No. S219783

10.566

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SIERRA CLUB, et al.,

Plaintiffs and Appellants,

v.

COUNTY OF FRESNO,

Defendant and Respondent, and

FRIANT RANCH, L.P.,

Real Party In Interest and Respondent

After a Published Decision by the Court of Appeal, filed May 27, 2014,
Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno
Case No. 11CECG00726
Honorable Rosenedo A. Peña, Jr.

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF *AMICUS CURIAE* NORTH COAST RIVERS ALLIANCE IN SUPPORT OF PLAINTIFFS AND APPELLANTS SIERRA CLUB, ET AL.

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, North Coast Rivers Alliance ("NCRA") requests leave to file the attached *Amicus Curiae* Brief in support of plaintiffs and appellants Sierra Club, et al. NCRA's proposed brief addresses the question whether *de novo* or substantial evidence review applies to a claim that an Environmental Impact Report's ("EIR's") discussion of air quality impacts is insufficient to promote informed decisionmaking, as required by the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*

Proposed *amicus* NCRA is an unincorporated association of conservation leaders from throughout the north coast of California engaged in the submission of comments and expert testimony on land and water resource management issues. NCRA seeks compliance by local, state and federal agencies and private industry with state and federal environmental laws. NCRA's members use California's north coast rivers for fishing, boating, swimming, and scientific study. They are vitally interested in assuring that public agencies fully disclose the potentially significant impacts of projects on watersheds and their dependent fish and wildlife.

NCRA is not affiliated with any party to this action, and writes solely to offer an environmental perspective on the significant issues of public welfare at stake in this dispute. Counsel for *amicus* NCRA are familiar with the questions involved in the case and the scope of their presentation. Counsel for *amicus* successfully represented plaintiffs and appellants Vineyard Area Citizens for Responsible Growth, Inc., before this Court in *Vineyard Area Citizens for Responsible Growth, Inc., et al. v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, a case that also addressed the standard of review applicable to challenges to an EIR's adequacy.

Dated: April 6, 2015

Respectfully submitted,

STEPHAN C. VOLKER
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INTRODUCTION AND SUMMARY OF ARGUMENT

This Court must determine the standard of review that applies to judicial analysis of a claim that an EIR lacks information sufficient to promote informed decisionmaking. Real Party in Interest Friant Ranch, L.P. ("Friant Ranch") argues that "decisions about the type, scope, and amount of analysis to include in EIRs are inherently factual, so they should be reviewed under the substantial evidence standard." Opening Brief on the Merits ("OB") 3. But this Court has long recognized that *de novo* review applies to claims that an EIR's analysis of a topic is inadequate to promote informed decision-making. Friant Ranch confuses such informational adequacy claims with arguments about *predicate factual questions* affecting the scope of an EIR's analysis. Moreover, its overbroad argument would eviscerate CEQA's informational purpose.

STATEMENT OF FACTS

NCRA adopts and incorporates the Statement of Facts submitted by plaintiffs and appellants Sierra Club, et al.

ARGUMENT

In *Vineyard,* this Court noted that "an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial

evidence," and explained that in "evaluating an EIR for CEQA compliance, then, a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." *Vineyard,* 40 Cal.4th at 435. Improper procedure claims are reviewed *de novo*; factual disputes are subject to the substantial evidence standard. *Id.* This Court held that whether an EIR included the "information mandated by CEQA" was a question of *procedure* reviewed *de novo*; by contrast, questions of "whether adverse effects have been mitigated or could be better mitigated" were questions of fact reviewed for substantial evidentiary support in the administrative record. *Id.*

This case presents this Court with the opportunity to refine that distinction in cases where a petitioner argues that an EIR contains insufficient information on a project's impacts. The question whether an EIR "include[s] detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project" is a question of law reviewed *de novo*. *Laurel Heights Improvement Association v. Regents of University of California* ("*Laurel Heights I*") (1988) 47 Cal.3d 376, 405. This standard is formulated in a variety of ways and illustrated by many cases. *See, e.g., id.*

at 404, 406 ("Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process"; EIR's cursory analysis legally inadequate); *Vineyard*, 40 Cal.4th at 440, 447 (EIR's failure to provide an "analytically complete and coherent" analysis of impacts related to uncertain future water supplies was a "procedural . . . flaw"); *Santiago County Water Dist. v. County of Orange* ("*Santiago*") (1981) 118 Cal.App.3d 818, 831 ("The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment").

