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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 FIVE

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| CENTER FOR BIOLOGICAL DIVERSITY,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>COUNTY OF LOS ANGELES et al.,<br><br>Defendants and Respondents. | B284427<br><br>(Los Angeles County Super. Ct. No. BS156932) |

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

John Buse, Aruna Prabhala and John Rose, for Plaintiff and Appellant.

The Sohagi Law Group, Margaret M. Sohagi, Nicole H. Gordon; Office of the County Counsel, Mary C. Wickham, County Counsel, and Elaine M. Lemke, Assistant County Counsel, for Defendants and Respondents.

In 2015, the County of Los Angeles (County) approved the Antelope Valley Area Plan (the Plan), an update of the existing Antelope Valley Area Plan adopted in 1986. The Plan sets high-level policies for development and conservation of approximately 1,800 square miles of unincorporated land near the County's northern border. The multi-year Plan approval process was governed by the California Environmental Quality Act (CEQA), and prior to approving the Plan, the County's Board of Supervisors (Board) certified an Environmental Impact Report (EIR) and adopted CEQA findings and a statement of overriding considerations. On the same date, the Board directed County staff to make certain modifications to the proposed Plan. Several months later—and without making changes to the EIR or the substance of the previously adopted CEQA findings and statement of overriding considerations—the Board recertified the EIR and approved the Plan as modified per the Board's earlier directions. We consider whether the Board violated CEQA by approving the Plan based on the pre-modification EIR and the other environmental documents.

## I. BACKGROUND

### *A. The Antelope Valley*

The portion of the Antelope Valley subject to the Plan is an 1,800 square mile region bordered by Kern County to the north, Ventura County to the west, San Bernardino County to the east, and cities in the southern foothills of the San Gabriel Mountains to the south. It includes all of the unincorporated land in this region—comprising approximately 75% of all unincorporated land in Los Angeles County and approximately 44% of the County's

total land mass—but excludes the cities of Lancaster and Palmdale, which are surrounded by the Plan project area.

The majority of the population of the Antelope Valley (as a geographic entity, as opposed to a community planning area) resides in Lancaster and Palmdale. The Plan project area itself is home to just over 90,000 people. Its agricultural output includes nursery plants, vegetable crops, field crops, fruit and nut crops, and livestock, and it has 10 active mines producing construction aggregate. It is crossed by two major north-south freeways, the Golden State Freeway (I-5) and the Antelope Valley Freeway (SR-14), which are connected east-west by State Route 138.

The project area's topography ranges "from flat-lying areas of little topographic relief such as the playa lakes and broad alluvial plains of the high Mojave Desert . . . to rugged mountain terrain along the north flank of the San Gabriel Mountains." It includes portions of the San Andreas and Garlock Fault Systems and is "one of the most historically active seismic settings in North America." It falls within four major watersheds and is traversed by the California and Los Angeles aqueducts. The topography lends itself to a variety of "[s]cenic viewsheds," including "mountains, ridgelines, unique rock outcroppings, unusual or scenic landforms, and long-range views of the Mojave Desert."

As noted in the EIR, "[t]he habitats and wildlife in the Project Area are among the most diverse in the State." Many of these are vulnerable. The EIR describes, for example, more than two dozen sensitive plant communities; 130 endangered, threatened, or rare plant species; and more than 70 wildlife species that are endangered, threatened, or considered a Species

of Special Concern by the California Department of Fish and Wildlife.

*B. Overview of the Plan Approval Process*

As explained in the EIR, the County's General Plan defines policy parameters for all unincorporated areas—i.e., the Antelope Valley and others—including both countywide policies and areawide plans addressing more granular concerns. Prior to adoption of the Plan, the Antelope Valley was governed by the 1986 Antelope Valley Areawide General Plan. In 2007, the County began meeting with stakeholders to update the 1986 plan.

A notice of availability of the Draft EIR was published in August 2014. The public comment period ran from late August through early October. Later in October, the County finalized the EIR. Pursuant to section 15132 of the CEQA Guidelines,[1] the Final EIR includes, among other things, the Draft EIR, the County's responses to public comments, and a list of revisions to the Draft EIR based on those responses. Except where otherwise noted, we refer to the Draft EIR and the Final EIR documents collectively as the EIR.

At the conclusion of a public hearing on November 12, 2014, the Board certified the EIR as complete and adequate

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[1] References to the "Guidelines" that follow are to the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15000, et seq.) "In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 fn. 5 (*Vineyard*).)

under CEQA. The Board also adopted CEQA Findings of Fact and a Statement of Overriding Considerations. The Board indicated its intent to approve the Plan subject to various modifications discussed *post*.

On June 1, 2015, the Center for Biological Diversity (Center) submitted a letter objecting to a proposed resolution recertifying the EIR and approving the Plan as modified. The Center cataloged what it saw as inconsistencies between the EIR and the modified Plan and noted that it "strongly disagree[d]" with the resolution's statement that the modifications proposed at the November 12th hearing "'did not change the conclusions in the Final EIR.'"

On June 16, 2015, the Board approved the resolution by a four-to-one vote. The resolution recertified the EIR, incorporated the earlier CEQA findings and statement of overriding considerations, repealed the 1986 Antelope Valley Areawide General Plan, and approved the Plan.

*C. The EIR*

The EIR analyzed the impacts of the Plan as of August 2014.[2] The Plan is divided into chapters describing its goals and

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[2] The Draft EIR is dated August 2014, and it does not identify the specific version of the Plan to which its analysis is addressed. The record includes a "Preliminary Draft Antelope Valley Area Plan" dated March 2011, a "Draft Antelope Valley Area Plan" dated July 2014 that appears to be a redline against an unformatted version of the March 2011 preliminary draft, a "Draft Antelope Valley Area Plan" dated August 2014, and other drafts dated after August 2014. Of these versions, the August 2014 Plan corresponds most closely with the Draft EIR: For

implementation programs as well as various "elements": Land Use; Mobility; Conservation and Open Space; Public Safety, Services, and Facilities; and Economic Development. The EIR, in turn, is divided into sections analyzing, among other things, the impacts of Plan policies in specific environmental contexts (e.g., aesthetics, biological resources, air quality), the severity of these impacts, and alternatives to the Plan.

The EIR is a "program" EIR, as opposed to a "project" EIR. Whereas a project EIR examines the environmental impacts of a specific development project, a program EIR is prepared for a series of related actions that can be characterized as one large project. (Guidelines, § 15168, subd. (a).) "A program EIR has advantages for the public agency, in that it is possible to conduct subsequent activities without preparing a new EIR if the agency finds that no new effects could occur or no new mitigation measures would be required." (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 664; Guidelines, § 15168(c).) Excluding appendices, the Draft EIR runs to 800 pages. We discuss only the pertinent provisions here.

