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8 *ORINDANS FOR SAFE EMERGENCY EVACUATION*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF CONTRA COSTA**

11
12
13 ORINDANS FOR SAFE EMERGENCY
14 EVACUATION,

15 Petitioner,

16 vs.

17 CITY OF ORINDA,

18 Respondent.
19
20

Case No.: N23-0579

PETITIONER'S OPENING BRIEF

**(California Environmental Quality Act,
Pub. Resources Code § 21100 et seq.; Code
of Civil Procedure §§ 1094.5 and 1085)**

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1 **I. INTRODUCTION**

2 Petitioner Orindans for Safe Emergency Evacuation (hereafter “Petitioner” or “OSEE”) brings
3 this action to redress serious concerns regarding the wildfire evacuation and emergency response
4 impacts of Plan Orinda (the “Project”) upon the City and residents of Orinda. Orinda is among the
5 most imperiled communities for wildfire risk in the state. The situation is compounded by Orinda’s
6 long, narrow, and winding roads, and few options for evacuation during a wildfire due to its
7 topography. In developing Plan Orinda, the City utterly failed in its duty to analyze, disclose, and
8 mitigate the wildfire evacuation impacts of the new development facilitated by the Project.

9 As detailed below, the Project would add thousands of residents to Downtown Orinda, adjacent
10 to critical evacuation routes, and primary traffic arterials within the City. These downtown areas are
11 either located within or directly adjacent to Very High Fire Hazard Severity Zones. The added
12 congestion resulting from this development risks trapping Orinda’s residents in gridlock during a
13 wildfire. Despite the manifestly grave implications, these adverse effects have simply been glossed
14 over by Respondent, without detailed analysis, or mitigation.

15 Petitioner’s fears are not hypothetical or remote; instead, they stem from the lived experience of
16 fellow Californians impacted by wildfire. As one concerned resident noted during the planning
17 process for Plan Orinda, “[p]erhaps we need to recall the horror of the 1991 Oakland Hills Fire (not
18 the first deadly fire in those neighboring hills) where people died in cars that were stuck in a line of
19 traffic on the winding narrow roads, just like Orinda’s roads.” (AR049305-049306.)

20 Petitioner is particularly concerned that Respondent’s Draft and Final Environmental Impact
21 Reports (collectively the “EIR”) prepared for the Project completely failed to discuss, evaluate, or
22 mitigate potential wildfire evacuation and emergency response impacts resulting from increased
23 development and population facilitated by the Project specifically in Downtown Orinda. This fails
24 the purpose of the California Environmental Quality Act (“CEQA”), which is to serve as an “‘alarm
25 bell’ whose purpose is to alert the public and its responsible officials to environmental
26 changes...before they have reached...points of no return.” (*Laurel Heights Improvement Assn. v.*
27 *Regents of University of California* (1988) 47 Cal.3d 376, 392.) Rather than apprise them of the
28 potential effects of the Project, the EIR leaves decision makers and the public to guess as to the true

1 nature and magnitude of the Project’s effects. The EIR represents only chance the public has to fully
2 understand the increased risks posed by the Project, and the only chance Respondent will have to
3 prescribe legally binding mitigation strategies applicable to all future development conducted under
4 the Project.

5 For these and other reasons described in detail below, the Respondent’s EIR violated CEQA, and
6 Respondent’s approval of the Project, therefore, must be rescinded, and further approvals
7 implementing the project should be set aside and/or enjoined.

8 **II. STATEMENT OF FACTS**

9 a. Respondent City of Orinda

10 Wildfire danger poses a serious and undeniable threat to the residents of Orinda. Most all of
11 Orinda is “mapped as High to Very High Fire Severity Zones” (AR000377) and has been designated
12 as “Wildland-Urban Interface,” which is the area where the built environment meets or intermingles
13 with the natural environment (AR000871). “Residential developments in the wildland urban interface
14 . . . can significantly increase the risks of wildfires and the risk to public safety....” (AR000874.)
15 Further, “the State Route 24 corridor south of Orinda has a FHSZ [Fire Hazard Severity Zone] ranking
16 of ‘very high’...and, therefore, is highly susceptible to wildfires.” (AR000495.)

17 Orinda is bisected roughly east to west/southwest by State Route 24 (hereafter “SR 24”). The
18 other primary transportation route in Orinda is Camino Pablo, which runs northwest to southeast, and
19 becomes Moraga Way when it crosses south under SR 24 in Downtown Orinda. (AR000192.)

20 Downtown Orinda, the geographic center of the City, is comprised of two sections divided by
21 SR 24: the Village and Theater Districts. The Village District is located to the north of SR 24, while
22 the Theatre District is the southern portion of downtown Orinda. (AR000192.) Vehicular access to
23 the downtown area in Orinda is available primarily via Camino Pablo / Moraga Way and SR 24.
24 (AR000192 & AR000440.) The only road connecting the Village and Theater Districts, furthermore,
25 is also Camino Pablo / Moraga Way, which pass under SR 24. (AR000192.) The on-ramps to SR 24,
26 moreover, are located at the point where Camino Pablo / Moraga Way pass under SR 24 at the center
27 of Downtown Orinda. (AR016898; *see also* AR000201-202 [showing proposed DPP sites in the
28 Village and Theater District, respectively, and depicting on-ramps to SR 24 where Camino Pablo /

1 Moraga Way pass under SR-24].) The DEIR identifies SR 24 as a “critical evacuation route.”
2 (AR000509.)

3 b. Petitioner Orindans for Safe Emergency Evacuation

4 Petitioner Orindans for Safe Emergency Evacuation is an unincorporated association
5 dedicated to the protection of the citizens of Orinda. Members of Petitioner group commented in
6 opposition to the Project for its numerous CEQA deficiencies and deleterious significant effects to
7 public safety. Petitioner is in no way opposed to *responsible* rezoning of areas within Orinda,
8 including downtown and elsewhere, in order to increase housing and employment opportunities, and
9 so that the City is able to fulfill its state-mandated housing obligations. Rather, Petitioner holds
10 genuine and grave concerns that the near complete failure of the EIR to evaluate and mitigate impacts
11 to wildfire evacuation and emergency response resulting from the Project places Orinda’s residents
12 in danger.

