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TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

MAR 16 2009

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TULARE COUNTY SUPERIOR COURT
STATE OF CALIFORNIA

Sierra Club,
Petitioner,
and
City of Tulare, et. al.,
Respondents.

) Case No.: 08 - 228122
) Order Granting Petition in Part For Writ of
) Mandate

This matter came on regularly for hearing on February 11, 2009 in Department 6 of the Tulare Superior Court, located at 221 S. Mooney Blvd., Visalia, California, the Honorable Patrick J. O'Hara presiding. Kara K. Ueda appeared on behalf of the Respondent, City of Tulare. Petitioner, Don Manro appeared on his own behalf. Babak Naficy appeared on behalf of Petitioner, the Sierra Club.

This case was consolidated with Manro v. City of Tulare, et. al., case no. 08-228094 as both cases challenge the validity of Resolution No. 08-13 of the City of Tulare (City) adopting Findings, A Statement of Overriding Considerations, and Certifying a final programmatic environmental impact report (EIR) in connection with its adoption of Resolution No. 8 14, approving the 2030 General Plan Update (GPU), specifically revising the land use, circulation, and conservation elements of the general plan.

The court having reviewed the record of the proceedings in this matter, the briefs

1 submitted by counsel, and the arguments of counsel, and the matter having been submitted for
2 decision, the Court finds that Resolution No. 08-13 of the City of Tulare (City) adopting
3 Findings, A Statement of Overriding Considerations, and Certifying a final programmatic
4 environmental impact report (EIR) in connection with its adoption of Resolution NO. 8-14,
5 approving the 2030 General Plan Update (GPU), specifically revising the land use, circulation,
6 and conservation elements of the general plan, fails to comply with the provisions of the
7 California Environmental Quality Act on certain issues as presented herein.

8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

PROCEDURAL STATUS

Petitioners argue that the City violated the California Environmental Quality Act (CEQA); Mr. Manro concurs and also brings this action under the Planning and Zoning Law, Division 1 of Title 7 of the Government Code, section 65000, et. seq.

Only parties who objected to the agency's approval of the project either orally or in writing may thereafter file a petition. (CEQA Guideline § 21177(b)). A petitioner who has standing to sue may litigate issues raised by others. (Guideline § 21177(a)). Both Petitioners objected to the agency's approval of the project, and have standing to sue, and may litigate any issues raised by others.

After the court issued its tentative ruling, in which the court analyzed the two petitions together and in sequence of the parties' arguments in their opening briefs, the City asked for separate judgments. Therefore, the court complies with the City's request, and issues this ruling on the Sierra Club's Petition, and a separate ruling on Mr. Manro's Petition.

However, in doing so, the court adopts a different format. The parties' briefs addressed different issues rather than following the outline of the petitions as to each cause of action, thus the court followed that format in its tentative. Now the court's analysis will address each cause of action as presented in the petitions, as the pleadings control.

The Administrative Record

The parties lodged the administrative record, and then prepared their briefs. No one at that point evidently had any argument with the administrative record, and thus the court

1 considered it agreed upon to be final and complete.

2 However, at the first hearing of this matter, Petitioner, the Sierra Club made an oral
3 motion to augment the record by admitting the declaration of Dr. Gordon Nipp.

4 Sierra Club acknowledged that normally only the administrative record is available for
5 review in CEQA but requested Dr. Nipp's declaration be admitted as to Respondent's affirmative
6 defense of Sierra's failure to exhaust its administrative remedies, which Sierra Club argued is an
7 exception to the general rule. Petitioner cited to footnote 5 in Western States Petroleum Ass'n v.
8 Superior Court, 9 Cal. 4th 559, 575 (Cal. 1995), which provides as follows:

9 “n5 These commentators propose several limited exceptions to the general rule
10 excluding extra-record evidence in traditional mandamus actions challenging
11 quasi-legislative administrative decisions. Specifically, they suggest that courts
12 should admit evidence relevant to (1) issues other than the validity of the agency's
13 quasi-legislative decision, such as the petitioner's standing and capacity to sue, (2)
14 affirmative defenses such as laches, estoppel and res judicata, (3) the accuracy of
15 the administrative record, (4) procedural unfairness, and (5) agency misconduct.
(Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, op. cit.
supra, § 23.55, pp. 967-968.) Because none of these exceptions apply to the case
at bar, we need not consider them.”