*1. Rural preservation strategy*

The EIR discusses specific policies in the Plan against the broader context of the Plan's "Rural Preservation Strategy." This strategy defines four major area types: "1) Rural Preserve Areas, where residential densities would be reduced in order to protect important ecological and agricultural resources as well as

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example, the list of "Relevant Area Plan Goals and Policies" in the Draft EIR includes language found in the August 2014 version of the Plan but not in the Plan as of July 2014.

minimize development in very high hazard areas; 2) Rural Town Areas, where maximum residential densities and minimum lot sizes would be established to preserve rural character; 3) Rural Town Centers, where urban commercial uses would be discouraged but rural commercial uses would be incentivized; and 4) Economic Opportunity Areas (EOAs), where plans for major infrastructure development are underway that may create the need for more detailed planning activities for these areas in the future."

The three EOAs discussed in the Plan and EIR are the East EOA, Central EOA, and West EOA. The Central and East EOAs are near Lancaster and Palmdale, respectively, and the West EOA includes the site of a proposed planned community called the Centennial Project.[3] The Plan explains that development induced by transportation infrastructure projects "should be guided to [the EOAs] so that the areas around them can be preserved and maintained at low density, or agricultural uses."

*2. Special management areas*

Designation of an area as a Rural Preserve Area, Rural Town Area, Rural Town Center, or EOA is not dispositive of land use policy for that area. These categories generally reflect more detailed density and use restrictions set forth in the Land Use

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[3] The East EOA encompasses the communities of Lake Los Angeles, Sun Village, Littlerock, Pearblossom, Llano, and Crystalaire. The Central EOA "is located along Avenue D, just north of Fox Field Airport and west of the CA-14 Freeway." The West EOA "is located along Highway 138 east and west of the California Aqueduct and including portions of Neenach."

Policy and Zoning Maps. A specific parcel within a Rural Preserve Area, for example, might be designated RL10 (Rural Land 10, permitting one dwelling unit per 10 gross acres) or RL20 (Rural Land 20, permitting one dwelling unit per 20 gross acres). In addition, "overlays"[4] for special management areas introduce restrictions that, as discussed *post*, may add to or emphasize restrictions spelled out elsewhere.

Special management areas include Significant Ecological Areas (SEAs), Hillside Management Areas, and Seismic Hazard Zones, among others. SEAs are significant for the Plan and for this litigation. As the EIR explains, SEAs "include undisturbed or lightly disturbed habitat[s] supporting valuable and threatened species, linkages and corridors to promote species movement, and are sized to support sustainable populations of its component species. The objective of the SEA Program is to preserve the genetic and physical diversity of the County by designating biological resource areas capable of sustaining themselves into the future. However SEAs are not wilderness preserves. Much of the land in SEAs is privately held, used for public recreation or abutting developed areas. Thus the SEA Program is intended to ensure that privately held lands within the SEAs retain the right of reasonable use, while avoiding activities and development projects that are incompatible with the long term survival of the SEAs. . . ." The EIR emphasizes that SEA coverage would more than double under the Plan—from

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[4] Overlays are zoning districts within existing zoning districts that impose additional land use restrictions.

approximately 134,745 acres as designated in the 1986 general plan to approximately 356,773 acres.[5]

The practical significance of an area's designation as an SEA includes, among other things, the need for certain projects to be reviewed by a SEA Technical Advisory Committee (SEATAC) and the applicability of two mitigation measures to address impacts on sensitive plant communities, wetlands, and wildlife movement within SEAs. The first of these mitigation measures, BIO-1, requires heightened review for discretionary projects, including a report by a biological consultant.[6] The second, BIO-2, requires special findings and further mitigation measures if there

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[5] These acreage figures appear most frequently in the EIR—and they are the only figures cited by the parties—but the EIR elsewhere notes SEA acreage was to increase from 135,772 to 332,899 acres or from 134,772 to 356,773 acres.

[6] BIO-1 provides as follows: "Biological resources shall be analyzed on a project-specific level by a qualified biological consultant. A general survey shall be conducted to characterize the project site, and focused surveys should be conducted as necessary to determine the presence/absence of special status species (e.g., focused sensitive plant or wildlife surveys). For proposed projects within SEAs, biological resources assessment report shall be prepared to characterize the biological resources on-site, analyze project-specific impacts to biological resources, and propose appropriate mitigation measures to offset those impacts. The report shall include site location, literature sources, methodology, timing of surveys, vegetation map, site photographs, and descriptions of biological resources on-site (e.g., observed and detected species as well as an analysis of those species with potential to occur onsite)."

is a potential for direct impacts to special status species.[7] A third mitigation measure, BIO-3, emphasizes an existing requirement that developments within SEAs be subject to a conditional use permit to ensure compatibility with the SEA, but provides generally (i.e., without limitation to SEAs) that "[p]roposed projects are requested to be designed so that wildlife movement corridors are left in an undisturbed and natural state."

*3. Goals and policies*

The Plan articulates goals and policies relevant to its various elements. In its analysis of the Plan's effects in specific

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[7] BIO-2 provides as follows: "If there is potential for direct impacts to special-status species with implementation of construction activities, the project-specific biological assessment (as mentioned in Mitigation Measure BIO-1) shall include mitigation measures requiring pre-construction surveys for special-status species and/or construction monitoring to ensure avoidance, relocation, or safe escape of special-status species from the construction activities, as appropriate. If special-status species are found to be nesting, brooding, denning, etc., on-site during the preconstruction survey or monitoring, construction activity shall be halted until offspring are weaned, fledged, etc. and are able to escape the site or be safely relocated to appropriate offsite habitat areas. Relocations into areas of appropriate restored habitat would have the best chance of replacing/incrementing populations that are lost due to habitat converted to development. Relocation to restored habitat areas should be the preferred goal of this measure. A qualified biologist shall be on site to conduct surveys, to perform or oversee implementation of protective measures, and to determine when construction activity may resume."

environmental contexts, the EIR lists relevant goals and policies drawn from multiple elements. For example, the EIR lists goals and policies associated with the Land Use, Mobility, Conservation and Open Space, and Economic Development elements as relevant to reducing adverse aesthetic impacts. We are primarily concerned in this appeal with goals and policies associated with the Land Use and Conservation and Open Space elements that were modified in the Plan as ultimately approved by the Board.

*a. land use goals and policies*

As stated in the EIR, Goal LU 2 is "[a] land use pattern that protects environmental resources." Relevant policies include:

- "Policy LU 2.1: Limit the amount of potential development in Significant Ecological Areas, including Joshua Tree Woodlands, wildlife corridors, and other sensitive habitat areas, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- "Policy LU 2.2: Limit the amount of potential development near and within Scenic Resource Areas, including water features, significant ridgelines and Hillside Management Areas, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- "Policy LU 2.3: Limit the amount of potential development in Agricultural Resource Areas, including important farmlands designated by the State of California and historical farmland areas, through

appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."

- "Policy LU 2.4: Limit the amount of potential development in Mineral Resource Areas, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- "Policy LU 2.5: Limit the amount of potential development in riparian areas and groundwater recharge basins, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- "Policy LU 2.6: Limit the amount of potential development near the National Forests and on private lands within the National Forests, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."

