

DRAFT PARTIALLY REVISED ENVIRONMENTAL IMPACT REPORT

# CALIFORNIA INSTITUTION FOR MEN Mental Health Crisis Facility Project

State Clearinghouse No. 2018072022



JULY 2021



**PREPARED FOR:**  
California Department of  
Corrections and Rehabilitation  
Facility Planning, Construction and Management  
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Draft  
Partially Revised Environmental Impact Report  
for the  
California Institution for Men  
Mental Health Crisis Facility Project  
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## LIST OF ABBREVIATIONS

2019 EIR	Environmental Impact Report certified by CDCR
ADA	Americans with Disabilities Act
CDCR	California Department of Corrections and Rehabilitation
CIM	California Institution for Men
CNDDDB	California Natural Diversity Database
CRC	California Rehabilitation Center
gsf	gross square feet
LAC	California State Prison - Los Angeles County
LEED	Leadership in Energy and Environmental Design
LOS	level of service
MDAQMD	Mojave Desert Air Quality Management District
mgd	million gallons per day
MHCF	Mental Health Crisis Facility
NRHP	National Register of Historic Places
OPR	Governor's Office of Planning and Research
PM <sub>10</sub>	particulate matter, 10 microns in diameter or less
RJD	R. J. Donovan Correctional Facility
SANBAG	San Bernardino Associated Governments
VMT	vehicle miles travelled

# 1 INTRODUCTION

The California Department of Corrections and Rehabilitation (CDCR) has revised certain analyses in the previously certified EIR prepared for the Mental Health Crisis Facility (MHCF) at the California Institution for Men (CIM) (proposed project) in response to a ruling on a Petition for Writ of Mandate issued by the Superior Court of California, San Bernardino County (Court).

## 1.1 BACKGROUND

On May 8, 2019, CDCR certified the EIR (2019 EIR) and approved the CIM MHCF Project. These actions were subsequently litigated (*City of Chino, Chino Valley Independent Fire District, County of San Bernardino and City of Chino Hills* (Petitioners) v. *CDCR, San Bernardino County Superior Court* Case No. CIVDS1917019.) In February 2021, the Court issued a ruling in favor of the petitioners on three of the ten causes of action in their petition for writ of mandate (Ruling). The three causes of action that were decided in favor of the petitioners are summarized below. The Ruling is included as Appendix A to this partially revised EIR. On June 24, 2021, the Court issued a proposed revised ruling (Revised Ruling) that modified the Court's decision in favor of petitioners on one of the three causes of actions originally decided in their favor (concerning traffic conditions). The Revised Ruling is included as Appendix B to this document. The Revised Ruling is identical to the Ruling with the exception of the ruling on petitioners' fifth cause of action. The difference in the rulings is explained below. Because the Court has not issued a final judgment as of this writing, this document addresses all three causes of action decided in petitioners' favor in the Ruling.

**Description of Baseline Conditions (First Cause of Action).** The Court found that the 2019 EIR "omitted any description of the condition of the buildings and infrastructure that are critical to the project, or a description of specific repairs either underway or contemplated." The Court concluded that, "The EIR's failure to state clearly and definitely what repairs and improvements have already been made and what still needs to be done renders the baseline analysis uncertain" and "prevents an informed comparison of pre-project and post-project conditions."

**Analysis of Project Alternatives (Third Cause of Action).** The Court found the analysis of offsite alternatives at the California State Prison, Los Angeles County at Lancaster (LAC) and at the California Rehabilitation Center at Norco (CRC) to be inadequate. Both alternatives were considered but eliminated from detailed consideration in the 2019 EIR because the EIR concluded neither would avoid or lessen any significant impact of the project. The Court also noted that "there is nothing in the record . . . explaining how or why CIM was selected [as the proposed project], instead of a different prison complex in Southern California."

The Court found the analysis of LAC to be inadequate because the record did not include justification to support information cited by CDCR for eliminating LAC from detailed consideration in the EIR. The Court focused on two items that were deemed to be inadequate: (1) difficulties in recruiting medical professionals to the Lancaster location, which rendered the alternative unable to meet most project objectives; and (2), a potential increase in biological impacts at LAC. Specifically, the Court found that the Draft EIR did "not show that any research was done on the question of recruitment of medical professionals to the Lancaster location, nor does it provide any references to environmental studies analyzing the flora and fauna in the region."

The Court found the analysis of CRC to be inadequate based on its determination that the Draft EIR "rejected the location based on an incomplete analysis of Norco's status as an historic place and whether the State Historic Preservation Office might consider the demolition of some of the structures." In the 2019 EIR, CDCR determined that CRC could result in new significant impacts to historic resources that would likely result from demolition of structures that are eligible for listing on the National Register of Historic Places (NRHP). The Court rejected that determination, stating that the demolition of NRHP-eligible structures at CRC could be determined to be less than significant with implementation of mitigation, including coordination with the State Historic Preservation Office. The 2019 EIR also determined that the CRC alternative is potentially infeasible because extensive coordination with the State Historic Preservation Office would be required; the Court found this feasibility determination was not supported with sufficient information.

