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**ELECTRONICALLY FILED**  
**Superior Court of California**  
**County of Sonoma**  
**6/12/2020 2:23 PM**  
**Arlene D. Junior, Clerk of the Court**  
**By: Angela Rubiano, Deputy Clerk**

8 Attorneys for Real Party In Interest  
COMSTOCK HEALDSBURG, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

11  
12 CALIFORNIA RIVER WATCH, an IRA  
Section 501(c)(3), non-profit public benefit  
13 corporation,

14 Petitioner,

15 v.

16 CITY OF HEALDSBURG,

17 Respondent.

18 COMSTOCK HEALDSBURG, LLC,

19 Real Party in Interest.  
20

Case No. SCV-264647

NOTICE OF ENTRY OF JUDGMENT  
DENYING PETITION FOR WRIT OF  
MANDATE

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE PATRICK M. BRODERICK  
COURTROOM 16

Action Filed: June 18, 2019  
Hearing on Petition: February 7, 2020

(CEQA Action)

21  
22 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

23 PLEASE TAKE NOTICE that the Court in the above-captioned matter (per the  
24 Honorable Patrick Broderick) entered and filed on May 18, 2020, its “Judgment Denying Petition  
25 for Writ of Mandate” (the “Judgment”). A true and correct filed-endorsed copy of said Judgment  
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(including the Judgment's own Exhibit A) is attached hereto and incorporated as Exhibit A.

Dated: June 12, 2020

MILLER STARR REGALIA

By: 

ARTHUR F. COON  
Attorneys for Real Party In Interest COMSTOCK  
HEALDSBURG, LLC

# **EXHIBIT A**

1 ARTHUR F. COON (Bar No. 124206)  
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8 Attorneys for Real Party In Interest  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

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12 CALIFORNIA RIVER WATCH, an IRA  
Section 501(c)(3), non-profit public benefit  
13 corporation,

14 Petitioner,

15 v.

16 CITY OF HEALDSBURG,

17 Respondent.

18 COMSTOCK HEALDSBURG, LLC,

19 Real Party in Interest.  
20

Case No. SCV-264647

~~PROPOSED~~ JUDGMENT DENYING  
PETITION FOR WRIT OF MANDATE

Judge: Hon. Patrick M. Broderick  
Date: February 7, 2020  
Time: 9:00 a.m.  
Dept.: 16

(CEQA Action)

21  
22 The "Verified Amended Complaint for Declaratory and Injunctive Relief and  
23 Petition for Writ of Mandate" (the "Petition") filed by Petitioner CALIFORNIA RIVER WATCH  
24 ("Petitioner") in the above-captioned matter, came on regularly for hearing on the merits on  
25 February 7, 2020, at 9:00 a.m., in Department 16 of the above-entitled Court, Judge Patrick M.  
26 Broderick, presiding. Despite its title, the Petition sought only a writ of administrative mandate  
27 and set forth four causes of action, all under the California Environmental Quality Act ("CEQA";  
28 Pub. Resources Code § 21000 et seq). Jerry Bernhaut appeared on behalf of Petitioner; Anna

1 Shimko and Deborah Kartiganer of Burke Williams & Sorenson, LLP appeared on behalf of  
2 Respondent City of Healdsburg; and Matthew Henderson of Miller Starr Regalia appeared on  
3 behalf of Real Party in Interest Comstock Healdsburg, LLC. The Court having reviewed and  
4 considered the papers and evidence filed in support of and in opposition to the Petition; having  
5 heard oral argument thereon; having entered and filed on April 28, 2020, its 31-page "Decision  
6 After Hearing on Amended Complaint for Declaratory Relief And Petition for Writ of Mandate"  
7 ("Decision"), which Decision ordered that the Petition be denied and a copy of which Decision is  
8 attached hereto and incorporated by reference as Exhibit A; and good cause appearing therefor,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

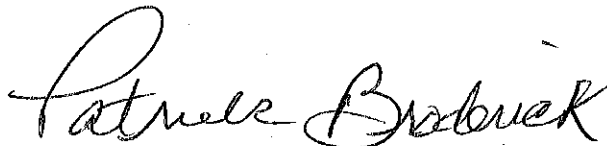
10 1. The Petition and each and every cause of action and claim or request for  
11 relief therein shall be, and hereby is, DENIED in its entirety, for the reasons set forth in the  
12 attached Decision.

13 2. Final Judgment in this case denying the Petition and all relief sought  
14 therein, is hereby entered in favor of Respondent City of Healdsburg and Real Party in Interest  
15 Comstock Healdsburg, LLC, and against Petitioner.

16 3. Costs are awarded to Respondent City of Healdsburg and Real Party in  
17 Interest Comstock Healdsburg, LLC as prevailing parties, and against Petitioner, to the extent  
18 provided by applicable law, and are to be determined upon the filing of a timely post-judgment  
19 memorandum or memorandums of costs.

20  
21 IT IS SO ADJUDGED.

22 DATED: 5-18, 2020

23  
24 

25 HON. PATRICK M. BRODERICK  
26 JUDGE OF THE SUPERIOR COURT

1 APPROVED AS TO FORM.

2 Dated: May 12, 2020

3

4

By: *Jerry Bernhaut*  
JERRY BERNHAUT  
Attorneys for Petitioner CALIFORNIA RIVER  
WATCH

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Dated: May     , 2020

BURKE WILLIAMS & SORENSON, LLP

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By: \_\_\_\_\_  
ANNA SHIMKO  
Attorneys for Respondent CITY OF  
HEALDSBURG

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1 APPROVED AS TO FORM.

2 Dated: May \_\_\_\_, 2020

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By: \_\_\_\_\_

JERRY BERNHAUT

Attorneys for Petitioner CALIFORNIA RIVER  
WATCH

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Dated: May 12, 2020

BURKE WILLIAMS & SORENSON, LLP

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By: \_\_\_\_\_



ANNA SHIMKO

Attorneys for Respondent CITY OF  
HEALDSBURG

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# **EXHIBIT A**



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HON. PATRICK M. BRODERICK  
JUDGE OF THE SUPERIOR COURT  
Courtroom 16  
3035 Cleveland Avenue  
Santa Rosa, CA 95403  
(707) 521-6729

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

APR 28 2020  
BY Cindy Quilley  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

CALIFORNIA RIVER WATCH,  
Petitioner,  
v.  
CITY OF HEALDSBURG,  
Respondent.  

---

COMSTOCK HEALDSBURG, LLC,  
Real Party in Interest.

Case No. SCV-264647

**DECISION AFTER HEARING ON  
AMENDED COMPLAINT FOR  
DECLARATORY RELIEF AND PETITION  
FOR WRIT OF MANDATE**

The Amended Petition for Writ of Mandate filed June 28, 2019, came on regularly for hearing on February 7, 2020, before the Honorable Patrick M. Broderick, Judge, presiding. Counsel Joseph Jerry Bernhaut was present on behalf of Petitioner. Counsel Deborah Kartinger and Anna C. Shimko were present on behalf of Respondent. Counsel Matthew C. Henderson was present on behalf of Real Party In Interest.

Upon consideration by the court of the papers and evidence filed in support of and in opposition to the Petition, and having heard and considered the oral argument of counsel, the Court renders the following decision:

**Amended Petition for Writ of Mandate Denied.**

1 Factual Background

2 Petitioner California River Watch ("Petitioner") challenges the May 20, 2019  
3 approval and adoption, by Respondent City of Healdsburg ("Respondent") of the North  
4 Entry Area Plan ("NEAP" or "Project") and the environmental impact report ("EIR") for  
5 the Project. Petitioner names Comstock Healdsburg, LLC ("Real Party in Interest" or  
6 "RPI") as real party in interest because Respondent proposes to implement the NEAP  
7 on property which RPI owns and is attempting to develop in accord with the NEAP.  
8 Petitioner contends that the analysis of greenhouse gas emissions ("GHGs") in the  
9 Project EIR is insufficient and violates CEQA with respect to one aspect of the NEAP,  
10 the proposed and envisioned hotel project. Petitioner argues that the GHG analysis  
11 regarding the hotel violates CEQA because 1) it lacks sufficient estimation of vehicle  
12 miles traveled ("VMT") due to the failure to include trans-boundary, long-distance travel,  
13 specifically air travel, involving visitors to the region; 2) it fails to analyze the consistency  
14 of the Project with statewide goals in a clear and appropriate manner; and 3) it includes  
15 inadequate mitigation measures which are improperly deferred and lacking sufficient  
16 performance standards.