Goal LU 3 is "[a] land use pattern that minimizes threats from hazards." Relevant policies include:

- "Policy LU 3.1: Prohibit new development on fault traces and limit the amount of potential development in seismic zones, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- "Policy LU 3.4: Limit the amount of potential development on steep slopes identified as Hillside Management Areas, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."

- "Policy LU 3.5: Limit the amount of potential development in landslide and liquefaction areas, through appropriate land use designations with very low residential densities, as indicated in the Land Use Policy Map . . . ."
- The EIR paraphrases LU 3.6 as "limit[ing] new residential uses in airport influence areas and near military land."

*b. conservation and open space goals and policies*

As stated in the EIR, Goal COS 4 is that "[s]ensitive habitats and species are protected to promote biodiversity." Relevant policies include:

- "Policy COS 4.5: Require new development to provide adequate buffers from preserves, sanctuaries, habitat areas, wildlife corridors, State Parks, and National Forest lands."
- "Policy COS 5.2: Limit the amount of potential development in Scenic Resource Areas through appropriate land use designations with very low densities in order to minimize negative impacts from future development."
- "Policy COS 19.1: Require new development in Hillside Management Areas and Significant Ecological Areas to comply with applicable Zoning Code requirements for open space preservation."

### *D. Differences Between the Unmodified Plan and the Plan as Adopted*

The EIR invokes the SEAs, LU policies, COS policies, and other provisions of the Plan in its analysis of the Plan's potential impacts on specific environmental features. This litigation focuses on the EIR's discussions of impacts relating to scenic vistas, sensitive plant communities, wetlands, wildlife movement, seismic hazards, development on unstable soils, and airport safety.[8]

At the November 2014 hearing, the Board certified the EIR as having been completed in compliance with CEQA and adopted the associated CEQA findings and statement of overriding considerations; the Board also requested modifications to the Plan. Specifically, the Board directed County staff to "[m]odify [Plan] policies and map[s] to delete conflicting language that restricts growth in the EOA's [and] clarify the proposed Area Plan to exclude from EOAs the applicability of other proposed policies limiting development . . . ." Among other changes, the approved Plan incorporated language purporting to exclude EOAs from Policies LU 2.2-2.6, 3.1, and 3.4-3.6, as well as COS 4.5 and 5.2. Policy COS 19.1 was deleted entirely.

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[8] The relevant policies for each of these categories are as follows: Scenic Vistas, Policies LU 2.1-2.6 and COS 5.2; Sensitive Plant Communities, Policies LU 2.2-2.6 and COS 4.5; Wetlands, Policies COS 4.5 and 19.1 Wildlife Movement, Policies LU 2.2-2.6 and COS 4.5 and 19.1; Seismic Hazards, Policies LU 3.1 and 3.5; Development on Unstable Soils, Policy LU 3.4; Airport Safety Hazards, Policy LU 3.6.

The Board also directed County staff to "[a]djust the [SEA] designation within the East and Central [EOAs] to the boundaries which generally align with the existing adopted SEAs and do not include any additional SEA expansion in the EOAs . . . ." The Board further directed County staff to remove proposed SEA expansions from parts of the West EOA. With these changes, the amount of new SEA land decreased by about 14,000 acres.[9] However, the terms of the Plan as modified still called for approximately 208,000 acres of new SEA land. The Board additionally directed County staff to remove all Rural Preserve Area designations from EOAs and to re-zone certain land in the West EOA from heavy agriculture to residential planned community.

*E. Trial Court Proceedings*

The trial court denied the Center's petition for a writ of mandate. The court found no supplemental or subsequent EIR was required because the EIR included no significant new information. The court also rejected the Center's argument that the "mismatch between the Project description [in the EIR] and the approved project" rendered the EIR's description of the Plan inaccurate. The court found the modifications at issue "were not intended to create a different Project, but rather to make the existing Project internally consistent." The CEQA findings and statement of overriding considerations were sufficient, in the

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[9] Respondents do not dispute this figure, but the only source is a speaker at the June 16, 2015, Board meeting.

court's view, because the findings relating to the Plan's impacts remained valid.

## II. DISCUSSION

The key question we confront is whether the County and the Board violated CEQA by continuing to rely on the EIR and substantively identical CEQA findings and statement of overriding considerations even after ordering modifications to the Plan. The Center appeals the trial court's denial of its writ petition that sought to compel Respondents to set aside their approval of the Plan and their certification of the EIR.

The Center specifically contends (1) the EIR is inadequate as an informational document because it does not fully and accurately disclose the Plan's environmental consequences, (2) Respondents violated CEQA by failing to recirculate the EIR or prepare a subsequent or supplemental EIR, and (3) the CEQA findings and statement of overriding considerations are not supported by substantial evidence. These arguments all assume that the differences between the unmodified Plan and the Plan as adopted are so significant that Respondents' analysis and findings with respect to the former do not meaningfully address the latter.

We are not persuaded that Respondents failed to proceed in the manner required by CEQA or that their CEQA-related environmental determinations are unsupported by substantial evidence. At bottom, the ordered modifications to the Plan (followed by a recertification of the EIR and approval of the other documents required by CEQA) clarified the role of EOAs as centers for development and were not so significant as to undercut Respondents' environmental analysis. This is so for several reasons. The Plan's policies promoting low-density

development in vulnerable areas are reflected in the Board-approved Land Use Policy Map and advanced by overlapping and redundant policies preserved in the adopted Plan. In the same vein, removing the Rural Preserve Area designation from land within EOAs was largely inconsequential with respect to density. In addition, the decision not to include EOAs in the more than 200,000-acre expansion of SEA coverage did not materially undermine the SEAs' role in the Plan or the effectiveness of mitigation measures unique to SEAs. In short, Respondents' assessment of the Plan's predicted environmental impacts, the measures that would mitigate those impacts, and the considerations that militated in favor of proceeding when further mitigation was not feasible remained valid following the Plan modifications.

### *A. General Principles of Appellate Review in CEQA Cases*

"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.]" (*Vineyard*, *supra*, 40 Cal.4th at p. 427)

"In evaluating an EIR for CEQA compliance, . . . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard*, *supra*, 40 Cal.4th at p. 435.) "'Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures,

"scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable," for, on factual questions, our task "is not to weigh conflicting evidence and determine who has the better argument.'" [Citation.]" (*Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection* (2008) 43 Cal.4th 936, 944.)

*B. The Role of the EIR and Relevant Standards*

"The environmental impact report is '"the heart of CEQA"' and the 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' [Citation.] It is intended . . . '"to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."' [Citation.] 'Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees . . . . The EIR process protects not only the environment but also informed self-government.' [Citation.]" (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229 (*Sierra Club*).) Thus, "[t]he preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. . . . [I]t must present information in such

a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Vineyard*, *supra*, 40 Cal.4th at pp. 449-450.)

