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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CLEVELAND NATIONAL FOREST FOUNDATION; MARY PRENTICE; KEITH KRAWIEC; and GILLIAN R. GILHOOL AND THOMAS K. GILHOOL, CO-TRUSTEES OF STONEAPPLE FARM TRUST,

Petitioners and Plaintiffs,

v.

COUNTY OF SAN DIEGO; SAN DIEGO COUNTY BOARD OF SUPERVISORS; and DOES 1 through 20, inclusive,

Respondents and Defendants.

GENESEE PROPERTIES, INC.; GARY JACKSON, PRESIDENT, GENESEE PROPERTIES, INC.; and DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No. 37-2016-00041519-CU-TT-CTL

Opening Brief of Petitioners and Plaintiffs

Assigned for all purposes to:
Hon. Judith F. Hayes
Department C-68

Action Filed: November 21, 2016
Trial Date: November 17, 2017

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INTRODUCTION

The Legislature adopted the California Land Conservation Act of 1965 (commonly known as the "Williamson Act") to protect the state's agricultural resources for the future. Agriculture needed this protection because California's tide of development collided with the state's property tax assessment system. This placed untenable financial pressure on farmers and ranchers, leading them to sell to homebuilders and taking their land out of production forever. The Williamson Act, bolstered by provisions of the Subdivision Map Act, has been largely successful.

The County of San Diego's approval of the Hoskings Ranch subdivision would undermine that success. In illegally approving a residential subdivision on land protected by the Williamson Act, the County has hastened the end of the land's agricultural use and enriched a developer at taxpayer expense. Key terms of the Ranch's Williamson Act contract limits the land's use to agriculture and compatible uses while ensuring it is assessed at a relatively low value, to help make such agriculture viable. As explained below, the Subdivision Map Act bars the subdivision of such land for residential purposes. Yet the County has approved 24 residential lots, under the pretense that because there may be cattle grazing across the lots and crops somewhere on the property, the estate homes will be merely "incidental to agriculture." This claim is simply not credible, and the uncontested facts in the County's own EIR belie it altogether.

County taxpayers are the real losers here. For ten years at the very least, the developer or its successors will own land carrying a valuable entitlement while still receiving tax benefits derived directly from the public fisc. The Legislature took action in 1985 and 1999 to prevent this subsidy. The County and the developer today attempt to revive it. They have imposed use restrictions on the land that ensure that the developer still has years of tax reductions ahead, even as it receives the benefit of the subdivision entitlement. This workaround does not solve the legal problem, although it does concede it.

The County has additionally approved Hoskings Ranch on the basis of an environmental impact report ("EIR") that fails to accurately describe the project or to analyze its impacts on the

environment. It ignores the most salient feature of the subdivision: the fact that it will not be implemented for some indeterminate period of time when groundwater supply and other environmental conditions will be completely different. The public and decisionmakers were thus not fully informed, as the California Environmental Quality Act ("CEQA") requires them to be. The EIR moreover relies on thresholds of significance that are invalid under the County's own mandate.

The County and the developer would turn the Williamson Act from a tool to protect farmland into an accomplice in its diminishment. The Hoskings Ranch approval sets a dangerous precedent, encouraging other developers to attempt the same. Enforcing the clear letter of the law by applying it in a straightforward manner to uncontested facts will reverse that transformation and leave the Legislature's work intact.

STATEMENT OF FACTS

I. Hoskings Ranch's Environmental Setting and Williamson Act Contract

The Hoskings Ranch Project site spans 1,416.5 acres in the Volcan Mountain foothills, less than a mile southwest of historic downtown Julian. Administrative Record Vol. 1, p. 138-39 (hereafter "AR [volume:page number]" excluding leading zeros); 9:4857. The site is undeveloped and has varied terrain: flatter areas and rolling hills in the north and east of the site drop steeply down to lower elevations in the south and west. AR 1:141, 159.

The Project site is designated Rural Land (RL-40 and RL-80) under the County's General Plan and is zoned for agricultural uses (A-72). AR 1:68; 9:4857, 4959. The majority of the site—1,292 acres—has been under a contract pursuant to the Williamson Act, Government Code sections 51200 et seq., with the County of San Diego for over three decades. AR 1:236. In return for restricting the land to commercial agriculture or compatible uses under the Williamson Act contract, the landowner, Real Party in Interest Genesee Properties, Inc. ("Genesee") receives a significant reduction in property taxes. AR 12:6404. The County assesses the land for tax purposes based on its current agricultural use—cattle grazing—and not on its potential for development. *See* AR 6:2795-96. For example, in 2006 alone, Genesee saved $37,000 in property taxes thanks to the Williamson Act contract. AR 12:6275, 6283.

Like most Williamson Act contracts, the contract has a 10-year term. AR 12:6404. But because the contract renews automatically each year on January 1 for an additional year (AR 12:6315), it will remain in place indefinitely until the landowner files a notice of non-renewal.[1] (AR 12:6404). Nonrenewal has two significant consequences: (1) automatic annual contract renewal ceases, and (2) property taxes increase annually over a 10-year period. At the end of those 10 years, the contract terminates, the use restriction is lifted, and property tax assessments reflect the land's fair market value. AR 12:6404-05.

