's compliance with CEQA, "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the

[3] References to the Appellants' Appendix are cited as "AA" [page number].

claim is predominantly one of improper procedure or a dispute over the facts." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435, rehg. den. Mar. 29, 2007 ("*Vineyard*"). If an EIR fails to address an issue or omits essential information, courts employ de novo review to determine whether the agency violated the Act's disclosure requirements. *Fresno*, 6 Cal.5th at 515-16. By contrast, courts use the "substantial evidence" test to review "substantive factual conclusions." *Vineyard*, 40 Cal.4th at 435.

Respondents argued at trial that the court should review all of Appellant's claims under the "substantial evidence" test (AA 354-356), but this argument is incorrect. For example, the EIR's failure to reveal to the public that there are no limits of any kind on the amount of groundwater CGWC may extract from the wells at the Project site, is an error of law. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 ("*Raptor*") (environmental setting deficiency rendered EIR "inadequate as a matter of law"); *see also Fresno*, 6 Cal.5th at 515.

Likewise, the EIR's omission of an adequate analysis of Project impacts on the groundwater aquifer constitutes legal error. As the Supreme Court recently explained in *Fresno*, "whether a description of

an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question." 6 Cal.5th at 514. The "ultimate inquiry" is whether the document includes enough detail to enable the public "to understand and consider meaningfully the issues raised by the project." *Id.* at 516. This inquiry is "generally subject to independent review." *Id*.

To the extent that the substantial evidence test applies to Appellant's remaining arguments, this test does not call for blind deference to an agency's determinations. "Substantial evidence" is "evidence of ponderable legal significance, reasonable in nature, credible, and of solid value." *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070; *see also* Guidelines § 15384(a).[4]

Finally, the EIR's errors and omissions were prejudicial. As the Supreme Court clarified in *Fresno*, where an EIR "'omits material necessary to informed decision making and informed public participation,'" it "subverts the purposes of CEQA" and "'the error is prejudicial.'" 6 Cal.5th at 515 (citations omitted). Here, the County

[4] The CEQA Guidelines are found at Cal. Code or Regs, title 14, section 15000 *et seq*. and are referred to herein as "Guidelines."

certified a deeply flawed EIR that precluded informed decision-making and meaningful public participation.

ARGUMENT

A. The Project Description omits crucial facts.

The EIR for the Project contains a misleading and unstable project description. "[A] project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. [Citation.] 'Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative), and weigh other alternatives in the balance.'" *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052. Comments on the DEIR raised the issue of insufficiency of the project description. *See* AR 401-403, 463, 490, 495, 519, 654, 686, 799-801, 936-937 and 56384.

In a confusing analysis of the issue of accurate project description, the trial court found that when the County permitted the bottling facility for CG's predecessor (CCDA), the approval was "ministerial" and since

CG's bottling activity is "consistent with that of CCDA and is an activity that is appropriate to the heavy industrial zone designation…. Therefore permitting the activity is ministerial and does not require that the county exercise discretion in allowing the activity and is therefore exempt from CEQA Review." AA 477. The trial court's decision goes on to say, after finding that the groundwater extraction and bottling operations are "exempt from CEQA" that the EIR properly concluded that there would be no significant impacts from these activities. AA 477.

The trial court did not apply the appropriate standard of review. If an EIR fails to apprise all interested parties of the true scope of the project, the issue is one of law and no deference is given to the agency's determination, citing *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.

As set forth above, the EIR contains a project description that is largely unrelated to the discretionary Permit that was issued by the County in conjunction with certification of the EIR. In fact, the Introduction to the Project Description chapter does not make any mention of the *only* discretionary approval being sought from the County: the CUP for the caretaker's residence. AR 1624. The "Project

Objectives" in the Project Description chapter all relate to enabling CGWC to utilize the site and meet increasing market demands. AR 1631-1632. There is one short paragraph regarding the caretaker's residence, and it states that the residence could accommodate an individual caretaker as well as his or her family. AR 1634. As noted above, the caretaker's residence is not habitable by children because of the toxic air contaminants. *See* AR 230-231.

The Project Description chapter is 40 pages long, and there is a single short paragraph mentioning the caretaker's residence. AR 1634. It is mentioned in three other lists of items regarding water supply, energy use, and construction activity. AR 1633, 1649, and 1651-52. Near the end of the Project Description chapter, the EIR indicates that "Siskiyou County would be responsible for the majority of approvals for development." AR 1662. Then, under a heading entitled "Approvals by Siskiyou County," the EIR lists the certification of the EIR, the CUP for the caretaker's residence, and a building permit for the pH neutralization building. *Id.* The "Approvals by Other Agencies" includes the Wastewater Discharge Permit from the City of Mount Shasta, approvals from the Regional Water Quality Control Board, and the Air District. AR 1664. The approvals by other agencies represent the only approvals

relating in any way to the beverage bottling activities. Despite this fact, the MMRP for the Project lists the County as the responsible agency for all mitigation measures. AR 1546-1559.

The EIR did not disclose to the public the fact that the County has no control over groundwater extraction or beverage bottling activities, and actively misled the public by including mitigation measures that the County has no ability to enforce. "An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. Without an accurate description, decision makers and the public cannot weigh a project's environmental costs and benefits, meaningfully consider mitigation measures, or evaluate alternatives. *Id.* at 192-193; and Guidelines § 15124 (requiring detail sufficient for "evaluation and review of the [project's] environmental impact").) CEQA requires a project description provide sufficient facts "from which to evaluate the pros and cons" of the project; an EIR in which "important ramifications" of the project remain "hidden from view" throughout the approval process "frustrates one of the core goals of CEQA." *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829; see also *San Joaquin Raptor Rescue Center v. County of Merced*

(2007) 149 Cal.App.4th 645, 655-657. The adequacy of a project description implicates CEQA's informational mandates and is thus reviewed de novo. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.

The County maintains that it has no ability to control groundwater extraction or production levels, but then provides a purportedly "stable" project description describing a specific level of groundwater extraction and production activity. *See* AR 164, 1633 (projected annual average draw of 129 acre-feet with one production line and 243 acre-feet with two production lines), and 1831. Those production levels stated with such certainty are a guess, and essentially represent speculation on the part of the County. If there was a commitment on the part of CGWC to a certain level of production, then the messiness of a fictional project description would have been avoided and the County could have entered into a development/ mitigation agreement with CGWC. They did not; and this fact is laden with significance. The inadequacies of the Project description were pointed out to the County in numerous comment letters and during public testimony. *See* AR 401-403, 463, 490, 495, 519, 654, 686, 799-801, 936-937 and 56384.

The Project description states that the levels of production are "estimates" and that they are based on an assumption of 90 percent capacity of the "installed bottling equipment." AR 1631. The Board of Supervisors were told by one of CGWC's attorneys that CGWC's vice president of manufacturing made the estimates of production, and with his 30 years of experience, it was reasonable to accept the representations. AR 35974. It is true that Richard Weklych provided estimates of the production levels that could be anticipated given certain equipment (AR 7954-7955 and 9025-9026), but he did not make a commitment to operate at or below those levels.

