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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITY OF DUARTE, Plaintiff and Appellant, v. CITY OF AZUSA, Defendant and Respondent; AZUSA ROCK, INC. et al., Real Parties In Interest and Respondents.	B235097 (Los Angeles County Super. Ct. No. BS127709)

APPEAL from an order of the Superior Court of Los Angeles, Thomas I. McKnew, Jr., Judge. Affirmed.

Rutan & Tucker, Jeffrey T. Melching and Michelle D. Molko for Plaintiff and Appellant City of Duarte

Best Best & Krieger, Michelle Ouellette and Fernando Avila for Defendant and Respondent City of Azusa.

Jeffer Mangels Butler & Mitchell, Joel Deutsch and Matthew D. Hinks for Real Parties in Interest and Respondents Azusa Rock, Inc., Calmat Co., and Vulcan Materials Company, Western Division.

The City of Duarte sought administrative mandamus (Code Civ. Proc., § 1094.5) in an action against the City of Azusa. Duarte's petition challenged an environmental impact report (EIR) certified by Azusa pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) concerning the Azusa Rock Quarry, which is operated by real parties in interest Azusa Rock, Inc., Calmat Co., and Vulcan Materials Company, Western Division (collectively, Vulcan). The trial court denied the petition. We reject Duarte's contentions regarding the EIR on appeal and affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The underlying action involves Vulcan's plan to change the location of its operations within the quarry to an area visible from Duarte and to remediate the quarry.

A. *Quarry Operations*

The quarry occupies approximately 270 acres of hilly terrain in Azusa, in an area in which mining operations of some kind have existed since the 19th century. In 1956, Azusa approved a special use permit for the quarry, which is now held by Vulcan. The permit allowed the mining of "aggregate" -- that is, rock, sand, and gravel -- for the manufacture of concrete and other uses. In 1988, pursuant to the requirements of the California Surface Mining and Reclamation Act of 1975 (SMARA) (Pub. Res. Code, § 2710 et seq.), Azusa imposed additional conditions

on the permit through a conditional use permit (CUP). The CUP established reclamation requirements for the quarry and authorized Azusa to oversee reclamation efforts. Under the CUP, operations on the quarry are to end in 2038, absent a further discretionary approval. The CUP and accompanying reclamation plan also identified an 80-acre site on the west side of the quarry as a "Future Mining Area."

Generally, mining operations in the quarry involve the loosening of rock by bulldozers, drills, and blasting. Loosened rock is then transported to an on-site crushing unit, where it is processed for transportation away from the quarry. In the 1980's, aggregate from the quarry was trucked to a processing plant at the so-called "Reliance facility" located 2.5 miles away in Irwindale. The Reliance facility also processes aggregate from sources other than the quarry. In 1990, Azusa adopted an EIR regarding the construction and operation of a conveyor system to transport materials from the quarry to the Reliance facility. Since the conveyor's completion in 1995, Vulcan has transported the quarry's aggregate to the Reliance facility exclusively by means of the conveyor.

In 2008, Vulcan applied to modify the CUP and reclamation plan. Vulcan proposed to move mining operations within the quarry from an approximately 80-acre site on the quarry's east side to the 80-acre site on its west side identified in the 1988 CUP and reclamation plan. In addition, Vulcan sought permission to remediate the vacated site and the new site (as appropriate) using a "micro-benching" technique to enhance the appearance of the recontoured slopes and to promote revegetation. Under this technique, the size of the step-like tiers or "benches" on the slope is reduced so that plantings will grow taller than each of the individual steps. Vulcan further sought to contour the benches to replicate natural hillside contours.

B. *Azusa's EIR*

Acting as the lead agency for purposes of CEQA review, Azusa prepared a draft EIR regarding Vulcan's project and circulated it for comment. In May 10, 2010, the Azusa City Council certified the final EIR, adopted a mitigation program and statement of overriding considerations, and approved the modifications to the CUP and reclamation plan. In describing the project, the EIR states: "The method of operation and transport of materials would remain as it currently exists. The [project] does not propose an increase in the annual tonnage mined, or an extension to the currently permitted timeframe ending in the year 2038. The [project] is limited in scope to a change in the mining areas and a change in the visual appearance of the excavated slopes by modifying the reclamation design . . . ." The EIR further stated that although the project transferred mining operations to a "less visible" area of the quarry, the project had a significant impact on certain scenic vistas within Duarte, as it would permanently change hill ridgelines visible from Duarte. In adopting the statement of overriding considerations, the Azusa City Counsel found that the visual impact in Duarte could not be fully mitigated.[1]

C. *Underlying Proceedings*

On August 3, 2010, Duarte sought administrative mandamus regarding the certification of the EIR, contending that the EIR contained numerous defects, including deficient analyses of the project's impacts. Following a hearing, the court rejected Duarte's challenges to the EIR and denied its petition. On June 3, 2011, judgment was entered accordingly.

DISCUSSION

Duarte contends that the EIR employs a defective project description and baseline, contains an inadequate air quality analysis, fails to disclose the loss of available mineral resources, proposes an unlawful deferred mitigation measure, and inadequately discusses alternatives to the project. For the reasons explained below, we find no deficiencies in the EIR.

A. *CEQA*

Under CEQA, an EIR must be prepared before a public agency approves any project that may have a significant effect on the environment. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 687-688.) CEQA and its related regulations -- ordinarily called "Guidelines" (Cal. Code Regs., tit. 14, § 15001 et seq., hereafter referred to as "Guidelines.") -- define an EIR as "an informational document" whose purpose "is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code, § 21061; Guidelines, § 15003, subds. (b)-(e).)

"In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the courts' inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' (Pub. Resources Code, § 21168.5.) Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by

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1 According to the EIR, even with mitigation measures, the project reduced the long term aesthetic quality of the Duarte vistas from 15 points to 14 points on a 15 point scale.

substantial evidence.' [Citations.]" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427, fn. omitted.)