17 In two resolutions on May 20, 2019, Respondent adopted the Project as part of  
18 the Healdsburg 2030 General Plan and certified the Final EIR ("FEIR") for the Project.  
19 AR 4-47. On May 21, 2019, Respondent issued a Notice of Determination ("NOD"). AR  
20 1-3.

21 The EIR identified three significant unavoidable impacts, all traffic impacts, none  
22 of which is at issue in this litigation: 1) vehicle circulation performance at Highway 101  
23 off-ramp; 2) traffic safety due to excessive queuing in a lane at the Highway 101 ramp  
24 intersection; and 3) cumulative impacts on vehicle circulation performance and traffic  
25 safety. It included a statement of overriding considerations justifying Respondent's  
26 approval of the Project despite these unavoidable significant impacts.

27 The NEAP Project is an overall planning project to govern development in the  
28 area it covers, a plan to "provide policy guidelines and development standards for the

1 future construction and operation of a mixed-use community on the North Village site"  
2 and this includes certain allowed development. The Project itself does not include  
3 actual approval of a hotel or any specific development. Instead, it sets forth the types of  
4 development allowed, not allowed, and preferred, as well as the overall guidelines to  
5 govern the development of the area and what standards the development must meet. It  
6 states that a hotel project is not only expressly allowed but is envisioned and among the  
7 preferred development choices to be included within the guidelines.

### 8 Request for Judicial Notice

9 Petitioner seeks judicial notice of this Court's order granting a petition for writ of  
10 mandate in SCV-259242, *California River Watch v. County of Sonoma* ("Prior CRW  
11 Action") and specific findings which this court made in that decision. Respondent and  
12 RPI oppose the request for judicial notice because 1) the Prior CRW Action is not  
13 precedent; 2) the Court may not judicially notice factual findings. These arguments in  
14 opposition to the request are unpersuasive. The Court may judicially notice the order  
15 and that the order made certain findings. This Court may not judicially notice the truth  
16 or correctness of any factual assertions made therein, but it may judicially notice the fact  
17 that the findings were made. Respondent and RPI are correct that the Prior CRW  
18 Action is not precedent for this case or otherwise controlling or binding directly in this  
19 case but that does not prevent the Court from judicially noticing it. Taking judicial notice  
20 of the Prior CRW Action may ultimately have no impact or bearing on the decision in  
21 this case but it is not improper.

22 Respondent and RPI seek judicial notice of applicable GHG plans and protocols:  
23 the State of California Air Resources Board ("CARB") *California's 2017 Climate Scoping*  
24 *Plan* ("Scoping Plan"); the CARB *Local Government Operations Protocol – For the*  
25 *Quantification and Reporting of Greenhouse Gas Emissions Inventories*; the CARB  
26 *California Greenhouse Gas 2000-2017 Emissions Trends and Indicators Report 2000-*  
27 *2017 – California Greenhouse Gas Inventory by Scoping Plan Category*; and the ICLEI  
28 *U.S. Community Protocol for Accounting and Reporting of GHG Emissions*. Petitioner

1 does not oppose this request and the Court finds that these are judicially noticeable and  
2 appropriate to consider here.

### 3 CEQA

4 The ultimate mandate of CEQA is "to provide public agencies and the public in  
5 general with detailed information about the effect [of] a proposed project" and to  
6 minimize those effects and choose possible alternatives. Public Resources Code  
7 ("PRC") section 21061. After all, the public and public participation hold a "privileged  
8 position" in the CEQA process based on fundamental "notions of democratic decision-  
9 making." *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural*  
10 *Association* (1986) 42 Cal.3d 929, 936. As stated in *Laurel Heights Improvement*  
11 *Association v. Regents of the University of California* (1988) 47 Cal.3d 376, at 392,  
12 "[t]he EIR process protects not only the environment but also informed self-  
13 government."

14 An EIR is required for a project which substantial evidence indicates may have a  
15 significant effect on the environment. Guidelines for the Implementation of CEQA  
16 (Guidelines), 14 CCR section 15063(b) ("Guidelines"); PRC sections 21100, 21151. In  
17 the words of the California Supreme Court, the EIR is "the heart of CEQA." [Citation.]  
18 An EIR is an 'environmental "alarm bell" whose purpose it is to alert the public and its  
19 responsible officials to environmental changes before they have reached ecological  
20 points of no return.' [Citations.] The EIR is also intended 'to demonstrate to an  
21 apprehensive citizenry that the agency has, in fact, analyzed and considered the  
22 ecological implications of its action.' [Citations.]" *Laurel Heights Improvement Assn. v.*  
23 *Regents of the University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights I*).

24 The burden of investigation rests with the government and not the public.  
25 *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170,  
26 1202.

27 As a result, "error is prejudicial 'if the failure to include relevant information  
28 precludes informed decisionmaking and informed public participation, thereby thwarting

1 the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v.*  
2 *County of Stanislaus* (1994) 27 Cal.App.4th 713, at 721-722, quoting *Kings County*  
3 *Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, at 712.

4 Standard of Review

5 PRC section 21168 governs CEQA actions under Code of Civil Procedure  
6 section 1094.5 challenging administrative decisions, those “made as a result of a  
7 proceeding in which by law a hearing is required to be given, evidence is required to be  
8 taken and discretion in the determination of facts is vested in a public agency.” Code of  
9 Civil Procedure section 1094.5. *Friends of the Old Trees v. Dept. of Forestry and Fire*  
10 *Protection* (1997) 52 Cal.App.4th 1383, 1389.

11 The reviewing court must determine if Respondent abused its discretion by 1)  
12 failing to proceed in the manner required by law, or 2) because its decision is not  
13 supported by substantial evidence. PRC 21168; *Laurel Heights I, supra*, 47 Cal.3d 392,  
14 fn.5. These two standards vary greatly and apply to different issues, so “a reviewing  
15 court must adjust its scrutiny to the nature of the alleged defect, depending on whether  
16 the claim is predominantly one of improper procedure or a dispute over the facts.”  
17 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007)  
18 40 Cal.4th 412, 435.

19 As the court explained in *Vineyard Area Citizens for Responsible Growth, Inc. v.*  
20 *City of Rancho Cordova* (2007) 40 Cal.4th 412 at 435

21 [A]n agency may abuse its discretion under CEQA either by failing to  
22 proceed in the manner CEQA provides or by reaching factual conclusions  
23 unsupported by substantial evidence. (§21168.5.) Judicial review of these  
24 two types of error differs significantly: while we determine de novo whether  
the agency has employed the correct procedures, “scrupulously  
enforc[ing] all legislatively mandated CEQA requirements” [Citation], we  
accord greater deference to the agency's substantive factual conclusions.

25 Agency actions are presumed to comply with applicable law unless the petitioner  
26 presents proof to the contrary. Evidence Code section 664; *Foster v. Civil Service*  
27 *Commission of Los Angeles County* (1983) 142 Cal.App.3d 444, 453. The petitioner in

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1 a CEQA action thus has the burden of proving that an EIR is insufficient. *Al Larson*  
2 *Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.

3 The court must resolve reasonable doubts in favor of the findings and decision.  
4 *Id.* The findings of an administrative agency are presumed to be supported by  
5 substantial evidence. *Taylor Bus. Service, Inc. v. San Diego Bd. of Education* (1987)  
6 195 Cal.App.3d 1331.

7 Nevertheless, courts must 'determine de novo whether the agency has employed  
8 the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA  
9 requirements"....' *Vineyard Area Citizens for Responsible Growth, supra*, 40 Cal.4th  
10 435, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.  
11 Therefore, failure to include required information is a failure to proceed in the manner  
12 required by law and demands strict scrutiny. *Sierra Club v. State Bd. of Forestry* (1994)  
13 7 Cal.4th 1215, 1236; *Vineyard Area Citizens for Responsible Growth, supra*, 40 Cal.4th  
14 435.

15 The substantial-evidence test does not apply, therefore, to a claim that an EIR  
16 failed to include mandatory information or elements. *Vineyard Area Citizens*, 435, citing  
17 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. Failure to  
18 include required information is a failure to proceed in the manner required by law and  
19 demands strict scrutiny. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215,  
20 1236; *Vineyard Area Citizens*, 435. Courts must determine such a question de novo.  
21 *Vineyard Area Citizens*, 435. In *Sierra Club*, 7 Cal.4th at 1236, the Supreme Court  
22 found that an agency had abused its discretion and failed to proceed in the manner  
23 requiring in approving THPs based on a record which lacked information on the  
24 presence of old-growth-dependent species.