Given the EIR's central role in informing and framing public debate, an agency must, under certain conditions, revise an EIR to reflect new information or changed circumstances. When an EIR is revised to accommodate "significant new information" prior to certification, the agency must recirculate it for further public comment (Guidelines, § 15088.5; see Pub. Resources Code,[10] § 21092.1); when the project changes after the EIR has been certified (but approval is still pending), the agency may be required to prepare either a subsequent or supplemental EIR (§ 21166). Notably, the pertinent statutes do not define the circumstances under which an EIR must be revised prior to certification—section 21092.1 only defines the circumstances under which an EIR that *has been* revised prior to certification must be recirculated. We therefore examine the statutory standards in greater detail to discern what light they shed on the particular issues presented here.

*1. Recirculation*

Recirculation is governed by section 21092.1, which provides that "[w]hen significant new information is added to an environmental impact report after notice has been given

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[10] Undesignated statutory references are to the Public Resources Code.

pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153, before certifying the environmental impact report." New information is "significant" only if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129 (*Laurel Heights II*).)[11] "Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new substantial impact or a substantially increased impact on the environment." (*Vineyard*, *supra*, 40 Cal.4th at p. 447.) "[T]he Legislature did

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[11] Guidelines, section 15088.5, subdivision (a) provides more detail. "'Significant new information' requiring recirculation include[s], for example, a disclosure showing that: [¶] (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. [¶] (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. [Citation.]"

not intend to promote endless rounds of revision and recirculation of EIR's. Recirculation was intended to be an exception, rather than the general rule." (*Laurel Heights II*, *supra*, at p. 1132.) Courts review an agency's determination of whether a newly disclosed impact is significant and warrants recirculation for substantial evidence in the record. (*Id.* at p. 1135.)

*2. Subsequent or supplemental EIR*

Section 21166 provides that "[w]hen an environmental impact report has been prepared for a project pursuant to this division,[12] no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: [¶] (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [¶] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." The choice between preparing a full-dress subsequent EIR or a supplement to an EIR is determined by the scope of the necessary revisions: If "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation," a supplement may suffice. (Guidelines, § 15163, subd. (a)(2).)

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[12] The Guidelines clarify that the subsequent EIR standards apply only after certification. (See Guidelines, § 15162, subd. (a).)

"'Section 21166 is intended to provide a balance against the burdens created by the environmental review process and to accord a reasonable measure of finality and certainty to the results achieved.' [Citation.] The statute accordingly requires evidence of such 'substantial changes' in the project or surrounding circumstances that 'major revisions' of the prior EIR are required. [Citation.] Likewise, under the . . . exception permitting subsequent review based on 'new information,' a new EIR is not required 'whenever "*any* new, arguably significant information or data" is proposed, "regardless of whether the information reveals environmental bad news."' [Citation.]' [Citation.] Rather, the Guidelines clarify that the new information justifying a subsequent EIR must be 'of substantial importance' and must show that the project will have 'significant effects not discussed in the previous EIR or negative declaration,' that '[s]ignificant effects previously examined will be substantially more severe' than stated in the prior review, or that new mitigation measures now exist, or are now feasible, but are not being adopted by the project's proponents. [Citations.] [¶] . . . [¶]

"Our standard of review for an agency's decision under section 21166 is well settled. 'We independently review the administrative record. [Citation.] We resolve reasonable doubts in favor of the administrative decision. [Citation.] "We do not judge the wisdom of the agency's action in approving the Project or pass upon the correctness of the EIR's environmental conclusions. [Citations.] Our function is simply to determine whether the agency followed proper procedures and whether there is substantial evidence supporting the agency's determination . . . ." [Citation.]' [Citation.] 'Substantial evidence

has been defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion" [citation], or "evidence of 'ponderable legal significance . . . reasonable in nature, credible, and of solid value'" [citations]." (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1057-1058 (*Moss*).)

*3. When an EIR must be revised prior to certification*

The Center argues the EIR is "inadequate as an informational document" because it addresses the unmodified Plan rather than the Plan as ultimately adopted. We understand the argument to be a challenge to the Board's failure to revise the EIR prior to recertifying it.

The parties dispute whether Respondents' decisions regarding the adequacy of the EIR are to be reviewed as procedural or factual determinations. The Center suggests any omission of "relevant information necessary for informed decisionmaking and public participation" is a procedural issue subject to de novo review. Respondents contend de novo review applies only to an agency's failure to satisfy "*specific* procedural obligation[s]" (emphasis ours), and, as a general matter, an agency's certification of an EIR as adequate is a factual determination that we review for substantial evidence.

There is no question that an agency can violate CEQA's procedural dictates by failing to document or consider certain information. For instance, in *Sierra Club*, *supra*, 7 Cal.4th at page 1236, our Supreme Court held the defendant agency "failed to proceed in the manner prescribed by CEQA" when it determined a timber harvest could have a significant adverse effect on the habitat of species dependent on old-growth forest

but failed to determine whether such species were present at the project site. In that case, the factual record revealed no ambiguity regarding the agency's obligation to consider the project's impact on these species. Similarly, in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, the court held the defendant agency's failure to consider environmental consequences that would follow if upgrades to a refinery enabled it to process different types of crude oil compelled de novo review. (*Id.* at p. 83.) An EIR that is "pervasive[ly]" "conclusory and evasive" likewise fails as an informational document. (*Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1371 (*Berkeley*).)

On the other hand, courts also recognize that procedural obligations may turn on an agency's prior resolution of factual issues—which would warrant review only for substantial evidence. For instance, in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, our Supreme Court considered whether substantial evidence supported an agency's decision to assess environmental impacts based solely on projected future, rather than existing, conditions. (*Id.* at p. 445.) Similarly, in *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538 (*Santa Monica Baykeeper*), the Court of Appeal dismissed the suggestion that an EIR's failure to adequately analyze impacts is necessarily subject to de novo review as "too simplistic." (*Id.* at p. 1546.) The *Santa Monica Baykeeper* court agreed an EIR's adequacy is subject to de novo review "'where it omits information that is both required by CEQA and necessary to informed discussion'" but held "CEQA challenges concerning the amount or type of information

contained in the EIR, the scope of the analysis, or the choice of methodology are factual determinations reviewed for substantial evidence. [Citation.]" (*Ibid.*; see also *Berkeley*, *supra*, 91 Cal.App.4th at p. 1356 ["Preparing an EIR requires the exercise of judgment, and the court in its review may not substitute its judgment, but instead is limited to ensuring that the decision makers have considered the environmental consequences of their action"].)

The aforementioned cases demonstrate that the adequacy of an EIR can be a factual issue. That still leaves, however, the question of what factual inquiry might be undertaken in the case of an EIR addressing a programmatic plan that has been modified.

*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890 (*Western Placer*) is a helpful guide in answering this question. In that case, the court considered whether the defendant agency violated CEQA by approving a mining project based on an EIR that did not consider certain changes to the project. Specifically, a few days after the agency released its final EIR, the mining operator submitted a revised project application to implement a variation on one of the project alternatives described in the EIR. (*Id.* at pp. 894-895.) The application departed from the project as described in the EIR by modifying the sequence in which different parts of the project area would be mined. (*Ibid.*) An advocacy group challenged, among other things, the EIR's failure to address potential environmental effects of the phasing described in the final project application. (*Id.* at p. 895.)