"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues on which we granted review by independently determining whether the administrative record demonstrates any legal error by the [agency] and whether it contains substantial evidence to support the [agency]'s factual determinations." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 427.)

B. *Purported Impacts at the Reliance Facility*

Duarte contends the EIR fails to disclose, analyze, and mitigate impacts from a purported increase in truck trips at the Reliance facility arising from the project. Duarte argues that this defect in the EIR is due to a defective project description and an improper baseline. As explained below, we find no deficiency in the EIR regarding its discussion of the Reliance facility.

1. *Governing Principles*

CEQA imposes requirements regarding (1) the time at which a project is defined and (2) the breadth of the definition. Because the EIR is intended to inform the decision to approve the project, CEQA requires that "[a]n accurate, stable and finite description" of the project be established "early enough in the

planning stages of [the] project to enable environmental concerns to influence the project's program and design, yet late enough to provide meaningful information for environmental assessment." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738.) Moreover, to enhance protection of the environment, CEQA defines "'project'" broadly to encompass the "whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately . . . ." (Guidelines, § 15378, subds. (a)). (*Kings County Farm Bureau v. City of Hanford, supra*, at p. 717.)

The Guidelines also require the EIR to specify what is often characterized as the "baseline" for the evaluation of the project's impacts. (*Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320.) An EIR should "clearly identify and describe the '[d]irect and indirect significant effects of the project on the environment' and give 'due consideration to both the short-term and long-term effects.'" (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1381, quoting CEQA Guidelines, § 15126.2, subd. (a).) A direct effect is a "change in the environment" which is caused "by and immediately related to the project," and an indirect effect is "a reasonably foreseeable impact which may be caused by the project." (Guidelines, § 15064, subds. (d)(1), (d)(3).)

Regarding the assessment of direct and indirect effects, the Guidelines state: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by

which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).)

Regarding the identification of the appropriate baseline, our Supreme Court has explained that "the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework." (*Communities For A Better Environment v. South Coast Air Quality Management Dist.*, *supra*, 48 Cal.4th at p. 321.) Nonetheless, "[n]either CEQA nor the . . . Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline." (*Id*. at p. 328.) Because the Guideline refers to what is "'normally'" the case, "'the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.' [Citation.]" (*Communities For A Better Environment v. South Coast Air Quality Management Dist.*, *supra*, at pp. 327-328.) Moreover, the use of operational levels allowed under a permit as a baseline is proper in certain special cases, for example, when the project is "a modification of a previously analyzed project and hence requir[es] only limited CEQA review" (Pub. Resources Code, § 21166; Guidelines, §15162) or is "the continued operation of an existing facility without significant expansion of use and hence exempt from CEQA review" (Guidelines, § 15301). (*Communities For A Better Environment v. South Coast Air Quality Management Dist.*, *supra*, at p. 326.) Generally, "an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, . . . for support by substantial evidence." (*Id*. at p. 328.)

2. *Characterization of Project and Baseline in EIR*

The EIR described the project as involving only a relocation of mining operations within the quarry and a modification of reclamation methods. According to the EIR, the project proposed no increase in production levels, no change in the methods of mining, no increase in the area subject to mining, and no physical alteration to the conveyor or the Reliance facility. Nonetheless, the EIR examined mining operations following the relocation at two different production levels in connection with air quality and other subjects of environmental concern.

The EIR assessed operations at the existing production level. During the 2006-2007 production year, the quarry produced 1.1 million tons of aggregate. According to the EIR, the existing level of production had been set by market conditions, which would continue to control future production levels.

The EIR also examined quarry operations at a production level of 6 million tons per year. Although the quarry had a permit from the South Coast Air Quality Management District (SCAQMD) that allowed it to produce 10.8 million tons per year, the quarry had never produced more than 1.7 million tons per year since 1995, when the conveyor began operating. Nonetheless, the project included the imposition of a limit on future quarry activity that capped production at 6 million tons per year. This maximum matched the physical carrying capacity of the conveyor to the Reliance facility, which had transported all of the quarry's aggregate since 1995. Under the project, aggregate from the quarry was to continue to be transported off-site exclusively by the conveyor. As we elaborate below (see pt. C.2., *post*), the limitation was identified as a "mitigation measure" to ensure future compliance with prevailing air quality standards and other regulatory standards.

The EIR assessed air quality and traffic related to the relocation of quarry operations at the then-current level of production and at the maximum production level of 6 million tons per year. However, the EIR contained no independent evaluation of air quality and traffic arising from the trucking of processed materials from the Reliance facility. Regarding these matters, the EIR stated that the 1990 EIR for the conveyor "analyzed the environmental impacts associated with the conveyance of up to 6 million tons per year of mined materials. This included the traffic that would result *from hauling off-site of the finished product* [from the Reliance facility] . . . ." (Italics added.) The EIR further stated that the 1990 EIR found no significant impacts from traffic levels at the Reliance facility associated with the transportation of 6 million tons per year on the conveyor. According to the EIR, the project "would not modify . . . this conclusion."

3. *Duarte's Contentions*

Duarte contends that the EIR is defective in failing to examine the effects of truck traffic hauling processed materials from the Reliance facility attributable to the 6 million ton annual production level at the quarry. Relying on data from the 1990 EIR for the conveyor, Duarte argues that an increase in quarry production from the existing level to that maximum level would probably generate an additional 1,256 "average daily truck trips" from the Reliance facility whose effects on air quality and traffic are not evaluated in the EIR. On the basis of this argument, Duarte advances interrelated challenges to the EIR. Duarte maintains that the EIR fails to discuss the project's impacts at the Reliance facility, contains a defective project description, and uses the 1990 EIR to establish an inadequate baseline for assessing the project's impacts at the Reliance facility.

a. *No Impacts*

We begin with Duarte's contention that the EIR was required to discuss the project's impacts at the Reliance facility due to an increase in quarry production to the maximum level of 6 million tons per year. Duarte argues that it is an "absolute certainty" that under the project, quarry production will increase to that production level, resulting in an increase in truck traffic hauling processed materials from the Reliance facility. This contention, like Duarte's other contentions, relies on a crucial premise, namely, that a *potential increase* in operations at the quarry to the maximum level is an "effect" or "impact" of the project, within the meaning of CEQA and its Guidelines. As explained below, we reject this premise.

