



2019 Update to the CEQA Deskbook, 3rd edition

Antero Rivasplata, AICP

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Includes new statutes and case law for 2018.

CEQA Deskbook, 3rd edition

by Ronald E. Bass, Kenneth M. Bogdan and Antero A. Rivasplata

Published by Solano Press Books, 2012

ISBN 978-0-923956-48-6

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Preliminary Note:

The Natural Resources Agency adopted a broad set of amendments to the CEQA Guidelines in early 2019. The text of the amendments is available online from the Agency at <http://resources.ca.gov/ceqa/>. Because the CEQA Guidelines amendments are so extensive, they are not all represented in this update. The amendments are based on changes in CEQA statute, and on case law prior to 2017. They are, for the most part, not substantially different from the interpretations found in the *CEQA Deskbook, 3rd Edition* and its annual updates. The exception, of course, is the new VMT transportation impact metric. In the interest of practicality, we have not attempted to include all of the amendments in this 2019 Update. They will be reflected in a new, comprehensively updated version of the CEQA Deskbook expected to be available at the end of 2019.

Note on the Vehicle Miles Travelled Metric

The 2019 amendments included substituting vehicle miles travelled (VMT) for level of service (LOS) as the metric for determining the significance of impacts on transportation. The Governor's Office of Planning and Research has published a *Technical Advisory on Evaluating Transportation Impacts In CEQA* to help agencies transition to evaluating projects on the basis of VMT. It is available, with other technical advisories, at www.opr.ca.gov. All references in the *CEQA Deskbook* to level of service (LOS) or traffic congestion as an environmental impact metric are obsolete. A significant increase in LOS or in traffic congestion is no longer considered to be environmental impact. (CEQA Guidelines Section 15064.3). Section 15064.3(b) describes the criteria by which transportation impacts are to be analyzed, as follows:

(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.

2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project’s vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project’s vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project’s vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

Agencies have until July 1, 2020 to implement this new transportation metric.

2019 Revisions to the CEQA Deskbook

Revise the first two paragraphs of Ministerial Projects on page 37, as follows:

Ministerial Projects. The exemption from CEQA review for ministerial projects is the most widely used statutory exemption. “Ministerial” describes a decision applying fixed, objective standards with little or no judgment required as to the wisdom or manner of carrying out the project (Pub. Res. Code § 21080(b)(1); Guidelines §§ 15268, 15369). Basically, an action is considered ministerial where an agency must issue the authorization if the proponent has met all the specified conditions of the action, regardless of environmental considerations and the agency does not have the “the ability to mitigate potential environmental impacts to any meaningful degree” (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11).

A “discretionary project,” on the other hand, requires the exercise of judgment or deliberation when a project decision is made (Guidelines § 15357). The public agency must determine whether the project will conform to applicable statutes, ordinances, regulations, or other fixed standards. Section 15357 notes that “[t]he key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.” If a project contains both ministerial and discretionary elements, it is not exempt (Guidelines § 15268(d)). Examples of ministerial projects include final subdivision map approvals and most building permits.

Insert the following in Figure 2-2 Statutory Exemptions under “Housing-Related Projects” on page 42:

Type of Action	Exempt Activities	Statutory Provision
Housing-Related Projects	Multi-family or multi-family mixed-use residential infill projects of at least 6 dwellings in unincorporated areas	Pub. Res. Code §21159.25
	Aesthetic effects of refurbishment, conversion, repurposing, or	Pub. Res. Code §21081.3

	replacement of an existing building that is abandoned, dilapidated, or has been vacant for more than 1 year (other limitations apply)	
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Revise the discussion of PSA and CEQA Time Limits Initiated by Completion of the Application on page 54, as follows:

PSA and CEQA Time Limits Initiated by Completion of the Application. CEQA, in coordination with the PSA, contains strict time limits that a lead agency is required to, but does not always, follow. Once an application is deemed complete, a lead agency must determine if the activity is subject to CEQA before conducting an initial study (Guidelines § 15060) (see Chapter 3 for discussion of Initial Studies). The lead agency must decide whether to prepare an EIR or a negative declaration within thirty days, complete a negative declaration within 180 days, and complete an EIR within one year (Guidelines §§ 15102, 15107, 15108). The lead agency can adopt procedures providing a one-time extension of the 180-day time limit, not to exceed 90 days, upon consent of the applicant. An applicant’s unreasonable delay in providing information will, however, suspend these time limits (Guidelines § 15109) (see Figure 2-5, page 56).