25 Determining whether a claim that a CEQA document lacks certain information is  
26 a failure to proceed in a manner required by law or is merely an issue of whether there  
27 is substantial evidence is not always clear and there has historically been some dispute.  
28 Thus, despite the discussion in *Sierra Club*, 7 Cal4th, at 1236, the court in *Barthelemy*

1 *v. Chino Basin Munic. Water Dist.* (1995) 38 Cal.App.4th 1609, at 1620, found that a  
2 claim that the EIR lacks *sufficient* information regarding an issue should be treated as  
3 an argument that the EIR is not supported by substantial evidence. Similarly, in  
4 *National Parks and Conservation Association v. County of Riverside* (4th Dist.1999) 71  
5 Cal.App.4th 1341, at 1353 (*National Parks II*), found that challenges to the scope of the  
6 analysis, the methodology for studying an impact, and the reliability of accuracy of the  
7 data present factual issues, so such challenges must be rejected if substantial evidence  
8 supports the agency's decision as to those matters ....”

9 By contrast, other courts have taken a different approach, as set forth in  
10 *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, at  
11 1392; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27  
12 Cal.App.4th 713, at 721-722; and *Kings County Farm Bureau v. City of Hanford* (1990)  
13 221 Cal.App.3d 692, at 712. The court in *Association of Irrigated Residents* rejected the  
14 analysis in *Barthelemy* and *National Parks II* that “claims that information has been  
15 omitted from an EIR essentially should be treated as inquiries whether there is  
16 ‘substantial evidence to support [the] decision ....’” It reasoned that such an approach  
17 “fails to acknowledge the important public informational purpose” of an EIR. As stated  
18 in *Kings County Farm Bureau*, “error is prejudicial ‘if the failure to include relevant  
19 information precludes informed decisionmaking and informed public participation,  
20 thereby thwarting the statutory goals of the EIR process.’” In *Madera Oversight*  
21 *Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, at 101-102, the court again  
22 determined that where the petitioner’s assertion is that information has been omitted  
23 from an EIR, “independent review will apply if the information ... is required by CEQA  
24 and necessary for an informed discussion. In contrast, if the asserted error concerns  
25 the amount or type of information that is not required by CEQA and necessary for an  
26 informed discussion, then the substantial evidence standard applies.” In *Save Round*  
27 *Valley v. County of Inyo* (2007) 157 Cal.App.4th 1437, at 1465, the court ruled that  
28 where an EIR included “only the barest of facts regarding the BLM parcel, vague and

1 unsupported conclusions about aesthetics, views, and economic objectives, and no  
2 independent analysis whatsoever of relevant considerations," the agency "failed to  
3 proceed in the manner required by law."

4 Under the substantial-evidence test, the court must uphold the decision if it is  
5 supported by substantial evidence in the record as a whole. *Bowman v. City of*  
6 *Petaluma* (1986) 185 Cal.App.3d 1065, 1075; see, *River Valley Preservation Project v.*  
7 *Metropolitan Transit Dev. Bd.*(1995) 37 Cal.App.4th 154, 166; see, *Santa Teresa Citizen*  
8 *Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703. The court must  
9 focus upon the THP's "sufficiency as an informative document." *Laurel Heights I*, 47  
10 Cal.3d 393. The evidence must be sufficient to allow one to make an intelligent,  
11 informed decision, i.e., sufficient to make clear the analytic route of the agency.  
12 *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986)  
13 42 Cal.3d 929, 936; *Al Larson Boat Shop Inc. v. Bd. of Harbor Commissioners* (1993)  
14 18 Cal.App.4th 729, 749; *Topanga Assn. for a Scenic Community v. County of Los*  
15 *Angeles* (1974) 11 Cal.3d 506, 513-514, 522.

16 When applying the substantial-evidence standard, in other words, the court must  
17 focus not upon the "correctness" of a report's environmental conclusions, but only upon  
18 its "sufficiency as an informative document." *Laurel Heights I*, 47 Cal.3d 393. The court  
19 must resolve reasonable doubts in favor of the findings and decision. *Id.* The findings  
20 of an administrative agency are presumed to be supported by substantial evidence.  
21 *Taylor Bus. Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331.

22 Substantial evidence is not simple "uncorroborated opinion or rumor" but "enough  
23 relevant information and reasonable inferences" to allow a "fair argument" supporting a  
24 conclusion, in light of the whole record before the lead agency. 14 CCR section  
25 15384(a); PRC section 21082.2; *City of Pasadena v. State of California* (2nd Dist. 1993)  
26 14 Cal.App.4th 810, 821 822. Other decisions define "substantial evidence" as that with  
27 "ponderable legal significance," reasonable in nature, credible, and of solid value.  
28 *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144.



1 Substantial evidence shall include facts, reasonable assumptions predicated  
2 upon facts, and expert opinion supported by facts. PRC section 21082.2(c); see also  
3 Guidelines 15064(g)(5), 15384. It does not include argument, speculation,  
4 unsubstantiated opinion or narrative, clearly incorrect evidence, or social or economic  
5 impacts not related to an environmental impact. Guideline 15384.

#### 6 Dispute Over the Standard of Review

7 Petitioner argues that the defect it raises is a failure to include required  
8 information or elements and thus that the court must apply the de novo independent-  
9 review standard. Respondent and RPI counter that Petitioner is actually claiming only  
10 that the discussions of GHGs and related mitigation measures lack sufficient information  
11 and thus the court must apply the more deferential substantial-evidence test.  
12 Ultimately, Petitioner appears to be correct here with one possible exception.

13 Petitioner claims that the EIR lacks certain information about GHG and that this  
14 information was required to be considered; the EIR fails to include a coherent analytical  
15 route or properly address thresholds and state standards; and the EIR includes  
16 defective mitigation measures which are deferred and lack performance standards.  
17 These alleged defects are not defects in the sufficiency of evidence to support the EIR's  
18 conclusions but instead arguments that the EIR lacks certain required information and  
19 elements. With respect to the first point, Petitioner is not claiming that Respondent's  
20 determination that there would be no significant impacts regarding GHGs is not based  
21 on substantial evidence but instead argues that the analysis completely lacks necessary  
22 information on a certain GHG issue and that this failure to include this information, in the  
23 words of *Kings County Farm Bureau*, "precludes informed decisionmaking and informed  
24 public participation." Similarly, with respect to the claim of insufficient analysis of  
25 compliance with applicable policies and thresholds, Petitioner contends that the analysis  
26 lacks a clear analytical route to allow for informed decisionmaking and improperly  
27 rejects consideration of some standards while presents an incoherent and jumbled  
28 discussion of various different standards. Finally, as to mitigation measures, Petitioner

1 again does not challenge the sufficiency of Respondent's conclusions but instead  
2 contends that Respondent failed to comply with CEQA's mandate that mitigation  
3 measures not be deferred and include enforceable performance standards.

4         The one exception is the extent to which Petitioner, instead of challenging the  
5 failure to include trans-boundary VMT information in the chosen methodology, is  
6 actually arguing that the adopted methodology is incorrect. Respondent and RPI  
7 correctly argue that the substantial-evidence test applies to determinations about choice  
8 of methodology. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124  
9 Cal.App.4th 1184, 1198 ("The substantial evidence standard is applied to conclusions,  
10 findings and determinations. It also applies to challenges to ... the methodology used  
11 for studying an impact and the reliability or accuracy of the data upon which the EIR  
12 relied ...."); *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538,  
13 1546 ("CEQA challenges concerning the amount or type of information contained in the  
14 EIR, the scope of the analysis, or the choice of methodology are factual determinations  
15 reviewed for substantial evidence."); *Residents Against Specific Plan 380 v. County of*  
16 *Riverside* (2017) 9 Cal.App.5th 941, 968 (quoting *Santa Monica Baykeeper*).

17         It is not entirely clear whether, or to what extent, Petitioner is trying to challenge  
18 the choice of methodology or simply claiming that the analysis applying the chosen  
19 methodology should have included the information on trans-boundary VMT. While there  
20 is some dispute over this, the court finds that that Petitioner is actually not truly  
21 attacking the choice of methodology, specifically the CalEEMod methodology, but  
22 arguing that the analysis should have included a methodology also for considering  
23 trans-boundary VMT. In the end, the Court is addressing both arguments and  
24 considerations and notes expressly that under both approaches, and even the standard  
25 of review more favorable to Petitioner based on its claim that it is attacking a failure to  
26 include required information, Petitioner is unpersuasive.

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1 Exhaustion of Administrative Remedies

2 Respondent and RPI argue that Petitioner failed to exhaust administrative  
3 remedies on the "exact issue" of the claim that the EIR's assumptions about VMT are  
4 "absurd." This argument is not addressed to the other two arguments regarding the  
5 sufficiency of the analysis showing compliance with applicable standards and plans, or  
6 mitigation measures.