16 The City did not object to the declaration of Dr. Nipp being admitted so long as the
17 declaration of Lucy Sylvester was also admitted on their oral motion. Sierra Club moved to strike
18 Ms. Sylvester's declaration but provided no authority for doing so, and no explanation as to why
19 Mr. Nipp's declaration should be admitted and not Ms. Sylvester's (which was only submitted to
20 counter the allegations in Mr. Nipp's declaration). However, at the second oral argument Sierra
21 Club objected “on the basis that it contradicts the city's certification earlier of the record that
22 does not include the documents that they now try to use to augment it.” In any event, the
23 declarations go to the fact of whether or not Sierra Club was given direct notice of the Final EIR
24 (FEIR) in time to comment on the FEIR's failure to adequately describe the existing
25 environmental setting with respect to biological resources and, that as a consequence, the
26 biological impacts are deficient. Sierra Club argued that since they did not get notice of the Final
27 EIR in time to comment, they have standing to bring this issue before the court. Sierra Club did
28 not argue that it, or anyone, had presented this issue during the comment period on the draft EIR.

1 Sierra only raised it after the City certified the FEIR.

2 On Sierra's oral motion to admit the declaration of Dr. Nipp, the court finds an exception
3 to the general rule and grants the motion. On Respondent City of Tulare's oral motion to admit
4 Lucy Sylvester's declaration if Dr. Nipp's declaration was granted, the court grants the motion,
5 and thus, denies Sierra Club's motion to strike Lucy Sylvester's declaration. Having admitted
6 these declarations, the court considers the administrative record to be final and complete.

7 Having admitted the declarations, the court finds that it does not help Sierra. Sierra Club
8 argues that the public was not properly notified of the availability of the Final EIR, and thus the
9 City cannot legitimately complain that Sierra Club failed to exhaust its administrative remedies
10 relative to issues raised for the first time in the Final EIR, citing to Endangered Habitats League,
11 Inc. v. State Water Resources Control Board (1997) 63 Cal.App.4th 227.

12 However, the City is not required to submit the Final EIR for public review but may do
13 so in its discretion. (14 Cal Code Regs 14089(b)). CEQA requires public review only at the draft
14 EIR stage. (Public Resources Code § 21092). Endangered Habitats League, Inc., supra, is
15 distinguishable, as its discussion of the exhaustion doctrine refers to where an effective
16 administrative remedy is wholly lacking. In that case, when the master drainage plan was
17 originally filed in 1986, it alluded to further environmental review, which was never done. The
18 county gave no notice and provided no opportunity to be heard on the question of
19 implementation, which was the second tier of environmental review.

20 Therefore, as to the City's argument that Sierra Club did not exhaust its administrative
21 remedies as to the biological impacts, the court finds that Petitioner Sierra Club did not exhaust
22 on that issue and is thus barred from raising it as an issue in this review.

23 But even if the Sierra Club had raised the specific issue of the draft EIR's failure to
24 adequately describe the existing environmental setting with respect to biological resources at the
25 public hearings, the City's citation to the administrative record at pages 448-450 (AR: 448-450)
26 and Appendix F, AR: 1335, supports with substantial evidence that the draft EIR considered the
27 existing biological setting sufficient for a GPU. A GPU is broad in scope and more
28 environmental review will be required for each specific project within the GPU.

STANDARD OF REVIEW

The court finds Public Resources Code § 21168.5 sets forth the standard of review in this case. Under section 21168.5, judicial review "extends only to whether there was a prejudicial abuse of discretion." An abuse of discretion is established "if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal. 3d 376, 392 (Laurel Heights I).) As a result of this standard, "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 189 [139 Cal.Rptr. 396].)

"An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and consider meaningfully the issues raised by the proposed project" (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal. 3d 376, 405 (Laurel Heights I)). "[N]oncompliance with the information disclosure provisions. . . which precludes relevant information from being presented. . . may constitute a prejudicial abuse of discretion. . . regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (Public Resources Code § 21005(a)). The trial court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. (Rural Land Owners Association v. City Council (1983) 143 Cal. App. 3d 1013, 1023).

The court must presume the agency complied with the law and petitioners bear the burden of proving otherwise. (Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal. App. 4th 99, 117). "CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." (Dry Creek Citizens Coalition v. County of Tulare (1977) 70 Cal. App. 4th 20, 26, citing CEQA Guidelines, § 15151).

"The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used

1 for studying an impact; and the reliability or accuracy of the data upon which the EIR relied
2 because these types of challenges involve factual questions." (Bakersfield Citizens for Local
3 Control v. City of Bakersfield (2004) 124 Cal. App. 4th 1184, 1198).