In view of the EIR's determination that the quarry's future production activity will set by market conditions, rather than by the project, the project does not include an increase in production to the maximum level within its effects, for purposes of CEQA review. Generally, "[w]hen an initial project may involve future expansion, the EIR for the project must analyze such expansion if it will likely change the scope or nature of the initial project or its environmental effect and the expansion '*is a reasonably foreseeable consequence of the initial project.*' [Citations.] Conversely, when future development is unspecified and uncertain, the EIR is not required to include speculation about future environmental consequences of such development. [Citations.]" (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1449, quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (*Laurel Heights*).) Under the Guidelines, "[a] change which is speculative or unlikely to occur is not reasonably foreseeable." (Guidelines, § 15064, subd. (d)(3).)

Here, an increase in quarry production to the maximum permissible level of 6 million tons per year is nothing more than a speculative possibility under the project. Since 1995, the quarry has never exceeded a production level of 1.7 million tons per year, and as the trial court observed, the project itself involves only a long-established quarry whose operations are "moving to the other side of the property." An increase in quarry operations to the maximum level is therefore neither a direct effect of the project -- namely, "a change in the environment which is *caused by* and immediately related to the project" -- nor an indirect effect -- namely, "a reasonably foreseeable impact which *may be caused* by the project." (Guidelines, § 15064, subds. (d)(1), (d)(3), italics added.) For this reason, under CEQA, the EIR was not required to examine an increase to the maximum permissible level as an effect of the project. (See *Save Round Valley Alliance v. County of Inyo*, *supra*, 157 Cal.App.4th at pp. 1448-1454 [CEQA did not require EIR for residential development plan to examine speculative future activities permitted under plan, but merely possible following plan's approval].)

As elaborated below (see pt. C.2., *post*), for certain purposes, the EIR compared operations at the proposed maximum production level against operations at the current production level. However, viewed in context, this comparison was not directed at assessing mining operations at the maximum production level as an effect of the project. Rather, the comparisons were intended only to ensure that the quarry's maximum *allowable* production complied with regulatory requirements, including air quality standards. In sum, Duarte's contention fails, as it relies on the

assumption that a potential increase in the quarry's level of production is included within the project's effects or impacts.[2]

b. *Project Description*

We turn to Duarte's challenge to the project description, namely, that the EIR relied on an shifting, unstable, or improperly "narrow" description of the project. As Duarte observes, the EIR described the project as not involving any increase in production, but also stated that the project "is for a maximum of 6 million tons per year . . . to be transported via the conveyor only." Duarte maintains that the EIR announces an increase in quarry production to the maximum permissible level, yet ignores or disregards this aspect of the project in assessing the project's impacts at the Reliance facility.

This contention fails for the reason discussed above (see pt. B.3.a., *ante*). Although the project includes the imposition of a limit on future quarry activity that caps production at 6 million tons per year, an increase in production to that level is not an effect of the project for purposes of CEQA review. As noted, the quarry is currently authorized to produce up to 10.8 million tons per year, but historically has produced far less. Because the project merely relocates operations

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[2] We recognize that the EIR, in assessing quarry operations at the level of 6 million tons per year, sometimes refers to potential "impacts" at that level and describes the maximum level as a "mitigation measure." However, the EIR uses these terms in discussing various conditions related to operations at that *hypothetical* level, rather than actual effects of the project itself, as defined by CEQA and the Guidelines.

Although the EIR's discussion of the hypothetical maximum level is somewhat misleading, we do not regard it as a substantive defect in the EIR, as "'[a]bsolute perfection'" is not required of an EIR (*Laurel Heights, supra,* 47 Cal.3d at p. 406). Because the import of the discussion is clear, the references to potential "impacts" and "mitigation measures" does not materially impair the EIR's function as an informational document.

within the quarry, it is not reasonably foreseeable that quarry operations will increase to the maximum permissible level as a result of the project.

Nor do we see any other defect in the project description. Generally, "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, 199.) Under this principle, an EIR's description of a project may be "unstable" when the EIR attributes conflicting characteristics to the project. Thus, in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655 (*San Joaquin Raptor Rescue Center*), the appellate court held that an EIR regarding changes to a mine's conditional use permit contained an unstable project description, as the EIR stated that no actual increase in production was sought, yet the mine sought to increase the area subject to mining.

In contrast, the EIR at issue here does not attribute conflicting characteristics to the project. As noted above, the project proposes no increase in production or in the area subject to mining. Furthermore, to secure future compliance with air quality standards, it includes a limit on the quarry's maximum allowable production. The EIR's project description thus discloses no instability or other defect.

c. *Baseline*

Duarte maintains that the EIR also improperly establishes the baseline with respect to the Reliance facility on the basis of the 1990 EIR. As noted above (see pt. B.2., *ante*), the EIR contained no independent evaluation of air quality and traffic arising from trucking at the Reliance facility, and instead relied on the 1990 EIR. For this reason, the EIR effectively incorporated into the project's baseline the operational levels examined in the 1990 EIR, that is, the transportation of 6

million tons per year on the conveyor and the processing of up to 7 million tons at the Reliance facility (with commensurate truck traffic). Duarte argues that the EIR's baseline for the Reliance facility, so determined, improperly allowed the EIR to avoid the requisite assessment of impacts at the Reliance facility attributable to the quarry's maximum production level of 6 million tons per year.