County representatives took offense, complaining that commenters were accusing County staff and CGWC representatives of being dishonest. AR 33380. This begs the question: why would the County rely solely upon representations by Project proponents regarding levels of production, particularly where there is no development agreement, no mitigation agreement, no way at all to enforce operation at the represented level? CGWC is owned by an international pharmaceutical company, so it makes sense that the citizens of a rural, California community might want to have something more than, "take my word for it."

At the final meeting of the Board of Supervisors, County staff presented a memo answering questions posed by the Board at the previous meeting. AR 31733-31749. The memo asserts that accepting estimates of production from the Project proponent to form the Project description means that the description is "supported by reasonable assumptions and expert opinions supported by facts." AR 31737. The Project proponent is not an unbiased expert, and no matter how much experience CGWC's employees have, they did not commit the company to a certain level of groundwater extraction or bottling activity.

County's strategy of relying on representations that the bottling facility will operate at roughly the same capacity as the previous operation on the site is also undermined by the fact that there are not reliable records of groundwater extraction rates for the previous plant, and the previous plant (with similar equipment) was trucking water in from another source at the rate of 148,800 gallons per week (and not pumping all of the water for its production from DEX-6). AR 799-801. In fact, the percentage of water used by the previous operator was only 30-35 percent from DEX-6, with 60-65 percent trucked in from Mossbrae Springs. AR 1082, and see AR 981, 19866, and19869.

Trucking water to bottling locations is a practice that occurs in the water bottling industry in the area. *See* AR 1082, and AR 19866, and 19869.

The lack of an accurate and complete Project description here frustrated CEQA's fundamental informational purpose. The EIR's description of the Project's technical and environmental characteristics (*see* Guidelines § 15124(c)) was insufficient to support an evaluation of its most controversial impact: extraction of unlimited amounts of groundwater from the aquifer. The fact that CGWC representatives with years of experience could provide a plausible estimate of how much water could be pumped operating one bottling line versus two was beside the point. Even if the inherent limits of production line capacities, waste stream disposal, etc. were never exceeded, the Project operator could easily, and without environmental review, transport extracted ground water by truck in unlimited quantities to an off-site facility for processing and bottling elsewhere.

Without information on the maximum pumping that would be allowed at the CGWC plant, the public was unable to understand exactly how the Project would impact the aquifer. *See Santiago County Water Dist., supra,* 118 Cal.App.3d at 831.

The failure to identify a "project" that the County has the power to authorize and impose conditions upon also precluded the County from complying with CEQA's requirement that all feasible mitigation measures be adopted, and that they be enforceable. PRC §§ 21002, 21002.2(b), 21081; and Guidelines § 15126.4(b). In the final memo to the Board of Supervisors, County staff urged approval of the Project stating that the County has "numerous enforcement mechanisms" and cited Siskiyou County Code section 1-5.05, a provision that supports Appellants' argument that none of the conditions of the caretaker's residence permit will be enforceable against plant operations. AR 31737-31738. The code section cited states that conditions of approval are enforceable "as a condition of exercise of the permit." *Id.* at 3178 and *see* AR 1157 (staff report stating that mitigation measures "will be made Conditions of Approval of the project," which is patently untrue, they will be conditions of the caretaker's residence permit). As noted, CGWC has no real need for the caretaker's residence, and the structures is not habitable as a residence, so "exercising" that permit is irrelevant.

Finally, the EIR's description of the extraction rates and production levels as though they were the upper limit on the activities served to confuse the public, and the decision makers. Saying that the

Project will consume 129 acre-feet of groundwater per year with one production line and 243 acre-feet with two production lines implies certainty. AR 1633. Those are definite figures. But they are a guess, and that undermines evaluation of impacts and potential alternatives. *Communities for a Better Environment, supra,* 184 Cal.App.4th at 83-84.

The Supreme Court has declined in other contexts to "countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials." *Laurel Heights Improvement Ass'n of San Francisco v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404-405 ("*Laurel Heights I"*). The County acted contrary to this fundamental goal by failing to disclose to the public that there was no upper limit on groundwater extraction. The County compounded this failure to disclose by inserting extraction and production figures that were implied limits, thereby confusing the public and failing to proceed according to law. Accordingly, the County's certification of the EIR and approval of the Project must be set aside.

B. The EIR includes impermissibly narrow project objectives

Under CEQA, a lead agency may not approve a project if there are feasible alternatives that would avoid or lessen its significant environmental effects. PRC §§ 21002, 21002.1(b). To this end, an EIR is required to consider a range of alternatives to a project that would feasible attain most of the project's basic objectives while avoiding or substantially lessening any of its significant environmental impacts. *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456. The discussion of alternatives must be sufficiently detailed to foster informed decision-making and public participation. *Id.* at 1456, 1460. A project proponent may not foreclose alternatives by adopting unreasonable narrow project objectives. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-37 (holding applicant's prior commitments could not foreclose analysis of alternatives); cf. *Nat'l Parks & Conservation Ass'n v. Bureau of Land Management* (9th Cir. 2010) 606 F.3d 1058, 1070.

The EIR's alternatives analysis fails for two reasons. First, the County attempted to define the Project's alternatives so narrowly as to preclude any alternative other than the Project. The first "Project Objective" listed in the EIR is "[t]o operate a beverage bottling facility

and ancillary uses to meet increasing market demand for Crystal Geyser beverage products." AR 1631. Other "objectives" include initiating operations "as soon as possible to meet increasing market demand for Crystal Geyser beverage products." *Id.* The County thus defined the core purpose – to allow CGWC to begin operations as soon as possible in such a way that supports CGWC business objectives – so narrowly as to preclude any alternative other than the proposed Project. Other alternatives, such as other locations, that would allow CGWC to obtain business advantages by quickly meeting market demand, were not evaluated.

With respect to the alternatives analysis, the trial court found as follows:

> The County considered a reasonable range of alternatives that met the project most objectives and mitigated most of the substantial environmental impacts. The project alternatives are supported by substantial evidence, taking the EIR as a whole, and sufficiently allow the lead agency to consider a feasible range of alternatives to the proposed project. The Petitioners have failed to bear their burden and the court finds that the stated project objectives were not impermissibly narrow. AA 501.

The trial court erred in concluding that "substantial evidence" supported the project alternatives. The analysis falls well short of what is required by CEQA. The EIR mentioned other alternatives, such as

aquaponics (use of the site to grow fish and plants together), and use of the site for residential purposes, noting that these were rejected out of hand. AR 1982-1984. Also rejected without analysis was an off-site alternative, and rightly so since the "objectives" of the Project involved developing the specific Project site. The alternatives were not truly alternatives. For example, the alternative to delay operation until electric power is available, avoiding significant impacts from Project generators, was eliminated because when the core objective is to get the Project proponent up and running and competing in the market, an alternative that involves delay would not be "feasible." AR 1984. The alternative was dismissed from full consideration because it would "not accomplish any of the project objectives in the short term." *Ibid.* There was, oddly, a reduced intensity alternative evaluated, suggesting that CGWC would operate only one bottling line, and that this would reduce the levels of extraction and production – but the County did not mention that this is an illusory alternative in light of the fact that the County is unwilling to exercise any police power or land use authority that could bring a development agreement into the process, and is committed to the position that CGWC is entitled to extract as much groundwater as it

wishes from the aquifer. The so-called alternatives were dismissed in a few paragraphs. AR 1985-1987.