By contrast, where an agency *makes factual determinations in the EIR* to justify truncating its analysis about a required topic– for example by stating that an alternative is infeasible for particular factual reasons so further analysis is inappropriate – those findings are reviewed under the substantial evidence standard. *Compare Laurel Heights I*, 47 Cal.3d at 405 (discussion of alternatives legally inadequate notwithstanding supposed infeasibility of alternatives because no such claim of infeasibility appeared *in the EIR*) *with In re Bay-Delta Programmatic Environmental Impact*

Report Coordinated Proceedings ("*In re Bay-Delta*") (2008) 43 Cal.4th 1143, 1167 (EIR's conclusion that alternative could not meet project objectives and thus did not warrant further study was supported by substantial evidence). This Court drew precisely such a distinction in *Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Prevention* ("*Ebbetts Pass*") (2008) 43 Cal.4th 936, 954. In *Ebbetts Pass*, this Court distinguished challenges to "the correct legal standard to determine the scope of analysis" in an EIR – "a predominantly procedural question" courts "review independently" – from challenges to "the correctness of factual findings predicate to the standard's application," which raise a "predominantly factual matter" courts "review only for substantial evidence." *Id.*

Friant Ranch would have this Court instead hold that so long as an EIR contains *any* discussion of an issue, the scope of discussion is reviewed under the substantial evidence standard. OB 23-36. But such a conclusion conflicts with the foregoing cases in which this Court held that an EIR that *discussed* an issue – but in a way that failed to promote informed decisionmaking – was *legally* inadequate. This Court's precedents distinguish between claims that an EIR's treatment of an issue is analytically incomplete and therefore insufficient to promote informed

decisionmaking – which claims are reviewed *de novo* – and claims that an EIR makes an incorrect predicate factual claim – which are reviewed under the substantial evidence standard.

In essence, Friant Ranch argues that the first type of challenge, that of analytical adequacy, does not exist. In its view, if an EIR covers all topics required by statute – no matter how superficially – then all questions about the adequacy of its discussion are reviewed deferentially. But the implication of Friant Ranch's overbroad argument is that a one-sentence discussion of air quality impacts that merely stated that "the Project will have significant air quality impacts" would only be reviewed by a court for factual support under the substantial evidence standard. That would *require* courts to *ignore* the legal question of whether such an abridged analysis promotes the informed decisionmaking CEQA requires.

I. WHETHER AN EIR IS SUFFICIENT TO PROMOTE INFORMED DECISIONMAKING IS A QUESTION OF LAW REVIEWED *DE NOVO*

This Court held in *Vineyard* that whether an EIR includes the "information mandated by CEQA" is subject to *de novo* review because an agency that approves an EIR lacking such information has "failed to proceed in the manner required by CEQA." *Vineyard*, 40 Cal.4th at 435 (citing *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236,

and *Santiago,* 118 Cal.App.3d at 829). In *Laurel Heights I*, this Court emphasized that the information CEQA mandates is that "sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights I*, 47 Cal.3d at 405. Other CEQA imperatives, such as the requirements that an EIR must both "contain facts and analysis, not just the agency's bare conclusions or opinions" and also "disclos[e] . . . the analytic route the agency traveled from evidence to action," are in essence further refinements of this basic concept. *Id.* at 404 (citation, ellipsis, and internal quotation marks omitted).

Here, this Court should, consistent with *Laurel Heights I* and *Vineyard*, expressly hold that the question whether an EIR promotes informed decisionmaking – or, put differently, "include[s] detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project" – is a *question of law reviewed de novo*. *Laurel Heights I*, 47 Cal.3d at 405; *Vineyard*, 40 Cal.4th at 435.