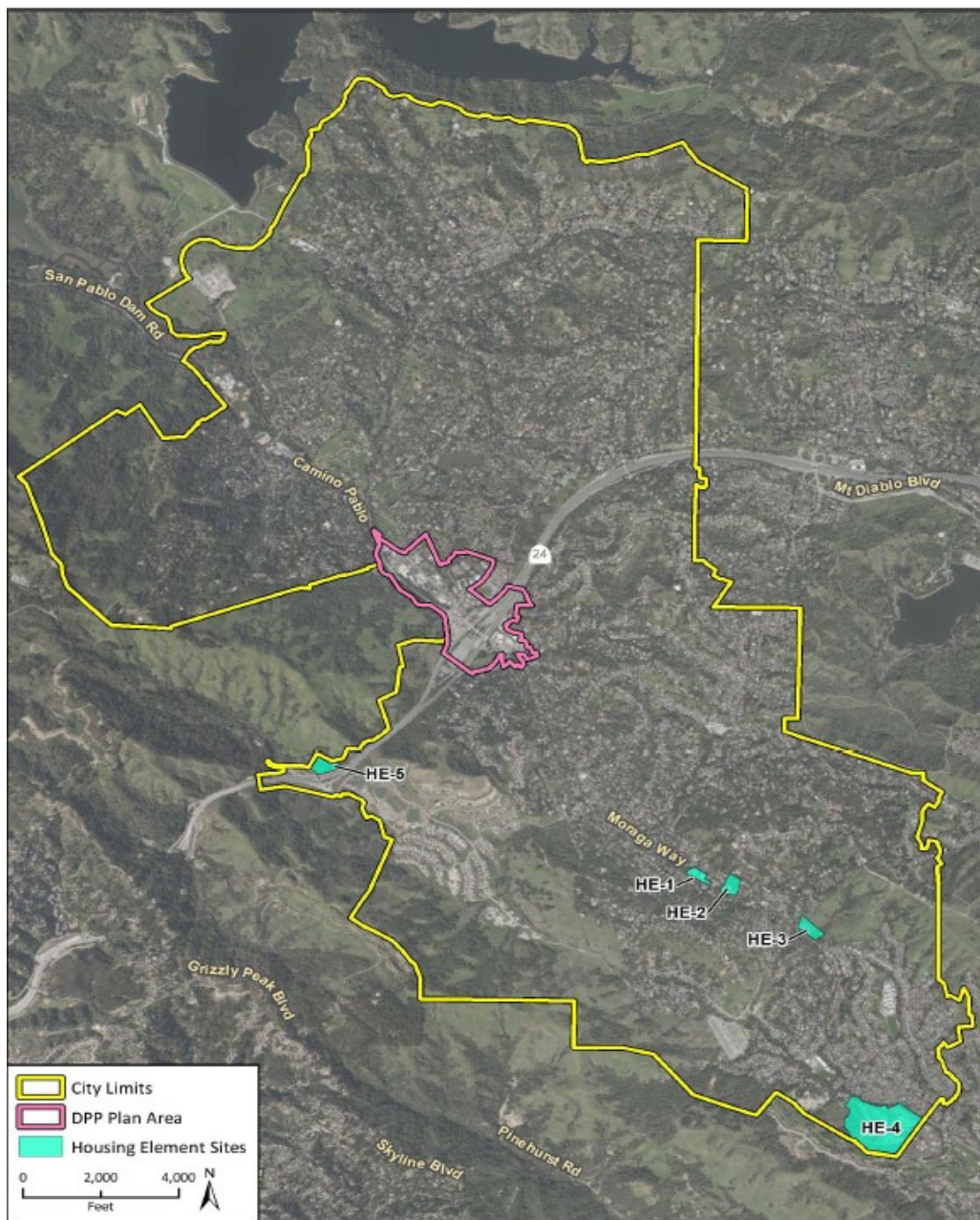
13 c. Plan Orinda

14 Plan Orinda (hereafter “Plan Orinda” or the “Project”) was adopted by the Orinda City
15 Council on January 31, 2023. (AR000080-82.) The Project consists of three primary components: the
16 2023-2031 Housing Element Update (“Housing Element”), the Downtown Precise Plan (“DPP”), and
17 the Safety Element Update (“Safety Element”). (AR000191.) Among other things, the Housing
18 Element and DPP update zoning and land use provisions of the City’s General Plan to facilitate
19 increased residential density in specific portions of the City. (AR000191-92.)

20 The Project will rezone five sites outside of the downtown to allow for increased dwelling
21 units per acre (“du/ac”). These “Housing Element Sites” are designated HE-1 through HE-5. Under
22 the Housing Element, HE-5 will be rezoned to allow for 20-40 du/ac, while the remaining sites will
23 be rezoned to allow for 20-25 du/ac. (AR000195.) Assuming maximum allowable build out,
24 development of the five Housing Element Sites will result in 765 additional residential units and an
25 estimated maximum population increase of 2,142. (AR000199.)

26 The DPP identifies 76 parcels as potential sites for residential development downtown. The
27 DPP sites are located in both the Village and Theater Districts, both north and south of SR 24. These
28 “DPP Sites” will be rezoned to allow for increased residential density. (AR000198.) Current

1 residential densities allowable in Downtown Commercial and Downtown Office zones are 10 du/ac
2 and 0 du/ac, respectively. The DPP will revise zoning standards to allow for residential development
3 of up to 85 du/ac within these zones. (AR000207.) Assuming maximum allowable build out, the DPP
4 will result in 1,618 additional dwelling units and an estimated maximum population increase of 4,530
5 downtown. (AR000207; and AR000203-205.) New or redeveloped commercial square footage in the
6 DPP resulting from Plan Orinda will exceed 600,000 square feet. (AR000203-205.) The figure below
7 shows the locations of the DPP and HE sites, as well as their relation to SR 24, Moraga Way, and
8 Camino Pablo. (AR000196.)



1
2 As of 2021, the population of Orinda was 19,078. (AR000411.) Taken together, the Housing
3 Element and the DPP are estimated to accommodate the addition of 6,627 new Orinda residents.
4 (AR000207.) Hence, the Project would increase Orinda’s population *by over one third*.

5 d. The Environmental Impact Report

6 In September 2022, the City issued the *Plan Orinda Draft Environmental Impact Report*
7 (hereafter “DEIR”) identifying the likely environmental consequences associated with development
8 facilitated by the proposed project. (AR000141.) In January 2023, the City issued the *Plan Orinda*
9 *Final Environmental Impact Report / Responses to Comments on the Draft EIR SCH #2022010392*
10 (hereafter the “FEIR”). The FEIR provided responses to public comments to the DEIR and
11 incorporates by reference the analysis in the DEIR. (AR000175.) The DEIR and FEIR are referred to
12 collectively herein as the “EIR.” On February 1, 2023, Respondent issued a Notice of Determination
13 approving the EIR, pursuant to Public Resources Code sections 21108 & 21152. (AR000001.)

14 Among other effects, the EIR attempts to analyze wildfire-related impacts resulting from the
15 Project. Relevant here, the DEIR provides a wildfire significance threshold labeled “Impact WFR-1,”
16 which asks: “if located in or near state responsibility areas or lands classified as very high hazard
17 severity zones, would the project substantially impair an adopted emergency response plan or
18 emergency evacuation plan?” (AR000509-511.)

19 The EIR does not define or explain what “substantially impair” means for WFR-1, nor does
20 it articulate how any aspect of the Project would be compared to that threshold. (*Id.*) Without
21 explanation or analysis, the EIR simply claims the “impact would be significant and unavoidable.”
22 (*Id.*) The EIR does not articulate, nor explain how, nor to what extent, any portion of “the Project will
23 substantially impair an adopted emergency response plan or emergency evacuation plan” to
24 meaningfully understand how the significance threshold for Impact WFR-1 is met or surpassed. The
25 EIR fails to even identify which “plan” would be impaired. The FEIR made no revisions to the DEIR’s
26 analysis of wildfire effects at Impact WFR-1. (AR000891-899.) As a result, the public, reviewing
27 agencies, and the City Council, have no idea how bad emergency evacuation will be following
28 buildout of the Project, nor where the worst effects will occur. Moreover, without such analysis, the

1 EIR cannot and does not evaluate potential mitigation measures or alternatives that could have
2 reduced or avoided this significant threat to residents’ safety.