II. 2003 Tentative Map Application; County and State Critiques

In May 2003, Genesee summited an application for a Tentative Subdivision Map that would split Hoskings Ranch into 33 lots ranging from 40 to 62 acres. AR 5:2429; 12:6445. From the start, the County's Department of Planning and Land Use ("DPLU") raised concerns that the subdivision and the proposed development ("the Hoskings Ranch Project" or "the Project") were inconsistent with the Ranch's Williamson Act contract. AR 12:6445. The California Department of Conservation (the "State"), the agency charged with administering the Williamson Act statewide, echoed those same concerns. AR 16:8664. In a November 2003 letter, the State advised that the Subdivision Map Act required the County to deny the Project. *Id*. That act prohibits local government approval of subdivisions on Williamson Act land that "result in residential development *not incidental* to the commercial agricultural use of the land." Gov. Code § 66474.4(a). The State stressed that residential development resulting from the Project would *not* be incidental to commercial agriculture. AR 16:8664. It critiqued the proposed subdivision for reducing economies of scale and creating parcels that, 40 to 62 acres in size, would be too small to be commercially viable for grazing. *Id*.

On July 14, 2006, the Planning Commission voted to deny the Project's Tentative Map, following staff's recommendation. AR 12:6404, 6441. When the Project came before the Board of Supervisors on September 27, 2006, staff once again unequivocally recommended denial on

[1] A property owner may also petition for "cancellation" of a Williamson Act contract, which terminates the contract if the petition is granted, but this process requires stringent findings and substantial fees. AR 12:6656-58.

the basis that the Project violated the Subdivision Map Act. AR 11:6082; 12:6403. In particular, staff noted that "there is no substantive basis" to determine that the Project's contemplated residential development would be "incidental to commercial agriculture." AR 12:6406. County Counsel agreed with this assessment. AR 14:7694.

In response to staff's conclusion that the Project violated the law, Genesee had proposed creating an easement that would prohibit residential development on the lots as long as the ranch's Williamson Act contract remained in place. AR 12:6407-08. Yet DPLU noted in its staff report that even with a "no-build" easement, the Project would still violate the Subdivision Map Act because the subdivision would *result* in residential development not incidental to commercial agriculture, even if the easement would delay construction of the residences. AR 12:6408-09, 6446; *see also* AR 12:6404.

The Board declined to approve Genesee's proposed Tentative Map. Instead, it voted to continue the item, directing staff to work with the applicant to see whether the Project could be made to comply with state law. AR 12:6305-12; *see also* AR 11:6082.

III. Updated Tentative Map and Project Application

Over the next several years, the County and Genesee corresponded about problems with the Project. *See, e.g.*, AR 13:7175-14:7311; 14:7335-63, 7395-7488. Even as the applicant reduced the number of lots in the proposed subdivision from 33 to 30 and then to 28 lots (AR 7:3667), County staff continued to emphasize that the Project complied with neither the Subdivision Map Act nor the site's Williamson Act contract. Staff's correspondence stressed that residential development on the site would not be merely incidental to agricultural uses. AR 13:7178-79, 7202-03; 14:7301, 7338-39, 7404-05, 7408, 7526, 7535; *see also* AR 14:7547-48. Staff cited several reasons for this conclusion, including that only a small portion of each lot would be used for agriculture and that it was unclear whether the Project site had sufficient groundwater to support crop cultivation. AR 13:7178-79, 7212. It indicated that the best option would be for Genesee to "withdraw the project, wait the ten years for non-renewal, and reapply when the property is no longer subject to a Williamson Act Contract." AR 13:7179.

In October 2013, the County circulated the Project's draft environmental impact report

("DEIR") for public review and comment. AR 13:7149. In the almost seven years between the Board of Supervisors hearing on the prior version of the Project and the DEIR circulation, Genesee had not filed for non-renewal of its Williamson Act contract. AR 12:6480. The EIR makes clear that Genesee has no plans to initiate non-renewal before selling the subdivided lots. AR 5:2572, 2573.

In the DEIR, Genesee now proposed a 24-lot subdivision. AR 1:107. Although Genesee repeatedly insisted that the Project was an agricultural subdivision (*e.g.*, AR 10:5072; 12:6596), the EIR states clearly that "[t]he Proposed Project is a tentative map for a *residential subdivision*." AR 6:2799 (emphasis added). It outlines Project plans for private driveways, graded building pads for homes, and septic leach fields for those residences. AR 1:75, 78-87.

As the EIR describes, each of the subdivision lots would be divided into two main sections: (1) a residential development area where a residence and related structures could be built, a driveway and leach fields constructed, and crops potentially planted (*see* AR 6:3207; 1:78-87; 5:2572), and (2) a fenced-off "open space easement" where cattle could graze but where no structures, crop cultivation, or grading would be allowed. (AR 1:28-29; 5:2520, 2569, 2572). The EIR proposes that future owners of each of the 24 lots would jointly graze a herd of 60 to 80 cattle, an operation directly managed by a local rancher with input from a subdivision homeowners association. AR 1:241; 5:2572; 6:3195, 3202, 3204, 3208.

The EIR also suggests that future lot owners might establish vineyards or orchards in the development areas on their lots to satisfy the Williamson Act contract's requirement that the land be kept in agriculture. AR 7:3669-70. However, the EIR's groundwater analysis only assesses whether groundwater on site could meet the minimum needs of 24 *residences* and up to 80 head of cattle grazed across the entire site. AR 6:2832; *see also* AR 12:6649-50; 13:6824. It does not assess groundwater needs for cultivating crops (*see* AR 8:3929), even though County staff had requested that it do so. (AR 13:7212).

Petitioner Cleveland National Forest Foundation submitted comments on the final EIR noting that the project violated the Williamson Act and Subdivision Map Act because the residential subdivision would not be incidental to on-site agricultural operations. AR 15:7947-

49. Many local residents also submitted comments critiquing the Project's potential negative impact on groundwater. *See, e.g.*, AR 16:8390, 8728-8731, 8763. Several reported that their or their neighbors' wells had recently gone dry. AR 16:8403, 8736-37, 8796, 8838.