Examination of this Court's rulings in these two benchmark cases confirms the wisdom of staying their prudent course. *Laurel Heights I* involved an EIR for a biomedical research facility. 47 Cal.3d at 403. The

alternatives analysis was cursory; it stated that "no alternative sites" on campus were considered and that existing off-campus space was not of "sufficient size to accommodate" the project. *Id.* In a claim conceptually indistinguishable from Friant Ranch's position here,[1] the respondent in *Laurel Heights I* "argue[d] that alternatives had already been considered and found to be infeasible during the University's various *internal* planning processes and that an EIR need not discuss a clearly infeasible project alternative. The Regents apparently believe[d] that, because *they* . . . were already fully informed as to the alleged infeasibility of alternatives, there was no need to discuss them in the EIR." *Id.* at 404 (emphasis added).

This Court emphasized, in italics, that the "*Regents miss the critical point that the public must be equally informed.*" *Id.* This Court held that "the discussion in the EIR of project alternatives [wa]s *legally* inadequate

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[1] The essence of Friant Ranch's argument is that because Fresno County had already determined *internally* that it would be infeasible to determine the magnitude of the project's human health impacts, there was no reason to include such an analysis in the EIR. OB 41 ("if the appellate court had reviewed the sufficiency of the EIR's air quality analysis for substantial evidence in light of the whole administrative record, the court . . . would have . . . understood that the type of 'correlation' analysis it envisions is very likely not feasible, or even possible, to conduct"). Any distinction between the positions of Friant Ranch here and the Regents in *Laurel Heights* – that it was sufficient to internally dismiss supposedly infeasible alternatives without identifying them in the EIR – is one without a difference.

under CEQA" because an "EIR must contain facts and analysis, not just the agency's bare conclusions or opinions," and also "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Id.* at 404-405 (emphasis added). This Court's ruling in *Laurel Heights I* that the alternatives analysis was *legally* inadequate despite the "purported discussion in the EIR" is directly contrary to Friant Ranch's claim that "a lead agency's decisions regarding the . . . scope and amount of information and analysis to include in an EIR" are subject to review under the substantial evidence standard. *Id.* at 403; OB 22-23. Unable to distinguish this controlling ruling, Friant Ranch ignores this obvious shortcoming in its argument.[2]

Vineyard likewise adheres to the principle that challenges to the analytical adequacy of a discussion are reviewed *de novo*. *Vineyard* involved a challenge to the discussion of water supplies in an EIR for a large residential and commercial development. *Vineyard*, 40 Cal.4th at 422-423, 427. This Court distilled four "principles of analytical adequacy

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[2] *See* OB 24 n. 7 (acknowledging both that there was a discussion of alternatives in the *Laurel Heights I* EIR and that that discussion was *legally* inadequate, but not attempting to explain how that holding is consistent with its position that the proper scope of an EIR's discussion is always subject to review under the substantial evidence standard).

under CEQA" for an EIR's "analysis of future water supplies" from four Court of Appeal decisions.[3] *Id.* at 429-430. This Court then held that the County's failure to comply with one of these requirements was a "*procedural* . . . flaw" reviewed *de novo*, not a "factual flaw" reviewed under the substantial evidence standard. *Id.* at 447 (emphasis added). More specifically, this Court found that the EIR's "substitut[ion of] a provision precluding further development for identification and analysis of the project's intended and likely water sources" prevented the EIR from "adequately . . . inform[ing] decision makers and the public" and therefore "the County erred *procedurally*." *Id.* at 444 (emphasis added).[4]

Following the strategy it used with this Court's inconvenient

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[3] These principles include (1) a discussion of the benefits and costs of supplying water; (2) an analysis that accounts for "the impacts of providing water to the entire proposed project"; (3) a disclosure of "*likely* future water sources, and . . . a reasoned analysis of the circumstances affecting the likelihood of the water's availability"; and (4) in circumstances where "it is impossible to confidently determine that anticipated future water sources will be available," an additional "discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." *Vineyard*, 40 Cal.4th at 430-433 (emphasis added).