**Analysis of Impacts on Traffic Conditions (Fifth Cause of Action).** The traffic analysis in the 2019 Draft EIR did not include trips generated by patient transportation to and from the MHCF in determining impacts related to vehicle congestion. The 2019 Final EIR considered these patient trips, but the Court found the assumptions pertaining to the route and timing of these trips to be unsubstantiated. Based on this consideration, the Ruling found in favor of the Petitioners. The Revised Ruling concluded that, due to a change in the CEQA Guidelines certified in 2018, this issue is moot. The Court's original finding regarding traffic assumptions, as well as the issue of mootness, are both addressed in Section 3.

## 1.2 PUBLIC REVIEW AND INTENDED USE OF THE PARTIALLY REVISED EIR

This partially revised EIR has been prepared in accordance with CEQA to address the deficiencies in the 2019 EIR identified by the Court in its Ruling.

The Guidelines for Implementation of the California Environmental Quality Act (CEQA Guidelines, codified at Title 14, California Code of Regulations, §§15000 et seq.) Section 15088.5 provides guidance on recirculation of Draft EIRs. Pursuant to CEQA Guidelines Section 15088.5(c), "if the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified."

Accordingly, this partially revised EIR focuses on the environmental baseline, traffic, and alternatives issues raised by the Court. It is organized as follows:

- ▶ **Section 1 (Introduction).** Presents background information on the process for the 2019 EIR certification, project approval, and subsequent CEQA lawsuit.
- ▶ **Section 2 (Project Description).** Summarizes the project description as presented in the 2019 EIR.
- ▶ **Section 3 (Response to Ruling Regarding the Adequacy of the Environmental Setting, Project Impacts and Mitigation Measures).** Provides information regarding the baseline and traffic analysis in response to deficiencies in the 2019 EIR identified by the Court.
- ▶ **Section 4 (Response to Ruling Regarding the Adequacy of the Alternatives).** Provides information regarding the LAC and CRC alternatives in response to deficiencies in the 2019 EIR identified by the Court.
- ▶ **Appendix A (Ruling on the Petition for Writ of Mandate).** Provides the full text of the February 2021 Ruling, which resulted in the need for this document.
- ▶ **Appendix B (Revised Ruling on the Petition for Writ of Mandate).** Provides the full text of the Revised Ruling dated June 24, 2021.

This EIR is a partial recirculation of the 2019 Final EIR. CDCR is circulating this partially revised EIR for a public review period of 30 days. CEQA Guidelines Section 15088(f)(2) states, "When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR." Accordingly, CDCR will only consider comments that raise environmental issues pertaining to the issues identified as inadequacies in the Ruling and addressed in this partially revised EIR.

Upon completion of the public review and comment period, CDCR will prepare a final partially revised EIR that will include the comments received on the draft partially revised EIR during the public-review period, responses to those comments, and any revisions to the draft partially revised EIR made in response to those comments. The final partially revised EIR and the 2019 EIR together will comprise the EIR for the proposed project. Before deciding whether to re-approve the proposed project, CDCR is required to certify that the EIR has been completed in compliance with CEQA, that the Secretary of CDCR has reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the lead agency.

## 2 SUMMARY OF THE PROPOSED PROJECT

CDCR proposes to construct and operate a new MHCF at CIM. Details regarding the project are included in the 2019 EIR and are summarized below. The proposed project would be constructed within the existing property boundaries of CIM, in the northwest portion of the existing prison grounds.

### 2.1 PROJECT LOCATION

The property boundaries of CIM, located at 14901 Central Avenue in the City of Chino, encompass approximately 2,500 acres owned by the State of California. CIM is within the central portion of Chino in San Bernardino County, approximately 33 miles southeast of downtown Los Angeles (see Exhibit 2-1 for the regional location of the proposed project). Regional access to CIM is by State Route 71.

There are four secure housing facilities (or “yards”) within CIM: facilities A, B, C, and D. These facilities are all separated from each other, so none share perimeter fencing (see Exhibit 2-2). The site for the proposed MHCF is within the existing secure perimeter of Facility D, at the location currently occupied by a closed and disused chapel, a disused/empty swimming pool, as well as associated sidewalks and landscaping. Demolition and removal of these components and related improvements would be necessary for construction of the proposed facility. The facility would be situated directly adjacent to the existing CIM infirmary.