As explained below, we reject Duarte's contention for two reasons. First, we find no error in the EIR's reliance on the 1990 EIR. Second, the contention fails because it relies on the assumption that a potential increase in quarry production must be included among the project's effects.

i. *Reliance on 1990 EIR*

We begin by examining whether the EIR properly determined the project's baseline for the Reliance facility on the basis of the 1990 EIR. According to the 1990 EIR, 7 million tons of materials per year were mined and processed in the area along the route of the proposed conveyor.[3] The quarry contributed one million tons per year, and other quarries contributed the remainder. The overall production level for the area was expected to remain constant. The conveyor was intended to remove the truck traffic transporting 6 million tons per year of materials from quarries along the conveyor's route. The 1990 EIR thus discloses that historically, trucks have transported up to 7 million tons per year of processed materials from the Reliance facility and nearby plants.

We find guidance on the question before us from *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316 (*Cherry Valley Pass*

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3 The record discloses that the conveyor was also intended to supply another processing plant approximately 900 yards from the Reliance facility. That plant was later closed, and its production activities were transferred to the Reliance facility.

Acres) and *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 (*Fairview Neighbors*). In *Cherry Valley Pass Acres*, the project subject to CEQA review was a residential development on the site of a former chicken ranch. (*Cherry Valley Pass Acres, supra,* 190 Cal.App.4th at pp. 324-325.) Shortly before the chicken ranch ended its operations, a court determined that the area containing the ranch was entitled to a specified amount of water from regional water sources, and additional water if the development was approved. (*Id*. at pp. 330-331.) The EIR for the residential development used as the baseline level of water supply the judicially determined amount, rather than the substantially smaller amount that the chicken ranch had actually used in its operations. (*Fairview Neighbors, supra,* at pp. 337-338.) In rejecting a challenge to the baseline, the appellate court concluded that selecting the chicken ranch's water use as the baseline would have been misleading, as it would have compelled a determination that the development's impact on the water supply was significant, even though the development's approval would have increased the water supply. (*Id*. at p. 338.)

Although *Fairview Neighbors* involved special circumstances not present here, namely, a supplemental EIR regarding a modification to a project already subject to CEQA review, it is also instructive. There, in 1976, an EIR was approved regarding a mine's conditional use permit, which allowed operations creating 810 truck trips per day. (*Fairview Neighbors, supra*, 70 Cal.App.4th at p. 240.) Later in 1996, a supplemental EIR was approved for the construction of an asphalt plant at the mine. (*Fairview Neighbors, supra,* at p. 241.) The supplemental EIR incorporated as an element of the baseline the 810 truck trips per day permitted under the previously issued conditional use permit, rather than the current traffic levels when the new project application was submitted. (*Fairview*

Neighbors,supra, at p. 243.) In rejecting a challenge to the baseline, the appellate court stated: "Discussing the possible environmental effects of the project based on actual traffic counts would have been misleading and illusory under the facts here. The flow of traffic for a mining operation fluctuates considerably based on need, capacity and other factors. [Citation.] . . . So it is here." (*Ibid*.; see also *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th at p. 658 ["[I]in the situation of an existing mine operation, a description of baseline environmental setting may reasonably include the mine's established levels of permitted use."].)

We conclude that the EIR properly selected the historical facts surrounding the conveyor and the Reliance facility as the baseline for assessing the project's impacts at the Reliance facility. As explained above, the project is designed only to relocate mining operations within the quarry, not to increase the quarry's production or change the conveyor or the Reliance facility. Furthermore, the 1990 EIR states that the production levels in and around the Reliance facility were not expected to change. In view of these facts, the EIR properly incorporated into the project's baseline for the Reliance facility the operational levels discussed in the 1990 EIR, that is, the transportation of 6 million tons per year on the conveyor and the processing of up to 7 million tons at the Reliance facility.

ii. *Purported Impacts at Reliance Facility*

Duarte's contention also fails because it relies on the assumption that an increase in quarry production to the maximum permissible level must be included among the project's effects. The purported impact at the Reliance facility that Duarte attributes to the project is an increase in truck traffic from the Reliance facility triggered by quarry production at the maximum permissible level. However, because the project does not include an increase to that production level,

the EIR was not required to assess any impacts at the Reliance facility attributable to such an increase, and it would be misleading to adopt any baseline for the project that suggests otherwise. Accordingly, we find no deficiency in the EIR's discussion of the Reliance facility.

C. *Air Quality Impacts From Blasting*

Duarte contends the EIR fails to disclose, analyze, and offer mitigation measures for air quality impacts arising from blasting related to the project. As explained below, we find no defects in the EIR related to blasting.

1. *Standard of Review*

As Duarte challenges technical air quality assessments conducted by Azusa's experts, our inquiry is governed by the discussion of the pertinent standard of review in *Laurel Heights*, *supra*, 47 Cal.3d 376. There, a neighborhood association challenged an EIR certified by the Regents of the University of California regarding the relocation of a biomedical research facility, contending that the technical studies underlying the EIR's assessment of the project's health risks were flawed. (*Laurel Heights*, *supra*, at pp. 407-408.) The Court of Appeal conducted its own critique of the studies and found the Regents should not have relied on them. (*Ibid*.)

In concluding that the Court of Appeal erred, our Supreme Court explained: "[The Court of Appeal's] approach is inconsistent with the principle that 'The court does *not* have the duty of passing on the validity of the conclusions expressed in the EIR, but only on the sufficiency of the report as an informative document.' [Citation.] It is also well established that '[d]isagreement among experts does not make an EIR inadequate.' [Citation.] [¶] We commend the Court of Appeal's

thoroughness in reviewing the two studies and the other evidence offered by the Regents . . . [as] such scrutiny is necessary under CEQA. The relevant point, however, is not that the two studies might be lacking in certain particulars or that the studies may not conclusively demonstrate a lack of environmental effect . . . . Stated differently, the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part of* the total evidence that supports the Regents' finding of mitigation. We find the studies are sufficient for that purpose. They do tend to show a lack of harmful effects . . . ." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 409.)