3 e. Statement of Overriding Considerations

4 Respondent’s January 31, 2023 resolution certifying the EIR for Plan Orinda includes a
5 Statement of Overriding Considerations describing its rationale to continue with the Project despite
6 the Project causing significant adverse effects to wildfire evacuation safety. (AR000040.) Broadly,
7 the Statement of Overriding Considerations contends the following benefits of the Project would
8 outweigh, in Respondent’s estimation, the significant effects of the Project: meeting the state-
9 mandated regional housing needs allocation (“RHNA”) requirements, encouraging affordable
10 housing, encouraging development of housing with access to transit, jobs, and community services,
11 economic benefits, and increased accessibility to employment for residents. (AR000040-41.) The
12 Statement also cites as benefits the fact that the Project includes a “state-mandated safety element”
13 and that the Project was adopted after “extensive public outreach.” (AR000041.) The Statement of
14 Overriding Considerations never explains how it weighs the potential loss of life through impaired
15 emergency response and evacuation safety in this balance.

16 **III. LEGAL BACKGROUND**

17 a. Impact Analysis Under CEQA

18 “The purpose of CEQA is...to compel government at all levels to make decisions with
19 environmental consequences in mind.” (Guidelines, § 15003.) “The foremost principle under CEQA
20 is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible
21 protection to the environment within the reasonable scope of the statutory language.” (*Laurel Heights*
22 *Improvement Ass’n. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 390.) The EIR is the “primary
23 means of achieving” these policies, and is therefore “the heart of CEQA.” (*Id.* at 392.)

24 An EIR is an informational document and, as such, “requires full environmental disclosure.”
25 (*Cmtys. for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 88.) Although “technical
26 perfection” is not required, an EIR must be “adequate[], complete[], and a good-faith effort at full
27 disclosure,” with “informed and balanced” decision making. (Guidelines, § 15003 (i)–(j).) “[A]n
28 agency must use its best efforts to find out and disclose all that it reasonably can.” (Guidelines, §

1 15144.) Failure to comply with these information disclosure provisions “may constitute a prejudicial
2 abuse of discretion...regardless of whether a different outcome would have resulted if the public
3 agency had complied with those provisions.” (Pub. Res. Code, § 21005(a).)

4 All EIRs must include a detailed statement setting forth “[a]ll significant effects on the
5 environment of the proposed project.” (Pub. Res. Code, § 21100(b)(1) [modifications added].) An
6 EIR must also include a detailed statement of:

7 (A) Any significant effect on the environment that cannot be avoided if the project is
8 implemented. (B) Any significant effect on the environment that would be irreversible
9 if the project is implemented. (3) Mitigation measures proposed to minimize
significant effects on the environment....

10 (Pub. Res. Code § 21100, subdivisions, (b)(2)-(3).) An EIR’s analysis of significant environmental
11 impacts must identify and describe the significant direct environmental impacts that will result from
12 the project in both the short term and the long term. (14 Cal. Code Regs. §§ 15126.2(a), 15143.)

13 An EIR cannot simply label an impact “significant” without first providing a discussion and
14 analysis. Such a backward approach “allows the lead agency to travel the legally impermissible easy
15 road to CEQA compliance.” (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port*
16 *Comm’rs* (2001) 91 Cal.App.4th 1344, 1370; *see also Sierra Club v. County of Fresno* (2018) 6
17 Cal.5th 502, 519 [a “sufficient discussion of significant impacts requires not merely a determination
18 of whether an impact is significant, but some effort to explain the nature and magnitude of the
19 impact.”]; *Cleveland Nat’l Forest Found. v. San Diego Ass’n of Gov’ts* (2017) 3 Cal.5th 497, 514.)

20 The scope of impacts required to be reviewed pursuant to CEQA includes health and safety
21 impacts, including, *inter alia*, “any significant environmental effects the project might cause or risk
22 exacerbating by bringing development and people into the area affected, [including] impacts of
23 locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines,
24 wildfire risk areas).” (14 Cal. Code Regs., § 15126.2.)

25 An EIR must analyze future expansion of a project or other action if it is “a reasonably
26 foreseeable consequence of the initial project” and the future expansion or other action “will likely
27 change the scope or nature of the initial project and its environmental effects.” (*Laurel Heights*
28 *Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.) Under this test, future

1 activities must be treated as part of the project, and included in an EIR’s impact analysis if those
2 activities are a reasonably foreseeable consequence of project approval. (*See National Parks &*
3 *Conserv. Ass’n v. County of Riverside* (1996) 42 Cal.App.4th 1505; *Del Mar Terrace Conservancy,*
4 *Inc. v. City Council* (1992) 10 Cal.App.4th 712.)

5 b. Mitigation and Alternatives

6 A fundamental purpose of an EIR is to identify ways in which a proposed project’s significant
7 environmental impacts can be mitigated or avoided. (Pub. Resources Code §§
8 21002.1(a), 21081(a)(1).) To implement this statutory purpose, an EIR must describe feasible
9 mitigation measures that can minimize the project’s significant environmental effects. (Pub.
10 Resources Code §§ 21061, 21100(b)(3); 14 Cal. Code Regs. §§ 15121(a), 15126.4(a); *Environmental*
11 *Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.) Any action that
12 is designed to minimize, reduce, or avoid a significant environmental impact qualifies as a mitigation
13 measure. (14 Cal. Code Regs. § 15370.)

14 When it approves a project, the agency must adopt any feasible mitigation measures identified
15 in the EIR that would mitigate or avoid the project’s significant environmental impacts. (Pub.
16 Resources Code §§ 21002.1(b); 21081(a)(1); 14 Cal Code Regs §§ 15021(a)(2)-(3), 15091(a)(1).)
17 The requirement that EIRs identify mitigation measures implements CEQA’s policy that agencies
18 adopt feasible measures when approving a project to reduce or avoid its significant environmental
19 effects. (Pub. Resources Code §§21002, 21002.1 (b), 21081(a); see also *King & Gardiner Farms,*
20 *LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 852.)

21 Mitigation measures should be identified for each significant effect described in the EIR. An
22 EIR may include mitigation measures that will reduce but not fully mitigate an environmental
23 impact. (*County of Fresno, supra*, 6 Cal. 5th at 525; see also *King & Gardiner Farms, LLC v. County*
24 *of Kern* (2020) 45 Cal.App.5th 814, 866.) An infeasibility finding for a mitigation measure must
25 “describe the specific reasons” for the agency’s decision to reject the mitigation measure or
26 alternative. (14 Cal. Code Regs. § 15091(c).)