[4] *See also id.* at 445 ("The reader attempting to understand the County's plan for providing water to the entire . . . development is left to rely on inference and speculation. In this respect, the FEIR water supply discussion fails to disclose 'the analytic route the agency traveled from evidence to action' and is thus not 'sufficient to allow informed decision making'") (quoting *Laurel Heights I*, 47 Cal.3d at 404).

decision about alternatives in *Laurel Heights I*, Friant Ranch simply ignores *Vineyard's* holding that an EIR's incomplete – albeit extensive – discussion of a topic was insufficient to allow informed decisionmaking and therefore *legally* inadequate. Indeed, Friant Ranch makes no attempt to square that plainly contrary ruling with its argument that the scope of an EIR's analysis is always reviewed for substantial evidence. OB 31 (quoting only the first two of the three "procedural . . . flaws" found by this Court in *Vineyard*, 40 Cal.4th at 447, and ignoring this Court's key holding that the EIR's discussion was *legally* insufficient to promote informed decisionmaking). The fact that this Court held that an EIR that discussed water supplies at length was nonetheless *legally* inadequate because it contained key analytical gaps is fatal to Friant Ranch's position that all claims relating to the scope of an EIR's discussion are reviewed under the substantial evidence standard.

The lower courts are in accord with this Court. For example, *Santiago,* which this Court cited with approval in *Vineyard*, is directly on point. There, the Court found an EIR "legally inadequate" because, even assuming the correctness of the EIR's bare conclusion about future water supplies, by itself "the conclusion . . . [wa]s insufficient to allow the EIR to fulfill its informational purpose." *Vineyard*, 40 Cal.4th at 435 (first

quotation); *Santiago*, 118 Cal.App.3d at 831 (second). Thus, even assuming the EIR's statement about future water supplies was supported by substantial evidence, the agency's failure to disclose in the EIR "the *basis* for [its] opinion" rendered the EIR legally inadequate. *Santiago*, 118 Cal.App.3d at 831 (emphasis added). In a further holding even more on point, the Court of Appeal held that the EIR was legally inadequate despite its identification of an adverse impact from increased water demand because it did not contain any "information about *how adverse* the adverse impact will be." *Id.* at 831 (emphasis added).

Here, the Court of Appeal similarly held that Friant Ranch's EIR was legally inadequate because, although it acknowledged human health impacts, it contained no information about "the potential *magnitude* of the impact on human health." Opinion 49 (emphasis added). This Court should reaffirm its prior approval of *Santiago* by affirming as well the identical holding below.

II. FACTUAL FINDINGS IN AN EIR ARE REVIEWED FOR SUBSTANTIAL EVIDENCE

Friant Ranch references a laundry list of cases where this Court applied the substantial evidence standard to claims broadly concerning the omission of information from an EIR to support its untenable argument.

Notwithstanding Friant Ranch's overbroad argument,[5] the substantial evidence cases it relies upon can be reconciled with the failure-to-proceed cases discussed above: in the substantial evidence cases the question was the correctness of an *express factual finding* that an EIR used to justify truncating its analysis, posing a clearly *factual* question on review. Moreover, many of the cases that Friant Ranch asserts involve an omission of information present instead "a factual dispute over whether adverse effects have been mitigated or could be better mitigated," a substantial evidence question under both *Vineyard* and *Laurel Heights*. *Vineyard*, 40 Cal.4th at 435; *Laurel Heights I*, 47 Cal.3d at 393.

A prototypical example of a factual dispute over the omission of information is an agency's statement in an EIR that analysis of a particular alternative is unnecessary because the alternative is infeasible due to a factual reason such as impossible expense or failure to meet most project objectives. Whether such a factual finding of infeasibility is supported by the record is a factual question reviewed for substantial evidence.[6] Many of

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[5] *E.g.*, RB 12-13 ("Appellants would . . . apply" the standard of whether an EIR "precludes informed decisionmaking and informed public participation" to "*all* claims that an EIR lacks sufficient information on required topics") (emphasis in original).