7 According to PRC section 21177, "[a] person shall not maintain an action or  
8 proceeding unless that person objected to the approval of the project orally or in writing  
9 during the public comment period provided by this division or prior to the close of the  
10 public hearing on the project before the filing of the notice of determination." This does  
11 not, however, bar an association or organization formed after approval from raising a  
12 challenge which one of its constituent members had raised, directly or by agreeing with  
13 or supporting another's comments. PRC section 21177(c). Moreover, someone may  
14 file a legal challenge based on an issue as long as "any person" raised that issue during  
15 the review process. PRC section 21177(a); see, *Friends of Mammoth v. Board of*  
16 *Supervisors* (1972) 8 Cal.3d 247, 267-268. It also does not apply to any grounds of  
17 which the agency did not give required notice and for which there was no hearing or  
18 opportunity to be heard. PRC section 21177(e).

19 A party challenging a decision under CEQA cannot, to exhaust administrative  
20 remedies, rely merely on "general objections" or "unelaborated comments." *Sierra Club*  
21 *v. City of Orange* (2008) 163 Cal.App.4th 523, 535; *Coalition for Student Action v. City*  
22 *of Fullerton* (1984) 153 Cal.App.3d 1194, 1197. However, "[l]ess specificity is required  
23 to preserve an issue for appeal in an administrative proceeding than in a judicial  
24 proceeding ...." *Citizens Association for Sensible Development of Bishop Area v.*  
25 *County of Inyo* (1985) 172 Cal.App.3d 151, 163.

26 Respondent and RPI are unpersuasive on this point. Petitioner notes in its reply  
27 that it submitted several pages of comments raising GHGs, specifically those involving  
28 VMT and tourists staying at the envisioned hotel, specifically mentioning the failure to

1 account for trans-boundary VMT GHGs by guests at the hotel with methodology  
2 presented and legal discussion. AR 6701-6709. This discussion in the record at AR  
3 6701-6704 focuses repeatedly and expressly on long-distance travel of guests from  
4 point of origin to Healdsburg and back. Petitioner argued the issue in different terms,  
5 expressly stating that the NEAP includes "no accounting ... for ... (GHG) emissions  
6 resulting from tourists ... traveling from their point of origin to Healdsburg and returning."  
7 It is immaterial whether Petitioner specifically asserted that the EIR's assumptions about  
8 "VMT" are "absurd." To the extent that Petitioner is now focusing, as Petitioner argues  
9 in the Opening Brief ("OB") at 9:16-17, on "[t]he failure ... to account for ... emissions  
10 from long distance travel," Petitioner clearly has exhausted administrative remedies.  
11 Petitioner does not appear to raise any other issues for which it may have failed to  
12 exhaust administrative remedies.

#### 13 Authority on GHG Analysis

14 California established GHG reduction and annual carbon sequestrations goals in  
15 AB 32, the California Global Warming Solutions Act of 2006 ("CGWSA").

16 The CGWSA requires the California Air Resources Board ("CARB" or "ARB") to  
17 reduce GHG emissions to 1990 levels by 2020, SB 32 of 2016 requires reduction to  
18 40% below 1990 levels by the end of 2030, and Executive Order No. S-3-05 requires  
19 reduction to 80% below 1990 levels by 2050. See, *Sierra Club v. County of San Diego*  
20 (2014) 231 Cal.App.4th 1152, at 1168; *Center for Biological Diversity v. Department of*  
21 *Fish & Wildlife* (2015) 62 Cal.4th 204, at 215-231 (*Newhall Ranch I*); *Cleveland National*  
22 *Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497.

23 Guideline 15064.4 governs determinations of the significance of impacts from  
24 GHGs. It sets forth a framework for estimating GHGs, how to choose appropriate  
25 methodologies, and how to determine impacts by comparison to baselines and  
26 thresholds of significance. Subdivision (a) requires lead agencies to "make a good-faith  
27 effort, based to the extent possible on scientific and factual data, to describe, calculate  
28 or estimate the amount of greenhouse gas emissions" of a project but clarifies that they

1 "shall have discretion to determine, in the context of a particular project, whether to"  
2 quantify GHGs "and/or" rely on a qualitative analysis or performance based standards.

3         Within the framework of AB 32, the CARB creating the Climate Change Scoping  
4 Plan (Scoping Plan) setting forth measures to reduce GHG emissions in the state to  
5 1990 levels by 2020, and the emission reductions needed. CARB, Climate Change  
6 Scoping Plan (Dec. 2008) Executive Summary, p. ES-1; *Cleveland National Forest*  
7 *Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 505; *Center for*  
8 *Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, at 215-216  
9 (*Newhall Ranch I*).

10         In *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62  
11 Cal.4th 204 (*Newhall Ranch I*), the court noted three criteria by which one could assess  
12 GHG impacts by comparing the impacts to business as usual, consistency with the  
13 goals of AB 32, etc., and existing GHG thresholds of significance. This reflects  
14 Guideline 15064.4(b). The court noted that it is proper to use consistency with the state  
15 reduction goals as a criterion but ruled that the mere fact that a project reduces GHG by  
16 31% compared to levels under business-as-usual standards does not necessarily show  
17 compliance with the statewide reduction targets and the analysis still requires  
18 substantial evidence to support that conclusion. Both Guideline 15064.4 and *Newhall*  
19 *Ranch I* make it clear that it is permissible but not mandatory to use these as thresholds  
20 of significance since the statewide targets "represent appropriate thresholds."

21         In *Cleveland National Forest Foundation v. San Diego Association of*  
22 *Governments* (2017) 3 Cal.5th 497, the Supreme Court rejected a petitioner's argument  
23 that CEQA GHG analysis requires a consideration of the consistency with statewide  
24 targets such as Executive Order No. S-3-05.

25         Guideline 15130(b) makes it clear that, as in other aspects of CEQA, studies of  
26 cumulative impacts are guided by "standards of practicality and reasonableness."  
27 According to Guideline 15364, "[f]easible" means capable of being accomplished in a  
28 successful manner within a reasonable period of time, taking into account economic,

1 environmental, legal, social, and technological factors.' Thus, "[a]n evaluation of the  
2 environmental effects of a proposed project need not be exhaustive, but the sufficiency  
3 of an EIR is to be reviewed in the light of what is reasonably feasible .... The courts  
4 have looked not for perfection but for adequacy, completeness, and a good faith effort  
5 at full disclosure." Guideline 15151; see also *Citizens to Preserve the Ojai v. County of*  
6 *Ventura* (1985) 176 Cal.App.3d 421, 429. An agency is "not required to engage in  
7 sheer speculation as to future environmental consequences [Citations], [but an] EIR [is]  
8 required to set forth and explain the basis for any conclusion that analysis of the  
9 cumulative impact of offshore emissions [is] wholly infeasible and speculative." *Citizens*  
10 *to Preserve the Ojai*, 430.

#### 11 Failure to Analyze Trans-Boundary GHGs

12 Petitioner's first argument is that the EIR omits any accounting of reasonably  
13 foreseeable GHGs from long-distance, trans-boundary VMT by tourists as a result of the  
14 hotel envisioned. In this argument, Petitioner contends that the EIR's VMT calculations  
15 are "based on a grossly unrepresentative range of VMT limited to trips by hotel guests  
16 while they are staying at the hotel, trips by employees and vendors, and guest arrivals  
17 and departures from local and nearby points of origin" and that this resulted in an  
18 "absurdly unrealistic estimate that the average length of trips associated with a planned  
19 wine country destination hotel will be 7.3 miles" as noted in the EIR at AR 1005. OB 9:  
20 2-5. More specifically, Petitioner contends that the EIR violates CEQA on this point  
21 because of "[t]he failure of the EIR to account for ... emissions from long distance  
22 travel," by ground or air. OB 9:8-27.

23 The parties, particularly Respondent and RPI, raise several different arguments  
24 regarding the propriety of the failure to include such long-distance travel in estimating  
25 VMT and thus final GHG totals, and these arguments somewhat muddle the real issue  
26 and core dispute. In the end, however, this seems to be an assertion that Respondent  
27 failed to proceed in the manner required by law because Petitioner attacks not the  
28 conclusions about VMT but the failure to include, estimate, or even discuss long

1 distance, air-travel VMT and contends that doing so omitted required information  
2 necessary for informed decisionmaking.

3 In brief, although each side is persuasive on certain specific arguments, and the  
4 court finds it appropriate to apply the "failure to proceed" standard, Respondent and RPI  
5 ultimately seem to be correct that the EIR did not need to include this information in the  
6 VMT analysis because the Scoping Plan documents say that it may be excluded.