The County failed to evaluate a reasonable "range" of feasible alternatives that would attain most of the Project's basic objectives, and failed to provide enough "meaningful information" about the alternatives it did mention to foster informed public participation. *Save Round Valley, supra,* 157 Cal.App.4th at 1456, 1460.

The County failed to demonstrate – in the EIR or anywhere else in the record – that the "No Project" alternative is infeasible. In rejecting an alternative as infeasible, an agency "must explain in meaningful detail the reasons and facts supporting that conclusion" (*Marin Municipal Water Dist. v. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1664), and must support its rejection with substantial evidence. CEQA Guidelines § 15091(b). The County purportedly rejected the "no project" alternative for three reasons: (1) "existing facilities within the project site would remain vacant and non-operational;" (2) it "would not utilize existing facilities and infrastructure to the extent possible;" and (3) it would not "create new employment opportunities in the County." AR 1985-1986.

At least the first two of these conclusory assertions lack support in the record, and none demonstrates that the no project alternative is infeasible. The core "objectives" to facilitate business advantages for CGWC are not proper Project objectives as noted above, and in addition to that, these core objectives are not even mentioned in dismissing the "no project" alternative. An agency's reasons for rejecting alternatives "must be discussed *in the EIR* in sufficient detail to enable meaningful participation and criticism by the public." *Laurel Heights I, supra,* 47 Cal.3d at 405, emphasis added.

In their trial court briefing, CGWC and the County asserted that the Project objectives were essentially divided into the County objectives and CG's objectives. AA 365. One set of objectives focused on CG's business interests (AA 365), and "[t]hese objectives were identified to ensure that Crystal Geyser is able to participate in and take advantage of the current business opportunities in the bottled water and beverage market." *Id.* The other set of objectives included taking advantage of the existing structure on the property, and the "availability and high quality of existing spring water on the property" and providing tax and employment benefits to the County. AA 365. These objectives focused on developing the existing plant into a beverage bottling

facility. Between the two sets of objectives, there was no feasible alternative that could be evaluated. One set of objectives would go completely unmet so long as CGWC did not gain a business advantage, and the other set of objectives would go unmet unless the Project site was approved for beverage bottling activities. No feasible alternatives exist, and so none could be analyzed.

The trial court's conclusion that "project alternatives are supported by substantial evidence" and that the County considered a "feasible range of alternatives to the proposed project" is in error.

C. The EIR's impacts analysis is insufficient.

Allegations in the Petition regarding the failure of the EIR to adequately analyze impacts necessarily include the assumption that the County was analyzing the impacts of a CEQA "project" that included the bottling facility operations, despite the fact that the County insists that it has no authority over the beverage bottling facility operations and was providing a discretionary CUP for the caretaker's residence only. The question of what the CEQA "project" was in this case is a threshold issue. Many of the allegations here are based upon the EIR's Project Description Chapter and analyses throughout, and are not based upon the County's assertion that it has no authority over the Project as

described in the EIR. If the County has no authority over the activities at the bottling facility, it begs the question why it acted as the lead agency.

The County concludes that only one impact, GHG emissions, will remain significant and unavoidable. AR 251-252. With respect to all other remaining impacts the EIR concludes that they are less than significant. AR 18-73. Many of these conclusions occur despite ample evidence in the record to the contrary. Lead agencies must determine significance of project impacts using "careful judgment…, based to the extent possible on scientific and factual data." Guidelines § 15064(b). The evaluation of an activity's significance also "depends upon the setting." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. An agency may not "travel the legally impermissible easy route to CEQA compliance" by making a significance determination without fully analyzing the project's effects. *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.

In many instances discussed below, the County insisted upon relying on old data insufficient to support conclusions, modeling programs that had been long since replaced by more relevant programs,

and worse yet, manipulated models designed to provide a particular outcome. *See* AR 4867, 7529-7530, 33253-33264, 35954-35958. The County stuck with the unreliable "evidence" because it supported the desired conclusions. This is not the exercise of "careful judgment" but an attempt to justify an approval that will allow unlimited groundwater extraction and also unrestricted levels of industrial activity and production. Indeed, the County ignored the very "scientific and factual data" on which it should have relied.

1. Impacts to aesthetics.

The EIR failed to disclose and properly evaluate the significance of the project's effects on aesthetics. The EIR's analysis begins with an unsupported assumption that the plant is not a "dominant visual feature." AR 1670. Many community members submitted comments refuting this assertion, noting that the plant is *the* dominant visual feature when looking over at Mt. Shasta from the Eddies, Black Butte, or along the Pacific Crest Trail. AR 543, 621, 746, 806, 928 and 940-941. These lay opinions based upon personal observation constitute substantial evidence. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927-928.

In response to calls for mitigation, the County stated the visibility of the plant will not be addressed because it is an existing condition (AR 1164, 1411-1412, 1184 and 32042), despite the fact that the "existing" situation is *in violation* of the 1998 Mitigation Agreement; the same Mitigation Agreement the County claims will be incorporated into the mitigation measures for the Project. AR 1429 and *see* AR 32198.

In response to comments regarding non-compliance with the 1998 Agreement, counsel for CGWC responded by stating the following: (1) CGWC "has committed to implementing measures in the 1998 Mitigation Agreement that are applicable to the proposed project"; (2) obligations of the 1998 Agreement that involve "past performance" are part of baseline conditions and do not apply; and (3) with regard to providing ongoing vegetative screening, CGWC will comply "to the degree commercially feasible." AR 7452. The letter concludes with a firm statement of *non-commitment* as follows: "In any event, it should be noted that the 1998 Mitigation Agreement sets forth existing conditions that are not tied to any proposed mitigation measure in the Draft EIR." *Id.* Compliance with the 1998 Agreement *is* a mitigation measure, it is a condition of the CUP for the "caretaker's residence." AR 7-17 at 16. Not only does the EIR fail to adequately evaluate and

mitigate aesthetic impacts, the County goes so far as to disavow one of the only mitigation measures proposed to address the eye-sore the Project creates.

2. Impacts to Air quality.

The record reveals that the air emissions and health risk assessments relied upon by the County to support its conclusions are highly suspect and cannot be regarded as valid expert opinion or reasonable assumption predicated on fact. The record actually demonstrates that the County engaged in a pattern of non-disclosure and manipulation of data to arrive at "no significant impact" findings. Impact analyses and risk assessments tampered with to produce preordained results does not constitute substantial evidence.

Beginning with the DEIR, the entire air quality analysis, including analysis of greenhouse gas emissions, was so deeply flawed that it was difficult to present discussion in comments on the DEIR. Autumn Wind Associates provided an expert analysis of the air quality sections in the DEIR and found that the basic inputs and assumptions had been heavily manipulated to "reduce" the apparent level of impact. AR 454-466.