Modify the last paragraph on page 65 as follows:

In addition, the Guidelines specify that a project with an effect that may cause a substantial adverse change in the significance of an historical resource will have a significant effect on the environment (Guidelines § 15064.5). There may be additional impacts associated with an adverse change in a historical resource. The court in *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129 held that a project’s adverse aesthetic effect on the city’s historic overlay district could be a significant impact. This was because height, density, massing, and architectural style, all of which are aspects of the project’s consistency with the historic district, are also aesthetic considerations.

Insert the following at the end of Process for Preparation of the Initial Study on page 60:

CEQA Guidelines Section 15063(a)(4) provides that the lead agency may prepare the initial study itself, contract for the preparation of any or all of the initial study, or allow the applicant to submit an administrative draft of the initial study. In any case, the initial study that is sent out for review must reflect the independent judgment of the lead agency. Remember, the lead agency is responsible for the adequacy of the initial study.

Revise the second bullet under Thresholds May Be Based on a Variety of Factors in the sidebar on page 60, as follows:

- Public service capacity standards, such as water supply capacity

Revise the second and third paragraphs under Thresholds of Significance on page 69, as follows:

Thresholds of significance to be adopted for general use must be developed through a public review process with advance public notice. Thresholds of general applicability are to be formally adopted by ordinance, resolution, rule, or regulation. Agencies should not adopt “advisory” thresholds of general applicability without having their decisionmakers formally adopt them. (*Golden Door Properties v. County of San Diego* (2018) 27 Cal.App.5th 892 [advisory greenhouse gas threshold not adopted through

public review process was invalid]) Thresholds must be supported by substantial evidence and the lead agency should briefly explain how compliance with the threshold means that the project's impact is less than significant (Guidelines § 15064 and 15064.7).

Ad hoc thresholds developed for a particular project are not required to be adopted by ordinance or other formal means (see for example, *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal. App. 4th 884). Thresholds that are developed on a case-by-case basis nonetheless must be supported by substantial evidence and the lead agency should briefly explain how compliance with the threshold means that the project's impact is less than significant.

Insert the following after the first paragraph under Relationship to Adopted Regulatory Standards on page 69:

CEQA Guidelines Section 15064.7(d) authorizes using "environmental standards" as thresholds. It advises that when adopting or using an environmental standard, the lead agency "shall explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of the project under consideration."

Insert the following at the end of the discussion of Relationship to Adopted Regulatory Standards on page 70:

See CEQA Guidelines Section 15064.7 Thresholds of Significance for a discussion of using "environmental standards" as thresholds of significance. Subsection (d) defines an environmental standard as:

... a rule of general application adopted by a public agency through a public review process and that is all of the following:

- (1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, plan or other environmental requirement;
- (2) adopted for the purpose of environmental protection;
- (3) addresses the environmental effect caused by the project; and,
- (4) applies to the project under review.

The requirement that a threshold of general application be adopted after a public process was applied by the court in *Golden Door Properties v. County of San Diego* (2018) 27 Cal.App.5th 892. In that case, the County's interim guidance for evaluating greenhouse gas emissions was invalidated because it applied generally to projects during the period while the County revised its climate action plan, contained a significance threshold, and had not been subject to a public process.

Insert the following after the first paragraph under Lay Person Testimony on Substantial Evidence on page 72:

Similarly, residents' opinions on an aesthetic effect can support a fair argument. In *Georgetown Preservation Society v. County of El Dorado* (2018) __ Cal.App.5th __, the court found that residents'

observations that a chain store would be out of place in a small historic community constituted a fair argument for an aesthetic effect. The court distinguished this CEQA determination from the County’s determination that the store otherwise met its Historic Design Guide standards. Consistency with design standards is a zoning determination, separate from a determination of significant environmental impact.

The court in *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129 held that public comments on their observations of traffic and vehicle activity at a nearby intersection could raise a fair argument. The court found that the public’s observations, although not expert observations, were fact-based.