2. *Assessment of Air Quality Impacts in EIR*

As noted above (see pt. B.2., *ante*), although the project proposed a modification of the CUP to permit the relocation of mining operations in the quarry and sought no increase in production levels, the EIR examined potential air quality impacts from the relocation at two production levels. The quarry was then producing 1.1 million tons of aggregate per year and market conditions would determine future production levels, but the quarry's SCAQMD permit allowed it to produce up to 10.8 million tons per year. However, to ensure compliance with prevailing air quality standards following the modification of the CUP under the project, the EIR incorporated into its analysis a "mitigation measure" that capped production at 6 million tons per year, which matched the conveyor's carrying capacity.

The EIR assessed compliance with air quality standards at two levels of production, namely, the then-current level of 1.1 million tons per year and the maximum permissible level of 6 million tons per year. For purposes of the

assessment, the EIR's analyses assumed there would be 20 blasts per year at the current level and 100 blasts per year at the upper limit of production. At each level, the EIR evaluated compliance with the SCAQMD's mass daily thresholds (MDTs) and federal and state ambient air quality standards (AAQS). In addition, the EIR assessed cancer and health risks.

The EIR explained that the SCAQMD established the MDTs as "significance thresholds" regarding a project's regional impacts, for purposes of CEQA review. Generally, the Guidelines encourage public agencies "to develop and publish" thresholds of significance. (Guidelines, § 15064.7, subd. (a).) "A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (Guidelines, § 15064.7, subd. (a).) According to the SCAQMD, the MDTs were developed from state and federal air quality standards.

Pointing to the SCAQMD's MDT methodology, the EIR identified average and "peak" levels of daily production for the two levels of annual production, and specified the project's daily emissions for average days and "peak" days at the two levels of production. Under the EIR's MDT analysis, blasting emissions were not included in the determination whether the quarry's daily emissions exceeded the MDTs.[4] According to the EIR, the quarry's emissions exceeded the MDTs only at

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[4] Regarding this aspect of the MDT analysis, the EIR stated: "Only one blast is expected to occur per day in the current . . . scenarios. In addition, the amount of explosives used in a single blast is not expected to change as a result of the [project]. Therefore, blasting emissions are not expected to change due to the [project] on the peak day. For these reasons, blasting emissions are not included in the MDT significance determinations."

the "peak" day for the maximum level of production. For this reason, the EIR incorporated into its analysis an additional "mitigation measure" limiting maximum permissible daily production to that specified for the average day at the maximum level of annual production.

Following the discussion of the MDTs, the EIR turned to an assessment of the quarry's compliance with the pertinent AAQSs, which set "localized" standards for the project. The EIR stated that the quarry complied with the AAQSs even at the daily production levels for the peak day at the upper annual production level. In addition, the EIR stated that the project posed no significant cancer or health risks.

3. *Duarte's Contentions*

Duarte contends that the EIR is defective because it fails to account for the increase in blasts from 20 per year at the current production level to a potential of 100 per year at the maximum production level. Duarte argues that the EIR misapplied the SCAQMD's MDT methodology, and that the EIR's MDT analysis improperly ignores the increase in the number of blasts. We disagree.

Our inquiry into Duarte's contentions is limited to whether the EIR's MDT analysis was inadequate to set a maximum permissible production level because it neglected the hypothetical increase in blasting. For the reasons explained above (see pt. B.3., *ante*), we reject Duarte's suggestion that an increase in blasting to 100 blasts per year is an actual direct or indirect effect of the project. Because the project's effects do not include an increase in quarry production to the maximum permissible level, they also do not include an increase in blasting.

To the extent Duarte asserts that the EIR misapplied the SCAQMD's MDT methodology in determining the maximum permissible production level, we

examine whether there is substantial evidence to support the EIR's determination, that is, whether the EIR and the underlying technical study are "sufficiently credible." (*Laurel Heights, supra*, 47 Cal.3d at p. 409.) On this matter, the technical study supporting the EIR's discussion of the MDTs, AAQSs, and other air quality factors stated that the hypothetical increase in blasting was taken into account. The SCAQMD reviewed the draft EIR's discussion and proposed modifications that were incorporated into the final EIR, but raised no objection to the aspects of the MDT analysis that Duarte attacks.

In addition, one of Azusa's experts who had helped develop the MDT significance thresholds for the SCAQMD stated at a public hearing that the EIR's analysis of peak day emissions was consistent with the "intent" of the SCAQMD's methodology. She asserted: "If you look at the EIR[,] the impacts of the increase[d] blasting frequency are analyzed *where appropriate*[,] . . . [w]hen you look at the annual concentration impact where you're looking at the total frequency that's happening over the entire year, also when you're looking at cancer risk calculations and considerations of chronic health risk. Those were all analyzed and that's where the blasting frequency was accounted for." (Italics added.) In light of this evidence and expert testimony, we reject Duarte's contention that the EIR misapplied the MDT methodology in determining the maximum permissible production level.[5]

Pointing to *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, Duarte maintains that the EIR is

defective as a matter of law because it exploits a "loophole" in the MDT standards. Duarte acknowledges that the function of the MDT standards -- unlike the AAQS standards -- is not directly to address health concerns, but to assist in the evaluation of a project's contribution to regional emissions. The crux of Duarte's argument is that because those standards are "daily," they disregard potentially significant impacts of an increase in the number of blasts: although only one blast occurs per day, there may be 80 additional blasts at the upper level of production. Duarte thus asserts that the additional blasts disclose a defect in the SCAQMD's MDT methodology, as applied here. We disagree.