When the DEIR was released, the Project appeared to have a minimal impact on air quality, as the Executive Summary in the DEIR

concludes that all air quality impacts are less than significant, except for the increased cancer risk for the people living in the caretaker's residence. AR 1598. This seems surprising in light of the tremendous number of truck trips that will result from operation of the Project. AR 1691 (100 Heavy-Heavy duty truck trips per day), and 26166.

In the DEIR, rather than use the methodology and inputs that are the standard of the industry for air quality analysis, and rather than including *all* of the truck traffic that the Project will generate, the County manipulated the inputs, misstating the types of truck traffic as well as modifying the standard assumptions for General Heavy Industrial analyses in such a way that the conclusions fall below thresholds of significance. AR 454-456.

The fleet mix for the DEIR analysis had also been manipulated to leave out the heaviest vehicles, thereby allowing the air quality model to support a finding of less than significant impact. The County's air quality modeling included an intentional reduction (or even zeroing out) of heavier vehicles. AR 458-459 and 934-953 at 943. In the face of this manipulation of the fleet mix, the County's consultant inexplicably claimed that the analysis is taking a "more conservative" approach in the DEIR. AR 4600. This goes beyond a failure to disclose information

in the DEIR, and into the realm of intentionally misleading the public, the decision makers and other agencies.

The County prepared a revised air quality impact study for the FEIR, and it revealed significant impacts, but that revision was not recirculated, and the County clung to the conclusions that the impacts were less than significant. How many members of the public took the County's word for it that the Project would have "less than significant" impacts to air quality, and did not participate further in the administrative process? Recirculation is required where new information "reveals, for example, a new substantial impact, or a substantially increased impact on the environment." *Vineyard, supra,* 40 Cal. 4th at 447; and Guidelines §§ 15088.5(a)(1) and (2).

The County's revised emissions study estimates Project emissions to be almost twice what was disclosed in the DEIR. AR 1788, and 31745-31746. The County took three steps to avoid changing the conclusion of a "less than significant" impact: (1) the analysis continued to inexplicably modify the standard fleet mix in the CalEEMod in order to minimize emission estimates; (2) emissions from stationary and mobile sources were separated and *no* threshold of significance was applied to mobile sources; and (2) the new numbers were not used to re-

run the Health Risks Assessment, thereby avoiding the fact that the health risks were significant.

i. County continued to modify the fleet mix for the FEIR.

The FEIR analysis was flawed. Substantial input-related changes were made in response to public comments, but the FEIR emissions remained underestimated for CAP and GHG pollutants, and the screening-level HRA conducted for the DEIR was carried through *unrevised* to the FEIR, reflecting substantially underestimated health risks. AR 33284.

The FEIR analysis did not correct the inappropriate modifications to the fleet-mix in the model, it simply adopted a different inappropriate modification to the fleet mix. AR 33284. EMFAC's fleet mix for the Siskiyou area has been carefully calculated. These carefully crafted fleet mixes are key to CARB's EMFAC model. *Id.* Changes to the fleet mix are appropriate only in limited and well-documented cases, and must be carefully explained. AR 33284-85. In the FEIR analysis, the 103 daily truck trips are calculated separately from the trips calculated in CalEEMod for the land use type (General Light Industrial). This deviation from the standard fleet mix is not explained. AR 33285. The FEIR asserts that "additional information" has been added to the

Appendix M CalEEMod input table to explain changes in the fleet mix, yet there is no explanatory information provided aside from: "Trips and VMT – refer to CalEEMod Table in Appendix M." AR 4604.

Removal of certain classes of vehicles from the analysis was inappropriate. The Project's mobile source emissions continue to be underestimated, rendering the FEIR's conclusions inaccurate. These underestimated emissions negatively affect the Project's screening level HRA process and the EIR's accuracy of estimated health risks, along with GHG emissions and related credit calculations. AR 33287-33288 at 33286. There is no substantial evidence to support the County's deviation from the accepted fleet mix.

ii. County improperly applied "no threshold" mobile source emissions

In this case, despite the fact that the County revised the air emissions analysis in a way that resulted in very different conclusions (*see* AR 1788), the County avoided calls for recirculation by abandoning the significance threshold used in the DEIR – in order to avoid making a finding of significance. AR 1697-98, 26173, 37669. The new air quality information showed significant impacts (even though the new study was also flawed), but rather than getting into the difficulty of having to come up with mitigation measures or making

findings of overriding significance, the County simply concluded that there is *no applicable threshold*. *Id.* Problem solved.

The County admits that the revised modeling reveals significantly increased emissions from mobile sources but declines to use the threshold of significance that was applied to these emissions *in the DEIR*, claiming "Siskiyou County is in attainment for all CAP's, [and] numerical thresholds have not been established for mobile emissions." AR 1177 ("numerical thresholds have not been established for mobile emissions") and 1697-1698. In other words, the County applied the Rule 6.1 threshold to *all* Project CAP emissions in the DEIR, but when the revised modeling revealed that the mobile emissions would exceed this threshold, the County abandoned it and now claims that there is no applicable threshold.

One of CGWC's attorneys responded to this comment by stating that the DEIR did not apply the threshold of significance (AR 37669), but the problem is that the DEIR included Table 4.2-4, holding the total Project emissions (mobile and stationary) to one threshold of significance (AR 26173), while the FEIR includes Table 4.2-4 with stationary sources only (AR 1697), breaking the mobile source emissions into a separate table without a threshold. AR 1698.

A lead agency may not analyze an impact without using a threshold of significance, and the fact that another agency has not established a threshold does not excuse the County from this requirement. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-656. The County's actions in an effort to avoid making a finding of significance violated CEQA.

iii. County failed to re-run the Health Risk Assessment with new emissions numbers

The most alarming deficiency that continues in the FEIR is the inaccuracy of the HRA. The revised modeling in the FEIR shows increased truck trips and an increased proportion of heavy-heavy trucks (that, relatively, emit the most diesel particulate matter in the fleet mix), with increasing mobile source emissions (except for CO, which decreased slightly). AR 37563-37565. While the FEIR recognizes the increase in criteria air pollutants that will result, it does not include a correlative increase in diesel particulate matter, relevant to health risks, into the original HRA's findings. Those findings were based on 100 "heavy-heavy duty" trucks. The FEIR analysis shows 103, with an additional 47 medium and heavy-duty class trucks not bound to the same $PM_{2.5}$ filter requirements as the HHD trucks, and $PM_{2.5}$ emissions have increased. AR 4600 and 4631.

County's effort to explain this is in response to comments (AR 37566) and contained in a memo from Sierra Research explaining that while the revised air emissions analysis prepared by the County shows a 68% increase in exhaust $PM_{2.5}$ emissions, that shocking increase noted by the County's own experts does not mean that the health risks near the plant have changed one bit. AR 32212-32213. The memo states that Gray Sky Solutions' manner of revising the HRA was improper because the rates used for total emissions includes operational and mobile source emissions, and the HRA should only be assessed with a fraction of each vehicle trip. AR 32212 and *see* 32981. The memo takes pains to say that *if* the HRA were to be re-run, it would still come out below the significance levels. *Id.* The interesting thing about this is that it would have taken less time to re-run the HRA than it did to write the memo speculating what might happen if the County did the right thing and re-ran the HRA with the new emissions figures. AR 35812-13 (supplemental staff report stating that re-running the HRA is "somewhat time consuming" and each model run can take "about one day to complete").