The *Western Placer* court observed "[t]he parties have directed us to no provision in CEQA or the Guidelines, and we

have found none, that requires all changes made to a project after the final EIR is released but prior to certification to be included in the EIR." (*Western Placer*, *supra*, 144 Cal.App.4th at p. 899.) "The closest CEQA comes to addressing this issue is when it discusses the requirement to recirculate an EIR." (*Ibid.*) Citing other authorities supporting the view that "new information occurring after release of the final EIR but prior to certification and project adoption need not be included in the EIR before the agency determines whether the new information is significant so as to trigger revision and recirculation,"[13] the court concluded its task on review was to decide whether "the County's determination that the new phasing was not significant new information requiring revision and recirculation of the EIR [was] supported by substantial evidence in the record." (*Id.* at pp. 902-903.)

We agree with the reasoning in *Western Placer*. And the Center does not actually dispute *Western Placer*'s analysis of the appropriate standard of review. Rather, the Center merely argues that, unlike the new information in *Western Placer*, the modifications to the Plan were significant. We shall turn to that

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[13] In *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, the court held that an agency's "fail[ure] to revise or recirculate the [program EIR] based on information that became available after [it] was issued, but before it was certified" was subject to review under the significant new information standard. (*Id.* at pp. 1146-1147.) "The question [t]here [wa]s whether [the] Respondents' implicit decision not to recirculate the [program EIR] (i.e., the decision that the new information was not 'significant') was supported by substantial evidence." (*Id.* at p. 1147.)

argument (which is the crux of the appeal) next, and we do so using, as in *Western Placer*, the substantial evidence standard of review.

### *C. The EIR was an Adequate Informational Document*

We first consider the Center's challenge to Respondents' failure to revise the EIR prior to certification. (We consider the issues of recirculation and preparation of a subsequent or supplemental EIR *post*.) Under the applicable standard of review, the Center must demonstrate there is no substantial evidence to support a determination that differences between the unmodified Plan and the adopted Plan do not amount to significant new information. (See *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330 [applying *Western Placer*].)

#### *1. Substantial evidence supports the Board's conclusion that exempting EOAs from certain policies was not significant new information that required revising the EIR*

The Plan (at least nominally) exempts EOAs from Policies LU 2.2-2.6, 3.1, and 3.4-3.6 and COS 4.5 and 5.2 as presented in the EIR. It also deletes Policy COS 19.1. The Center contends these exemptions "leave the considerable area covered by the EOAs unprotected by the policies intended to protect" various aesthetic and biological resources and to avoid hazards. According to the Center, the exemptions will therefore result in "more, and more severe, significant environmental effects than the EIR acknowledges." As we discuss below, the Center has not

met its burden to show that there is no substantial evidence for the opposite conclusion Respondents reached.

*a. scenic vistas*

The EIR lists Policies LU 2.2-2.6 and COS 5.2 among the various policies that would "serve to lessen potential impacts to scenic vistas" and render those impacts "less than significant." Policies LU 2.2-2.6 (as already described) promote "land use designations with very low residential densities" in Scenic Resource Areas, Agricultural Resource Areas, Mineral Resource Areas, riparian areas and groundwater recharge basins, and near National Forests. Policy COS 5.2 likewise promotes development "with very low densities" in Scenic Resource Areas. We are persuaded by Respondents' argument that the Center has not satisfied its burden to show that the limits on these policies flowing from the Board-directed modifications to the Plan represented significant new information.

First, though we doubt the Land Use Policy Map fully "implements" Policies LU 2.2-2.6 and COS 5.2, we do agree the map requires very low-density development in large parts of the EOAs. With certain exceptions, the proposed SEA boundaries described in the EIR encompass land designated RL20 (one dwelling unit per 20 gross acres).[14] It is true that Policies LU 2.2-

[14] The Central and East EOAs both designate small portions of land originally proposed to be covered by SEAs for industrial use. However, in the West EOA, roughly half of an area proposed to be covered by SEAs is designated H5 (0-5 dwelling units per net acre), and smaller portions are designated RL1 (one dwelling unit per gross acre) and IL (light industrial). In all or nearly all of these cases, the same density designations govern despite the removal of the SEA overlay. In affected portions of the West

2.6 and COS 5.2 promote low-density development in specific areas (e.g., Hillside Management Areas, Scenic Resource Areas) that do not necessarily coincide with the proposed SEA expansion and may not be designated RL20. But on a close perusal of the record, we have identified no significant acreage in the EOAs that was subject to Policies LU 2.2-2.6 and COS 5.2 and is designated for a density greater than RL20.[15]

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EOA, the approved Land Use Policy Map imposes a specific plan requirement, mandating "the preparation and adoption of a Specific Plan or similar planning document for these parcels before any development of five or more residential dwelling units, any commercial use, any industrial use, or any combination thereof, can be approved." The specific plan requirement subjects substantial development in this area to another tier of high-level planning, public comment, and public agency review before any development may occur. (See, e.g., *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1306, fn. 3 [noting that EIR for specific plan could be prepared as program EIR or master EIR].) Additionally, much of the area slated for development in the West EOA is subject to the Tejon Ranch Conservation and Land Use Agreement, which, among other things, sets aside over 3,000 acres of open space, limits the carbon footprint of proposed development, promotes energy- and water-efficient design, and mitigates impacts to existing habitat.

[15] For example, the Center points out that portions of the West EOA designated RL1 and H5 contain slopes of 25 percent or greater. The Center's concession that this is "difficult to see" in the relevant maps is an understatement, but the relevant area does not appear to be substantial. Similarly, the Center notes the East EOA includes active fault trace areas, parts of the Aquist-Priolo Fault Zone, and parts of the major Seismically Induced Liquefaction Zone east of Palmdale designated for

Second, even to the extent that areas that would have been covered by Policies LU 2.2-2.6 and COS 5.2 are not designated RL20 in the approved Land Use Policy Map, it is not clear these policies materially inform the EIR's conclusions about the Plan's environmental effects. The Center contends "[a]t a minimum, *something* in the EIR's analysis indicates that applying these specific policies in EOAs is essential to the conclusion that impacts to scenic vistas would be less than significant." But this follows only if we assume Respondents prepared the proposed Plan to do the bare minimum necessary to avoid significant impacts. Nothing in the EIR suggests this is the case. The Center's emphasis on the fact that the EIR describes these policies as "relevant" to its analysis of aesthetic impacts falls short of showing that they are essential to that analysis.[16]

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development denser than RL20. Based on our review of the EIR's Seismic Hazards map and the adopted Land Use Policy Map for the Antelope Valley East Portion (which admittedly utilize different scales and include few common reference points), the majority of this land is designated either RL10 or RL20.

[16] Indeed, there is no compelling reason to believe application of these low-density policies within EOAs—the intended focus points of development—is necessary to the EIR's conclusions regarding the draft Plan's environmental effects. The Center contends applying Policies LU 2.2-2.6 and COS 5.2 would "reduce[ ] to some extent" the impacts recognized in the EIR. This is somewhat imprecise. These policies do not mitigate or reduce impacts *caused by* density—they simply reduce density. To the extent that their inapplicability in the EOAs did not substantially affect development density allowed in the EOAs, this was not significant new information.