7 Preliminarily, Petitioner in part relies on the Prior CRW Action but while that  
8 decision is relevant for the argument that it is improper for the EIR to rely on the  
9 thresholds and standards which the County sought to establish in the project at issue in  
10 that case, it is not relevant to the issue of whether this EIR improperly failed to consider  
11 long-distance travel in VMT calculations. The Prior CRW Action involved a CEQA  
12 challenge to the county's approval of a Programmatic EIR (the PEIR) and Climate  
13 Action Plan (CAP), a planning-level document to guide overall analysis of the GHG  
14 impacts of future projects in the county. The court's decision was based on the specific  
15 facts in the record in that case, including, amongst others, the respondent's claim that  
16 including the missing information would have been infeasible while admitting in the  
17 record that there were available feasible methodologies for quantifying the missing GHG  
18 data but merely contended that it was difficult. None of this is part of the analysis in this  
19 case, the Prior CRW Action is not precedent, and its determinations, for this point, have  
20 no direct bearing on the analysis here.

21 In one of their arguments supporting their position, Respondent and RPI contend  
22 that the EIR properly did not consider long-distance, air-traffic information in the VMT  
23 because Respondent had made factual determinations that the Project would not cause  
24 any changes in air traffic.

25 Countering this, Petitioner relies on "common knowledge" about the region's role  
26 as a tourist destination and findings of the Sonoma County Economic Development  
27 Board showing that destination spending and related tax receipts "are the highest that  
28 Sonoma County has seen in the last decade" while travelers "are flocking" hither from

1 around the world. OB 11:4-7, 9-16. These points, however, seem reasonable but in of  
2 themselves lack any clear evidence to show that the Project may actually cause a  
3 change or increase in such traffic.

4 Respondent's response in the record to Petitioner's comment on this point states  
5 the conclusion that it will not study these long-distance GHGs because the evidence  
6 demonstrated no change in air traffic. AR 6711-6714. Respondent and RPI correctly  
7 note that Petitioner does not point to anything in the record showing that the hotel will  
8 cause an increase in tourism, and thus VMT, or which otherwise actually refutes the  
9 conclusion regarding air traffic; the record shows that the area already experiences  
10 strong tourist activity; Respondent reasoned that the tourists would already visit the  
11 area with or without the hotel and that the tourists who visit the area come for the  
12 region, its wine, and other reasons rather than because of any specific hotel; and  
13 Respondent in fact used the CalEEMod model to generate estimates of VMT associated  
14 with the hotel. AR 6711-6712.

15 At AR 251, the EIR stated that because the Initial Study had determined that the  
16 Project would not cause a change in air traffic, then there would be no impact related to  
17 air traffic and that it was not going to consider the issue further. The Initial Study is at  
18 AR 6761, et seq., with the traffic discussion at AR 6840-6841. It states that the Project  
19 will not result in a change in air traffic but merely explains that the Project will not cause  
20 changes in air traffic patterns because of its distance from the Healdsburg Municipal  
21 Airport and discusses this in terms of local air traffic patterns and safety risks,  
22 specifically at that airport. It provides no evidence and discussion on whether the  
23 Project could generate or alter air traffic in the sense of trips and visits and it is entirely  
24 unrelated to the issues of whether it will have any effect on such trans-boundary trips.

25 Thus, from what the record shows as far as it is currently possible to discern, the  
26 Initial Study found that the Project would not change the local air patterns, with an  
27 emphasis on safety, because of local air traffic needs only. It made no determination on  
28 whether the Project would actually cause an increase in visits or trips, by air or



1 otherwise, and the only evidence mentioned related to the vicinity of the local airport,  
2 nothing more. The EIR's Transportation and Traffic section then used this statement  
3 from the Initial Study to determine that it would not alter air traffic at all so refused to  
4 consider it further; and then in the response to comments, most notably at AR 6712,  
5 Respondent used this in part to support its finding that the Project would not cause an  
6 increase in air traffic and thus VMT. That conclusion on the face of the record cannot  
7 be based on the Initial Study since the Initial Study never actually addressed that.  
8 Respondent otherwise, in both the response to comment and in its opposition, cites to  
9 absolutely no evidence or analysis of any sort which would support its assumptions and  
10 conclusions that the Project would not lead to an increase in visits by air or otherwise. It  
11 logically reasons that the envision hotel would merely serve people who would already  
12 be in the area or visit for other reasons, but admits the analysis "assumed" this while it  
13 provides nothing to support this assumption.

14           Nonetheless, Respondent and RPI properly assert that the methodology is  
15 appropriate, and the failure to consider the long-distance and air-travel VMT immaterial,  
16 because in the end the EIR appropriately bases its decisions on compliance with the  
17 Scoping Plan and that under the Scoping Plan, GHGs related to international and  
18 interstate flights are excluded. In the record, at AR 1566, the CARB 2014 GHG  
19 inventory states that aviation related GHGs include only those emissions for intrastate  
20 flights while interstate and international flights 'are included as an information item, but  
21 their [GHGs] are not counted ... in California's overall inventory." The 2007 CARB staff  
22 report for AB 32 and the Scoping Plan likewise notes that "[k]ey exclusions [from the  
23 state GHG inventory] are interstate and international flights, as well as ships operating  
24 outside of California waters." AR 1363. Similarly, an "Important Note" to the 2000-2017  
25 11th Edition of the California Greenhouse Gas Inventory for the Scoping Plan, excludes  
26 such international aviation traffic and also states that because this raises a question of  
27 how to treat emissions from interstate flights, the ARB staff determined that such GHGs  
28 should be estimated for information purposes only but not included in the emissions at

1 issue in determining compliance with the GHG mandate. See RJN, Ex. C, p. 1. The  
2 CARB reports note that the California inventory is consistent with international and  
3 national guidelines and protocols to the greatest extent possible." See, e.g., AR 1357.  
4 Petitioner does not challenge this.

5 With respect to the ICLEI protocols on which Petitioner relies, the Scoping Plan  
6 states "[i]n developing local plans, local government should refer to "The U.S.  
7 Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions"  
8 which is an ICLEI publication. RJN, Ex. A, p. 100; RJN, Ex. D. This adds that "these  
9 plans should disclose all emissions within the defined geographical boundary, even  
10 those over which the local government has no regulatory authority to control, and then  
11 focus the strategies on those emissions that the jurisdiction controls. For emissions  
12 from transportation, the community protocol recommends including emissions from trips  
13 that extend beyond the community's boundaries." *Ibid.* However, these are not part of  
14 the emissions which must be included. This document, in section 2.4, the section  
15 discussing which GHG sources and activities to include in an analysis beyond those  
16 mandated, provides a list of those items which local governments are "strongly  
17 encouraged" to include. In this section, it states that local governments may focus on  
18 those GHG sources and activities over which they have "significant influence" but also  
19 notes that they may find it appropriate to include "trans-boundary air and rail travel."  
20 Section 2.4.1, RJN, Ex. D, p. 29. While this clearly encourages agencies to estimate  
21 these GHGs, it is also clear that this is not mandatory under these protocols and that  
22 even to the extent that they should be reported, the emphasis for them is on information  
23 purposes only rather than truly factoring them into analysis on compliance with GHG  
24 thresholds.

25 The related ICLEI Local Government Operations Protocol states that in  
26 considering their own GHG activities, it is only optional for local governments to report  
27 Scope 3 business travel, Scope 3 travel being the very category at issue and which  
28 Petitioner claims the EIR fails to consider. RJN, Ex. B, p. 174. It explains that "no

1 widely accepted calculation methodologies for transportation modes such as airline  
2 travel yet exist."

3 As noted, not only does the Scoping Plan provide a framework for GHG analysis  
4 in California which agencies may use to determine GHG impacts under CEQA, but the  
5 EIR's analysis is expressly based compliance with the Scoping Plan. See, e.g., AR  
6 350-362.

7 Respondent and RPI also point out that in relying on CalEEMod, the EIR also  
8 uses a "well-accepted methodology" and the record supports this. This factor,  
9 combined with clear indications under the Scoping Plan and other protocols that such  
10 VMT need not be considered and is typically excluded, the fact that Petitioner has  
11 pointed to nothing in the record which would actually demonstrate that the Project would  
12 cause an increase in such VMT, and the fact that Petitioner has pointed to nothing  
13 showing that this VMT should actually be included in the analysis, indicates that  
14 Respondent did not need to include this information under CEQA or to allow for  
15 informed decisionmaking. The record and the applicable documents regarding the  
16 Scoping Plan and protocols make it clear that the missing VMT did not need to be, and  
17 is generally excluded from, analysis in determining compliance with applicable  
18 thresholds of significance. If that is so, it was not required for informed decisionmaking.