In fact, at least 50 additional truck trips were noted on the Site Specific CalEEMod Inputs (AR 4600) that were not analyzed in the

HRA included in the FEIR. These 50 additional truck trips produced the 68% increase in $PM_{2.5}$ and the HRA should have been re-run. *See* AR 4631 *cf.* AR 29089. The bottom line is that the County failed to run the screening level HRA with the new mobile source information, and as a result, the HRA is inaccurate.

Increased emissions were not the only reason the HRA should have been re-run by the County. The original HRA was based on the assumption that all heavy-duty diesel truck traffic would access and depart the bottling plant primarily from the north on N. Mt. Shasta Blvd. (running north-south and to the west of the plant), but with about one-third of the truck trips approaching or departing southerly on N. Mt. Shasta Blvd. *See* AR 33119-33132.

In direct conflict, the DEIR states "Trucks would be directed to use the same route as with former CCDA Waters operations and access Interstate 5 via the Mt. Shasta Boulevard and Abrams Lake Road interchanges." AR 7267-68. Because these interchanges are to the north, all or nearly all of the project-related truck traffic would approach or depart the Crystal Geyser plant from the north. The HRA assumed that one-third of Crystal Geyser heavy-duty truck trips would exit *southerly* on N. Mt. Shasta Blvd from the property with the remainder

turning to the north. If all truck traffic is to go north as indicated in Appendix U. The fundamental assumptions for modeling project-related heavy-duty diesel truck emissions to estimate increased cancer risks would then be inaccurate. This under-represents the estimated cancer risk at the residence on Reginato Road, having the greatest project-related increased cancer risk. AR 33119-33132.

With the FEIR emissions data, modeling was conducted by Dr. Andrew Gray of Gray Sky Solutions, and the increase in DPM-containing $PM_{2.5}$ will cause the project's maximum cancer risk for the most at-risk residents to exceed the 10/million increased cancer risk threshold of significance, rendering the FEIR's determination of a less-than-significant risk invalid. AR 33119-33132.

In summary, the FEIR includes substantial emissions input-related changes, but the changes do not remedy the errors of the DEIR. Emissions remain underestimated for CAP and GHG pollutants, and the screening-level HRA conducted for the DEIR and carried through unrevised to the FEIR now reflects substantially underestimated health risks.

3. Greenhouse gas emissions

The EIR acknowledged that GHG emissions would be significant. AR 1788. However, the County erred in disclosing only a fraction of the estimated emissions in the DEIR (AR 1789), and failed to recirculate the EIR when the radically new estimates were revealed. The FEIR continued to use the static threshold of 10,000 metric tons per year of CO_2 for operational emissions (based on AB 32 targets for 2020) and presented the new conclusions without any additional discussion of mitigation measures or project alternatives that could avoid some of the emissions that were more than five times the threshold. AR 1789.

CEQA requires recirculation of a draft EIR whenever "significant new information" is added to the EIR after its release for public comment. PRC § 21092.1. Appellants requested this in light of the fact that the DEIR emissions analysis was so deeply flawed. AR 935. "Significant new information" includes a change to the EIR 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. Guidelines § 15088.5(a). The test is met where the new information demonstrates that the draft EIR was

"fundamentally and basically inadequate and conclusory in nature." Guidelines § 15088.5(a)(4).

Here the County acknowledged that the climate analysis presented in the DEIR was flatly inadequate by preparing a new emissions analysis that more than doubled the estimated air emissions and showed a five-fold increase in GHG emissions. AR 1176. This fact alone required recirculation. *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1052-53. The trial court concluded that the undisclosed emissions were not significant, and so circulating the new information to the public was not required. AA 484-5. The trial court reasoned that the increased impact simply required the same mitigation measures, "albeit at a greater level." *Id.* The trial court accepted Respondents' arguments that it does not matter how significant the GHG emissions are, one need only purchase additional carbon off-set credits. AA 485. The trial court's adoption of this position was in error.

Off-set credits address global GHG emissions, but the two-fold increase also says something about what will be endured by the local citizens. The DEIR states that operations will produce 35,486 Metric Tons of CO2e, the FEIR states 61,281 Metric Tons CO2e, and the

threshold of significance is 10,000 Metric Tons. AR 1788. Thus, emissions are nearly 2 times greater than the previous study, and 6 times greater than the threshold, and yet Respondents now argue that no matter how great the GHG emissions, adding off-set credit requirements dispenses with the problem. The County should have recirculated at least the air quality portion of the DEIR in order to disclose the true GHG emission levels and consider potential mitigation measures that would not just reduce the global impact, but reduce the impact on local citizens as well. PRC § 21092.1; and Guidelines § 15088.5(a)(4). The increased emissions disclosed in the DEIR is a significant change that the public should have had an opportunity to review, submit comments, and receive a written response.

At the very least, the County was required to provide the public and the decision makers with an explanation of the magnitude of the impact and to evaluate additional mitigation measures. As the Supreme Court has explained, an "EIR's designation of a particular adverse impact as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." (*Cleveland National Forest Foundation v. San Diego Ass'n of Govs.* (2017) 17 Cal.App.5th 413, 439-40.)

Also, the analysis in both the DEIR and the FEIR omitted any consideration of CO_2 emissions that will occur as a direct result of the Project's consumption of materials used for making bottles. AR 667. The Project will produce single-use polyethylene terephthalate ("PET") bottles for its products. AR 1632. The bottles will be molded on site using "preforms." *Id.* There is no discussion of how many bottles will be produced, nor any consideration of the GHG emissions associated with making the preforms. The manufacture of one ton of PET produces 3 tons of CO_2. AR 667 and 692.

With respect to the GHG emissions associated with making bottles on site out of "preforms," Respondents argued to the trial court that these emissions need not be considered for two reasons: (1) there will be no preforms made on site (they will be made elsewhere); and (2) that there is no basis for requiring a "life-cycle" analysis. AA 385. Respondents cited to *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 ("*Save the Plastic Bag*"), claiming that the increased use of preforms is similar to the increased use of paper bags in that case, and is "an indirect and uncertain consequence." AA 385.

The court in *Save the Plastic Bag* addressed the question of whether a City banning the use of plastic bags was required to analyze the potential for increased demand for paper bags, and the impacts associated with paper bag use elsewhere. The court found that it was impossible to predict whether or not there would be in increase in demand for paper bags, and that the impacts of paper bag manufacturing in an area outside of the City's geographical boundaries. *Save the Plastic Bag, supra,* 52 Cal.4th at 173-174. This is distinguishable from the case at hand.