IV. County Review and Approval of the Project

When the Project came before the Planning Commission for a hearing on February 5, 2016, County staff abandoned the critiques they had raised so forcefully in 2006: staff now concluded that the Project complied with the Williamson Act contract and the Subdivision Map Act, and recommended Project approval. AR 11:6083. The staff report for the hearing describes agricultural uses that might be possible on the subdivided lots (AR 11:6083-84) and concludes, in a complete turnaround from prior staff analyses, that "[s]ingle family homes would remain incidental to the agricultural use of each lot." AR 11:6078. The report does not explain how or why these uses would be incidental to agriculture, or how the Project differed from previous versions that garnered the opposite conclusion. The Planning Commission voted to approve the Project. AR 9:4855-56.

The Project as approved by the Planning Commission included conditions for Tentative Map approval that had not been mentioned in the EIR: a recorded "Declaration of Restrictions" and an "Agricultural Use Easement" held by the County (collectively, "the Development Restrictions") that would prohibit home construction on the subdivided parcels so long as the Williamson Act contract remains in place. AR 1:9, 11, 45-47; 12:6083. These provisions were functionally identical to the restrictive "no-build" easement that Genesee had proposed back in 2006. *See* AR 12:6407-08, 6408-09, 6446, 6404. Staff rejected the easement for not remedying the Project's Williamson Act and Subdivision Map Act violations. *Id*.

Three days after the Planning Commission vote, the County received a letter from the State, again stating that the proposed subdivision was inconsistent with the Williamson Act and the Subdivision Map Act. AR 10:5047-48.

Concerned residents brought this letter to the Planning Commission's attention at three subsequent Planning Commission meetings. AR 12:6566-69, 6553, 6556. Staff explained that the item was now in the "jurisdiction of the Board of Supervisors" and that the Commission

could not reconsider its prior decision. AR 12:6569-70. Commissioners expressed concern, however, about not having known of the DOC's position when making their decision on the Project. *See, e.g.*, AR 12:6558 (Commissioner commenting "it was a letter from a State agency that was material in the decision-making that got right to the heart of the matter").

At the Board hearing, several speakers, including Petitioners, criticized the Project as violating the Williamson Act and Subdivision Map Act. AR 12:6500-02, 6484-85, 6488-89. The director of the San Diego County Farm Bureau testified that "[a]pparently the developer wanted the best of all wor[l]ds[:] the Williamson Act contract advantages and the ability to continue to process [the Project] through the County of San Diego." AR 12:6482-83; *see also* AR 15:8141. When the Board questioned Genesee's counsel on why the developer did not simply begin the process of terminating the Williamson Act contract in 2006, after the Board declined to approve the Project, counsel noted that if he had a "time machine" things might have been done differently. AR 12:6480. He then shared that Genesee has stressed from the outset that it does not intend to "get out of the Williamson Act." *Id*.

Petitioner Cleveland National Forest Foundation submitted comments in advance of the hearing, explaining that Project approval would violate CEQA. These comments noted that the FEIR's project description was incomplete and misleading, given that it never analyzed the newly required Declaration of Restrictions, which had changed the Project to one where Williamson Act protections for agriculture had to be discontinued before homes could be built. AR 15:7949-50. They also noted that the Declaration of Restrictions rendered the EIR's agricultural resources analysis meaningless and its climate change analysis irrelevant, and that the EIR's groundwater analysis was inadequate. AR 15:7950-52.

The Board voted to approve the Project (AR 12:6522), and (1) certified Project's EIR as adequate under CEQA; (2) adopted a resolution conditionally approving the Tentative Map, including the Development Restrictions; (3) approved an amendment to the site's Williamson Act contract lowering the minimum parcel size to 40 acres; and (4) approved a $750,000 defense and indemnification agreement for Genesee to indemnify the County in litigation related to the Hoskings Ranch Tentative Map. AR 9:4855-56. Petitioners timely filed this action.

STANDARD OF REVIEW

I. Standard of Review for Subdivision Map Act Claim

This action seeks a judicial resolution of whether the County violated the Subdivision Map Act in approving a tentative map on the Hoskings Ranch site, which is covered by a Williamson Act contract. In examining the application of the statutes to known facts, it presents a mixed question of law and fact, which this Court reviews de novo. *See Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888 (explaining that where, as here, "the inquiry requires a critical consideration, in a factual context, of legal principles and their underlying values, the question is predominantly legal and its determination is reviewed independently").

II. Standard of Review for CEQA

CEQA's dual standard of review is well-settled: a court will "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements,'" while according "greater deference to the agency's substantive factual conclusions." *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (citations omitted). Whether an EIR "omit[s] essential information," or fails to address an issue, is a procedural issue subject to de novo review. *Id*. Claims that a project description is misleading or erroneous are reviewed de novo. *See Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.

Here, Petitioners challenge the EIR's failure to describe accurately the Project that the County approved and its reliance on a legally invalid threshold of significance. Petitioners additionally argue that the EIR entirely failed to consider key questions regarding environmental impacts. The CEQA causes of action thus do not dispute the County's weighing of evidence, but rather challenge "whether the EIR is sufficient as an informational document." *Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 711. Accordingly, the Court must review these claims de novo, as a matter of law. *Banning Ranch*, 2 Cal.5th at 935.

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ARGUMENT

I. The County Violated the the Subdivision Map Act in Approving the Hoskings Ranch Project

A. The Project Proposes a Residential Subdivision Not Incidental to Commercial Agriculture, in Violation of the Subdivision Map Act.