19 Petitioner argues that under *Newhall Ranch I, supra*, the Scoping Plan does not  
20 necessarily establish an appropriate framework for considering GHG impacts, the  
21 threshold needs to be tailored to the specific project in order to use Scoping Plan  
22 methodology, and this project "calls out" for inclusion of trans-boundary VMT despite the  
23 Scoping Plan methodology. *Newhall Ranch I*, as noted, made it clear that the Scoping  
24 Plan is not a mandatory framework for GHG analysis but is generally an appropriate  
25 one, stating at 62 Cal.4th 223, the very citation on which Petitioner itself relies,

26 Neither A.B. 32 nor the Scoping Plan establishes regulations  
27 implementing, for specific projects, the Legislature's statewide goals for  
28 "regulations or requirements adopted to implement" a statewide reduction  
plan within the meaning of Guidelines section 15064.4, subdivision (b)(3).

1 That guideline, however, does not expressly or impliedly prohibit a lead  
2 agency from using the A.B. 32 goals themselves to determine whether the  
3 project's projected greenhouse gas emissions are significant. As noted by  
4 the Natural Resources Agency in its amicus curiae brief, "a discussion of a  
5 project's consistency with the State's long-term climate stabilization  
6 objectives ... will often be appropriate ... under CEQA," provided the  
7 analysis is "tailored ... specifically to a particular project." Indeed, to  
8 proceed in this manner is consistent with CEQA's "inherent recognition ...  
9 that if a plan is in place to address a cumulative problem, a new project's  
10 incremental addition to the problem will not be 'cumulatively considerable'  
11 if it is consistent with the plan and is doing its fair share to achieve the  
12 plan's goals." [Citation.] For this reason as well, we conclude DFW's  
13 choice to use that criterion does not violate CEQA. The only published  
14 Court of Appeal decisions to consider this question have reached the  
15 same conclusion, albeit with little discussion. [Citation.]

9 Petitioner is thus correct that the Supreme Court noted that use of the Scoping Plan  
10 methodology should be "tailored ... specifically to a particular project," but this GHG  
11 discussion on its face is tailored to this specific project and Petitioner fails to explain  
12 how it is not. The EIR's GHG discussion does not simply rely generally on the Scoping  
13 Plan but specifically and clearly notes and considers the specific issues of this Project.  
14 In claiming that it does not, Petitioner provides no explanation other than the issues  
15 discussed above as to the need to include long-term VMT because this region is a  
16 tourist destination. Petitioner's claim that this Project "calls out" for inclusion of VMT is  
17 wholly unsupported. Petitioner provided nothing more at the hearing aside from the  
18 contention that it is appropriate to consider VMT in line with the Scoping Plan  
19 methodology explained above because here Respondent has "authority" over trans-  
20 boundary VMTs and emissions, but this is unpersuasive and unclear. Petitioner's only  
21 apparent explanation is that Respondent has such authority because it could deny the  
22 permit for the Project, which has nothing to do with controlling the VMT or GHGs.  
23 Clearly, Respondent has no authority at all over how many people may travel to or from  
24 the city, much less the county or region, how they may travel, what fuel they may use,  
25 or the like. Being able to deny the permit is simply control over whether it will allow the  
26 Project, not whether it could have any control over the VMT or GHG emissions.

27 Petitioner vaguely argued at the hearing, in a development of a claim made in the  
28 papers and discussed above, that Respondent could access data on tourism and

1 determine how the hotels relate to that. However, Petitioner has made no showing  
2 whatsoever of how that could actually lead to any more specific and non-speculative, to  
3 say nothing of meaningful, determinations as to how simply building a hotel in a region  
4 that is tourist destination could actually generate trans-boundary VMT and GHG, much  
5 less how Respondent could possibly have any control over those. Petitioner claims that  
6 "common sense" dictates that building a hotel will increase tourism and thus VMT but  
7 this is merely an assumption without any support and based on the record "common  
8 sense" does not indicate either way. As Respondent and RPI contend, Petitioner's  
9 proffered "common sense" conclusion appears to be similar to that analysis which the  
10 court rejected in *San Franciscans for Livable Neighborhoods v. City and County of San*  
11 *Francisco* (2018) 26 Cal.App.5th 596, at 619-620, where petitioner challenged the EIR  
12 for a housing project in part on the failure to study GHGs related to an increase in  
13 population. In rejecting this argument, the court explained that the project there was  
14 growth-accommodating rather than growth-inducing. Here, nothing shows that this  
15 Project is growth inducing and on its face it merely appears to accommodate tourists  
16 who will come to the region anyway. At the very least, that is a reasonable conclusion,  
17 based on the record, and there is no support for Petitioner's argument that this is  
18 incorrect or lacking in substantial evidence merely because tourists flock to the region.

19 The record indicates that the CalEEMod methodology employed is an accepted  
20 model and methodology, a point which Petitioner fails to dispute. Petitioner has claimed  
21 that a different methodology was rejected but Petitioner cites to nothing in the record  
22 showing that anyone actually set forth a feasible methodology considering trans-  
23 boundary VMT, which Respondent rejected. Petitioner's proposal seems to have been  
24 to draw up and look at purely hypothetical itineraries of made-up visitors, wholly lacking  
25 in authority or actual methodology. AR-E 2282-2284.<sup>1</sup> In its e-mail, Petitioner argued  
26 "we believe the FEIR ... could have provided a reasonable estimate of travel[-]induced  
27

28 <sup>1</sup> The Court notes that these e-mail comments were initially not provided with the lodged record but the parties stipulated that they should have been and they thus filed them with a joint stipulation adding them to the record.

1 GHG emissions" and "[t]here are analytical models for providing a reasonable estimate  
2 of GHG emissions attributable to a 130[-]room hotel ...." Petitioner did not clarify what  
3 these are or how they would work, providing no other information aside from giving the  
4 hypothetical examples of different theoretical travelers and claiming that doing so "is an  
5 example of feasible methodology." Petitioner did not in that e-mail explain how this is a  
6 feasible methodology rather than sheer speculation, which is all that it appears to be.  
7 Petitioner has not at any point in this litigation pointed to, or mentioned, any other  
8 methodology or any other basis for finding this example to be a feasible methodology  
9 instead of sheer speculation.

10 In its e-mail, and in argument before the Court, Petitioner argued that it is "not the  
11 public's burden to gather enough information to provide an accurate project description,"  
12 but while a generally correct statement of the law, this is inapplicable to the situation  
13 before the Court. This case does not involve a failure to provide a project description  
14 or, indeed, any other effort by Respondent to put the burden on the public. Instead,  
15 Petitioner is claiming that Respondent failed to employ a possible methodology for  
16 determining impacts which it did not consider, for which Petitioner claims there is a  
17 feasible methodology. The EIR adopted a methodology which appears facially  
18 reasonable and supported by substantial evidence, Petitioner does not actually appear  
19 to challenge that methodology in of itself, the Scoping Plan expressly excludes the type  
20 of trans-boundary VMT which Petitioner wants considered, and the record demonstrates  
21 nothing but speculation as a method to account for trans-boundary VMT. In light of  
22 these facts, Petitioner may not simply claim that there is a feasible methodology to  
23 assess missing data, provide mere speculation, and then claim that Respondent must  
24 do the research to find a feasible methodology. Respondent's decision not to study the  
25 trans-boundary VMT is not improperly putting the burden on the public, but instead a  
26 proper refusal to adopt Petitioner's proposed methodology on the basis that it is  
27 speculative. See *Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22  
28 Cal.App.5th 214, 225-228 (where agency "reasonably concluded that quantification of

1 downstream emissions would be speculative ... no further analysis was required”).  
2 Respondent had no obligation to then try to find another methodology based on  
3 Petitioner's conclusory, unexplained, and unsupported claim such may exist. As noted  
4 above, Guideline 15064.4(a) makes it clear that an agency's efforts to study GHGs must  
5 be “based to the extent possible on scientific and factual data” and, consistent with  
6 CEQA's principles in general, provides no room for speculation.

7       As noted above in the section on standard of review, Respondent and RPI argue  
8 that the standard of review for determining an agency's choice of methodology, the  
9 substantial-evidence test, should apply to the choice of methodology and that there is  
10 substantial evidence for this determination. As the Court noted, however, that does not  
11 appear to be the thrust of Petitioner's argument, which seems focused on whether the  
12 EIR fails to consider information that was required. Rather than attacking the chosen  
13 methodology, Petitioner seems to be, and claims that it is, arguing that Respondent  
14 rejected adoption of an additional methodology specifically for including trans-boundary  
15 VMT. Nonetheless, under this approach as well, the Court finds that there is substantial  
16 evidence that the EIR employed an appropriate methodology consistent with the  
17 statewide standards, Scoping Plan, and methodological approach, that Petitioner has  
18 failed to demonstrate any basis to the contrary or that anyone actually put forth a  
19 feasible methodology considering trans-boundary VMT effects, and that Respondent  
20 improperly rejected the proffered methodology which on its face was based on pure  
21 speculation.