CGWC has provided estimates to the County of the number of bottles it will use each year (AR 1631-32 and 1633), and so the number of preforms is not uncertain (no more uncertain than the amount of water CGWC will extract each year). The amount of $C0_2$ that is generated by the production of preforms is also known. AR 667 and 692. Lastly, GHG emissions have been recognized by California courts to be a global problem made up of cumulative impacts, and the fact that they "are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local." *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 219-220 *as modified on denial of rehearing* (Feb. 17, 2016). Thus,

the County may not avoid the analysis of the known cumulative, global impacts associated with the identifiable number of preforms the Project will consume each year.

The trial court erred in concluded that the "use of plastic bottle preforms is part of the project operation, but the manufacture of preforms is not a direct result of the project operation. Preforms will continue to be manufactured whether or not the project is approved and therefore it is not an indirect result of the project." This finding by the trial court says that the preform production is "part" of the Project, but that it is not an indirect impact. It is, in fact, an indirect impact, and preforms for this bottling facility will not be manufactured if the bottling facility is not approved. This contribution to total GHG emissions must be included.

The GHG analysis also includes HVAC use in such a way that is not supported by any evidence. AR 1786. "The HVAC system was assumed to run two hours a day, 160 days annually, with four heating units." There is no discussion of why the heating units would be used for only two hours per day, particularly in light of local cold winter conditions. There is also no mention of how much the air conditioning units will be used. Since teas will be brewed and boilers will be used, it

is likely some cooling of the building will be required in the summer. GHG emissions from the AC system must be evaluated.

Finally, the County failed to describe feasible mitigation measures to reduce the significant GHG emissions identified in the new GHG analysis. Guidelines § 15088.5(a). Because the DEIR revealed only half of what the County now predicts, it included only a paltry offering of mitigation measures such as encouraging car pools, installing a solar array (removed in FEIR), use of Pacificorp power when it becomes available, no engine idling, and purchase of offset credits. AR 1790-1791. The County failed to reevaluate these measures when the estimates of emissions doubled. This oversight left the Project with completely ineffective climate mitigation.

The handful of mitigation measures include for GHG reduction are also not enforceable. CEQA mandates that mitigation measures be enforceable. Guidelines §§ 15091(a)(1), (b) (mitigation findings must be supported by substantial evidence); and 15126.4(a)(1) and (2) (mitigation must be effective and enforceable). In spite of this requirement, Mitigation Measure 4.6-1's "possibility" of installing solar arrays, and a plan to establish carpooling for employees are perfect examples of unenforceable mitigation measures providing no basis to

claim any impact reduction. AR 250-251 and 464-466. Further, as noted in detail above, the County has no authority to enforce these mitigation measures outside of the context of CG's use of the caretaker's residence.

CGWC's attorney indicated that CGWC was opposed to any requirement for the installation of a solar array. AR 1087. In response, the Board of Supervisors made the finding that the solar array would not be required because of "aesthetic" impacts. AR 267. While the aesthetic impacts of a solar array may have been significant, the loss of one of the only mitigation measures for air quality impacts required the County to consider and adopt other feasible measures. PRC §§ 21002, 21002.2(b), 21081.

4. Noise impacts.

CEQA establishes a California policy to "take all action necessary to provide the people of this state with…freedom from excessive noise," thus providing the public "a statutorily protected interest in quieter noise environments." *Berkeley Jets, supra,* 91 Cal.App.4th at 1379-80, citing PRC § 21001(b).

The City glossed over the noise issues despite comments from residents about the former plant operation stated that they were not able

to have their windows open on summer nights. AR's 350, 394, 652, 680, 1099-1100, 1132, 1140, including a neighborhood parcel map at AR 598 to show all residents effected by noise.

The FEIR analysis picks and chooses from data in the DEIR and from the revised noise study presented with the FEIR, and uses noise thresholds that have been superseded and are *not* the standard for the industry. AR 36773, 37350. The Federal Interagency Committee on Aviation Noise ("FICAN") thresholds used in the EIR to determine incremental significance for all project noise sources are out-of-date and inappropriate for industrial noise sources. They have been superseded by incremental thresholds developed by the Federal Transit Administration ("FTA") for transportation noise sources, which are more stringent than the FICAN thresholds at noise exposure levels common in most environmental circumstances. AR 33253-33264 at 33254-55.

County clung to the standard, stating that it is a less restrictive standard, but "there is no mandate" not to use it, and the FICAN standards were selected based on "the judgment of the noise consultant." AR 37354. CEQA's policy is to provide protection to the public against noise, and the FTA standards have by far the stronger

scientific basis. AR 33258. Thus, rather than correcting the errors contained in the DEIR's analysis, the FEIR includes additional errors in methodology as well as considerable misinformation.

Additionally, a noise expert pointed out to the County in comments on the FEIR that neither the FTA nor the FICAN thresholds are applicable to industrial noise sources. Noise from industrial sources is *not* "broadband in nature." It has a completely different frequency spectrum than background levels that in most cases are dominated by transportation sources. AR 31846 and 31872. To be less than significant for CEQA purposes, project machinery noise levels must be low enough, or made low enough, on average and in each octave band, to be inaudible to its residential neighbors throughout the day, especially during nighttime hours. *Id.* County rejected this assertion that it should evaluate noise that is audible to neighbors. AR 37352.

Throughout its response to comments on the shortcomings of the EIR's noise analysis, the County asserts the claim that it was entitled to rely upon City and County noise thresholds as a standard of significance for the Project. AR 37342-37360. County defends its conclusions by pointing to these noise ordinances, but case law rejects such excuses. *See Berkeley Jets, supra,* 91 Cal.App.4th at 1380 (CEQA does not look

to local noise ordinances to determine significance of impacts); *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 300-01 (EIR could not ignore significant increases in traffic simply because traffic was within levels permitted by general plan).

In response to comments on the DEIR, the County apparently charged its noise experts to figure out a way to get out from under the burden of significant noise impacts and the required mitigation. In addition to the "new" baseline developed by selecting a residence 80 feet from the railroad tracks, the County arbitrarily omitted analysis of vibrational noise and decided not to analyze the combined impact of traffic and industrial noise from plant operations. AR 33330-33333 at 33331. "The Revised Noise Analysis picks and chooses between the noise levels predicted by the FHWA Model and the ambient noise measurements in order to eliminate the significant and unavoidable traffic noise impacts that were contained in the Draft EIR." AR 33332.

Case law requires the EIR to provide enough information so readers can determine whether project-related noise would "merely inconvenience" people or "damn them." *Berkeley Jets, supra,* 91 Cal.App.4th at 1371, 1382; and see *Gray v. County of Madera* (2008)

167 Cal.App.4th 1099, 1123 (EIR must describe impact of noise increase in light of existing conditions). Submerging the true impacts in a convoluted combination of models and standards does not meet this standard. While a lead agency does have discretion with respect to methodology, it may not rely on an inapplicable method to justify a no-significance finding. *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228, *as modified on denial of rehearing* (Feb. 17, 2016). It appears from the noise analysis and the revised analysis that it was a concerted effort to avoid a finding of significance. Noise impacts to neighbors in the quiet community near the bottling facility will impact their wellbeing, and the County should engage in an objective analysis that will allow for the development of mitigation measures to protect these citizens.