The Subdivision Map Act restricts subdivisions of land subject to a Williamson Act contract. Specifically, Government Code section 66474.4(a) requires that a local government deny a tentative map for a subdivision of contracted land that "will result in residential development not incidental to the commercial agricultural use of the land." "[S]ubdivision of [contracted] lands for residential purposes is prohibited by both the Williamson Act and by Section 66474.4 of the Government Code . . . ." Ch. 1018, Stat. of 1999, § 15, at 7851 (provided at AR 10:5044.)); *see also* 75 Ops. Cal. Atty. Gen. (1992) 278, 285-86 ("The subdivision of land which is subject to a Williamson Act contract would generally not serve the primary goal of the Williamson Act to promote the conservation of agricultural lands.").

Here, the County approved a predominantly residential subdivision on contracted land in plain violation of the law. The EIR itself admits that the Project's tentative map is for a "residential subdivision." AR 6:2799; *see also* AR 7:3378 (categorizing development as "Estate Residential"), 3839 ("The proposed project would be a rural residential development . . . ."), 3840 (same). The Project would divide the land into 24 lots to be sold off to independent owners, each with a designated building pad for a home, a septic leach field and well, and a driveway. AR 1:75, 78-89. The subdivision further reserves land for internal roads to provide each homeowner access to his or her lot. *Id*.

The subdivision is, on its face, a residential development, where homes are the main use. The County and Genesee nonetheless claim that homes built on a subdivided Hoskings Ranch would be merely "incidental" to commercial agriculture, thus allowing approval despite the Subdivision Map Act. AR 1:8. They are transparently wrong. The uncontested factual record demonstrates that this is a primarily residential project.

The Department of Conservation, the state agency charged with administering the Williamson Act, saw through the County's spurious claim that agriculture will "predominate"

the Project, warning the County that "residential development which will follow this subdivision cannot be considered incidental." AR 10:5048. The County's own staff previously came to the same conclusion. In 2006, staff reported that "[n]o evidence has been provided showing that commercial agriculture will be facilitated by dividing the 1,461.5-acre property" into smaller lots. AR 12:6406. "[T]he subdivision design," the staff report continues, "is clearly to facilitate residential development, not commercial agriculture." *Id.* "Any agricultural use which would potentially be developed on any of the [] proposed lots would *not* be the primary use of the lot, to which residential use would merely be 'incidental.'" *Id.* (emphasis added). Staff followed up with the same conclusion regarding a 2011 version of the Project. AR 13:7178-79 (Dec. 28, 2011 letter from DPLU to Genesee emphasizing that the Project would violate Section 66474.4 of the Subdivision Map Act).

Nothing about the Project can explain the County's changed position. The rejected 2006 version proposed an easement barring homebuilding while the Williamson Act contract is in force (AR 12:6407-08). The Development Restrictions attached to the approved 2016 version include that easement plus a "Declaration of Restrictions" doing the same thing. AR 1:8-9, 11, 45-47. Genesee proposes a joint cattle grazing program for the ongoing agricultural use of portions of the property (AR 1:241; 5:2572; 6:3195, 3202, 3204, 3208), but as discussed below, that proposal cannot transform the homes into uses "incidental" to agriculture.

The County was right the first time: this is a residential subdivision in which houses will dominate. It cannot survive the Subdivision Map Act's prohibition on approving such a project.

B. Ongoing Agriculture on the Property, if Any, Will Not Transform this Residential Subdivision into an Agricultural Project with Incidental Housing.

Nothing in the record before the Court can overcome the common-sense conclusion that this is a residential subdivision, rather than one where residential use is incidental to agriculture. To justify approving the Project, the County found that future residences in the subdivision would be incidental to agriculture because the "predominate feature of the Project is the establishment in perpetuity of extensive natural resources in open space, the continuing agricultural grazing and breeding operations facilitated by the Project design, as well as areas

established on each parcel (averaging 8.35 acres) intended to support small scale agricultural and farming operations . . . .” AR 1:8. None of these factors establish that the residential development is incidental.

Initially, the County’s reliance on the open space features of the Project is a red herring. In order to subdivide the property, the County must determine that “residential development [is] not incidental to the *commercial agricultural* use of the land.” Gov. Code § 66474.4 (emphasis added). The development’s relationship to open space is irrelevant.

Neither Genesee nor the County offer any positive argument that subdividing the land into 24 lots would assist or promote such agricultural use. As the State observed, the “proposed subdivision . . . has no relevance to the existing commercial agricultural use of the land.” AR 10:5048. Indeed, the County’s findings in support of its Project approval simply assert that the open space and agricultural uses on the Project site are “predominate.” AR 1:8. The County appears to lose sight of what it is actually approving: a subdivision map that will allow the sale of lots and construction of homes and infrastructure. Its findings do nothing to explain why the residential uses that this map entitles are merely incidental to the uses on the land today.

If the existing agricultural use were the chief purpose of the Project, leaving the land free of 24 building pads, driveways, and leach fields would be the most efficient way to maintain that agricultural operation. Instead, Genesee proposes to limit the area available to the grazing operation, put the operation under a complex joint management system, give it new neighbors whose sensibilities may be tread upon, and—last but not least—remove the Williamson Act tax breaks intended to keep such ranching viable. The residential development is not incidental to the grazing operation, but will dominate and harm it.

Agriculture, by contrast, is a subordinate use of the property. Residents would be irrelevant to the proposed joint grazing operation. The EIR describes the joint grazing proposal as “a gentleman farmer model” where residents might appreciate the “rural feel” of the site, but would have no “day to day involvement” in the grazing operation on their property. AR 5:2573. Rather, the grazing program would “be operated and managed by local professional ranchers.” AR 5:2572. Residents wishing to be involved in cattle ranching would do so through a

subdivision homeowners association, or through quarterly grazing management meetings. AR 6:3208. They would be participating as homeowners, not ranchers; they would be living in a residential subdivision, not on an agricultural operation. The grazing proposal, moreover, is just that: a proposal. Nothing in the Project approval makes it mandatory. The County could not rely on this scheme to draw any conclusion about the future use of the Project site.