4 DISCUSSION

5 Sierra Club makes multiple arguments as to the City's failure to comply with CEQA. Thus,
6 the court reviews the administrative record to see if a prejudicial abuse of discretion is
7 established because the City has not proceed in a manner required by law, or if the determination
8 or decision is not supported by substantial evidence.

9 10 **I. Sierra Club's First Cause of Action is "Failure to Impose Adequate Mitigation Measures** 11 **to Address Significant Adverse Environmental Impacts."**

12 Sierra Club alleges the mitigation measures are inadequate as to: (1) agricultural resources;
13 (2) aesthetics; (3) air quality; (4) biological resources. Sierra Club only presented argument in its
14 brief as to issue 1, agricultural resources, and global climate change, which was addressed in its
15 petition under issue 3, air quality. The court has found Sierra Club is precluded from raising
16 issue 4, biological resources for failure to exhaust its administrative remedies. Thus, the court
17 only addresses mitigation issues as to agricultural resources and global climate change.

18 First, the City argues that Sierra Club did not exhaust their administrative remedies as to the
19 argument regarding mitigation measures as to agricultural conversion and global warming.
20 However, these issues were raised in the public hearings on the draft EIR as the City responded
21 to Sierra Club's comments on these issues in the FEIR. The City complains that after it
22 responded to Sierra Club in the FEIR that Sierra Club did not comment further that the City's
23 responses were inadequate before the adoption of the FEIR. Thus, the City argues Sierra Club is
24 precluded from bringing these arguments now as no one raised them before the public agency
25 before its adoption of the FEIR. Sierra Club argues that it is not required to comment on the
26 FEIR so long as it had previously raised the issue sufficiently for the City to be aware of the
27 deficiency.

28 The court finds that this argument also goes to the sufficiency of the responses to comments

1 in the FEIR (Sierra Club's Fifth Cause of Action). The court finds that Sierra Club exhausted on
2 these issues as it raised them sufficiently in the comment period on the draft EIR, and is not
3 barred from raising them herein.

4 In the FEIR the City adopted mitigation Policy COS -3.12 and 3.13 in response to Sierra
5 Club's comments. Sierra Club argues these mitigation measures are inadequate as a matter of
6 law, and did not adequately respond to their comments as to a standard for mitigation regarding
7 the ratio of agricultural resources.

8 The City admits that it was required to identify feasible and "fully enforceable" mitigation
9 measures. However, the city ignores CEQA's prohibition against deferral of the formulation
10 measures unless it can be shown that practical considerations prevent formulation of mitigation
11 measures, in which case the agency can satisfy CEQA by (1) committing to eventually devising
12 such measures, and (2) articulate specific performance criteria at the time of project approval.
13 (San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670).

14 The proposed agricultural policies set forth in Conservation and Open Space (COS) -3.12 and
15 3.13 fail under this standard in part because they do not include "specific performance criteria. In
16 this context, the essential missing specific performance criteria is the relationship (i.e. the ratio)
17 between the number of farmland acres converted and the number of acres that must be set aside.
18 Therefore, there is no mandatory ratio to guide future development.

19 Sierra Club commented that the City should adopt a ratio and the City did not adequately
20 respond to this comment. Responses should explain rejections of the commentors' proposed
21 mitigations and alternatives. Evasive, conclusory responses and mere excuses are not legally
22 sufficient. (Cleary v. County of Stanislaus (1981) 118 Cal.App.3rd 348, 355-360, (failure to
23 adequately respond to any significant public comment is an abuse of discretion); Guidelines
24 §15088(b)).

25 The center-piece of the City's global warming mitigation measures is policy COS-7.2,
26 pursuant to which, the City hopes to develop a plan ("Plan") to identify and reduce Green House
27 Gases (GHG) emissions. The FEIR hopefully promises that the Plan will explain how the City
28 will inventory GHG emissions, establish GHG levels in 1990 and 2020, and "set a target for the

1 reduction of emissions attributable to the City's discretionary land use decisions and its own
2 internal government operations." AR 3:747. COS-7.2 is an inadequate mitigation measure
3 because it impermissibly defers the formulation of mitigation measure and does not include any
4 specific performance criteria. (San Joaquin Raptor Rescue Center v. County of Merced (2007)
5 149 Cal.App.4th 645, 670).