[6] By contrast, an agency that makes a finding that is *legally insufficient to establish infeasibility* has failed to proceed in the manner required by law. *See, e.g., Save Round Valley Alliance v. County of Inyo*

the cases Friant Ranch cites fall into this category. For example, in *In re Bay-Delta,* 43 Cal.4th at 1165-1167, the petitioner challenged an EIR's decision to dismiss a reduced export alternative from further study. The EIR expressly dismissed the alternative as infeasible because it would not meet project objectives; this Court held that the EIR's factual finding was supported by substantial evidence. *Id.* Similarly, in *Citizens of Goleta Valley v. Board of Supervisors* ("*Goleta Valley II*") (1990) 52 Cal.3d 553, 570-575, the petitioners argued that the EIR wrongly failed to consider certain off-site alternative locations, but this Court held that the agency's finding that such locations were infeasible was supported by substantial evidence.[7]

(2007) 157 Cal.App.4th 1437, 1464-1465 (EIR's statement that alternative was outside its jurisdiction was "insufficient to establish infeasibility" because "even if . . . an act of Congress is required to effect" the alternative, "this does not necessarily render the alternative infeasible"; agency failed to proceed as required by law).

[7] Ordinarily, the fact that the EIR in *Goleta Valley II* did not expressly make a finding of infeasibility as to the particular proffered alternatives would frustrate informed decisionmaking and thus be a failure to proceed in the manner required by law. As *Laurel Heights I* explains, "alternatives and the reasons they were rejected . . . must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public." 52 Cal.3d at 569; *Laurel Heights I,* 47 Cal.3d at 404-405. However, this Court held in *Goleta Valley II* that the unique circumstances presented – including apparent sandbagging by the petitioner and detailed prior public consideration of alternative locations by the agency – justified the agency's decision not to release "a full-blown supplemental EIR" merely to provide the public with a factual finding of infeasibility. 52

Friant Ranch also tries to convert cases that concern "a factual dispute over whether adverse effects have been mitigated or could be better mitigated" into cases about the adequacy of an EIR's discussion in order to support its untenable argument that the informational adequacy of an EIR is reviewed for substantial evidence. For example, Friant Ranch characterizes the *Laurel Heights I* analysis of wind dispersion impacts as involving "the sufficiency of the EIR's discussion." OB 24 n. 8. But as this Court recognized in both *Vineyard* and *Laurel Heights I* itself, that discussion in *Laurel Heights I* actually concerned the propriety of "the agency's finding that the project impacts described in the EIR were adequately mitigated," a question plainly subject to the substantial evidence standard. *Vineyard*, 40 Cal.4th at 435 (quotation); *Laurel Heights I*, 47 Cal.3d at 407 (placing the discussion in question under the heading "There is substantial evidence to support the Regents' finding that the potential environmental effects of the project, as it is now defined in the EIR, will be *mitigated*") (emphasis added). Friant Ranch essentially argues that this Court repeatedly misunderstood its own holding in *Laurel Heights I.*

Friant Ranch also claims that *Laurel Heights Improvement Association v. Regents of University of California* ("*Laurel Heights II*")

Cal.3d at 569-570.

(1993) 6 Cal.4th 1112, 1136-1143, applies the substantial evidence standard to a claim that an EIR "fail[ed] to include . . . relevant information." OB 28. But *Laurel Heights II*, like the portion of *Laurel Heights I* just discussed, involved a factual challenge to an agency's finding of significance. Since this Court "conclude[d] that substantial evidence support[ed] a determination that the effect of night lighting would be insignificant," there was no need for the agency to recirculate the EIR to account for that impact. *Laurel Heights II*, 6 Cal.4th 1112, 1140. The *Laurel Heights II* holding – that whether a project's impacts are significant is a factual question – is entirely consistent with the holding of the Court of Appeal below that the analytical completeness of an EIR's treatment of an issue is a question of law. Friant Ranch attempts to manufacture a conflict where none exists.

Finally, Friant Ranch's reliance upon *Ebbetts Pass,* 43 Cal.4th 936, is misplaced. Friant Ranch argues that in *Ebbetts Pass* "all of petitioner's claims that the THPs lacked sufficient information raised factual disputes," but that statement is misleading at best. OB 32. Petitioners claimed that the EIR improperly circumscribed its cumulative impact analysis. *Ebbetts Pass,* 43 Cal.4th at 949. This Court expressly applied its "independent legal judgment" to the question of the "geographic scope required of a

cumulative impact assessment"; it "agree[d] with plaintiffs that the question[] of what analytical procedure is required . . . is a predominantly procedural question on which we exercise our independent legal judgment." *Id.* at 949, 951. That holding is conceptually identical to the Court of Appeal's holding below, and it is fatal to Friant Ranch's argument.