27 An EIR, furthermore, may not defer the formulation of mitigation measures to a future time,
28 but mitigation measures may specify performance standards that would mitigate significant effects

1 and may be accomplished in more than one specified way. “Impermissible deferral of mitigation
2 measures occurs when an EIR puts off analysis or orders a report without either setting standards or
3 demonstrating how the impact can be mitigated in the manner described in the EIR.” (*Preserve Wild*
4 *Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281.)

5 c. Agency Findings

6 An agency’s findings must be “accompanied by a brief explanation of the rationale for each
7 finding.” (14 Cal. Code Regs., § 15091(a).) This requirement applies to the findings relating to
8 mitigation of significant impacts, mitigation measures under the jurisdiction of another agency, and
9 infeasibility of mitigation measures and alternatives required under Pub. Resources Code §21081(a)
10 and 14 Cal Code Regs §15091(a). Findings cannot contain simply bare conclusions; the findings
11 must set forth the *basis* for the agency’s conclusions. (*Rio Vista Farm Bureau Ctr. v. County of*
12 *Solano* (1992) 5 Cal.App.4th 351, 373; *Sacramento Old City Ass'n v. City Council* (1991) 229
13 Cal.App.3d 1011, 1034; *Resource Defense Fund v. LAFCO* (1987) 191 Cal.App.3d 886.) Only if
14 agencies make such findings can members of the public, other agencies, and reviewing courts analyze
15 the logic of the agency’s decision. (*Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198
16 Cal.App.3d 433, 440; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134
17 Cal.App.3d 1022.)

18 d. Statement of Overriding Considerations

19 A statement of overriding considerations is required for any significant effects on the
20 environment remaining after mitigation. (14 Cal. Code Regs. § 15092(b)(2)(B).) “The purpose of
21 such a statement is to demonstrate the balance struck by the body in weighing the benefits of a
22 proposed project against its unavoidable environmental risks.”(*San Diego Citizenry Group v. County*
23 *of San Diego* (2013) 219 Cal.App.4th 1, 24 [citing *Sierra Club v. Contra Costa County* (1992) 10
24 Cal.App.4th 1212, 1222, disapproved on other grounds in *Voices of the Wetlands v. State Water*
25 *Resources Control Bd.* (2011) 52 Cal.4th 499].) A statement of overriding considerations,
26 furthermore, must be “supported by substantial evidence” in an EIR or elsewhere in the record. (*San*
27 *Diego Citizenry Group, surpa*, 219 Cal.App.4th at 24.)

1 When an EIR fails to fully evaluate the impacts of a project, it renders a statement of
2 overriding considerations based on the EIR inadequate. (*San Franciscans for Reasonable Growth v.*
3 *City & County of San Francisco* (1984) 151 Cal.App.3d 61, 80 [analyzing the sufficiency of the
4 statement of overriding considerations and holding “the understatement of cumulative impacts
5 skewed the Commission’s perspective concerning the benefits of the particular projects...The
6 inadequate cumulative analysis prevented the Commission from gaining a true perspective on the
7 consequences of approving these projects.”])

8 A finding that a project’s benefits override its significant environmental impacts is not a
9 substitute for findings rejecting mitigation measures or alternatives as infeasible. (14 Cal. Code Regs.,
10 § 15091(f); *see Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d
11 1022, 1034.) A statement of overriding considerations *supplements* those findings by explaining the
12 agency’s reasons for deciding to proceed with the project despite significant impacts. (*California*
13 *Native Plant Soc’y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 983; *Federation of Hillside &*
14 *Canyon Ass’ns v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1201.)

15 e. Standard of Review

16 Under CEQA, courts must determine whether the agency prejudicially abused its discretion
17 by either: (1) failing to proceed in the manner required by law, or (2) reaching a decision or
18 determination that is not supported by substantial evidence. (*Laurel Heights Improvement Ass’n. v.*
19 *Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) When reviewing an agency’s compliance with
20 CEQA, a court “must adjust its scrutiny to the nature of the alleged defect, depending on whether the
21 claim is predominantly one of improper procedure or a dispute over the facts.” (*Vineyard Area*
22 *Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.)

23 If an EIR fails to address an issue or omits essential information, courts employ de novo
24 review to determine whether the agency violated the statute’s disclosure requirements. (*Banning*
25 *Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 935.) Similarly, the sufficiency
26 of an EIR’s discussion of environmental impacts is reviewed de novo. (*Sierra Club v. Cty. of Fresno*
27 (2018) 6 Cal. 5th 502, 512-16.)

28 [W]hether a description of an environmental impact is insufficient because it lacks
analysis or omits the magnitude of the impact is not a substantial evidence question.

1 A conclusory discussion of an environmental impact that an EIR deems significant can
2 be determined by a court to be inadequate as an informational document without
reference to substantial evidence.

3 (*Id.* at 514.) “The ultimate inquiry...is whether the EIR includes enough detail ‘to enable those who
4 did not participate in its preparation to understand and to consider meaningfully the issues raised by
5 the proposed project.’ [citations omitted]...The inquiry presents a mixed question of law and fact. As
6 such, it is generally subject to independent review.” (*Id.* at 516.) The de novo standard of review,
7 moreover, applies both to claims an EIR completely omits required analysis and claims that the
8 analysis of an EIR is insufficient; in both instances “the reviewing court must decide whether the EIR
9 serves its purpose as an informational document.” (*Id.* at 515-16.)

10 To determine when an EIR must analyze an environmental issue, courts apply the “fair
11 argument” test: an EIR must analyze every issue for which the record provides a “fair argument” of
12 significant impact. (*Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1, 13; *Protect the*
13 *Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

14 By contrast, courts use the “substantial evidence” test to review an agency’s “substantive
15 factual conclusions.” (*Vineyard, supra*, 40 Cal.4th at 435.) But “the existence of substantial evidence
16 supporting the agency’s ultimate decision...is not relevant when one is assessing a violation of
17 [CEQA’s] information disclosure provisions.” (*Cmtys. for a Better Env't v. City of Richmond* (2010)
18 184 Cal.App.4th 70, 82.) While substantial evidence review involves deference to the lead agency’s
19 role as fact-finder, such deference does not mean abdication of vigorous judicial review. (*Laurel*
20 *Heights, supra*, 47 Cal.3d at 409 [“We do not suggest that a court must uncritically rely on every
21 study or analysis presented by a project proponent in support of its position...”].)

22 **IV. ARGUMENT**

23 a. The EIR fails to evaluate impacts of increased population in the DPP on evacuation or
24 emergency response.