22       Finally, whether it is feasible to include the trans-boundary VMT is not even  
23 material unless Petitioner can demonstrate that reliance on the Scoping Plan was in  
24 some manner an abuse of discretion and this it has failed to do. The Scoping Plan  
25 expressly excludes this VMT information and by complying with it, Respondent  
26 therefore did not need to consider the trans-boundary VMT. Doing so may even have  
27 been improper in light of the Scoping Plan's framework and approach because it would  
28 have conflicted with the Scoping Plan approach.

1 Nothing Petitioner has provided in papers or at the hearing demonstrates that it is  
2 improper to rely on the Scoping Plan methodology, which expressly excludes  
3 consideration of such trans-boundary VMT at issue here.

4 In the end, although the EIR contains no support for the conclusions that it did  
5 not need to include long-distance, air-traffic data in the VMT calculation because the  
6 Project would not cause any, the record does demonstrate that in accord with the  
7 Scoping Plan such VMT information did not need to be included in the EIR.  
8 Respondent therefore did not fail to proceed in the manner required by law.

### 9 Consistency with Statewide Emission Goals

10 Petitioner next argues that the EIR does not adequately consider consistency  
11 with statewide emission goals and instead relies on standards from the county's  
12 invalidated Climate Action Plan ("CAP"). Petitioner notes that the EIR rejects basing the  
13 analysis on Respondent's 2030 General Plan ("2030 Plan") because that plan's GHG  
14 section notes that it will cause significant, unavoidable consequences. Petitioner then  
15 notes, and criticizes, the reliance on the CAP because it had been invalidated and the  
16 section discussing compliance with the Scoping Plan because the conclusions are  
17 based on insufficient VMT information while the discussion is "confusing" and  
18 "obfuscated."

19 Petitioner appears to claim that it is improper or confusing for the EIR to avoid  
20 considering compliance with Respondent's 2030 Plan but this is not persuasive. The  
21 EIR explains that the 2030 Plan fails to comply with the Scoping Plan and state  
22 standards on GHG thresholds and reduction. It thus validly and logically explains that  
23 there is no point in determining compliance with the 2030 Plan since it would be  
24 meaningless or improper as a basis for determining thresholds of significance or GHG  
25 impacts.

26 Petitioner's CAP argument is unpersuasive. Nothing shows that the reliance on  
27 the CAP standards and thresholds was improper or violates CEQA for two significant  
28 reasons. First, even though the county's CAP was itself invalidated in the Prior CRW



1 Action, Respondent later, in a March 2018 resolution, adopted its own standards and  
2 climate plan based on and using the CAP, and the EIR is clear that it is actually basing  
3 its analysis on the CAP as adopted by Respondent, an adoption that was not  
4 invalidated. AR 352, 363, 373. This means that the invalidation of the county's CAP is  
5 immaterial and that Respondent is in fact using a valid, standing plan as the framework  
6 for analysis. The fact that the standards in Respondent's own adopted plan are taken  
7 from, and may be even the same as, those in the county's CAP does not make  
8 Respondent's own plan improper.

9 Petitioner at the hearing reiterated the argument that Respondent should not be  
10 able to rely on standards from the County CAP simply because that CAP had been  
11 invalidated in a prior CEQA action but admitted that Respondent had itself adopted the  
12 standards used here and that there had been no challenge to Respondent's adopted  
13 standards. Petitioner only added that it is difficult to understand how this could make  
14 sense but Petitioner fails to take into account the nature of the court's role here and the  
15 bases for its decision. A court in a CEQA petition does not rule on the "correctness" of  
16 an EIR but only on whether it complies with the law in light of the record. *Laurel Heights*  
17 *I, supra*, 47 Cal.3d 393. The mere fact that the standards or content which Respondent  
18 adopted are the same as those in the invalidated County CAP is alone immaterial.  
19 Respondent's adopted standards were never challenged and thus it is appropriate for  
20 Respondent to consider them as adopted standards, regardless of their similarity to  
21 standards in another agency's plan which was invalidated. Moreover, nothing about the  
22 invalidation of the County CAP in of itself indicates that other agencies could be  
23 forbidden from using the same standards themselves and this is an issue which courts  
24 simply do not have the power to consider in determining compliance with CEQA in light  
25 of the record on the project before them.

26 Second, nothing shows that this causes any prejudice, particularly since  
27 Respondent is not using the reliance on this CAP approach in lieu of compliance with  
28 the Scoping Plan. The EIR is very clear that it is separately considering compliance

1 with both the Scoping Plan and the CAP standards. AR 350-353. The fact that the EIR  
2 finds compliance with Respondent's adoption of the CAP standards *in addition to*  
3 compliance with the State Scoping Plan does not in some manner invalidate or corrupt  
4 the reasoning that the Project complies with the Scoping Plan standards, or obfuscate  
5 the issues or reasoning; it is simply comparing the Project to additional GHG standards  
6 and explaining that it complies with both.

7         Petitioner is similarly unpersuasive in its attack on the determinations of  
8 compliance with the Scoping Plan. The EIR sets forth clear information, clearly explains  
9 that it is determining compliance with the Scoping Plan by using the Bay Area Air  
10 Quality Management District ("BAAQMD") thresholds of significance, clearly explains  
11 how the Project's GHG impacts, without mitigation, would potentially exceed the  
12 BAAQMD thresholds and thus violate the Scoping Plan; and then clearly explains that  
13 the adopted mitigation measure will remedy this by reducing any potential GHG levels  
14 to below the BAAQMD thresholds of significance. AR 350-363. As explained further  
15 below in the section on the mitigation measure, it clearly demonstrates that this is so  
16 because the mitigation measure actually requires all projects within the ambit of NEAP  
17 to meet the BAAQMD thresholds of significance either with or without various  
18 measures, and demonstrate proof of such compliance. Although Petitioner, as  
19 discussed below, attacks the mitigation measure as improperly deferred and lacking  
20 clear performance standards, that is a separate issue and does not itself invalidate the  
21 analysis regarding the Scoping Plan and BAQMD thresholds.

22         Finally, Petitioner provides no explanation supporting its conclusory argument  
23 that this analysis "presents a confusing, obfuscated thought process." Its only  
24 explanation is that this is so because Respondent rejected compliance with its own  
25 2030 Plan, a rejection which all parties seem to agree was proper since it by definition  
26 does not comply with the Scoping Plan or state requirements otherwise, and relies on  
27 both the BAAQMD thresholds as well as Respondent's own adopted standards from the  
28 CAP. This does not make the discussion confusing and in fact the discussion on its

1 face seems to be clear and straightforward and it presents a clear analytical route  
2 demonstrating how it reached its conclusion.

3 The opposition also correctly notes, as explained above, that it is permissible for  
4 an agency to use the Scoping Plan as a basis for GHG analysis and determining  
5 thresholds of significance. *Center for Biological Diversity v. Department of Fish &*  
6 *Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch I*). Petitioner also does not seem to  
7 dispute the appropriateness of relying on the Scoping Plan, however, and instead  
8 claims merely that the EIR fails to demonstrate properly how the Project complies with  
9 it.

#### 10 Mitigation Measures

11 Finally, Petitioner challenges the EIR's mitigation measures as related solely to  
12 GHGs, arguing that Respondent improperly adopted deferred mitigation measures  
13 lacking clear performance standards as required.

#### 14 Authority on Mitigation Measures

15 Ensuring that an agency adopts sufficient mitigation measures is one of the key  
16 roles of CEQA. PRC section 21002 states that "it is the policy of the state that public  
17 agencies should not approve projects as proposed if there are feasible alternatives or  
18 *feasible mitigation measures available* which would substantially lessen the significant  
19 environmental effects ...." The Supreme Court decided that considering alternatives is  
20 one of the most important functions of an EIR. *Wildlife Alive v. Chickering* (1976) 18  
21 Cal.3d 190, 197. In fact, "[t]he core of the EIR is the mitigation and alternatives  
22 sections." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564,  
23 566 (*Goleta II*).

24 CEQA is thus recognized as not merely a "procedural" statute but one that  
25 contains a "substantive mandate" that agencies not approve projects if feasible  
26 alternatives or mitigation measures can substantially reduce those impacts. *Mountain*  
27 *Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 134; see also *Remy,*  
28 *III*

1 et al., Guide to the California Environmental Quality Act (10th Ed.1999) Chapter I, pp.2-  
2 3.