Ebbetts Pass did apply the substantial evidence standard to two claims, but each of those claims falls neatly into the two substantial evidence categories delineated above. First, the petitioners challenged the *correctness* of the agency's finding that cumulative impacts *would be insignificant*; this Court held that the substantial evidence standard applied. *Id.* at 950-951. Such a "factual dispute over whether adverse effects have been mitigated" is a claim clearly subject to the substantial evidence standard. *Vineyard*, 40 Cal.4th at 435 (quotation omitted). Second, the petitioners challenged the adequacy of the EIR's discussion of impacts of future herbicide use. This Court's discussion is instructive:

> Whether the preparer of the three THP's . . . applied the correct legal standard to determine the scope of analysis is a predominantly procedural question we review independently, *but the correctness of factual findings predicate to the standard's application* (for example, delineation of the circumstances under which a future action is likely to occur) *is a predominantly factual matter we review only for substantial evidence.*
>
> [¶¶]

> . . . [P]laintiffs do not dispute that the planned logging, mechanical clearing, and the passage of "one to ten years post harvest" until herbicides may be applied could change the conditions on the ground. *Applying the substantial evidence standard to this predominantly factual question*, we conclude CDF did not abuse its discretion by accepting the plans' finding that the precise parameters of future herbicide use could not be predicted, and hence failing to demand a more detailed, site-specific analysis of impacts and mitigation measures.

Ebbetts Pass, 43 Cal.4th at 954-956 (emphasis added). This Court held that the proper "scope of analysis" of impacts from herbicides presented a legal question, but that the "predicate" "factual finding" of whether a certain analysis *is in fact feasible* is a substantial evidence question. *Id.*

In this case, the Court of Appeal held that respondent was required to address not just the *existence* of impacts to human health but also the *magnitude* of such impacts. Under *Ebbetts Pass*, the question whether CEQA mandates a particular "*scope* of analysis" is a legal question, whereas the question whether it is *feasible in this case to conduct* such an analysis is a factual question. 43 Cal.4th at 954 (emphasis added).

III. FRIANT RANCH'S ARGUMENT WOULD REQUIRE COURTS TO IGNORE AN EIR'S SUFFICIENCY AS AN INFORMATIONAL DOCUMENT

The one-size-fits-all inflexibility of Friant Ranch's argument reveals its fallacy. Friant Ranch either ignores or trivializes contrary regulations and case law. For example, it argues that the Guidelines section that

specifies what an air quality analysis should include is an "advisory directive," and notes that no other statutory or regulatory sections mandate a particular *form* of air quality discussion. Reply Brief on the Merits ("RB") 22-23 (discussing use of "should" in Guidelines section 15126.2(a)), 26 (arguing the EIR's discussion of air quality is adequate "assuming *arguendo* that this directive is mandatory rather than purely advisory"); OB 38-39 (arguing that CEQA does not expressly require agencies to disclose anything about the magnitude of impacts on human health). Friant Ranch even argues that courts cannot introduce any requirements beyond those expressly stated in CEQA's text or the Guidelines. OB 38-39; RB 23-24.

The implication of Friant Ranch's argument is that, because no statute or regulation *mandates* a particular *form or depth* of discussion of air quality impacts, an EIR that ignored the "advisory" Guidelines suggestions about scope of discussion and merely stated that "the Project will have significant air quality impacts" would only be reviewed by a court for factual support under the substantial evidence standard. RB 22. Friant Ranch would have courts simply *ignore* the legal question of whether such a truncated analysis promotes the informed decisionmaking CEQA requires. Friant Ranch's argument is refuted by common sense and overruled by this Court's contrary and correct holdings in *Laurel Heights I* and *Vineyard*.