*b. sensitive plant communities*

The EIR lists policies LU 2.2-2.6 and COS 4.5 and 19.1 among the various goals and policies that would "serve to minimize impacts to sensitive plant communities," despite the Plan's expected "significant adverse effect on sensitive communities." We have already summarized Policies LU 2.2-2.6. Policy COS 4.5 requires new development to provide "adequate buffers from preserves, sanctuaries, habitat areas, wildlife corridors, State Parks, and National Forest lands," and Policy COS 19.1 requires new development in Hillside Management Areas and SEAs to comply with applicable Zoning Code requirements for open space preservation.

The Center contends the EOAs include plant communities identified as sensitive. In support of this contention, the Center cites a map in the EIR identifying "Plant Communities of the Antelope Valley" and two lists of sensitive plant communities found elsewhere in the EIR. The map does not include all sensitive plant communities, nor does it include an EOA overlay. Because the Center does not tell us which sensitive plant communities actually fall within EOAs, our review is based on a comparison between maps of different scales with few common points of reference.

As best as we can discern (and the Center bears the burden of proof), the EOAs do not encompass significant areas of sensitive plant communities. The West EOA appears to include large areas of annual grasslands and perennial grasslands with smaller segments of alkali sink scrub and agricultural land. Of these, the EIR identifies only alkali sink scrub as sensitive. The Central EOA appears to be largely saltbush scrub with smaller segments of alkali sink scrub and perhaps alkali playa. Alkali

sink scrub and alkali playa are sensitive. The East EOA is primarily creosote bush scrub, developed land, Joshua Tree woodland, and agricultural land, with much smaller segments of alkali sink scrub and alluvial fan sage scrub. Only alkali sink scrub is sensitive.

Based on the limited coverage of sensitive plant communities within EOAs alone, the Center has not satisfied its burden to show that the change in applicability of Policies LU 2.2-2.6 and COS 4.5 and 19.1 within EOAs was significant new information. The Center also has not carried its burden with respect to Policies LU 2.2-2.6 for the reasons discussed *ante* with respect to scenic vistas. The Center concedes Policy COS 19.1 is redundant of Zoning Code requirements that will continue to apply. And the Center further fails to show that alternative protections for sensitive plant communities—from the Land Use Policy Map to regulation of riparian habitats by the US Army Corps of Engineers, California Department of Fish and Wildlife, and/or Regional Water Quality Control Board—do not continue to apply.[17]

*c. wetlands*

The EIR lists policies LU 2.2-2.6 and COS 4.5 and 19.1 among the various goals and policies that would "have both direct and indirect beneficial effects for wetlands . . . ." Even with these policies in place, the EIR anticipates that development "may have

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[17] According to the EIR, "for riparian habitat under the jurisdiction of the USACE, CDFW, and/or RWQCB, permits and mitigation may be required, subject to the approval of the regulatory agencies."

a significant adverse effect on wetlands . . . ." The EIR concludes, however, that unrelated mitigation measures and regulation by other agencies would make these impacts "less than significant." The Center acknowledges the extent of wetlands (if any) in the Central and East EOAs has not been determined, but emphasizes that the West EOA does include wetlands.

Our discussion of policies LU 2.2-2.6 and COS 4.5 and 19.1 *ante* also applies to wetlands. First, for the reasons discussed with respect to scenic vistas, the Center has not carried its burden to demonstrate no substantial evidence supports the judgment that rendering Policies LU 2.2-2.6 inapplicable in the West EOA did not constitute significant new information. Second, for the reasons discussed with respect to sensitive plant communities, regulation of such wetlands by other agencies provides additional support for the same judgment, i.e., that the inapplicability of the LU and COS policies was not significant new information.

Furthermore, Respondents correctly point out that other COS policies—which were not excluded from EOAs in the final Plan—offer specific protection to wetlands. For example, Policy COS 3.4 provides for the "[s]upport, preservation, restoration and strategic acquisition of open space to preserve natural streams, drainage channels, wetlands, and rivers, which are necessary for the healthy functioning of ecosystems," and Policy COS 4.10 provides for "[r]estrict[ing] development that would reduce the size of water bodies, minimizing the potential for loss of habitat and water supply." The continued application of these policies, the low density restrictions that remain in place, and the other considerations we have already discussed are substantial evidence that modifying the Plan to make Policies LU 2.2-2.6 and

COS 4.5 and 19.1 inapplicable in the West EOA was not significant new information concerning an impact on wetlands that would require pre-certification revisions to the EIR.

*d. wildlife movement*

The EIR lists Policies LU 2.2-2.6 and COS 4.5 and 19.1 among the various goals and policies that would "have direct and indirect beneficial effects for protecting regional wildlife linkages and facilitating wildlife movement . . . ." Nonetheless, impacts would be significant even with mitigation measures. The Center argues the inapplicability of Policies LU 2.2-2.6 and COS 4.5 and 19.1 in the West EOA was significant new information.

For the reasons we have already given, the Center did not carry its burden to show the Board lacked substantial evidence to conclude its directed Plan modifications making Policies LU 2.2-2.6 inapplicable in the West EOA were not significant with regard to an impact on wildlife movement. To the same point, and despite the inapplicability of Policies COS 4.5 and 19.1, Policy COS 4.6, which "encourage[s] connections between natural open space areas to allow for wildlife movement," remains applicable in the West EOA.

*e. seismic hazards*

The EIR lists Policies LU 3.1 and 3.5, along with existing State and County regulations, as measures that would reduce "impacts associated with exposure to strong seismic ground shaking, seismic-related ground failure including liquefaction, and landslides . . . to a less than significant level." Policies LU 3.1 and 3.5 limit development in vulnerable areas to "land use designations with very low densities."

Our Supreme Court has held CEQA does not require an EIR to include "an analysis of how existing environmental conditions will impact a project's future users or residents" because such an analysis focuses on "the environment's effects on a project" rather than "the *project's* impacts on the existing environment." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386-390.) This suggests the EIR's discussion of seismic hazards may not have been strictly necessary at all.

Assuming, however, that such an analysis is required under CEQA, the Center does not identify the densities prescribed for the relevant areas of the West and East EOAs in the adopted Land Use Policy Map. Our comparison of the EIR's Seismic Hazards map and the adopted Land Use Policy Map suggests that the vast majority of these areas are designated RL10 and RL20. With those density limits continuing in force, the Center has not shown the Board lacked substantial evidence to conclude that exempting the West and East EOAs from Policies LU 3.1 and 3.5 was not significant new information requiring pre-certification revisions to the EIR.[18]

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[18] Respondents contend the Center's challenges to the EIR's analysis of seismic hazards, as well as its analysis of development in unstable soil and airport safety hazards, are forfeited because they were not raised in the trial court or during administrative proceedings before the County. We do not address the question of forfeiture because we reject these challenges on the merits.