25 i. *Impact WFR-1 completely ignores build out of the DPP*

26 As detailed above, and assuming maximum allowable build out, the DPP will result in a
27 maximum of 1,618 additional dwelling units and an estimated maximum population increase of 4,530
28 within the downtown area. (AR000207; AR000203-205.) The impacts of that development must be

1 assessed. (*Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 396; *Visalia Retail, LP*, *surpa*, 20
2 Cal.App.5th at 13; *Protect the Historic Amador Waterways*, *surpa*, 116 Cal.App.4th at 1109.) The
3 future development facilitated by the DPP is reasonably foreseeable and gives rise to a fair argument
4 that adding thousands of new residents to downtown Orinda will have significant effects upon
5 evacuation and emergency response during a wildfire. Of the 76 sites identified in the DPP, the DEIR
6 identifies at least 17 that are located directly adjacent to a Very High Fire Hazard Severity Zone,
7 northwest of SR 24, between Camino Pablo and Orinda Way. (AR000496; AR000499.) Elsewhere,
8 the DEIR states that these DPP sites may actually “overlap” with the very high Fire Hazard Severity
9 Zone. (AR000513.) The remaining DPP Sites are located, at most, only 2,400 feet from the very high
10 Fire Hazard Severity Zone. (AR000496; AR000499.) The DEIR further states that “Orinda’s main
11 transportation routes are close to all DPP sites and would be relied on as evacuation routes during a
12 wildfire evacuation.” (AR000509.)

13 Yet, the DEIR fails to analyze or disclose exactly *how* buildout of the DPP would impact
14 wildfire evacuation by current or future residents. The total failure to analyze the potential impacts to
15 wildfire evacuation and emergency response resulting from development and increased population in
16 the DPP also makes it impossible to meaningfully evaluate potential mitigation measures or
17 alternatives, since the specific conditions to mitigate or avoid have not even been identified with any
18 precision.

19 In its discussion of wildfire impacts to emergency response and evacuation, at Impact WFR-
20 1, the DEIR *only* describes the following significant impact: “Development facilitated by the project
21 could further inhibit safe evacuation by introducing more residents to the area that would require
22 evacuation on narrow hillside roadways. As such, impacts related to emergency response plan or
23 emergency evacuation plan would be significant.” (AR000510.) This does *not* include the DPP, which
24 is *not* “on narrow hillside roadways,” but rather, is located on “flat, mostly developed terrain....”
25 (AR000496.) Among the sites for Project development, HE-5 is the only proposed site located “either
26 on sloped hillsides or near to sloped hillsides.” (*Id.*) The impact identified by the DEIR – specifically,
27 the inhibition of safe evacuation by introducing more residents to the area that would require
28 evacuation on narrow hillside roads – is, therefore, applicable only to HE-5. The EIR provides *no*

1 *discussion or analysis* regarding the potential wildfire emergency response, nor evacuation impacts,
2 resulting from the dramatic increase in population *in the DPP* or elsewhere.

3 At best, in what the EIR labels impact “WRF-2” – discussing the potential risk that
4 “development facilitated by the Project would expose project occupants and structures to wildfire
5 risks” – the Respondent states in relevant part:

6 Goals and policies in the updated Safety Element would mitigate the risk of loss of
7 life, injury, and property loss from wildfires. Policies S-24 through S-38 would
8 maintain MOFD fire protection standards...and emergency services, and maintaining
evacuation routes in the event of an emergency.

9 (AR000513.) Yet, the EIR does not identify what evacuation routes will be maintained, or how they
10 will be maintained and to what standards. (*Id.*) This statement, moreover, is part of the EIR’s
11 description of the potential impacts; the measures noted are not incorporated into the mitigation
12 measures developed for WFR-2. (AR000513-514.) Finally, and most critically, this portion of the
13 EIR continues to fail to analyze or discuss the nature and magnitude of the wildfire emergency
14 response and evacuation impacts of the Project due to new development in the DPP. (AR000512-
15 513.)

16 After the DEIR was circulated for public review and comment, and as part of its revisions to
17 the Safety Element, Respondent completed an “Evacuation Analysis” in January 2023 (hereafter, the
18 “Evacuation Analysis”) In response to one public comment regarding wildfire risk mitigation and
19 evacuation safety, the FEIR responds in relevant part:

20 Since the Draft EIR was circulated for public review, the City has prepared an
21 evacuation analysis looking at evacuation constraints for existing and potential new
22 development within the City. This analysis supports the Draft EIR’s conclusion that
23 the existing conditions are already constrained when it comes to evacuation and that
new development anticipated by the Housing Element could exacerbate those
impacts....

24 (AR000889.)

25 The Evacuation Analysis fails, however, to disclose or evaluate evacuation constraints caused
26 by new development facilitated by Plan Orinda. Instead, it only assesses potential evacuation times
27 for current population and development levels, rather than looking at the impacts of the full potential
28 buildout of Plan Orinda. To assess evacuation constraints and evacuation times during a community-

1 wide evacuation, the Evacuation Analysis utilizes *current* Contra Costa County tax assessor data to
2 estimate the number of individuals (and automobiles) that would need to evacuate. (AR016890.) That
3 Contra Costa County tax assessor data does not provide data on *future* development accommodated
4 in the HE or DPP resulting from Plan Orinda; the Evacuation Analysis, therefore, does not estimate
5 the effect of future development in those areas on the number of individuals / automobiles that will
6 evacuate during a wildfire and the resulting impairment to emergency response and evacuation
7 capacity.

8 Regarding the DPP, the Evacuation Analysis states “[m]ost non-residential land uses in
9 Orinda, like offices and commercial areas, are concentrated in Downtown Orinda near the on-ramps
10 to SR-24 and around BART. These areas are the least constrained given their proximity to high-
11 capacity routes out of Orinda.” (AR016889.) Here, the Evacuation Analysis assumes existing baseline
12 conditions in the DPP, characterized by non-residential land uses. (See AR000203-205 [all but two
13 of the 84 DPP sites listed are *currently* zoned for either commercial or office uses only].) It does not
14 evaluate effects on evacuation constraints after the reasonably foreseeable development, and
15 accompanying population growth, facilitated by Plan Orinda. Instead, the Evacuation Analysis simply
16 ignores the thousands of additional residents and commercial development that will be located within
17 the DPP and HE. As discussed both previously and in greater detail below, the DPP developments
18 are located directly at and around access points to the critical evacuation route of SR 24.

19 In addition to failing to consider and analyze the effects of increased population within the
20 DPP resulting from the Project, the Evacuation Analysis’ discussion of the congestion impacts under
21 current conditions is flawed. Here, the Evacuation Analysis states that DPP areas are “least
22 constrained” due to their proximity to SR 24 and BART. This statement, however, is contradicted by
23 the Evacuation Analysis’ own conclusions. Specifically, the two intersections that the Evacuation
24 Analysis identifies as “the *most constrained* intersections” are located *within the DPP*. (AR016902.)¹

25
26 _____
27 ¹ Specifically, the Evacuation Analysis identifies the following intersections: “Camino Pablo
28 southbound / Santa Maria Way westbound and the SR-24 westbound on-ramps” and “the Camino
Pablo and Brookwood Road intersection, just before the right-turn cloverleaf on-ramps to SR-24
westbound from Camino Pablo Northbound.” (AR016902.)

1 What’s more, these “most constrained” identified by the Evacuation Analysis, and located within the
2 DPP, are used to access the “critical evacuation” route of SR 24. (AR016902, AR16899-16901.) The
3 Evacuation Analysis, therefore, concludes that under current conditions the DPP areas are
4 simultaneously the least *and* most constrained during an evacuation.