6 The court agrees with Sierra Club that the City failed to impose adequate mitigation measures
7 to address significant adverse environmental impacts as to agricultural resources and global
8 climate change. This is a failure to proceed in the manner required by law and is a prejudicial
9 abuse of discretion. In each case, the City made a finding that the significant adverse impact was
10 "unavoidable" despite the proposed mitigation measures. The City's findings, that these impacts
11 are "unavoidable," are not supported by substantial evidence because feasible mitigation
12 measures exist, and were suggested to the City that could reduce the significance of these
13 environmental impacts. The City's responses to Sierra Club's comments as to the mitigation
14 measures were insufficient. It was a failure to proceed in the manner required by law and a
15 prejudicial abuse of discretion.

16 The court issues the Writ of Mandate setting aside the City's approval of the GPU and the
17 certification of the Final EIR as to the City's failure to adequately impose mitigation measures as
18 to the issues of agricultural resources and global climate change, and orders the City to comply
19 with CEQA.

20
21 **II. Sierra Club's Second Cause of Action is "Failure to Adequately Analyze Project**
22 **Impacts on Water Supplies."**

23 The court agrees with Sierra Club. Although the City relies exclusively on a groundwater
24 basin that is in overdraft, the EIR found that the City's water supplies could adequately support
25 the projected population increase under the Update without exacerbating the overdraft. AR
26 2:310-315. To reach this conclusion, the EIR relies exclusively on a draft Urban Water
27 Management Plan (UWMP) and a poorly defined groundwater recharge program. AR 3:315.

28 Our Supreme Court set forth the necessary criteria for discussion as to impacts on water

1 supplies in a proper EIR in Vineyard Area Citizens for Responsible Growth, Inc. v. City of
2 Rancho Cordova (2007) 40 Cal.4th 412, 432, as follows:

3 "First, CEQA's informational purposes are not satisfied by an EIR that simply
4 ignores or assumes a solution to the problem of supplying water to a proposed
5 land use project. Decision makers must, under the law, be presented with
6 sufficient facts to "evaluate the pros and cons of supplying the amount of water
7 that the [project] will need." (Santiago County Water Dist. v. County of Orange,
8 supra, 118 Cal. App. 3d at p. 829.) Second, an adequate environmental impact
9 analysis for a large project, to be built and occupied over a number of years,
10 cannot be limited to the water supply for the first stage or the first few years.
11 While proper tiering of environmental review allows an agency to defer analysis
12 of certain details of later phases of long-term linked or complex projects until
13 those phases are up for approval, CEQA's demand for meaningful information "is
14 not satisfied by simply stating information will be provided in the future." (Santa
15 Clarita, supra, 106 Cal.App.4th at p. 723.) As the CEQA Guidelines explain:
16 "Tiering does not excuse the lead agency from adequately analyzing reasonably
17 foreseeable significant environmental effects of the project and does not justify
18 deferring such analysis to a later tier EIR or negative declaration." (Cal. Code
19 Regs., tit. 14, § 15152, subd. (b).) Tiering is properly used to defer analysis of
20 environmental impacts and mitigation measures to later phases when the impacts
21 or mitigation measures are not determined by the first-tier approval decision but
22 are specific to the later phases. For example, to evaluate or formulate mitigation
23 for "site specific effects such as aesthetics or parking" (id., § 15152 [Discussion])
24 may be impractical when an entire large project is first approved; under some
25 circumstances analysis of such impacts might be deferred to a later-tier EIR. But
26 the future water sources for a large land use project and the impacts of exploiting
27 those sources are not the type of information that can be deferred for future
28 analysis. An EIR evaluating a planned land use project must assume that all
29 phases of the project will eventually be built and will need water, and must
analyze, to the extent reasonably possible, the impacts of providing water to the
entire proposed project. (Stanislaus Natural Heritage, supra, 48 Cal.App.4th at p.
206.) Third, the future water supplies identified and analyzed must bear a
likelihood of actually proving available; speculative sources and unrealistic
allocations ("paper water") are insufficient bases for decision making under
CEQA. (Santa Clarita, supra, 106 Cal.App.4th at pp. 720-723.) An EIR for a land
use project must address the impacts of likely future water sources, and the EIR's
discussion must include a reasoned analysis of the circumstances affecting the
likelihood of the water's availability. (California Oak, supra, 133 Cal.App.4th at p.
1244.) Finally, where, despite a full discussion, it is impossible to confidently
determine that anticipated future water sources will be available, CEQA requires
some discussion of possible replacement sources or alternatives to use of the
anticipated water, and of the environmental consequences of those contingencies.
(Napa Citizens, supra, 91 Cal.App.4th at p. 373.) The law's informational
demands may not be met, in this context, simply by providing that future

1 development will not proceed if the anticipated water supply fails to materialize.
2 But when an EIR makes a sincere and reasoned attempt to analyze the water
3 sources the project is likely to use, but acknowledges the remaining uncertainty, a
4 measure for curtailing development if the intended sources fail to materialize may
5 play a role in the impact analysis. (See *id.* at p. 374.)”