As explained, in *Laurel Heights* this Court reviewed an EIR's cursory discussion of alternatives *de novo* for conceptual completeness and found it wanting. 47 Cal.3d at 403-407. The respondent Regents asked this Court to focus instead on whether its "internal" decision that alternative locations were "infeasible" was supported by the record, but this Court held to the contrary that "[e]ven if the Regents are correct in their conclusion that there are no feasible alternatives to the Laurel Heights site, the EIR is nonetheless defective under CEQA" because it did not "contain analysis sufficient to promote informed decision making." *Id.* at 404.

Yet if Friant Ranch's argument were the law, *de novo* review would have been inappropriate in *Laurel Heights I*, and this Court would have only reviewed the EIR's vague statements of infeasibility in its two-paragraph alternatives analysis for substantial evidentiary support in the administrative record. But this Court rejected such a holding, because it would improperly "countenance a result that would require blind trust by the public" in the agency's conclusions, a result directly at odds with "CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials." *Id.*

Friant Ranch's position that an EIR need only comply with the barest literal translation of the Public Resources Code and CEQA Guidelines to be

legally sufficient also defies *Vineyard*. There this Court distilled four "principles for analytical adequacy" of an analysis of future water supplies despite noting that "[n]either CEQA itself, nor the CEQA Guidelines, nor any of this court's decisions address this question specifically." 40 Cal.4th at 428-430. Friant Ranch's position would have required this Court to instead conclude that the EIR was legally sufficient because it did not conflict with "CEQA itself, []or the CEQA Guidelines." *Id.*

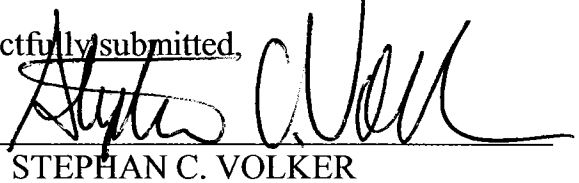
Friant Ranch complains that if courts are allowed to determine whether an EIR's discussion is analytically adequate, agencies "will have no way of knowing whether their EIR includes sufficient information on a given topic." OB 12. But any reasonable lay person could have told respondent that acknowledging the presence of an issue while ignoring its magnitude does not make for a coherent analysis. Or respondent could have asked a lawyer familiar with *Santiago* for guidance; that case held that "[w]hat is needed is some information about how adverse the adverse impact will be." 118 Cal.App.3d at 831. Such common sense analysis is precisely what the Court of Appeal found lacking. Opinion 49 (EIR wrongly omitted discussion of "the potential *magnitude* of the impact on human health") (emphasis added).

CONCLUSION

This Court should affirm the decision below and hold that whether an EIR's analysis of a topic is sufficient to promote informed decisionmaking presents a question of law reviewed *de novo*.

Dated: April 6, 2015

Respectfully submitted,

By: 

STEPHAN C. VOLKER
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North Coast Rivers Alliance

CERTIFICATE OF COMPLIANCE

In accordance with Rules 8.520 subdivision (b)(1) and 8.204 subdivisions (b)(4) and (c)(1), California Rules of Court, I certify that the *Amicus Curiae* Brief of North Coast Rivers Alliance, together with its application for leave to file this brief, is in at least 13-point proportional type and contains 4937 words.

Dated: April 6, 2015

Respectfully submitted,

STEPHAN C. VOLKER
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PROOF OF SERVICE BY UNITED STATES POSTAL SERVICE

I am a citizen of the United States of America; I am over the age of 18 years and not a party to within entitled action; my business address is 436 14th Street, Suite 1300, Oakland, CA 94612.

On April 6, 2015, I served the below-named document:

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF *AMICUS CURIAE* NORTH COAST RIVERS ALLIANCE IN SUPPORT OF PLAINTIFFS AND APPELLANTS SIERRA CLUB, ET AL.

by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below (CCP §1012, 1013, and 1013(a)).

I am familiar with the practice of this firm for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at Law Offices of Stephan C. Volker for deposit, and addressed to:

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California Court of Appeal
Fifth Appellate District
2624 Ventura Street
Fresno, CA 93721-3004

The Honorable Rosenedo A. Pena, Jr.
Superior Court of California
County of Fresno
1100 Van Ness
Fresno, CA 93724

I declare under penalty of perjury that the foregoing is true and correct and that it was executed April 6, 2015 at Oakland, California.

Teddy Ann Fuss