*f. development on unstable soils*

The EIR lists Policy LU 3.4, along with other Plan goals and policies and existing state and County regulations, as relevant to ensure that impacts associated with development on unstable soils "are reduced to the maximum extent practicable" and that "associated impacts would be less than significant." Policy LU 3.4 limits development on steep slopes within Hillside Management Areas to "very low residential densities."

The Center contends environmental impacts will be more severe than described in the EIR because slopes of 25 percent or greater exist within the East and West EOAs. Again, we are left to compare maps of different scale with few common reference points to determine the locations of these asserted high-slope areas.

Our review indicates slopes of 25 percent or greater appear to be few and far between in the East EOA, but that they are somewhat prevalent in the West EOA. Although it is difficult to pinpoint what land use designations apply to these sloped areas, the difficulty is ultimately immaterial—the Land Use Policy Map as first proposed and the Land Use Policy Map as adopted following the Board's request for Plan modifications are the same in the relevant areas. Additionally, the EIR also highlights an "existing HMA Ordinance [that] encourages development in HMAs on less steep slopes, and requires a Conditional Use Permit . . . prior to development in certain HMAs." This ordinance continues to apply to the EOA areas. Under the circumstances, there is no basis to conclude Plan modifications made the EIR an insufficient informational document with respect to possible development on unstable soils in the East and West EOAs.

*g. airport safety hazards*

The EIR cites Policy LU 3.6, other Plan goals and policies, "[f]ederal and state regulations . . . that prevent hazards to the public and environment near public airports," and County requirements that "development projects near public airports comply with any applicable [Airport Land Use Compatibility Plan (ALUCP)]" in support of its conclusion that potential impacts associated with public airports, private airstrips, and heliports are less than significant. The EIR also cites Policy LU 3.6 in support of its conclusion that development would not conflict with ALUCPs.

The Center contends these conclusions are invalid because Policy LU 3.6 no longer applies in the Central EOA, which is within the airport influence area for Lancaster's Fox Field and adjacent to Edwards Air Force Base. Here again, however, the proposed Land Use Policy Map prescribes the same densities for the relevant areas as the adopted Land Use Policy Map. Exempting the Central EOA from Policy LU 3.6 had no impact on the density of development allowed in relevant areas, and accordingly, no impact on the EIR's sufficiency as an informational document.

*2. Substantial evidence supports the Board's conclusion that reducing SEA coverage in EOAs was not significant new information that required revising the EIR*

The Plan as ultimately adopted added over 200,000 acres to SEA coverage, but this increase was about 14,000 acres (i.e., roughly six percent) less than the increase contemplated in the

Plan prior to the Board-directed modifications. The Center argues that because the EIR emphasized that the scope of the expanded SEA coverage in the pre-modification Plan was "based on the best available science," the smaller expansion will necessarily "result in new potentially significant impacts and exacerbate impacts considered significant and unavoidable." In particular, the Center maintains the EIR concludes impacts to wildlife and plant species, sensitive plant communities, wildlife movement, and wetlands would be either minimized or considered less than significant as a result of mitigation measures unique to SEAs. Thus, as the Center argues it, "[b]ecause [Mitigation Measures BIO-1, BIO-2, and BIO-3] apply only *within* designated SEAs, their mitigating effects are necessarily diminished by the removal of some 14,000 acres of SEAs from the approved [Plan]."

The Center has not satisfied its burden to show the changes to SEA coverage (whether alone or combined with the other Plan modifications) reveal the Board lacked substantial evidence to conclude the EIR was an appropriate environmental analysis of the Plan as ultimately approved. The record indicates BIO-3, for instance, is not limited to SEAs and merely emphasizes existing requirements. The Center also has not shown that SEATAC review, BIO-1, and BIO-2 require such significantly greater review or protective measures than project-level CEQA review to which any EOA development would be subject. (See, e.g., Guidelines, §§ 15065 [mandatory findings at preliminary review stage], 15091 [mandatory findings at approval stage].) We also see no reliable basis to conclude, as the Center appears to argue, that making mitigation measures BIO-1 and BIO-2 inapplicable in the EOAs reduces the effectiveness of these mitigation

measures in the aggregate. In other words, there is no logical basis to believe that because the Plan made BIO-1 and BIO-2 applicable *only* within the proposed SEAs they would have a mitigating effect *everywhere* within the proposed SEAs. As discussed *ante*, a number of other programs and policies—from the existing HMA ordinance applicable to steep hillsides to the constellation of agencies responsible for riparian habitats—continue to offer protection for uniquely vulnerable land and wildlife.[19]

In light of the relatively small—14,000 acres or six percent—difference in SEA coverage; the fact that mitigation measures would not necessarily have a significant effect on the Plan's impacts throughout all 14,000 acres; and other protections that continue to apply; there is substantial evidence for the Board's conclusion that the change in SEA coverage does not qualify as significant new information.[20]

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[19] In the West EOA, in particular, development in areas originally designated SEAs will be subject to the specific plan requirement and/or the Tejon Ranch Conservation and Land Use Agreement described *ante*.

[20] At oral argument, the Center cited *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (*Kings County*) for the proposition that "a simple ratio calculation" is not an acceptable approach to determining whether an impact is significant. It is true that *Kings County* disapproves of assessing "the ratio between [an individual] project's impacts and the overall problem." (*Id.* at p. 720.) However, evaluating the difference between *proposed* SEA coverage and *adopted* SEA coverage in context of the total increase in SEA coverage is not analogous to comparing one source of pollution to pollution in the

*3. Substantial evidence supports the Board's conclusion that reducing the footprint of Rural Preserve Areas was not significant new information that required revising the EIR*

A Rural Preservation Strategy Map analyzed in the EIR designates substantial portions of all three EOAs as "Rural Preserve Area." As described in the EIR, Rural Preserve Areas are areas "where residential densities would be reduced in order to protect important ecological and agricultural resources as well as minimize development in very high hazard areas." The EIR concluded these "land use patterns" prescribed in the Plan were "designed to maintain the region's rural character." In its June 16, 2015, resolution adopting the Plan, the Board noted that the Plan "was revised to remove the Rural Preserve Areas from the EOAs" in order to "delete conflicting language that restricts growth in the EOA's." In the adopted Rural Preservation Strategy Map, areas of the EOAs originally proposed to be Rural Preserve Areas are instead "Non-Preserve Areas" or "Future Rural Town Areas."

The Center contends the removal of the Rural Preserve Area designations from EOAs renders the EIR's conclusions regarding the significance of the Plan's impacts to scenic views and visual character invalid. However, it is not clear what influence the Center believes these designations would have had

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aggregate. There is no risk, at this level of programmatic analysis, that the attempt to contextualize SEA coverage will, over time, "allow[ ] the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling." (*Id.* at p. 721.)

within EOAs. The Center does not dispute Respondents' claim that removing Rural Preserve Area designations from the EOAs did not result in higher-density development being allowed in the adopted Land Use Policy Map.[21] In this light, the change in designation was primarily rhetorical and its effect, in essence, nominal.