Insert the following in Table 3-3 Selected Environmental Setting Court Decisions on page 77:

Lead Agency’s Choice of Baseline Set Aside	
<i>Bottini v. City of San Diego</i> (2018) 27 Cal.App.5 th 281	Where a cottage had previously been demolished on the project site, the baseline for analysis was the site absent the cottage. A Class 3 categorical exemption would apply.

Revise the following discussion added after County Projects Affecting Oak Woodlands on page 78 by the 2015 CEQA Deskbook Update.

Appendix F: Energy Conservation

Appendix F of the CEQA Guidelines lays out recommendations for the analysis of whether a project may result in the “inefficient, wasteful, or unnecessary” use of energy, including fuels. Enacted in the 1970s prior to California’s comprehensive energy conservation regulations, this appendix has often been ignored in CEQA analyses. The decision in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173 has given new emphasis to these provisions. In that decision, the Court of Appeal held that an EIR for a proposed regional shopping mall did not adequately consider the project’s energy use, including vehicle fuel, and whether mitigation would be necessary in order to avoid the inefficient, wasteful, or unnecessary use of energy. When reviewing projects, the pertinent aspects of Appendix F should be taken into consideration.

CEQA Guidelines Section 15126.2(b) emphasizes the need to consider energy impacts in an EIR. It states:

If analysis of the project’s energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use. This analysis should include the project’s energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project’s size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy use that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the lead agency.

Revise the discussion under Public Review beginning on page 83, as follows:

Every negative declaration is subject to the requirement of public review and comment, as well as interagency review. After a lead agency has prepared an initial study, and prepared a proposed negative declaration, including the development of any necessary mitigation measures, it must notify the public of the availability of the document and the opportunity to comment prior to adopting the negative declaration as final. The Notice of Intent to Adopt a Negative Declaration must specify the review period, identify any public meetings or hearings on the project, briefly describe the project, and state where the proposed negative declaration and all documents incorporated by reference are available for review (Pub. Res. Code § 21092(b)(1)). A copy of the notice of intent and the proposed negative declaration must be mailed to responsible and trustee agencies and agencies with jurisdiction by law and to all parties previously requesting notice (Guidelines §§ 15073, 15072). The notice of intent must be posted in the county clerk’s office for a minimum of twenty days (Pub. Res. Code § 21092.3). The clerk must post the notice within twenty-four hours of receipt (Pub. Res. Code § 21092.3). In addition, where a state agency is the lead agency, a state agency is a responsible agency, where a trustee agency’s involvement is required, or where the project is of statewide, regional, or areawide importance, sufficient copies (currently fifteen are required by the SCH) of the proposed negative declaration and initial study are required to be sent to the SCH for transmittal to other agencies (Pub. Res. Code § 21091, Guidelines § 15205). The copies submitted to the SCH must be accompanied by a notice of completion form (Guidelines § 15205, Guidelines Appendix C).

Revise the first paragraph in the discussion of Environmental Review of Subsequent Activities on page 96, as follows:

Environmental Review of Subsequent Activities. Once a program EIR has been prepared, subsequent activities that are within the scope of the program will be evaluated to determine whether an additional CEQA document needs to be prepared. CEQA Guidelines Section 15168(c)(2) sets out examples of the factors that an agency may consider when determining whether a later activity is within the scope: “consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR.” In many cases, the lead agency will not need to prepare a new CEQA document but instead can rely on or tier from the program EIR. Section 15162 of the CEQA Guidelines, regarding the triggers for a subsequent or supplemental EIR, applies to this analysis and acts to limit the need prepare a new EIR unless there have been substantial changes in the project or its circumstances or substantial new information that indicates the later revisions to the project would now have a new or more severe impact not analyzed in the original program EIR (*Friends of the College of San Mateo Gardens v. San Mateo Community College District* (2016) 1 Cal.5th 937; *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency, et al.* (2005) 134 Cal. App. 4th 598). When the later activities involve site-specific operations, the lead agency should use a written checklist (an initial study checklist) to document its determination that the environmental effects of the operation were already covered in the program EIR. This determination is not subject to the fair argument test. If the program EIR addresses the program’s effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the program EIR scope, and additional environmental documents would not be required (Guidelines § 15168(c)).