Uncontested evidence also contradicts the County's finding that a primary purpose of the Project is to foster small farming operations on each lot. *See* AR 1:8. The finding claims that "each parcel" could support "small scale" agriculture. *Id.* The EIR suggests that this would entail crops such as grapes or tree fruit. AR 7:3669-70. The EIR goes on, however to demonstrate that not all the subdivided lots could support crop cultivation. AR 7:3689.

Moreover, the EIR's groundwater assessment, by its own terms, included *no* analysis of whether the site's low-yielding wells had sufficient water to "transition to more intensive activities such as orchards or vineyards." AR 7:3670; *see* AR 8:3929. Instead, it looked only at whether on-site groundwater could meet the minimum needs of 24 residences and up to 80 head of cattle, and found that many wells on the site just barely met the County's absolute minimum requirement—three gallons per minute—for water yields to support residences. AR 7:3662; 6:2832; *see also* AR 12:6649-50, 13:6824.

The County's findings, moreover, rely on the Development Restrictions to ensure "the continuation of agricultural uses" on site. AR 9:4857. These findings are factually incorrect. The Development Restrictions will allow (but not require) agricultural uses while the Williamson Act contract is in place, while barring home construction. AR 1:8-9, 11, 45-47. They do nothing to ensure that grazing will continue after the contract is terminated and homes are built. Without the tax support from the contract, there is little reason to believe grazing—which was "not economically viable" just eleven years ago (AR 12:6406)—will continue. Once they are built, the houses will surely be the dominant use of the site, if not the only use.

Commercial agriculture on individual lots is infeasible. It is mere window dressing and cannot justify the Project as an agricultural subdivision with incidental residences. Hoskings Ranch is a residential subdivision, where homes are the primary use and agriculture is, at most, a

hobby for "gentleman farmers." The County's approval violated the Subdivision Map Act and must be invalidated.

C. The Subdivision Undermines the Williamson Act's Purpose of Protecting Agriculture.

By approving a residential subdivision where future homes will be irrelevant to commercial agriculture, the County has obstructed the Williamson Act's purpose. The Williamson Act was enacted in 1965 to reduce the property tax burden on farmers and ranchers and thus help halt the "rapid and virtually irreversible loss of agricultural land to residential and other developed uses." *Sierra Club v. Hayward* (1981) 28 Cal.3d 840, 850, 863; *see also Lewis v. City of Hayward* (1986) 177 Cal.App.3d 103, 108; Gov. Code § 51220. At the time, county tax assessors were required to assess all land based on its "highest and best use," or market value, which often exceeded a given parcel's value as agricultural land, especially for parcels in areas experiencing rapid growth and development. *Lewis*, 177 Cal.App.3d at 108; *see also Dorcich v. Johnson* (1980) 110 Cal.App.3d 487, 492. "As property assessments and taxes increased, many agricultural landowners were forced to discontinue farming and sell or convert their land to urban development." *Dorcich*, 110 Cal.App.3d at 492.

The Act creates a mechanism to counter this problem. Farmers and ranchers can enter into enforceable contracts with their county governments under which they commit to restricting their land to agricultural or compatible uses for 10 or more years; in return, their land is assessed solely for its agricultural value. *Honey Springs Homeowners Assn. v. Bd. of Supervisors* (1984) 157 Cal.App.3d 1122, 1131; *Sierra Club*, 28 Cal.3d at 851. Contracts are automatically renewed each year for an additional year and can continue indefinitely until a contract is placed in nonrenewal. *Lewis*, 177 Cal.App.3d at 109; Gov. Code. § 51245. Even after the nonrenewal notice is filed, the contract's land-use restrictions still apply, and the landowner may not develop the land for the rest of the contract period. *Sierra Club*, 28 Cal.3d at 852; Gov. Code § 51246(a).

The Act aims to protect agricultural land from development by giving financial assistance to ranchers and farmers who make "a long-term commitment to agriculture." *See Sierra Club*, 28 Cal.3d at 852. Genesee has done the opposite. By subdividing its land, it has instead made a

commitment to residential development. And by approving Genesee's subdivision, the County allows Genesee to convert viable agricultural land to residential uses. This is exactly what the Williamson Act, and the accompanying provision of the Subdivision Map Act, aims to prevent.

In addition to improperly facilitating the conversion of agricultural land, the County's approval allows Genesee to take improper advantage of the Williamson Act's tax relief. The subdivision approval is a valuable entitlement to develop the land. Even as it holds this entitlement, the developer retains the tax benefit of the Williamson Act contract. Genesee has thus increased its lands' value while continuing to pay reduced taxes to the County. The fundamental unfairness to other taxpayers speaks for itself.

As the California Supreme Court has held, the Legislature's intent in passing the Williamson Act was not to "subsidize those who would subdivide. On the contrary, the overwhelming theme of the legislation is the need to preserve undeveloped lands in the face of development pressures." *Sierra Club*, 28 Cal.3d at 853. The Legislature made clear that the Act must be enforced consistent with the goal of preserving agriculture. Gov. Code § 51252. The County has given in to development pressure and abandoned its responsibility here.

D. The Agricultural Use Easement and Declaration of Restrictions Do Not Cure the Project's Violation of the Williamson Act and the Subdivision Map Act.