3 It is well-established that it is improper for an agency to rely on *deferred*  
4 mitigation. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Defend the*  
5 *Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275-1276.

6 The court in *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359 found a  
7 negative declaration ("ND") defective because it improperly relied on deferred  
8 formulation of specific mitigation measures. The city required the applicant to comply  
9 with any existing ordinance protecting the Stephens' kangaroo rat and allowed the city  
10 to require a biological report on the rat and compliance with any recommendations in  
11 the report. The court found this insufficient because it, like the approval in *Sundstrom*,  
12 based the approval on compliance with a report that had not yet even been performed.

13 By contrast, the court in *Schaeffer Land Trust v. San Jose City Council* (1989)  
14 215 Cal.App.3d 612, upheld an ND for a general plan amendment for a parcel of land  
15 which, regarding traffic issues, required any future development to comply with  
16 applicable "level of service" standards. Unlike the other cases mentioned above, the  
17 mitigation measures were delayed because the development and impacts were not  
18 concrete, but the mitigation was fixed to set performance standards which, by definition,  
19 ensured that there would be no significant impact.

20 As a result, "[d]eferral of the specifics of mitigation is permissible where the local  
21 entity commits itself to mitigation and lists the alternatives to be considered, analyzed  
22 and possibly incorporated in the mitigation plan." *Defend the Bay v. City of Irvine* (2004)  
23 119 Cal.App.4th 1261, 1275-1276; see also, *Sacramento Old City Assn. v. City Council*  
24 (1991) 229 Cal.App.3d 1011, 1028-1030. This applies where "mitigation is known to be  
25 feasible, but where the practical considerations prohibit devising such measures early,"  
26 so that "[w]here future action to carry a project forward is contingent on devising means  
27 to satisfy such criteria, the agency should be able to rely on its commitment as evidence

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1 that significant impacts will in fact be mitigated." *Sacramento Old City Assn., supra*,  
2 1028-1029.

3 Mitigation with deferred specifics was found to satisfy CEQA where the lead  
4 agency had committed to mitigation meeting a specified range of criteria and project  
5 approval required the developer to obtain permits and adopt seven itemized measures  
6 in coordination and consultation with relevant agencies. *Defend the Bay, supra*, 1276.

7 A mitigation measure that required replacement habitat preservation was  
8 similarly found to satisfy CEQA even though the specifics were not fully determined but  
9 where the approval set forth *specific possibilities and parameters that the mitigation*  
10 *needed to meet.* *Endangered Habitats League, Inc. v. County of Orange* (2005) 131  
11 Cal.App.4th 777, 794. The EIR "set[] out the possibilities - on-site or off-site  
12 preservation of similar habitat at a ratio of at least two to one, or one of several possible  
13 habitat loss permits from relevant agencies."

14 The court in *Coastal Hills Rural Preservation v. County of Sonoma* (2016) 2  
15 Cal.App.5th 1234, at 1258, upholding this trial court's order denying a CEQA petition for  
16 writ of mandate, explained that although "CEQA usually requires mitigation measures to  
17 be defined in advance" and not deferred, "deferral [of mitigation measures] is permitted  
18 if, in addition to demonstrating some need for deferral, the agency (1) commits itself to  
19 mitigation; and (2) spells out, in its environmental impact report, the possible mitigation  
20 options that would meet "specific performance criteria" contained in the report."

21 In *Sundstrom, supra*, the county required future hydrological studies as  
22 conditions of a use permit and required that any mitigation measures that the study  
23 suggested would become mandatory. The court found this to be improper because the  
24 impacts and mitigation measures were not determined.

25 In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131  
26 Cal.App.4th 777, the court found a mitigation measure that required replacement habitat  
27 preservation to satisfy CEQA even though the specifics were not fully determined but

28 ///

1 where the approval set forth specific possibilities and parameters that the mitigation  
2 needed to meet. *Endangered Habitats League*, 794.

### 3 The Mitigation Measures at Issue

4 The measures at issue, which Petitioner cites at OB 18-19, are found at AR 362-  
5 363. The EIR admits that GHG impacts would be significant absent the mitigation but at  
6 AR 374 cites to and relies on the mitigation measures to support the conclusion that,  
7 with the mitigation measures, the Project's GHG impacts would be reduced to less than  
8 significant.

9 The measure is actually one mitigation measure with various options on how to  
10 achieve it. It states that each developer shall "provide documentation to the City ...  
11 demonstrating that the proposed development would meet the BAAQMD recommended  
12 threshold of significance ... or would achieve additional GHG ... reductions sufficient to  
13 meet the recommended threshold through a combination of one or more" measures. It  
14 then lists several measures which may be used and add that the measures used may  
15 include "comparable" ones "approved by the City."

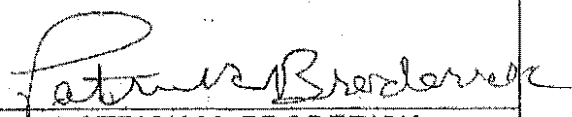
16 Petitioner is correct that this is open ended in the details and mechanics and  
17 leaves significant uncertainty over exactly what will be done to reduce any GHGs.  
18 However, as Respondent and RPI note, it sets what appears to be a mandatory and  
19 clear performance standard: any development must, regardless of what actual  
20 mitigation approaches it employs, or whether it employs any at all, "meet the BAAQMD  
21 recommended threshold of significance." This is a clear performance standard and it is  
22 apparently mandatory. It also by definition would mean that there will be no significant  
23 impact since it by definition requires that all development meet the applicable threshold  
24 of significance. Petitioner does not take issue with this performance standard but  
25 instead attacks the specifics of each method for achieving this performance standard,  
26 which is immaterial. What matters ultimately is that there is a clear, mandatory  
27 performance standard and that in some fashion each development must meet it.

28 Accordingly, the Amended Petition for Writ of Mandate is denied.

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IT IS SO ORDERED.

DATED: 4-28-2020

  
PATRICK M. BRODERICK  
Judge of the Superior Court

## PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the attached Decision After Hearing on Amended Complaint for Declaratory Relief and Petition for Writ of Mandate in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: April 28, 2020

Arlene Junior  
Clerk of the Court

By: Cynthia Gaddie  
Cynthia Gaddie, Deputy Clerk

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**PROOF OF SERVICE**

*California River Watch v. City of Healdsburg, et al.*  
**Sonoma County Superior Court, Case No. SCV-264647**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

On May 12, 2020, I served true copies of the following document(s) described as **[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

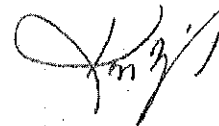
**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address karen.wigylyus@msrlegal.com to the persons at the e-mail addresses listed in the Service List.

**BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the Court by using the Odyssey eFileCA system. Participants in the case who are registered users will be served by the Odyssey eFileCA system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 12, 2020, at Walnut Creek, California.



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Karen Wigylyus

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**SERVICE LIST -EService**

***California River Watch v. City of Healdsburg, et al.***  
**Sonoma County Superior Court, Case No. SCV-264647**

<p>Jack Silver Law Office of Jack Silver 708 Gravenstein Hwy, No. #407 Sebastopol, CA 95472 Tel: 707 528 8175 Email: jsilverenvironmental@gmail.com</p> <p>Attorney for Petitioner CALIFORNIA RIVER WATCH</p> <p><i>Via E-Service</i></p>	<p>Jerry Bernhaut 23 Woodgreen Street Santa Rosa, CA 95409 Tel: 707 595 1852 Email: j3bernhaut@gmail.com</p> <p>Attorney for Petitioner CALIFORNIA RIVER WATCH</p> <p><i>Via E-Service</i></p>
<p>Samantha W. Zutler Gail E. Kavanagh Anna C. Shimko Burke, Williams &amp; Sorensen, LLP 101 Howard Street, Suite 400 San Francisco, CA 94105 Tel: 415 655 8100 Fax: 415 655-8099 Email: szutler@bwslaw.com gkavanagh@bwslaw.com ashimko@bwslaw.com</p> <p>Attorneys for Respondent CITY OF HEALDSBURG</p> <p><i>Via E-Service</i></p>	

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**PROOF OF SERVICE**

*California River Watch v. City of Healdsburg, et al.*  
**Sonoma County Superior Court, Case No. SCV-264647**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

On June 12, 2020, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT DENYING PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address karen.wigylus@msrlegal.com to the persons at the e-mail addresses listed in the Service List.

**BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the Court by using the Odyssey eFileCA system. Participants in the case who are registered users will be served by the Odyssey eFileCA system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 12, 2020, at Walnut Creek, California.

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Karen Wigylus

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**SERVICE LIST -EService**

***California River Watch v. City of Healdsburg, et al.***  
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