5 On September 26, 2022, a public comment to the DEIR outlined additional concerns regarding
6 the increased allowable density in the DPP of 85 du/ac, stating “at 85 du/ac with no or limited on-site
7 parking, the crush of parked vehicles for a high-rise building here, will affect Level of Service at this
8 freeway on-ramp and wildfire escape routes.” (AR000854.) In response, the City stated:

9 [A]s discussed in Section 4.14, Wildfire, high density development in the DPP Area
10 would be served by existing main transportation routes such as SR 24, Camino Pablo,
11 and Moraga Way. Thus, the sites would be accessed by pre-existing roadways and
12 development facilitated by the project would not impair the use of fire evacuation
routes through the modification of existing roadways, either through elimination,
reduction in width, or blockage of the roadways.

13 (AR000855.) The City’s response ignores the potentially significant impact raised by the commenter,
14 and instead focuses only on whether the development facilitated by the project would physically
15 modify the existing roadways. Nor does the response analyze or address possible congestion impacts
16 along the existing main transportation routes resulting from adding over 6,700 additional residents
17 (and their vehicles) to the DPP and Housing Element Sites, over 4,500 of which would be located in
18 the DPP area.

19 The City also responds that:

20 As discussed on Page 4.11-25 of the Draft EIR, “Additional vehicles associated with
21 new development sites could increase delays for emergency response vehicles during
22 peak commute hours. However, emergency responders maintain response plans which
23 include use of alternate routes, sirens, and other methods to bypass congestion and
24 minimize response times. In addition, California law requires drivers to yield the right-
25 of-way to emergency vehicles and remain stopped until the emergency vehicle passes
to ensure the safe and timely passage of emergency vehicles.” Furthermore, on-street
parking would be prohibited in areas where the provision of such would impede the
movement and flow of emergency vehicles. Therefore, impacts related to emergency
access would be less than significant.”

26 (*Id.*) The response here, as well as the analysis referenced by the City on “Page 4.11-25 of the Draft
27 EIR” addresses only impacts to emergency response, and does not address adverse effects to fire
28

1 *evacuation* resulting from higher population density in the DPP and Housing Element Project areas.
2 (AR000463.) That analysis, moreover, is not specific to the DPP area; nor does it identify the
3 “alternate routes” that could be used for emergency response vehicles, let alone for evacuation. In
4 fact, the EIR itself identifies only one “principal arterial” connecting the Village and Theater Districts
5 of the DPP and which also leads into and out of the DPP area, namely Camino Pablo / Moraga Way.
6 (AR000440.)

7 Since no revisions were made to the EIR to address these concerns, public comment again
8 raised these issues to the City Council, on January 30, 2023, before the public hearing approving the
9 Project:

10 It is obvious that because the downtown is already a major choke point for evacuation
11 from both north and south sides of the community, the addition of a significant number
12 of residents and their cars to the downtown would only exacerbate the existing
13 emergency evacuation problem....

14 Any major additions to housing or traffic must address the problem of emergency
15 evacuation fully and at the very least include a sincere effort to find alternatives to
16 exacerbating the problem rather than simply accepting the situation as the price of
17 progress....

18 (AR049305-049306.) The City approved the Project without revision.

19 The Court of Appeal’s decision in *League to Save Lake Tahoe v. County of Placer* (2022) 75
20 Cal.App.5th 63, illustrates how Respondent should have proceeded. There, petitioner challenged an
21 EIR which evaluated the impacts of a “land use specific plan and rezoning to permit residential and
22 commercial development and preserve forest land near Truckee and Lake Tahoe.” (*Id.* at 76.)
23 Previously zoned only for timber production, the new plan would rezone portions of the relevant area
24 for development of “up to 760 residential units and 6.6 acres of commercial use....” (*Id.* at 78.)

25 Regarding potential impacts of the project to wildfire evacuation and emergency response,
26 Placer County used the same significance threshold as Respondent here, located at Appendix G of the
27 CEQA Guidelines. (*Id.* at 133.) Placer County conducted an evacuation analysis that “modeled how
28 long it would take for the...development to evacuate in the event of a wildfire...Conservatively
assuming that all of the project’s residences would be occupied and evacuated (935 vehicles)”
(*Id.* at 135 [emphasis added].) Placer County then determined that the increased population

1 evacuating from the new development would not have a significant impact on emergency response
2 or evacuation; the court agreed. (*Id.* at 137.)

3 Like Placer County, the City of Orinda was required to have estimated the additional number
4 of residents that would be added to the area as a result of the Project, and to have evaluated the
5 resulting impact on emergency response and evacuation by both current and future residents during a
6 wildfire. (*Id.* at 135.) Instead, Orinda’s evacuation analysis simply constitutes a baseline study into
7 what *current* evacuation times would be in an emergency *prior* to the Project’s implementation.

8 To the extent that Respondent argues that the EIR does in fact evaluate wildfire evacuation
9 and emergency response impacts resulting from the Project, the analysis is deficient. In *Sierra Club*
10 *v. County of Fresno* (2018) 6 Cal.5th 502, the petitioners challenged an environmental impact report
11 “issued as part of a master plan to develop a partial retirement community....” (*Id.* at 508.) There, the
12 EIR concluded that air quality impacts resulting from the project were significant and unavoidable.
13 (*Id.* at 517.) As part of its analysis, the EIR quantified the volume of specific pollutants that would
14 likely be generated by the project, and then described generally the adverse health effects of those
15 pollutants. (*Id.* at 517.) “The discussion of the adverse health effects, however, was not connected to
16 the levels of the pollutant that would be emitted by the completed project.” (*Id.* at 517, 519.) The
17 Court in *County of Fresno* held that the EIR’s here analysis was inadequate:

18 [T]he EIR[.]...is inadequate as an informational document...The EIR’s discussion of
19 health impacts of the named pollutants provides only a general description of
20 symptoms that are associated with exposure to the [pollutants]...The disclosures of
21 the health effects...fail to indicate the concentrations at which such pollutants would
22 trigger the identified symptoms...“[a]fter reading the EIR’s, the public would have no
23 idea of the health consequences that result when more pollutants are added to a
nonattainment basin.”...[A] sufficient discussion of significant impacts requires not
merely a determination of whether an impact is significant, but some effort to explain
the nature and magnitude of the impact.

24 (*Id.* at 519 [quoting *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
25 Cal.App.4th 1184, 1220 [modifications added].)

26 The EIR prepared by Respondent suffers from the same flaws. While it both quantifies
27 potential population increase in the DPP, and very generally describes evacuation and emergency
28 response impacts, the EIR nowhere ties specific evacuation or emergency response impacts to

1 increased population in the DPP (or any non HE-5 areas) facilitated by the Project. Thus, there is no
2 way for the public to determine from the EIR how, where, or to what extent, development facilitated
3 by the Project in any area outside of HE-5, and especially within the DPP, will adversely impact
4 evacuation or emergency response. The EIR therefore fails as an informational document to enable
5 the public and decision makers “to understand and meaningfully consider” the impacts of the Project
6 on emergency response and evacuation. (*County of Fresno, supra*, 6 Cal.5th at 515-16.)