The responses to comments dismissed concerns about exceedance of noise standards, claiming that a 1-4 dB exceedance is minor. AR 37345-37346. Even a 1 dB increase in 24-hour levels represents a potentially significant impact to local sensitive receptors that may require mitigation. AR 33262. In the trial court Respondents claimed that a 1-4 dB exceedance of noise standards is minor. AA 372; and AR 37345-37346.

Respondents urged the trial court to accept the notion that the area around the bottling facility is made up of "industrial uses, Interstate 5, and nearby train tracks." AA 374. In fact, the bottling facility is in the midst of a quiet neighborhood in a relatively serene mountain setting. AR 56120-56124.

The trial court simply avoided the issue by stating that application of the General Plan noise standards is within the County's discretion, and the court is required to defer to the County on the issue. The trial court's holding on the issue of noise impacts is in error. Further, as noted below in the section regarding the General Plan, where there is a numerical threshold the agency does not have any discretion regarding interpretation.

5. Impacts to hydrology.

The Project groundwater wells consist of a domestic well and DEX-6; the well that will be used to extract groundwater for bottling and production. AR 1810. According to the EIR, the domestic well is perforated in both the upper and lower aquifer systems, while DEX-6 is perforated in the deeper aquifer. *Id*. The Project's potential impacts to groundwater levels were of concern to many in the community, including Appellants.

This analysis necessarily includes all of the uncertainty discussed elsewhere in this brief about the unstable Project description. County insists that it has no authority over the amount of groundwater that can be pumped at DEX-6, and so the amounts used to analyze for impacts to groundwater are entirely uncertain. The remainder of this discussion assumes that the figures set forth in the EIR are fixed, but that is an assumption for the sake of argument only.

The threshold of significance used by the County for impacts to groundwater was: whether the Project would "substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table" AR 1824. The strict application of this generic threshold was useful to allow for a very generalized view of the groundwater in the area, but it was in error. By using this standard, the County was able to accept the analysis based upon outdated models, ignore the standards of significance the Tribe attributed to the Resource, and avoid having to do any actual studies on the impacts of the proposed pumping at DEX-6 and the nearby domestic wells. The County violated CEQA by applying a standard of significance that did not analyze the water extraction increase "in light

of existing conditions." *Gray v. County of Madera, supra,* 167 Cal.App.4th at 1123. This decision to use a general threshold did not take into account the complexity of the groundwater system and the fact that the aquifer is a Tribal Cultural Resource and that there are many local residents relying upon it for domestic water. By ignoring these realities, the County did not "use its best efforts to find out and disclose all that it reasonably could." *Berkeley Jets, supra,* 91 Cal.App.4th at 1370, citing Guidelines § 15145. Here, the EIR's failure to adequately analyze the Project's potential impacts on nearby wells meant that the County did not develop measures to mitigate those impacts.

The record is rife with studies and modeling data, and conclusions by experts, but the one question that needs to be answered with respect to the Projects impacts to Big Spring Aquifer is whether industrial scale pumping at DEX-6 on the Project site causes short and/or long-term damage to groundwater levels at the many nearby off-site residential wells, City wells, and proposed City wells. AR 32666 and 32940. This question has not been answered, and the County continues to point to the resumes of its experts, the volumes of material, but the unfortunate fact is that reams of material are not substantial evidence unless they analyze the appropriate question.

The County's experts used an obsolete and oversimplified model (PUMPIT) which is not applicable to the groundwater underneath the fractured volcanic hydrologic setting, in extrapolating the County has gathered *only from wells on the Project site.* AR 32666 and 33305. While the County's experts may opine that sufficient water exists, that opinion must be based upon substantial evidence. Guidelines § 15384. In this case, the lack of knowledge about the upper and lower aquifers results in a lack of substantial evidence to support the County's conclusions. AR 33302-33307.

County will argue that it is entitled to accept one expert's opinion over another's, but this is not a matter of conflicting opinions. There has never been any testing at all to determine what the impacts will be to neighboring wells, so this is not a matter of conflicting expert opinions. AR 32667.

Many comments from local residents were submitted to the County regarding the impacts to domestic wells during the time the Plant was operating between approximately 2000 and 2010. In response to comments, the County claims that the evidence submitted by commenters is "anecdotal." AR 1188-89, 1260, 1357, and 1404.

The County was not entitled to ignore evidence that industrial-scale pumping at DEX-6 had caused neighborhood wells to fail in the past. Lay testimony of neighbors based on personal observations is substantial evidence. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927-928. Also, the County was required to fully analyze this impact in response to this evidence. *Berkeley Jets, supra,* 91 Cal.App.4th at 1370, citing Guidelines § 15145.

The Gateway Neighborhood Association also submitted to the County a detailed expert analysis of the local groundwater elevation, taking data from wells in the Project vicinity. AR 38835-38890.

In response to requests for a monitoring program for neighboring wells, the County responded with a firm no, but its own expert could not provide an answer without heavy qualifications. AR 7529. The response states that the groundwater extractions at the plant would not draw down nearby wells, stating as follows: "this also assumes certain conditions, such as: the fractures in the volcanic rocks at the Domestic Well remain open, extensive and continuous in the subsurface area beneath the region; the elevations of the perforated intervals in the wells being considered are the same; and the same stratigraphic horizons in the Domestic Well have been perforated in the other wells in the

region." AR 7529. In other words, there is no guarantee at all that the prediction is correct.

The responses to requests for monitoring goes on to state that monitoring wells is "fraught with both logistical and even legal issues…." AR 7530. This is not a valid reason to abandon the effort of gathering the necessary data to determine impacts. Monitoring the neighborhood wells for impacts over time as CGWC engages in its unlimited groundwater extraction is a feasible mitigation measure, and really the only measure available to address the potentially devastating impacts that will likely occur as a result of groundwater depletion.

Respondents argued to the trial court that in 2017, the County "studied" the Project's impacts to neighboring wells. AA 374-75. In fact, there has never been a study that directly evaluates the potential impacts on neighboring wells. Respondents rely upon Appendices P and W to the EIR, both prepared by the same consultant in 2016 and 2017, respectively. AA 374. Respondents argued that the County was entitled to rely upon these expert reports and could ignore conflicting opinions from other experts. *Id.* The trouble with the reports is that, despite Respondents' arguments to the contrary, they did not actually evaluate the potential for impacts to neighboring wells.

The 2017 study (Appendix W) measures the effect of three days of rapid pumping (at 247 gal/min) at the Domestic Well ("DM") upon a number of other CGWC "observation" wells within a radius of 2200 feet from DM. AR 7371-7404. The main problem is the same as with all previous hydrology tests: neither the pumped well nor the observation wells are the same (or even close to) the wells of interest, which are DEX-6 (the CGWC production well) and residential wells to the east. AR 7391. No evidence or reason exists to suspect that the pairs of wells that were actually tested and the pairs of wells of interest even feed off the same underground streams. Moreover, the 2017 test was very short-term (3-day pumping) whereas the effects of concern would develop from almost continuous long-term pumping for months or years. There is no evidence that the theories considered in Appendix W are well founded or relevant for the local geology.