Revise the last two paragraphs of the discussion of SB 743 added to page 111 by the 2014 Update, as follows:

Section 21099(d) states that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area are not to be considered significant environmental impacts. It reserves the lead agency’s right to consider aesthetic impacts under a local design review ordinance “or other discretionary powers.” The court in *Covina Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712 applied this provision in upholding a Class 32 infill exemption for a mixed use infill project located ¼-mile from a commuter rail station. In that case, the court found that the project’s parking impacts were not subject to CEQA review.

Revise the discussion after Notice of Availability on page 122, as follows:

Notice of Availability. The notice that the draft EIR is available for public review must contain a description of the project and location; identification of significant environmental impacts; specification of the review period; identification of the public hearing date, time, and place (if applicable); address where the draft EIR and all documents incorporated by reference in the draft EIR are available for review; and a statement of whether the project site is a listed toxic site (Pub. Res. Code §§ 21092(b), 21092.6; Guidelines §§ 15087, 15105). Although the lead agency is not required to provide a copy of the draft EIR with the notice, it must make it available for copying and can charge a reasonable fee for copying costs.

Revise the first paragraph under Response to Comments on page 127, as follows:

The lead agency must prepare a final EIR responding to all comments raising significant environmental issues received on the draft EIR, including e-mail comments, and certify the final EIR before approving the project. The responses to comments in the final EIR must include good faith, well-reasoned, written responses to all comments received on the draft EIR during its review period. The level of detail contained in the response can correspond to the level of detail in the comment. As discussed above, the lead agency must also consider any late comments received after the review period before approving a project. Guidelines §§ 15088, 15132.

Insert the following discussion after the first paragraph under Forecasting and Speculation on page 134:

An agency is not required to examine a “worst case scenario.” The examination should be based on what may occur in the reasonably foreseeable future. *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102 [EIR for general plan update not required to evaluate potential full build-out of county where evidence of slow growth indicated that full build-out was not reasonably foreseeable].

Revise the second and third paragraphs under Judicial Standards for EIR Content Adequacy on page 131 as follows:

Judicial review of the content of EIRs typically incorporates the “rule of reason” standard to assess whether the lead agency has complied with the requirements of CEQA. The courts do not hold an agency to a standard of absolute perfection, but rather require only that an EIR show that an agency has made an objective, good-faith effort at full disclosure (Guidelines § 15151). In reviewing an EIR for

adequacy, courts will make sure that all required contents are included, and that conclusions are supported by substantial evidence in the record before the lead agency.

Two cases in 2018 highlight courts' concern over full disclosure. In *Sierra Club v. County of Fresno* (2018) __ Cal.5th __, the California Supreme Court invalidated the EIR for a large, mixed-use development because its discussion of health impacts of air quality pollutants "failed to indicate the concentrations at which such pollutants would trigger the identified symptoms." An EIR must include "sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises." In *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, the Court of Appeal invalidated an EIR for a new railyard supporting the Port of Los Angeles because the air quality analysis lacked sufficient detail to inform neighbors of the project's immediate and cumulative effects. It noted in its opinion that: "In this case, a neighbor will have no idea how bad air quality will be, if the railyard is constructed, at any point or for how long in the future."

Disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required. Also, exhaustive treatment of issues is not required in an EIR. The California Supreme Court has held that "the sufficiency of an EIR is to reviewed in light of what is reasonably feasible." (*Sierra Club v. County of Fresno* (2018) __ Cal.5th __). Minor technical defects identified in an EIR are not necessarily fatal (Guidelines § 15151).

The scope of judicial review does not extend to the correctness of an EIR's conclusions, but only to the EIR's sufficiency as an informative document for decision makers and the public (Guidelines § 15003(i)). In most cases, the court will review the administrative record to determine whether substantial evidence supports the lead agency's conclusions (see Chapter 10 for more information regarding CEQA litigation). However, when examining whether there has been an abuse of discretion on the part of the lead agency, the court will also look whether there is sufficient analysis to support its significance conclusion. (*Sierra Club v. County of Fresno* (2018) __ Cal.5th __). This analytical link between data (i.e., substantial evidence) and conclusion is critical to the adequacy of the EIR.