7 In short, the EIR’s analysis of impacts of wildfire on emergency response and evacuation at
8 WFR-1 completely ignores the future impacts of increased development and population in the DPP
9 (or anywhere outside of HE-5.) The express purpose of the Project is to facilitate and encourage
10 increased residential development in the DPP and elsewhere. The development, therefore, is a
11 foreseeable consequence of the Project. There is manifestly a “fair argument” that the addition of
12 thousands of residents to the DPP may have significant adverse impacts to emergency response and
13 evacuation in the event of a wildfire. Respondent’s failure to analyze these effects, therefore, violates
14 CEQA. (*Laurel Heights Improvement Assn., supra*, 47 Cal.3d at 396; *Visalia Retail, LP, supra*, 20
15 Cal.App.5th at 13; *Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at 1109.) To the
16 extent that the EIR does admit that wildfire evacuation and emergency response are significantly
17 impacted by the Project, the analysis is woefully inadequate and fails to inform the public regarding
18 the nature and magnitude of those effects. The EIR therefore fails as an informational document and
19 violates CEQA. (*County of Fresno, supra*, 6 Cal. 5th at 514-16.)

20 b. The EIR fails to articulate how the significance threshold for Impact WFR-1 was crossed.

21 As noted above, the significance threshold set by the EIR for Impact WFR-1 asks: “if located
22 in or near state responsibility areas or lands classified as very high hazard severity zones, would the
23 project substantially impair an adopted emergency response plan or emergency evacuation plan?”
24 (AR000509.) Though finding that the impacts described in Impact WFR-1 are significant and
25 unavoidable, the EIR does not articulate nor explain how, or to what extent, any portion of “the Project
26 will substantially impair an adopted emergency response plan or emergency evacuation plan” to
27 meaningfully understand how the significance threshold for Impact WFR-1 is met or surpassed. Nor
28

1 does the EIR even identify any specific “emergency response plan or emergency evacuation plan”
2 against which the effects of the Project will be evaluated.

3 Without knowing when or how the significance threshold is crossed, and to the extent that the
4 EIR fails to evaluate, as discussed further below, measures to mitigate wildfire evacuation impacts
5 resulting from the Project, the EIR fails to articulate or explain how the significant effects identified
6 in Impact WFR-1 are unavoidable. The EIR simply claims the “impact would be significant and
7 unavoidable.” (AR000509.) This bald assertion regarding significance, without further support,
8 violates CEQA. ((*Berkeley Keep Jets Over the Bay Comm.*, *supra*, 91 Cal.App.4th at 1370; *See*
9 *also Cleveland Nat’l Forest Found.*, *supra*, 3 Cal.5th at 514 [“an EIR’s designation of a particular
10 adverse environmental effect as ‘significant’ does not excuse the EIR’s failure to reasonably describe
11 the nature and magnitude of the adverse effect.”]))

12 Illustrative here is *Save North Petaluma River & Wetlands v. City of Petaluma* (2022) 86
13 Cal.App.5th 207. There, while evaluating the possible fire or flood impacts associated with a project
14 adopted by the City of Petaluma, the city used the same significance threshold found at Appendix G
15 of the CEQA guidelines used by Respondent here. (*Id.* at 226-227 [asking if the Project
16 would...‘[i]mpair implementation of or physically interfere with an adopted emergency response
17 plan or emergency evacuation plan.’”]) The court concluded that the EIR’s analysis of the emergency
18 response and/or evacuation impacts was sufficient, because it:

19 *identified the relevant provisions in the City’s emergency response plan and took into*
20 *account specific information about the Project site and the actual threat of flood or fire*
21 *at the site...This was sufficient to demonstrate the analytic route from specific*
underlying evidence to the ultimate conclusion.

22 (*Id.* at 230 [citing *Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d 376, 404] [emphasis added].)

23 By contrast, Respondent here nowhere identifies what emergency response or evacuation plans are at
24 issue, let alone describes how specific portions of those plans will be impaired by the Project. Unlike
25 the City of Petaluma, then, Respondent has failed to “demonstrate the analytic route from specific
26 underlying evidence to the ultimate conclusion” in violation of CEQA (*Id.*)

1 c. The EIR’s mitigation measures are flawed

2 The EIR prescribes a single mitigation measure to address impacts identified in Impact WFR-
3 1 (hereafter referred to as “WFR-1 Mitigation Measure”). (AR000510.) WFR-1 Mitigation Measure
4 prescribes guidelines for future development and is limited expressly to the HE-4 and HE-5 Sites.
5 WFR-1 Mitigation Measure states in full:

6 The City shall require the following measures prior to approval of projects on Housing
7 Element Sites HE-4 and HE-5

8 1. A Wildfire Hazard Assessment and Plan shall be developed for the project site.

9 2. Shelter-in-place design guidelines shall be required for project site development.
Guidelines include the following:

- 10 • Well-maintained, fire district approved landscape and vegetation
11 management plan.
12 • Adequate roadway and driveway widths, designed to accommodate two-way
13 traffic and large firefighting apparatus.
14 • Adequate water supply and water flow for firefighting efforts.
15 • Vegetation modification zones surrounding the community.
16 • Homes in the community are built with heavy timber, ignition-resistant
eaves, residential fire sprinklers, a Class A ignition-resistant roof, dual pane
17 (one being tempered) glass windows, and chimneys with spark arrestors
containing a minimum of 0.5-inch screen.

18 3. Wildfire Hazard Assessment and Plan and site design applying shelter-in-place
19 guidelines must be approved by MOFD [Moraga Orinda Fire District]

20 (AR000510-511 [modifications added].)

21 i. *The EIR fails to develop mitigation measures addressing the effects of increased
22 population in the DPP on wildfire evacuation and emergency response*

23 Mitigation Measure WFR-1 is limited by its own terms to future development of HE-4 and
24 HE-5, and only prescribes guidelines and standards for *within* the development of the HE-4 and HE-
25 5 themselves. It does not address or ameliorate impacts to evacuation or emergency response via any
26 existing roads, including the “critical” evacuation route of SR 24 (AR000509) or the “principal
27 arterial” (AR000440) of Camino Pablo / Moraga Way.

28 The EIR, therefore, fails to propose or evaluate *any* mitigation, whatsoever, to address
evacuation and emergency response impacts resulting from the intended population increase within
the DPP, or other than HE-4 and HE-5. This failure is especially pronounced because the Evacuation

1 Analysis prepared by Respondent (notwithstanding that it fails to consider the population increase
2 and development caused by the Project) provides a range of possible measures to ameliorate
3 congestion during an evacuation, such as: contra-flow lanes in designated areas during an evacuation,
4 a signal timing plan for specific intersections, and capital improvements at the SR-24 on ramps from
5 Camino Pablo. (AR016911-016915.) The EIR fails to analyze, much less adopt, any of these
6 recommendations, which are otherwise unenforceable. Indeed, nowhere in the record does
7 Respondent develop, describe, or adopt measures to avoid or minimize wildfire evacuation and
8 emergency response impacts resulting from the Project for any areas other than HE-4 of HE-5,
9 including in the DPP, in violation of CEQA. (14 Cal. Code Regs. § 15021.)