The County required as a condition of project approval Development Restrictions—the Agricultural Use Easement and the Declaration of Restrictions—prohibiting the construction of residences on the Project site while the Williamson Act contract is still in place. AR 1:8-9, 11, 45-47. These Restrictions effectively concede the point: the only reason to delay residential construction on the Project site is that such development is inconsistent with the Williamson Act contract and the Subdivision Map Act. Furthermore, rather than solving the Project's legal violations, the Restrictions in fact amplify them.

1. The Project Approval Recreates a Loophole that the Legislature Closed in 1985 with the 3-Year Rule.

The Subdivision Map Act provides a process for landowners, like Genesee, to seek approval for a residential subdivision before their property's Williamson Act contract has fully expired. Genesee and the County have not followed that process here, and cannot by proposing

and agreeing to the Development Restrictions (AR 12:6479) invent their own alternative procedure.

The Legislature recognized that some landowners with land under contract, like Genesee, might wish to transition from agriculture and to begin readying their land for development before their Williamson Act contract has expired. It laid out a clear process to facilitate this: Landowners must first put their contract in nonrenewal. *See* Gov. Code § 66474.4(e)(2). Once their contract has three or fewer years left in its term, subdivision restrictions are relaxed and a local government may approve their project's tentative map even when the resulting residences will not be incidental to continuing agricultural uses. *Id.*

Before the Legislature adopted this "3-year rule" through AB 1678 in 1985, subdivision of land under Williamson Act contract was required to create parcels large enough to support agriculture. Request for Judicial Notice in Support of Petitioners' Opening Brief ("RJN"), Exh. 1 at 2. Through an exception, developers could create smaller parcels, suitable for residential development, by filing for contract non-renewal and then immediately subdividing, even though the contract would then have nine years left to run. *Id.* For those nine years, developers could use "Williamson Act tax advantages to subsidize rural residential development." RJN, Exh. 2 at 3. AB 1678 closed that loophole by allowing subdivision of contracted land to create small parcels only when the contract had already been non-renewed and had three years or less to run. *Id.*.

Later amendments added to Section 66474.4(a)'s minimum parcel size requirement the requirement at issue here, the bar on subdivisions resulting in residential uses not incidental to commercial agriculture. RJN, Exh. 3 at 2, 11; *see also* RJN Exh. 4 at 6. The bar doesn't apply if the nonrenewal process has begun and there are only three years left on the Williamson Act contract. Here, however, the County has approved a subdivision entitling non-incidental residential development, but the Development Restrictions mean that the Williamson Act contract will be in effect for at least ten more years. For that entire time, Genesee will benefit from the subsidies that AB 1678 eliminated. The County's action effectively re-opens the loophole that AB 1678 closed.

Genesee chose not to use the tool that the Legislature provided. It could have filed for nonrenewal in 2006. Its subdivision plans could then have gone forward within three years of contract termination without violating the Williamson Act and Subdivision Map Act. Instead, the Development Restrictions allow Genesee to receive full agricultural tax breaks at taxpayer expense while obtaining entitlements that threaten the continued agriculture on the Project site. The Williamson Act was not intended to provide such a generous subsidy for developers. *Sierra Club*, 28 Cal.3d at 852.

2. Section 66474.4 Bars Subdivision of Land Resulting in Residences Not Incidental to Commercial Agriculture, Not Just the Residences Themselves.

Another provision of Section 66474.4 also bars this workaround. Section 66474.4 forbids any *subdivision* on contracted land that will "result in residential development not incidental to the commercial agricultural use of the land." Gov. Code 66474.4(a). The Development Restrictions delay home construction but do not delay the unlawful subdivision. If, as here, the subdivision is illegal because it results in residential uses, then delaying those uses makes no difference. As County staff correctly found with respect to a previously-proposed, similar restriction, "[t]he Subdivision Map Act's mandatory denial provision does not refer to temporary conditions. To be able to approve the subdivision, the County must be able to find that it will not result in residential development (unless it is incidental to commercial agriculture)." AR 12:6446 (emphasis in original). Such a finding is not possible here and the Development Restrictions do not make one possible.

3. The Development Restrictions Create An Incentive for Future Lot Owners to Abandon Agricultural Uses.

The Development Restrictions additionally undermine the Williamson Act by creating an incentive for future lot owners to abandon commercial agricultural uses on their parcels. The Development Restrictions force a lot owner who wishes to build a residence to first exit the Williamson Act contract. AR 1:8-9, 11, 45-47. Following such termination, the lot will be assessed at market value. This will increase property taxes on the lot, making continued agriculture less commercially viable. The Development Restrictions will force lot owners to

choose between building a home and keeping the land in agriculture. In light of the subdivision's residential purpose, the choice is clear: owners will end their contracts and build their homes. The Development Restrictions therefore vitiate the County's claim that the Project "would preserve agricultural use on the site so that it remains ongoing and so the use continues subsequent to the proposed construction of single family homes." AR 11:6083. The Development Restrictions, far from ensuring statutory compliance, fly in the face of the Williamson Act.

II. The County Violated CEQA in Approving the Hoskings Ranch Project

A. The EIR's Misleading Project Description Violates CEQA, and Misrepresents the Project's Environmental Impacts

The County approved a Hoskings Ranch Project that included the Development Restrictions, but the EIR supporting that approval analyzed a different project, one with no such restrictions. The mismatch between the approved Project and the EIR is a fatal flaw under CEQA, Public Resources Code sections 21000 et seq.

The EIR is "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (citations omitted) ("*Laurel Heights I*"). It is "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Id.* As an essential part of this purpose, the EIR must accurately describe the Project it analyzes. *See* Cal. Code Regs., tit. 14 (CEQA "Guidelines") § 15378. CEQA requires an analysis of the "whole of the [project]," including reasonably foreseeable future activities related to the project. *Laurel Heights I*, 47 Cal.3d 3 at 395-96 ; Guidelines § 15378. "An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. An EIR that does not meet this standard is "fundamentally inadequate and misleading." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-56.