At the outset, we observe that Duarte's contention presents a question regarding our standard of review. The cases upon which Duarte relies stand for the proposition that an EIR may not rely on an administrative agency's significance threshold to disregard the assessment of a potentially significant impact on the environment when there is substantial evidence to support a "fair argument" that an impact may exist. (*Protect the Historic Amador Waterways v. Amador Water Agency*, *supra*, 116 Cal.App.4th at pp. 1110-1111 [EIR improperly limited project's potential impacts to those listed on administrative checklist]; see also *Mejia v. City of Los Angeles*, *supra*, 130 Cal.App.4th at p. 342 [lead agency improperly failed to prepare EIR by relying on administrative threshold regarding significance of project for traffic]; *Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th at pp. 108-130 [administrative significance threshold does not permit lead agency to avoid preparing EIR when there is a potentially significant impact supported by "fair

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5 For similar reasons, we reject Duarte's contention that the EIR failed to adequately disclose the hypothetical increase in blasting.

argument" from evidence].)[6] However, the issue before us is not whether the EIR applied the MDTs in a manner that permitted it to avoid examining the project's *actual* effects at the maximum permissible production level. As explained above, just as an increase in production to that level is not among the project's effects, an increase in blasts to 100 per year is also not among its effects, for purposes of CEQA review. Rather, the precise issue before us concerns the adequacy of the MDT thresholds, as applied here, to set an acceptable maximum permissible production level, that is, one that complies with the regulatory goal the MDTs are intended to serve.

With respect to this issue, Duarte's challenge amounts to the contention that the MDTs are defective because they do not appropriately serve the pertinent goal, namely, the regulation of regional emissions. Duarte, argues in effect, that Azusa, as the lead agency, was obliged to look beyond the MDTs for more stringent criteria to promote this goal. Ordinarily, a lead agency's selection of significance thresholds in order to ensure that a project achieves a regulatory goal is examined for an abuse of discretion. (See *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, *supra*, 197 Cal.App.4th at pp. 335-336.) Accordingly, Azusa's application of the thresholds is not subject to the "fair argument" standard.

We find no abuse of discretion in the EIR's analysis of air quality issues. Whether required to or not, the EIR examined the potential consequences of 80

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6 Ordinarily, the fair argument standard is employed in determining whether an EIR must be prepared for a project. (*Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 330-331.) "Under the fair argument standard, a project 'may' have a significant effect whenever there is a 'reasonable possibility' that a significant effect will occur." (*Id*. at p. 330, quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.)

additional blasts with respect to air quality standards and risks for cancer and other health hazards. Neither the SCAQMD nor any expert raised any pertinent objection to the adequacy and comprehensiveness of the EIR's analysis. Moreover, Duarte has identified no expert opinion supporting its contention regarding the MDT methodology. In short, the EIR's discussion of air quality impacts is not defective.[7]

D. *Mineral Resources*

Duarte contends the EIR is defective because it failed to examine a significant impact on valuable mineral resources due to the project, namely, Vulcan's abandonment of the aggregate remaining at the site from which Vulcan proposes to transfer its operations. Relying on Azusa's initial study for the EIR, the EIR stated that the project will have no impact on mineral resources. (Guidelines, § 15128.) Duarte argues that the EIR erroneously neglects a permanent loss of valuable aggregate, noting that Vulcan has agreed to "forfeit[]" its rights under the CUP to mine that site. We disagree.

Generally, "[d]isagreements regarding the adequacy of an EIR's impact analysis will be resolved in favor of the lead agency if any substantial evidence

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[7] For the first time on appeal, Duarte's reply brief contends the data contained in the EIR and underlying study show that 100 blasts per year -- by themselves -- may produce emissions exceeding federal air quality standards. Duarte has forfeited this contention by omitting it from its opening brief. However, we would conclude that the contention fails were we to address it on the merits. In *Laurel Heights*, the Supreme Court rejected a similar attempt to undermine the EIR's determinations by means of a contrary inference predicated on the evidence underlying the EIR, stating, "The question . . . is not whether there is substantial evidence to support the *Association's* position; the question is only whether there is substantial evidence to support the *Regents'* conclusion." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 407.) As explained above, there is substantial evidence to support the EIR's determinations.

supports the lead agency's determination." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243.) The record discloses ample evidence to support the EIR's determination regarding the loss of mineral resources. Under the project, the total available reserves of aggregate at the quarry are reduced by less than one percent, that is, from 106,500,000 tons to 105,581,000 tons. Furthermore, the project merely stops the mining of aggregate at the original site of operations, but does not destroy the aggregate or place it beyond the reach of future mining operations. Nor does the project involve the irrevocable loss of rights to mine the aggregate, as the record demonstrates that notwithstanding the forfeiture of Vulcan's mining rights through the project, Vulcan can seek to recover its entitlement to mine the aggregate by applying for a modification of the CUP and the underlying agreements related to the project. As the record shows that the project does not, in fact, result in a permanent loss of aggregate, we find no deficiency in the EIR regarding the project's impact on mineral resources.[8]

E. *Slope Stability Mitigation Measure*

Duarte contends the EIR contains an unlawful "deferred" mitigation measure in connection with the hillside slopes at the new operational site. We reject this contention.

Generally, "[a]n EIR must describe feasible measures that could minimize significant adverse impacts. [Citation.] An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project's significant effects and

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8 For the same reasons, we reject Duarte's related contention that the EIR relies on an unstable project description because it depicts the project as ending operations at the original site, but disregards the resulting permanent loss of mineral resources.

may be accomplished in more than one specified way. [Citation.] [¶] Thus, '"' for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process . . . , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated.'"' [Citation.] Conversely, '"[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."' [Citation.]" (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281.)

In discussing the project's impacts on the geology of the new operation, the EIR described studies undertaken to ensure that the slopes at the new operational site are stable and earthquake-resistant when operations eventually end. The EIR discussed the design of the final slopes, which is based on current knowledge of the rock strata within the slopes and the stability criteria for slopes found in SMARA and its regulations.

In addition, the EIR proposed the following mitigation measure: "Geologic mapping of actual cut slopes. The existing natural and cut slopes are on the order of 1/4-mile from the planned final cut slopes. Considering the highly fractured, discontinuous nature of the rocks, it is possible that the . . . orientations within the final cut may be significantly different than the present exposures. The orientation within the cut slopes can be a major factor since slopes oriented such that discontinuities are . . . unsupported will be more susceptible to slides than slopes

with discontinuities dipping into slope or neutral to the slope face. [Vulcan] shall provide additional studies to determine the orientation and characteristics of the . . . discontinuities and of the cut slopes, to provide further mitigation of slope failure. By mapping and monitoring cut-slope discontinuities, slope cuts can be oriented to minimize adverse relationships[,] thereby reducing the slide potential. In certain areas, adjusting the design of future phase bench widths and sequencing would mitigate the hazards."