The hydrogeology underlying the Southwest aspect of Mt. Shasta volcano is complex and poorly understood. AR 34578, 43721, 43754, 43763 and 43768. "The hydrogeology is particularly complex leading to significant uncertainty and raising concern that neighboring domestic wells will be impacted." AR 429-436 at 430-431.

What is known about the aquifer is insufficient to support the conclusions made by the County. AR 1061. None of the necessary factors are addressed in Appendix W or anywhere else, because the wrong questions are asked. AR 1060-1065. Appendix P acknowledges this complexity and notes that the DEX-3A, -3B and DEX-5 appear to be discontinuous from the other wells. AR 04847.

No hydrological studies have ever indicated that the subjects of the 2017 study (the Domestic Well and the various CG-property wells) share the same aquifer as the residential wells. One would think that showing this sharing would be a prerequisite for relevant interpretation of measurements described in the 2017 study. Because of the universally acknowledged nature of the underground channels as a possibly discontinuous complex network in fractured andesite and lava tubes, this question of connectivity or lack thereof cannot be ignored just because it is unknown. AR 429-436, 1060-1065, 4847 and 34578. Yet the 2017 study completely ignores this fundamental question. The 2017 study contains no scientific justification for using any putative DM-to-CGWC wells connection results to make any conclusions regarding the DEX-6-to-residential well connection. AR 07375.

The 2017 study looked only at the effect of 3 days of pumping, done once in just one season of one year (spring). AR 7376. The community, on the other hand, is concerned about the effect of continuous pumping over many years, a time scale *hundreds or thousands of times* longer than what was tested.

Appendix W says the 3-day pumping period was *deemed* by the consultant to be of sufficient duration to monitor for possible measurable water level drawdown in the nearby water level observation wells, and to check for the possible presence of nearby boundary conditions." AR 7378, emphasis added. Appendix W provides no factual basis for "deeming" 3 days to be sufficient. In fact, the overly brief 3-day period precluded a serious examination of 4 out of 7 of the wells. AR 7385. The 2017 study (very short-term) is useless in predicting whether the aquifer will be depleted (or not) over the long-term. Whether these extrapolations are actually accurate or even relevant to the real world needs experimental verification at any given set of sites, a project that CGWC never investigated. Short-term experiments are quicker and cheaper and underestimate worrisome effects and yet may still serve to soothe the public and the decision makers.

A conclusion of the 2017 study was that vigorous pumping at DM had minimal effects on other CGWC wells nearby, and given some extrapolation in space and time, maybe vigorous pumping at DM would have little effect on a residential well to the northeast. AR 7387. Appendix W does not explicitly extend this conclusion to the expected effect of pumping at DEX-6 upon residential wells in general, but the implication is that there is *little or no* impact. *cf.* AR 3299 (Slade noting that pumping at DEX-6 caused decline at DEX-1). That is a conclusion desired by CGWC now, in order to allay community concerns. AR 12559-12597 (SECOR report attempting to prove *connection* between DEX-6 and Big Springs).

As an alternative to a valid scientific argument, Respondents argue that use of the PUMPIT program was peer reviewed by Geosyntec. AA 376. Peer review, however, must be independent. It is not to be done by "peers" that themselves were involved in the project. CGWC paid Geosyntec to produce a hydrological reports in 2012 and 2014. AR 751, 770, 1418, and 1423. Flaws in the Geosyntec Report were extensively discussed in comments on the DEIR. AR 34580, 34980 and 33079. Geosyntec is not an unbiased independent party.

The evidence in the record shows that the County never studied the question of whether or not industrial pumping at DEX-6 would impact neighboring wells. The studies in Appendix P and W address the wrong wells at the wrong time of year and for the wrong testing period. There is no substantial evidence to support the County's conclusion of no significant impact to the groundwater aquifer.

D. The Project violates mandatory General Plan thresholds.

All counties and cities must adopt a general plan for the physical development of their land. Gov't Code § 65300. The general plan functions as a "constitution for all future developments." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570; and *Corona–Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994. Perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan. *Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors* (2005) 62 Cal.App.4th 777, 1336. A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.

The Project will not be consistent with the surrounding land uses and will be harmful to the citizens of both the County and the City, in violation of their respective General Plans.

CEQA requires that the County take into consideration this inconsistency with applicable general plans, and this is a significant impact under CEQA and must be mitigated, and alternatives to the Project as proposed must be considered in order to reduce the impacts.

The DEIR found that the Project would result in noise impacts to at least one residence that conflicts with the General Plan noise standards and that mitigation of this impact is "infeasible" and so it would remain significant and unavoidable. AR 26350. In the FEIR, the impact was downgraded to less than significant. AR 1878-1879.

There are, of course, mitigation measures that could be considered, including a reduction in the size of the plant in order to reduce traffic and its associated noise. Failing to disclose this land use conflict is a violation of CEQA on its own, and it is also a violation of the State Planning Laws. The County may not approve a project that violates a general plan policy that is fundamental, mandatory, and clear. *Endangered Habitats League, Inc. v. County of Orange, supra,* 131

Cal.App.4th at 782. The Project violates a clear, mandatory noise standard.

Master Response 20 does not really address the Project, but the caretaker's residence. The County notes that the Project is within a woodland productivity resource constraint overlay zone, and says that the overly "informed County officials when zoning the central portion of the project site as Heavy Industrial, allowing for construction of the CCDA Waters Plant[,]" asserting that it is too late to challenge that zoning determination. AR 1195 The Master Response goes on to state that the "Proposed Project" includes a "by-right" operation of the bottling facility "over which the County has no approval authority, and the caretaker residence." *Id.* All of this is the basis upon which the County concludes that the Proposed Project is consistent with the General Plan. AR 32967-68.

The County's stance on this issue cuts against its current claim that the mitigation measures in the MMRP are *enforceable*. In an effort to avoid the problem of violation of the numeric noise standard, the County claims that it has no ability to control what goes on at the bottling facility and can only exercise control over the caretaker's residence. This entire brief represents an attempt to respond to the

County's claim that it can and will enforce mitigation measures against the bottling operation. Yet in response to comments it claims that the County has no control over the bottling operation.

CONCLUSION

Appellants respectfully request that this Court reverse the trial court's decision and remand the matter for issuance of a writ of mandate directing compliance with CEQA and the State Planning Laws.

DATED: April 16, 2021

LAW OFFICE OF DONALD B. MOONEY

By_____/s/_____
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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c))

I certify that this brief contains 13,952 words, not including tables of contents and authorities, signature block, and this certificate of word count as counted by Microsoft Word, the computer program used to produce this brief.

DATED: April 16, 2021

/s/
Marsha A. Burch

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Blvd, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On April 16, 2021, I served a true and correct copy of

APPELLANTS' OPENING BRIEF

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__X__ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the Davis, California.

Clerk of the Court
Siskiyou County Superior Court
311 4th Street
Yreka, CA 96097

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 16, 2021.

/s/
Donald B. Mooney