The EIR's project description here violates CEQA. The EIR describes and analyzes a project fundamentally inconsistent with the project that the Board of Supervisors ultimately

approved. First, the EIR assumes that the Williamson Act contract will continue after homes are built in the Project, although the Development Restrictions ensure that this cannot happen. Second, it assumes that the Project will be built in the near term, when it will in fact be built after a delay of at least ten years. These twin discrepancies prevent the EIR from achieving its required informational purpose.

1. The EIR Incorrectly Describes the Project as Simultaneously Including the Williamson Act and Residences.

According to the EIR, the Project is "designed to encourage agricultural operations on each parcel." AR 7:3567; 1:240. The EIR further assumes that the Williamson Act contract will continue to cover the Project site and that individual owners "may" end the contract. AR 6:2798; 7:3551, 3556. This is essential to the EIR's finding that the Project will not cause conflicts with neighboring agricultural operations: the EIR concludes that the Project itself will continue to be agricultural and therefore cannot conflict with agriculture. AR 6:2798; 7:3556. Yet the County has imposed the Development Restrictions on the Project, thus encouraging lot owners to take their land out of agriculture, as described in Part I.D.3 above.

The EIR must assume that the contract *will* be terminated. Termination is a necessary prerequisite to construction of the Project, and an EIR must assume that the project will be built. *See San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 75. The EIR was thus required to analyze the potential impact of terminating the Williamson Act contract.

2. The EIR Ignores the Decade (At Least) That Will Elapse Between Project Approval and Construction.

The Development Restrictions will delay construction of the Project by at least ten years, the run-out time for the non-renewal of the contract. The EIR takes no account of this delay. CEQA, however, requires the EIR to accurately describe a project's lifespan. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-55) (finding EIR's defective analysis of project's duration rendered inadequate its assessment of project's environmental consequences). It has not done so here.

This failure infects the EIR's analysis of the Project's environmental impacts. For

example, the EIR's traffic analysis considers the effect of adding Project traffic to current road conditions (AR 1:225-26), conditions that will change in the decade or more before homes are built. The EIR's impacts analysis and findings rely on list of 90 past, present, and future projects in Project area (AR 5:2621-22, 2641-43), a list which will no longer be relevant when the Project is built in in ten (or more) years. It is the Project's construction and use that will cause the traffic; the EIR must account for the actual impact of that traffic.

Finally, the EIR's climate change analysis will be irrelevant by the time the Project is built. The EIR measures the Project's contribution to global climate change against a threshold of significance set out in the County's 2015 GHG (Greenhouse Gas) Guidance ("the Guidance"). AR 6:2815, 2821, 2823. This threshold is invalid, as discussed in Part II.B below, but even on its own terms it is insufficient to accurately measure the Project's impact. Per the Guidance, the Project would have a less than significant impact if it emits less than 900 metric tons per year of carbon dioxide equivalent gases ("MT/year CO2e"). AR 6:2815-16; *see also* AR 15:7977-78. That 900 MT/year CO2e threshold was calculated to identify projects that would require mitigation to move toward meeting California's GHG emission reduction goals for the year 2020. AR 15:7977; 6:2815. But with the Development Restrictions, the Project cannot be built until at least 10 years after approval: 2027 at the earliest. The state's 2020 goals will be moot, and the calculations used to select the 900 MT/year CO2e threshold will be meaningless.

Thresholds of significance must be supported by substantial evidence. *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 ("*Newhall Ranch*"). The record here may contain evidence supporting a threshold applied to a project to be built by 2020. Because the EIR mistakenly considered a project that would be built immediately, however, it does not even purport to support a threshold for this Project, which will be built much later.[2]

[2] The Guidance itself admits this shortcoming: "The County anticipates that a portion of projects submitted for review would have buildout dates beyond 2020 . . . it is important to quantify and report emissions *at project buildout* . . . ." AR 15:7980 (emphasis added).

The EIR has thus described and analyzed the wrong project. It considered a subdivision with continuing agriculture and near-term construction, when in fact, agriculture on the site will most likely cease just before home construction begins, at least ten years from now. The County's approval of this unanalyzed Project rendered the EIR's conclusions meaningless.

The EIR's failure to account for the inevitable, sitewide contract termination and the ten-year delay in construction is fatal to its analysis. Because the County failed to provide the public and decision-makers with accurate information about the Project as it was approved and its real impact on conversion of agricultural land, it violated CEQA's basic disclosure requirements. *See Berkeley Keep Jets Over the Bay v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1354-55. The Project approval, which necessarily relied the EIR, is invalid.

B. The EIR Violates CEQA by Relying on the County's 2015 GHG Guidance Even Though the County Has Not Yet Adopted a Climate Action Plan as Required.

The EIR also fails to demonstrate that the Project will not obstruct the County's duty to adopt a Climate Change Action Plan ("CAP") that meets the State's emission-reduction goals. The County in 2011 adopted a General Update that set out a two-step process for adopting thresholds of significance to measure projects' climate change impacts. First, Mitigation Measure CC-1.2 required preparation of a CAP within six months of General Plan adoption to mitigate the General Plan's significant climate change impacts. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1159; *see also* RJN, Exh. 5 at 7-80. Second, Mitigation Measure CC-1.8 required the revision of the County's CEQA thresholds of significance "based on the [CAP]." RJN, Exh. 5 at 7-81. These measures were required in order to meet statewide climate change goals. *Sierra Club*, 231 Cal.App.4th at 1160.