10 ii. *The EIR impermissibly defers mitigation measures for Impact WFR-1*

11 Subsections 1 and 3 of WFR-1 Mitigation Measure impermissibly defer mitigation. Those
12 subsections require that a “Wildfire Hazard Assessment and Plan” be developed at some point in the
13 future for project sites at HE-4 and HE-5, and also that MOFD approve “site design applying shelter-
14 in-place guidelines.” (AR000510.) The WFR-1 Mitigation Measure does not prescribe any specific
15 content or requirements for either Wildfire Hazard Assessment and Plan or site design applying
16 shelter-in-place guidelines. To the extent that they are not required now, and where there are no
17 specified requirements for either document / analyses, the EIR impermissibly defers the formulation
18 of the WFR-1 Mitigation Measure until a later time, in violation of CEQA. (*Preserve Wild Santee*,
19 *surpa*, 210 Cal.App.4th at 280-281.)

20 d. The Statement of Overriding Considerations is flawed

21 Respondent’s Statement of Overriding Considerations is flawed because the EIR did not
22 analyze or consider the full effects of the Project, nor adequately consider mitigation measures or
23 alternatives. As noted above, the EIR completely ignores the potential adverse effects of population
24 increase in the DPP on emergency evacuation and response. (*See* section IV.a, *supra*.) Similarly, the
25 EIR fails to evaluate or discuss measures to mitigate the impacts resulting from the build out of the
26 DPP; this includes any discussion about why any such measures are not feasible. (*See* section IV.c,
27 *supra*.)

1 In *San Franciscans for Reasonable Growth, supra*, 151 Cal.App.3d 61, the court found that
2 respondent failed to adequately evaluate reasonably foreseeable high-rise development as part of its
3 cumulative impact analysis in an EIR prepared as part of the approval process for proposed
4 development. (*Id.* at 72-79.) As a result, the EIR’s evaluation of the impacts of the project was
5 deficient, thereby rendering the statement of overriding considerations inadequate:

6 [T]he understatement of cumulative impacts skewed the Commission’s perspective
7 concerning the benefits of the particular projects...[H]ad the analyses presented a true
8 picture of the impacts...the Commission might well have found that what they thought
9 were “benefits” did not so much override unmitigated environmental impacts as
actually cause them. The inadequate cumulative analysis prevented the Commission
from gaining a true perspective on the consequences of approving these projects.

10 (*Id.* at 79-80 [modifications added].) The same is true here. Because the EIR failed to fully and
11 adequately evaluate or discuss the impacts of the Project in the first instance, and particularly in light
12 of its failure to analyze the impacts to wildfire evacuation and emergency response resulting from
13 development within the DPP, the Statement of Overriding Considerations did not, and indeed could
14 not, compare the true impacts of the Project to any purported benefits. As a result, the conclusions of
15 the Statement of Overriding Considerations are not supported by substantial evidence as required.
16 (*San Diego Citizenry Group, supra*, 219 Cal.App.4th at 24.)

17 Moreover, and even assuming the EIR’s impact analysis underlying the Statement of
18 Overriding Considerations is otherwise complete, the Statement itself merely enumerates a list of
19 purported benefits, but provides no discussion of how those outweigh the costs of significant adverse
20 effects to wildfire evacuation and emergency response, which effects translate to a significant increase
21 to the risk of loss of human life, as a result of the Project. In other words, the Statement of Overriding
22 Considerations eschews any discussion of actual impacts of the Project, lists only the Project benefits,
23 and ultimately states in conclusory terms that the benefits outweigh the admittedly significant effects
24 to wildfire evacuation and emergency response. The Statement fails to provide any understanding of
25 how the Project’s costs and benefits are weighed in the balance.

1 e. Vehicle Miles Traveled (VMT)

2 In its discussion of Impacts AQ-1 and TRA-2, relating to greenhouse gas / air quality impacts
3 and travel impacts, respectively, the EIR underestimates, and therefore fails to fully disclose or
4 analyze, VMT generated by the Project.

5 A public comment submitted in response to the DEIR notes that the DEIR:

6 fails to correctly analyze the VMT in connection with the DPP. Specifically, it
7 impliedly assumes no change in the number and location of the existing service
8 businesses...In fact, the DPP will cause major change in these, because the DPP
9 contemplates the demolition of the buildings containing these businesses. The
10 demolition of the buildings containing these businesses will increase VMT....

11 (AR000865-866.) In response to the comment a referenced above, Respondent states:

12 For purposes of the VMT analysis it was assumed that there would be no demolition
13 or displacement of commercial businesses in the DPP. Furthermore, because the
14 project does not include demolition or displacement of these businesses, it was
15 assumed that there would be no substantial change to the availability of food and
16 services in the DPP.

17 (AR000887.) The assumption that there would be no demolition or displacement of commercial
18 businesses in the DPP, however, is belied by the record, which contemplates significant demolition
19 and/or displacement of existing commercial businesses within the DPP as set forth below.

20 In analyzing the potential hazardous materials release impacts from the Project, the DEIR
21 expressly contemplates the demolition of commercial business in the DPP, including gas stations.
22 “Demolition of existing buildings, particularly on or near DPP Housing Element Sites DPP-35, DPP-
23 37, and DPP-40, and grading and excavation activities associated with new construction within the
24 Plan Area may result in emissions and transport of hazardous materials.” (AR000373.) DPP-35, DPP-
25 37, and DPP-40 are each gas stations. (AR000359.) Here, Respondent’s assumption that there would
26 be no demolition or displacement of commercial businesses in the DPP (AR000887) is directly
27 contradicted by the record.

28 The 2023-2030 Housing Element, furthermore, states that “[t]he DPP is made up of several
different sites that are prime for redevelopment. Based on the nature of the location it is assumed that
some sites will demolish the existing use, and some will redevelop with the current use on the site.”
(AR012530.)

1 Because the EIR ignores demolition contemplated by the Project when estimating VMT
2 impacts, the EIR’s analysis of VMT generated by the Project is necessarily an underestimate. For this
3 reason, the EIR fails to adequately disclose or analyze VMT generated by the Project and
4 corresponding effects to travel and greenhouse gas emissions / air quality. For the same reasons, the
5 EIR’s conclusions regarding VMT effects caused by the Project is not supported by substantial
6 evidence, and therefore violates CEQA. (*Laurel Heights, supra*, 47 Cal.3d at 392; *Vineyard, supra*,
7 40 Cal.4th at 435.)

8 **V. CONCLUSION**

9 For the reasons stated herein, Respondent’s EIR supporting the January 31, 2023 adoption of
10 the Project fails to meet the requirements of CEQA. Petitioner, therefore, respectfully requests the
11 Court order Respondent to vacate the Project approval, and vacate and enjoin all approvals made in
12 furtherance of the Project, unless and until brought into compliance with CEQA.

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14 DATED: November 6, 2023

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