The following revises the discussion of Impact of the Environment on Projects beginning on page 143 and ending on page 145 beyond the changes made in the 2016 CEQA Deskbook Update (keep the discussion under "Short- and Long-term Impacts"):

The California Supreme Court has held that "CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents." (*California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369). As a general rule, CEQA is intended to focus on the impacts of the project on the environment, not the impact of the environment on the project. For example, CEQA does not require consideration of the effects of existing levels of toxic air contaminants on new development. Nor does it require consideration of the effects of locating a subdivision astride an active fault line.

The Court identified two exceptions to this rule:

- A situation where "a project could exacerbate hazards that are already present." The Court cited the example of a new residential development that disturbed existing subsurface contamination.

It also upheld the following sentences in Guidelines Section 15126.2(a): “The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. ... Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.”

- Those situations where the Legislature has specifically required consideration of impacts of the environment on the project. The Court identified the following:
 - Noise and safety considerations for projects located near airports (Public Resources Code Section 21096);
 - Safety, health risk, and other concerns related to school construction projects (Public Resources Code Section 21151.8);
 - Hazard-related and other concerns limiting the use of statutory exemptions for certain housing projects (Public Resources Code Sections 21159.21, 21159.22, 21159.23, and 21159.24) and
 - Hazard-related and other concerns limiting the use of the statutory exemption for transit priority projects (Public Resources Code Section 21151.1).

The Court is silent on whether existing environmental conditions would need to be considered in cases where the existence of such conditions precludes the use of a statutory exemption. The Court’s reasoning suggests that existing conditions would not need to be analyzed in a negative declaration or EIR under those circumstances unless the project would exacerbate the existing conditions.

A footnote in this decision explained that CEQA does not prohibit an agency from considering how existing conditions might impact a project’s future users or residents. However, unless the project would exacerbate such conditions the existing conditions would not be evaluated for significance. And, as a result, no mitigation measures could be applied.

The CEQA Guidelines were amended in 2019 to reflect this holding. This includes amendments to Section 15126.2 on the consideration and discussion of significant environmental impacts, and changes to the environmental analysis checklists in Appendices G and N.

Add the following to the discussion of Deferred Mitigation on page 183:

CEQA Guidelines Section 15126.4(a) establishes rules for the deferral of mitigation measures in an EIR. It states that when it is impractical or infeasible to include mitigation details during the project’s environmental review, the agency may defer the specific details provided that it: (1) commits itself to the mitigation; (2) adopts specific performance standards the mitigation will achieve; and (3) identifies the type of potential action that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. In some cases, deferral of mitigation is linked to the fact that additional permits that will specify mitigation requirements have yet to be obtained. Section 15126.4(a) addresses this situation by stating that “[c]ompliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the

record, to reduce the significant impact to the specified performance standards.” This assumes that the EIR fully describes that regulatory permit and the impact analysis explains how it is pertinent to the project, regulates the affected resource, and will reduce project impacts.

Add the following summary of California Supreme Court decisions to page 243 in addition to the revision made by the 2015 - 2018 updates of the CEQA Deskbook:

***Sierra Club v. County of Fresno (2018)* __ Cal.5th __**

The California Supreme Court undertook review of the EIR certified for the Friant Ranch project. The project consisted of the Friant Ranch Specific Plan, which would allow over 2,500 single and multi-family residential units, a commercial center, a recreation center, trails, open space, a neighborhood electric vehicle network, and parks and parkways. The project also included the dedication of 460 acres to open space.

The Supreme Court’s opinion discussed the standard of review a court must apply when adjudicating a challenge to the adequacy of an EIR’s discussion of significant impacts and mitigation measures; whether CEQA requires an EIR to connect a project’s air quality impacts to specific health consequences; whether a lead agency retains the discretion to substitute later adopted mitigation measures in place of those proposed in the EIR or whether that is impermissible deferred mitigation; and whether a lead agency may adopt mitigation measures that reduce a project’s significant and unavoidable impacts, but not to a less-than-significant level.