The Center argues, however, that the land use designations are "irrelevant," and that what matters "is the County's choice that development should no longer be directed away from areas in EOAs evaluated as Rural Preserve Area." But the Center does not identify a means by which development would be "directed away from" Rural Preserve Areas other than land use designations, and absent a showing that land use designations changed significantly, the Center has not satisfied its burden to show the Board lacked substantial evidence to conclude the removal of Rural Preserve Area designations from the EOAs was not significant new information.

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[21] Based on our own comparison of the Rural Preservation Strategy Map as proposed, the Land Use Policy Map as proposed, and the Land Use Policy Map as ultimately adopted, any changes in density are extremely small (e.g., a small portion of the eastern part of the Central EOA along the Sierra Highway originally proposed to be designated RL20 was designated IL (light industrial) and a small portion of land originally within the Central EOA designated RL10 ended up outside the smaller Central EOA but with a higher density of RL2).

*D. There Was No Need to Recirculate the EIR or Prepare a Subsequent or Supplemental EIR*

Respondents recertified the EIR without change when they approved the Plan. The Center contends Respondents should have either recirculated the EIR prior to approving the Plan, prepared a subsequent or supplemental EIR, or prepared an addendum to the EIR. We review Respondents' decision to forgo these steps for substantial evidence. (See *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135 [recirculation]; *Moss*, *supra*, 162 Cal.App.4th at p. 1058 [subsequent/supplemental EIR].)

For the reasons discussed *ante*, the differences between the Plan before and after modifications did not amount to "significant new information" triggering the recertification requirement. (§ 21092.1.) Nor did they amount to "substantial changes" or "new information" triggering the need to prepare a subsequent or supplemental EIR.[22] (§ 21166.)

Guidelines, section 15164, subdivision (a) provides that an agency "shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions . . . calling for preparation of a subsequent EIR have occurred." "Preparation of an addendum is . . . a way to make minor corrections to an EIR without recirculating the EIR for further review." (2 Kostka & Zischke, Practice Under the Cal.

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[22] Because these arguments fail on the merits, we do not decide whether the fact or timing of the recertification alone obviated the need to recirculate the EIR or to prepare a subsequent or supplemental EIR. Nor do we need to address whether the Center's arguments regarding the preparation of a subsequent or supplemental EIR were forfeited.

Environmental Quality Act (2d ed. 2016) § 19.6, at p. 19-10; see also Guidelines, § 15164, subd. (b) [providing that an addendum to a negative declaration—i.e., a finding that a project will have no significant environmental effects—may be prepared to address "minor technical changes or additions"].) An addendum "need not be circulated for public review [and] can be included in or attached to the final EIR," but "[t]he decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project." (Guidelines, § 15164, subds. (c) & (d).) Here, the Board catalogued modifications to the Plan in the resolution recertifying the EIR and approving the Plan. Although not styled as an addendum, this document—considered as part of the approval process—is not the sort of "*post hoc* rationalization" that courts have routinely condemned in the CEQA context. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (2008) 47 Cal.3d 376, 425 ["We will not accept *post hoc* rationalizations for actions already taken, particularly in light of the fact that those activities were begun in violation of CEQA, even if done so in good faith"].) The Center does not articulate how this document falls short of satisfying "CEQA's fundamental goal of fostering informed decision making." (*Id.* at p. 402.)

Finally, the Center contends Respondents abused their discretion by failing to expressly determine whether a subsequent or supplemental EIR or addendum was necessary. The Center cites *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005 (*City of San Jose*) for the proposition that failure "to make a determination whether a subsequent or supplemental EIR was required" might amount to a CEQA violation. (*Id.* at p. 1017.) *City of San Jose* cites no authority for such a rule, and our

Supreme Court recently reached the opposite conclusion.[23] (*Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 953, fn. 4 ["Nothing in [CEQA] requires the agency to make an explicit finding" regarding the continuing relevance of an original EIR].)

Substantial evidence supports Respondents' decision to recertify the EIR and to approve the Plan based on that document.

### *E. CEQA Findings and Statement of Overriding Considerations*

#### *1. Background and standard of review*

The procedures required under CEQA are intended to advance "the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially

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[23] The Center does not cite Guidelines section 15164, subdivision (e), which provides that "[a] brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence." To the extent that this section is consistent with *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, we find that the Board satisfied this requirement by noting, in its resolution approving the Plan, that "changes to the Project (set forth below) were made after the Board's hearing that did not change the conclusions in the [EIR]." This notation is supported by substantial evidence for the reasons discussed *ante*.

lessen the significant environmental effects of such projects . . . ." (§ 21002.) Accordingly, when an EIR identifies one or more significant effects on the environment if a project is approved, the agency must make specific findings regarding potential mitigation measures or alternatives and their feasibility. (§ 21081, subd. (a).) Specifically, "the agency must find that the project's significant environmental effects have been mitigated or avoided [citation], that the measures necessary for mitigation 'are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency' [citation], and/or that 'specific economic, legal, social, technological, or other considerations' render mitigation 'infeasible' [citation]. When the agency finds that mitigation is infeasible, the agency must also find 'that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.' [Citation.]" (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 350.)

We review CEQA findings and a statement of overriding considerations for substantial evidence in the record. (Guidelines, §§ 15091, subd. (b), 15093, subd. (b).)

*2. Respondents were not required to analyze the Plan as proposed as an alternative to the Plan as ultimately adopted*

In its June 2015 resolution recertifying the EIR and approving the Plan, the Board also readopted the CEQA findings and statement of overriding considerations originally adopted at the November 2014 hearing. The Center does not contend the CEQA findings and statement of overriding consideration failed

to address significant environmental effects, feasible alternatives or mitigating measures, or overriding considerations with respect to the draft Plan and EIR. Rather, the Center contends the CEQA findings and the statement of overriding considerations improperly fail to consider the pre-modifications Plan as a feasible alternative to the Plan as ultimately adopted.

The parties dispute the threshold at which changes to a project require that an earlier version be analyzed as a feasible alternative (or that specific provisions of the earlier version be considered as mitigation measures). Relying on the plain text of sections 21002 and 21081, subdivision (a), the Center suggests even minor changes to a project require that an earlier version be considered as an alternative to the final version.
The Center's position is not tenable.

CEQA takes a practical approach to the need for new documentation to address changes to a project. "The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) Just as an agency is not required to recirculate an EIR or prepare a subsequent or supplemental EIR every time new information is added or identified, changes to a project do not necessarily require changes to the CEQA findings and statement of overriding considerations. (See *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1553 ["If the significant effects as found in the original EIR have been addressed by findings, and an addendum is only proper where no new significant environmental impacts are discovered, why should new findings be required in

connection with preparation of an addendum"].) Accordingly, when modifications to a project do not require an agency either to recirculate an EIR or to prepare a supplemental EIR or an EIR addendum, neither do they require the agency to make further CEQA findings or an updated statement of overriding considerations. For the reasons discussed *ante*, the insignificant differences between the Plan pre- and post-modifications did not require Respondents to take these steps.

## DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIM, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.