The County adopted a CAP, but in response to a challenge by the Sierra Club, the Court of Appeal upheld this Court's decision to invalidate it. *Id.* at 1157, 1176. The court found that CAP did not do what the General Plan EIR required: it contained no detailed deadlines and lacked enforceable measures to reduce Countywide emissions. *Id*. at 1162, 1166, 1168-70.

The mitigation measures set enforceable standards for the documents they mandate. *Id.* at 1168-70, 1176 (invalidating CAP because it "does not fulfill the County's commitment under

CEQA and Mitigation Measure CC-1.2"); *see also Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508 (city violated CEQA when it failed to comply with mitigation measures it had imposed on project). Mitigation Measure 1.8 requires thresholds of significance based upon a valid CAP. The County still has not adopted a valid CAP. Therefore, any thresholds of significance used after the General Plan Update do not comply with Mitigation Measure CC-1.8, as a matter of law, because they are not based on the CAP as the measure requires. As Hon. Timothy Taylor of this court has pointed out, an EIR that uses "guidance" formulated in that period, rather than using a threshold that complies with the mitigation measure, puts "the cart before the horse." *See* RJN, Exh. 7 at Attachment A at 9.[3]

As in the case Judge Taylor decided, the EIR here based its threshold of significance on a County "guidance" document issued in the absence of a valid CAP. (AR 6:2815, 2821, 2823.) That threshold is thus legally invalid. A CEQA analysis that relies on invalid thresholds is itself invalid. *Newhall Ranch*, 62 Cal.4th at 227-28.

C. The EIR Fails to Adequately Analyze the Project's Impacts to Groundwater Supplies in the Project Area.

The Julian area faces a growing water shortage. As the EIR admits, water levels on the Project site are low. AR 7:3552, 3554. Wells on site just barely provide the three gallons per minute, minimum, required for residential use. AR 7:3662; 6:2832. And in recent years, a number of residential wells on parcels neighboring the Project site have gone dry. AR 16:8352-53, 8403, 8796. Meeting the Project's demands may impact local supplies; the EIR must analyze such impacts. An EIR's water supply analysis must provide the public and decision-makers with "facts from which to evaluate the pros and cons of supplying the amount of water that the [project] will need." *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829. That information must include detail sufficient to enable the public "to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights I,* 47 Cal.3d

[3] The Superior Court's decision in *Sierra Club v. County of San Diego* is not binding precedent and has been stayed by the filing of a notice of appeal. *See* RJN, Exh. 8; Code Civ. Proc. § 916. Judge Taylor's logic, however, remains persuasive.

at 405; Guidelines § 15151.

The EIR's water supply analysis does not meet this standard. Notably, the EIR entirely fails to account for California's recent record-setting drought. The final EIR's water supply and demand calculations do not examine whether the drought altered groundwater levels in the Project area, even though the document was released at the end of 2015 when the severity of the drought was well understood. AR 5:2482. Evaluation of an impact's significance must be "based to the extent possible on scientific and factual data" and must accurately reflect the project's "setting." Guidelines § 15064(b). In this case, water conditions changed dramatically as the County was evaluating this Project. See, e.g. AR 16:8352-53, 8390. In lieu of using current information, the EIR based its evaluation of groundwater levels on site on pump tests conducted between 2003 and 2011. AR 8:3946. At the same time, the EIR used only rainfall years from 1971-2005 for its groundwater recharge calculations. AR 8:3954. By refusing to account for current conditions, the EIR unlawfully provides no meaningful analysis of potential shortfalls in the Project's water supply. The EIR likewise fails to recognize that as a result of the Project's Development Restrictions, which delay Project implementation indefinitely, the Project will be implemented at some future time when availability of groundwater in the Project area is unknown.

Nothing can excuse the County from its obligation to provide up-to-date, accurate water supply and groundwater analysis. Such analysis was entirely possible prior to Project approval, and was thus mandatory. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007)*, 40 Cal.4th 412, 431 (EIR must analyze water supplies "to the extent reasonably possible"). Because the County failed to "find out and disclose all that it reasonably can" regarding the Project's impacts on local water supplies, it violated CEQA. *See Berkeley Keep Jets Over the Bay*, 91 Cal.App.4th at 1370 (quoting Guidelines § 15144) (emphasis omitted).

In addition, although the County asserts that a "predominate feature of the Project" is to facilitate small-scale farming operations (AR 1:8), the EIR never evaluates whether the Project site has sufficient groundwater to water the crops on such farms. The EIR simply punts this analysis, stating that water needs "must be approached on a case by case basis by each lot

owner" at a later date. AR 7:3662. CEQA does not allow this approach. The EIR repeatedly claims that raising crops is a foreseeable use of the subdivision. AR 7:3668, 3669-70, 3677, 3682, 3684-87, 3689; *see also* AR: 5:2243-44. The impacts of providing water for such crops are therefore reasonably foreseeable consequences of the Project and must be considered in the EIR. *Laurel Heights I*, 47 Cal.3d at 396. Because the County abdicated its responsibility to conduct the "thorough investigation" that this critical topic demands (Guidelines § 15145; *Vineyard*, 40 Cal.4th at 435), the EIR and the Project approval resting on it are invalid.

CONCLUSION

For all of these reasons, Petitioners respectfully request that the Court issue a Writ of Mandate directing the County to rescind its approval of the Hoskings Ranch Project and its certification of the EIR's adequacy.

DATED: September 1, 2017

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PROOF OF SERVICE

Cleveland National Forest Foundation, et al. v. County of San Diego, et al.
Case No. 37-2016-00041519-CU-TT-CTL
San Diego County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On September 1, 2017, I served true copies of the following document(s) described as:

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

Executed on September 1, 2017, at San Francisco, California.

David Weibel