6 The City's EIR does not adequately analyze project impacts on the water supply as it does not
7 comply with the criteria as set forth in Vineyard. The City's reliance on 12,500 Acre Foot per
8 Year (AFY) surface water deliveries from the Tulare Irrigation District (TID) is misplaced and
9 inadequately explained. The City was required to identify alternatives to this potential supply
10 because the future availability of this water cannot be confidently determined. The EIR did not
11 offer any analysis or facts to show that this water will actually materialize. The only evidence the
12 City offered is that once, in 2006, the City was able to purchase 11,000 acre feet. This is not
13 substantial evidence. CEQA requires evidence and analysis to support the conclusion that water
14 supplies will materialize. The EIR violates CEQA because the conclusion that sufficient surplus
15 surface water supplies will be available to TID for purchase by the City is not supported by
16 substantial evidence. This is a prejudicial abuse of discretion.

17 The court issues the Writ of Mandate setting aside the City's approval of the GPU and the
18 certification of the Final EIR as to the City's failure to adequately analyze the project impacts on
19 water supplies, and orders the City to comply with CEQA.

20 **III. Sierra Club's Third Cause of Action is "Violation of Water Code §10910, et. seq.:
21 Failure to Prepare a Water Supply Assessment."**

22 This cause of action was not argued in Sierra Club's brief, therefore the court determines that
23 Sierra Club abandoned this argument.

24 **IV. Sierra Club's Fourth Cause of Action is "Inadequate Alternatives Analysis."**

25 The court agrees with Sierra Club that the City failed to discuss a reasonable range of
26 alternatives. CEQA requires that "The alternatives shall be limited to ones that would avoid or
27 substantially lessen any of the significant effects of the project." (Guidelines, sec. 15126.6, subd.
28 (f)). The EIR must compare the merits of each feasible alternative and explain in some detail
how the alternatives were selected. (Guidelines, sec. 15126.6). Significantly, the discussion of

1 alternatives must include sufficient information about each alternative to allow evaluation and
2 comparison of alternatives to the Project. (Guidelines, sec. 15126.6(d)); Association of Irrigated
3 Citizens v. County of Madera (2003) 207 Cal.App.4th 1383, 1400).

4 There is no project alternative that would require less conversion of farmland or a reduced
5 population scenario. None of the alternatives, other than the no project alternative, provide a
6 scenario that might substantially reduce any of the significant effects of the Project. The range of
7 alternatives is, therefore, unreasonably narrow. This is a failure to proceed in the manner
8 required by law. Additionally, the City's adoption of alternative 1 is not supported by substantial
9 evidence. Both of these constitute a prejudicial abuse of discretion.

10 However, as to Sierra Club's argument that the City should have adopted Alternative 4, not
11 alternative 1, the court disagrees. The court's role does not include reweighing the evidence that
12 was before the agency. The court may not substitute its judgment for that of the people and their
13 local representatives and may not set aside an agency's certification of an EIR "on the ground
14 that an opposite conclusion would have been equally or more reasonable." (Citizens of Goleta
15 Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564).

16 The court issues the Writ of Mandate setting aside the City's approval of the GPU and the
17 certification of the Final EIR as to its failure to adequately present and analyze a reasonable
18 range of project alternatives, and orders the City to comply with CEQA.

19 **V. Sierra Club's Fifth Cause of Action is "Inadequate Response to Comments."**

20 The court agrees with Sierra Club. CEQA Guideline § 15088(c) provides that the written
21 responses shall describe the disposition of significant environmental issues raised (e.g. revisions
22 to the proposed project to mitigate anticipated impacts or objections). In particular, the major
23 environmental issues raised when the Lead Agency's position is at variance with
24 recommendations and objections raised in the comments must be addressed in detail giving
25 reasons why specific comments and suggestions were not accepted. There must be good faith,
26 reasoned analysis in response. Conclusory statements unsupported by factual information will
27 not suffice.