In our view, this measure does not constitute unlawful deferred mitigation. In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794-796 (*Endangered Habitats League*), which addressed CEQA review of a proposed residential development, the EIR stated several mitigation measures that required the developer to conduct studies and develop plans for regulating the fuel used during construction, tree restoration, and water runoff, subject to specified criteria and the approval of appropriate local agencies. The appellate court found no improperly deferred mitigation. (*Ibid*.)

We reach the same conclusion here. The mitigation measure requires Vulcan to conduct the studies necessary to configure the final contours of the slope, which will conform to the stability criteria in SMARA and its regulations. Furthermore, the project, as approved, gives authority to monitor compliance with the mitigation measure to Azusa, which has the right to oversee reclamation effects at the quarry through the CUP. Accordingly, there is no unlawful deferred mitigation.[9]

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9 Duarte's reply brief suggests that the stability criteria found in SMARA and its regulations provide inadequate performance standards. However, the technical studies underlying the project conclude that final slopes contoured in accordance with the standards "[are] expected to be as good or better than the surrounding natural slopes." As
(Fn. continued on next page.)

The authorities upon which Duarte relies are distinguishable. In each case, the appellate court concluded that one or more mitigation measures improperly deferred mitigation by requiring the future studies or action without specifying sufficiently precise performance standards. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90-91, 93 [mitigation measures aimed at reducing emission of greenhouse gases relied on inadequate standard for success, i.e., subjective judgment of city council]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119 [mitigation measure aimed at restoring water supplies depleted by mining operation governed only by generalized goal]; *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th at pp. 668-670 [measures intended to protect vernal pools from mining operation relied on generalized goal and lacked specific performance criteria or standards]; *Endangered Habitats League*, *supra*, 131 Cal.App.4th at pp. 793-794 [measure requiring acoustical study set no performance standards].) As explained above, that is not the case here. In short, we find no deficiency in the mitigation measure.

F. *Alternatives*

Duarte challenges the EIR's discussion of alternatives to the project on several grounds. As explained below, we reject Duarte's contentions.

1. *Comparison of "Mitigated" Project with Alternatives*

Duarte contends the EIR improperly assesses alternatives to the project against the project with certain mitigation measures included within it. The crux of

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there is substantial evidence to support the EIR's determinations, Duarte's contention fails.

Duarte's contention is that under CEQA, the EIR was obliged to compare the alternatives with the "unmitigated" project. We disagree.

Generally, "[a]n EIR must discuss a reasonable range of potentially feasible alternatives to the proposed project. [Citations.] The discussion should focus on alternatives that could substantially reduce or avoid one or more of the significant environmental effects while still serving the project's fundamental objectives. [Citations.] An EIR need not consider every conceivable alternative but must consider a range of alternatives sufficient to permit the agency to evaluate the project and make an informed decision, and to meaningfully inform the public. [Citations.]) Under the 'rule of reason,' an EIR's discussion of alternatives is adequate if it provides sufficient information to compare the project with a reasonable choice of alternatives. [Citations.]" (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1264, fn. omitted.) The discussion of alternatives must be evaluated in light of the facts of the case and the purposes of CEQA. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 556.)

In discussing the project, the EIR identified several potentially significant impacts subject to adequate mitigation and one significant impact not amenable to full mitigation, namely, the impacts on vistas in Duarte. For purposes of the comparison with alternatives, the EIR considered three principal candidates: a "[n]o [p]roject" alternative; an "[a]lternative [d]esign," which involved the relocation of the operations to a different location within the quarry; and an "[a]lternative [s]ite," which involved the acquisition of new land for operations. Under the comparison, the EIR assessed the project with the mitigation measures imposed against the alternatives, which are evaluated as subject to similar mitigation measures, whenever appropriate. The EIR concluded that none of the

alternatives is significantly superior to the project, and none "improve[d] the aesthetic impacts the [project] attempts to rectify."

We find no deficiency in the EIR's comparison of the "mitigated" project against similarly "mitigated" alternatives. Under CEQA, Azusa could not approve the project without finding that mitigation measures capable of avoiding or substantially lessening the project's substantial effects had been required or incorporated into the project. (Pub. Resources Code, § 21081, subd. (a)(1); Guidelines, § 15091, subd. (a)(1); see *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 466.) According to the EIR, the mitigation measures for the project were designed to ensure the project's compliance with a variety of environmental regulations and goals. Furthermore, as noted in the EIR, Vulcan agreed to many of the measures as "[p]roject [d]esign [f]eatures," that is, "self-imposed features of the project description . . . included to reduce or eliminate significant impacts that could otherwise result."

Under these circumstances, the EIR reasonably focuses the comparison on the "mitigated" project, as the "unmitigated" project would never be approved. As the trial court remarked, "To compare the alternatives [with the project] without [considering] the mitigation measures would be meaningless. . . . Simply put, there is no unmitigated project and what such a 'project' might be is pure speculation. To strip away these elements simply to compare it to other 'raw' alternatives would not provide either the public or the decision makers any relevant information about the proposed project." We agree with the trial court.