In addressing the first point, the Court noted that a determination of adequacy hinges on whether there has been an abuse of discretion. This may be found when the agency has either proceeded in conflict with CEQA or reached conclusions that are unsupported by substantial evidence. The Court clarified that a case such as this, where the question is whether the EIR’s discussion was adequate, the Court will undertake de novo review of this question (that is, it will not defer to the agency’s judgment as it would if it were a question of substantial evidence). A court must examine whether the EIR contained sufficient analysis to support its significance conclusion: “an EIR’s discussion of environmental impacts is an issue distinct from the extent to which the agency is correct in its determination whether the impacts are significant.” An EIR missing sufficient analysis to support its conclusions fails to meet CEQA’s “function of facilitating ‘informed agency decisionmaking and informed public participation.’ (citation omitted)” An EIR must include “sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises.”

Applying this approach to the question of air quality impacts, the Court concluded that the EIR’s discussion of the health effects of the project’s air quality impacts was insufficient. While the EIR contained general discussions of the health impacts of project-generated pollutants and disclosed the amounts of raw pollutants expected to be emitted by the project, the EIR “failed to indicate the concentrations at which such pollutants would trigger the identified symptoms” and, for ozone while providing an estimate of ROG and NOx emissions, the EIR failed to “give any information to the reader about how much ozone is estimated to be produced as a result.”

At the same time, the Court affirmed that CEQA does not require a deep dive into scientific analysis: “... we do not require technical perfection or scientific certainty: “[T]he courts have looked not for an

exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure.””” (California Native Plant Society v. City of Santa Cruz, supra, 177 Cal.App.4th at p. 979; accord Laurel Heights I, supra, 47 Cal.3d at p. 406; see Guidelines, § 15151 [“An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.”].)” For example, it rejected the notion that a full Health Risk Assessment is needed at any stage of the project.

The Court summed up its opinion as follows: “The EIR must provide an adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts or it must adequately explain what the agency *does* know and why, given existing scientific constraints, it cannot translate potential health impacts further.”

The EIR included a mitigation measures to “substantially” reduce air quality impacts, but not below significance. The Court took issue with EIR’s use of the term “substantially” where there was no factual support for that conclusion. Certainly the measure would reduce impacts, but “the EIR included no facts or analysis to support the inference that the mitigation measures will have a quantifiable ‘substantial’ impact on reducing the adverse effects.”

The Court upheld the EIR’s mitigation measures in the face of the Sierra Club’s contention that they improperly deferred mitigation. The Court noted that “[m]itigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels.” The EIR contained 12 specific measures to reduce air quality impacts.

The air quality mitigation included a substitution clause allowing the lead agency to “substitute different air pollution control measures for individual projects, that are equally effective or superior to those propose[d] [in the EIR], as new technology and/or other feasible measures become available [during] build-out within the [Project].” The Court found no problem with this approach:

... Allowing future substitutions for equal or more efficient technology to mitigate a project’s acknowledged significant effects promotes CEQA’s goal of environmental protection and is not an impermissible deferral of mitigation or an abuse of discretion. It is simply a recognition that substitutions of adopted mitigation measures may be implemented to further minimize the Project’s environmental impacts.

Sierra Club argued that the County had violated CEQA because the mitigation measures will not reduce impacts to less than significant levels. The Court disagreed:

We conclude that as long as the public is able to identify any adverse health impacts clearly, and the EIR’s discussion of those impacts includes relevant specifics about the environmental changes attributable to the project, the inclusion of mitigation measures that partially reduce significant impacts does not violate CEQA.

We have stated that protection of the environment and of California’s resources has long been considered of the utmost importance. However, in enacting CEQA to protect the environment, the Legislature did not seek to prevent all development. Section 21081, subdivision (b) allows a

project to continue even if there are significant environmental effects that have not been mitigated, if “the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

The Court also rejected Sierra Club’s claim that the mitigation measures would be unenforceable. The Court found the measures themselves sufficiently detailed and provisions of the Specific Plan sufficiently regulatory to ensure that mitigation would be implemented. It recognized that a plan-level EIR could not be expected to have the same level of detail as project-level mitigation measures. The County’s mitigation monitoring program further “places the burden of enforcement on the County.”