28 See the discussion in the First Cause of Action. Additionally, the City's responses to the Farm

1 Bureau comments were inadequate. With respect to mitigation measure COS-3.10, the Farm
2 Bureau argued that protesting the formation of new Williamson Act contracts within the
3 planning area would not mitigate the impacts on important farmlands and Williamson Act lands
4 in the planning area. AR 3:636, comment 03-35. The City's response completely ignores the
5 Farm Bureau's complaint that the EIR describes COS-3.10 as a policy intended to conserve
6 agricultural resources, when in fact, by protesting Williamson Act contracts, which are intended
7 to protect farmlands and prevent their premature conversion, COS-3.10 would have the opposite
8 effect. The City's responses to the Farm Bureau's comments relative to the EIR's alternatives
9 analysis are no better. This is a failure by the agency to proceed in the manner required by law
10 constituting an abuse of discretion.

11 The court issues the Writ of Mandate setting aside the City's approval of the GPU and the
12 certification of the Final EIR as to its inadequate responses to Comments, and orders the City to
13 comply with CEQA.

14 **VI. Sierra Club's Sixth Cause of Action is "Inadequate Analysis of Project Impacts."**

15 Although Sierra Club set forth several issues in its Petition under this cause of action, its
16 opening brief only argued the inadequate analysis of project impacts as to the issue of global
17 climate change. Thus, the court only discusses that issue finding the other issues abandoned.

18 The court agrees with Sierra Club on this issue. Although the City devoted subchapter 6.2 of
19 the EIR to the issue of Climate Change (AR 2:403-410), it failed to show where in that section it
20 analyzed stationary sources for GHG. The City appears to be arguing that it was not required to
21 do so because no guideline specifically requires it; and the analysis of the Project's GHG
22 emissions from stationary sources was unnecessary in light of the City's conclusions that the
23 Project's impact on global warming is significant and unavoidable.

24 Under CEQA's general requirements, the City was required to estimate the Project's overall
25 emissions, including stationary and non-statutory sources. Contrary to this requirement, the EIR
26 only calculated the emissions from vehicular traffic. No explanation is given for why this
27 calculation could be done without information about specific projects but the same could not be
28 done for stationary sources. Sierra Club has shown that analytical models exist to calculate

1 emissions from stationary sources without the specific information as to later specific projects
2 the City claims are necessary for this analysis. This is a failure to proceed in the manner required
3 by law and is an abuse of discretion.

4 Before assessing the significance of the Project's impact on global warming the City was
5 required to calculate the Project's GHG emissions using best available tools. (Berkley Keep Jets
6 Over the Bay v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1371). Guideline
7 section 15144 ("agency must use its best efforts to find out and disclose all that it reasonably
8 can" about the Project's impacts).

9 The court issues the Writ of Mandate setting aside the City's approval of the GPU and the
10 certification of the Final EIR as to its analysis of global climate change, and orders the City to
11 comply with CEQA.

12 **VII. Sierra Club's Seventh Cause of Action is "Failure to Adequately Describe Project**
13 **Goals and Objectives."**

14 This argument was not set forth in Sierra Club's opening brief; therefore the court considers
15 Sierra Club abandoned this argument.

16 **VIII. Sierra Club's Eighth Cause of Action is "Finding Not Supported by Substantial**
17 **Evidence."**

18 The court finds that this is not a cause of action but this argument is subsumed within the
19 argument regarding the mitigation measures. Sierra Club argues that the City's finding that the
20 significant impacts to the agricultural resources and air quality were "unavoidable," despite the
21 proposed mitigation measures, is not supported by substantial evidence. See the discussion under
22 section one regarding mitigation measures.
23

24 **CONCLUSION**

25 For the reasons stated herein, and on the specific causes of action as stated herein, the
26 court issues the Writ of Mandate setting aside the City's approval of the GPU and the
27 certification of the Final EIR, and orders the City to comply with CEQA. Sierra Club shall
28

1 prepare a judgment and preemptory writ of mandate according to the court's ruling. The Writ
 2 shall include that this court does not direct respondent to exercise its lawful discretion in any
 3 particular way (Public Resources Code § 21168.9(c)) and this court will retain jurisdiction over
 4 respondent's proceedings by way of a return to this preemptory writ of mandate until the court
 5 has determined that respondent has complied with the provisions of CEQA (Public Resources
 6 Code § 21168.9(b)). The judgment and writ shall be prepared in compliance with California Rule
 7 of Court, rule 3.1312.

8 March 12 2009



Patrick J. O'Hara
 Superior Court Judge

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