Pointing to *Laurel Heights*, Duarte argues that alternatives must be compared with the "unmitigated" project. There, our Supreme Court rejected the contention that an EIR may omit any consideration of alternatives if the lead agency finds that all of the project's significant impacts are subject to adequate

mitigation. (*Laurel Heights*, *supra*, 47 Cal.3d at pp. 400-402.) In holding that an EIR must discuss both mitigation measures and project alternatives, the court explained that the contrary contention "ignore[d] the chronology of the environmental review process under CEQA ," as it effectively permitted the decision to approve a "mitigated" project -- which the EIR is intended to inform -- to eliminate the assessment of alternatives from the EIR before the decision was made. (*Id*. at pp. 401-402.)[10]

Duarte maintains that these remarks establish that an EIR may not compare a "mitigated" project against the alternatives. However, as our Supreme Court has explained, "[l]anguage used in any opinion is . . . to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered." (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.) *Laurel Heights* involved a failure to consider any alternative to the project, and the court addressed whether an EIR must discuss both mitigation measures and project alternatives. Here, we confront a different issue invoking an aspect of the CEQA review process not discussed in *Laurel Heights*, namely, that the project at issue here effectively required certain mitigation measures in order to be approved

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10 On this matter, the court stated: "As a matter of logic, the EIR must be prepared before the decision to approve the project. Not until project approval does the agency determine whether to impose any mitigation measures on the project. [Citation.] One cannot be certain until then what the exact mitigation measures will be, much less whether and to what degree they will minimize environmental effects. According to [the contention at issue], the decision to require mitigation measures on project approval removes the need to consider project alternatives in the EIR. The decision imposing mitigation measures, however, is not made, and cannot be made under CEQA, until after the EIR has been completed. To [accept the contention] would be to say that alternatives need not be discussed *if* there is a possibility that the agency might adopt mitigation measures. Such result would invert the chronology of the CEQA process." (*Laurel Heights*, *supra*, 47 Cal.3d at pp. 401-402.)

(Pub. Resources Code, § 21081, subd. (a)(1); Guidelines, § 15091, subd. (a)(1)). Under these circumstances, the EIR reasonably assessed the only version of the project that was likely to be approved against the alternatives.[11]

Duarte suggests that the CEQA Guidelines too mandate a comparison of the "unmitigated" project against alternatives. We disagree. The Guidelines require an EIR "to consider a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (Guidelines, § 15126.6, subd. (a).) In addition, they provide that "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project." (Guidelines, § 15126.6, subd. (b).) Nonetheless, under the Guidelines, "[t]he range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project." (Guidelines § 15126.6, subd. (f).)

In our view, the EIR before us complies with these requirements. The EIR's discussion of the alternatives notes the significant impacts underlying the mitigation measures required of the project, and whenever appropriate, assumes that similar measures would be imposed on the alternatives. In comparing the

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11 For similar reasons, Duarte's reliance on *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383 is misplaced. There, the appellate court concluded that under *Laurel Heights*, a timber harvest plan -- which is functionally equivalent to an EIR -- was deficient because it failed to discuss alternatives to the pertinent project. (*Friends of the Old Trees v. Department of Forestry & Fire Protection, supra,* at pp. 1388, 1404.)

alternatives with the project, the EIR examines the alternatives in considerable detail, and assesses the extent to which their potential impacts can be mitigated as effectively as the impacts associated with the project. For this reason, the discussion "evaluate[s] the comparative merits of the alternatives" while focusing on the avoidance or substantially lessening of the "significant effects of the project." (Guidelines, § 15126.6, subds. (a), (b)). In sum, the EIR contains an adequate discussion of the project and its alternatives.

2. *Comparison By Factors*

Duarte contends the EIR's comparison of the project with the alternatives is deficient because the EIR focused on broad environmental factors identified in the Guidelines (Appendix G), rather than on specific impacts. We disagree. Generally, under CEQA, "[n]o iron-clad rules can be imposed regarding the level of detail required in the consideration of alternatives. EIR requirements must be 'sufficiently flexible to encompass vastly different projects with varying levels of specificity.' [Citation.] The degree of specificity required in an EIR 'will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.' [Citation.]" (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 745-746.)

Aside from comparing the alternatives with the project in light of the CEQA factors, the EIR examined the alternatives in detail with respect to the project's single significant and unavoidable impact -- i.e., the visual impact on Duarte -- and also assessed the alternatives with respect to other impacts. Accordingly, the discussion of alternatives in the EIR was adequate for its purposes.

3. *EIR's Summary*

Duarte contends the EIR does not comply with the Guidelines, which require the inclusion of a "brief summary of the proposed action[] and its consequences," and further provide: "The summary shall identify: [¶] [e]ach significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect" (Guidelines, § 15123, subds. (a), (b)(1)). Here, the EIR's summary states that none of the alternatives avoid the project's single significant effect (after mitigation), but otherwise does not identify the alternatives that might reduce or avoid the project's other significant effects (before mitigation). Because the Guidelines specify that the term "'shall,'" as found in the Guidelines, "identifies a mandatory element which all public agencies are required to follow" (Guidelines, § 15005, subd. (a)), Duarte argues that the EIR's summary is defective.

It is unnecessary for us to address whether the EIR's summary complies with the Guidelines' requirements, as the purported defect (if any) cannot provide a basis for administrative mandamus. Public Resources Code section 21061 states: "In order to facilitate the use of environmental impact reports, public agencies shall require that such reports contain an index or table of contents and a summary. Failure to include such index, table of contents, or summary *shall not constitute a cause of action* . . . ." (Italics added.)

In view of this statute, the requirements imposed on summaries under the Guidelines must be regarded as "directory," rather than as mandatory. "As a general rule, . . . a '"directory" or "mandatory" designation . . . denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' [Citation.] If the action is invalidated, the requirement will be termed 'mandatory.' If not, it is 'directory' only." (*California Correctional Peace*

Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1145, quoting *Morris v. County of Marin* (1977) 18 Cal.3d 901, 908.) Because "[a] statute overrides any inconsistent provision in a regulation" (*Juarez v. 21st Century Ins. Co.* (2003) 105 Cal.App.4th 371, 376), the term "shall," as used in the Guidelines' requirements for summaries, is merely directory in import. Accordingly, Duarte has failed to identify a defect in the EIR supporting administrative mandamus.

DISPOSITION

The judgment affirmed. Azusa is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.