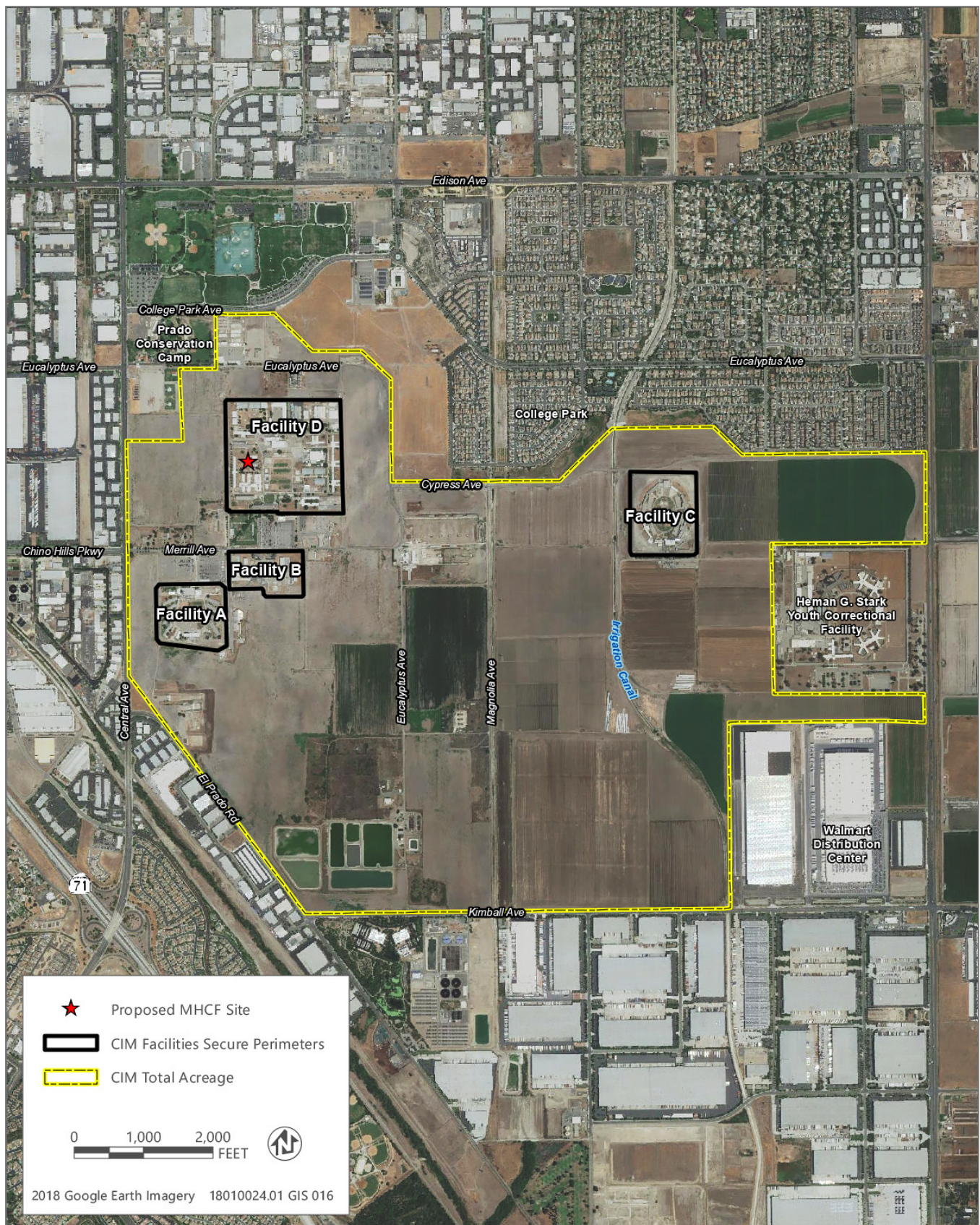
### 2.2 DESCRIPTION OF PROPOSED PROJECT

The new MHCF building would be configured as a one- or two-story building with up to approximately 69,000-gross square feet (gsf) of overall building footprint. The MHCF building would provide space for a total of 50 beds dedicated to patients in mental health crisis, along with mental health care treatment space, clinical support space, housing, recreation, custody, support, and administrative services. Housing, treatment, and support space would be built according to CDCR Design Criteria Guidelines; California Building Standards Code; California Code of Regulations Title 24; mental health licensing; and other State design policies and regulations. The facility would be constructed to highly secure standards and the building would also be designed to allow the provision of other levels of mental health care in addition to crisis care.

Other proposed project components include a new cyclone fence and secure vehicle access area, improvements to comply with the Americans with Disabilities Act (ADA) which involve upgrading the existing pedestrian pathway between the administration building and the MHCF site and resurfacing and restriping portions of the existing administration building parking lot to comply with ADA requirements. A 360-space paved parking lot for staff and visitors would be installed in one of two areas. Both options would be located outside of the secure perimeter of Facility D and would be accessed from Merrill Avenue. Parking lot Option A, located just southwest of the Facility D perimeter, would be approximately 3 acres. Parking lot Option B, located south of the Facility D perimeter and immediately east of the existing parking lot, would be approximately 2.5 acres. The MHCF would be built in accordance with the U.S. Green Building Council’s sustainable design principles established through its Leadership in Energy and Environmental Design (LEED) rating system. Exhibit 2-3 shows the proposed site plan and Exhibit 2-4 provides additional preliminary site plan details.

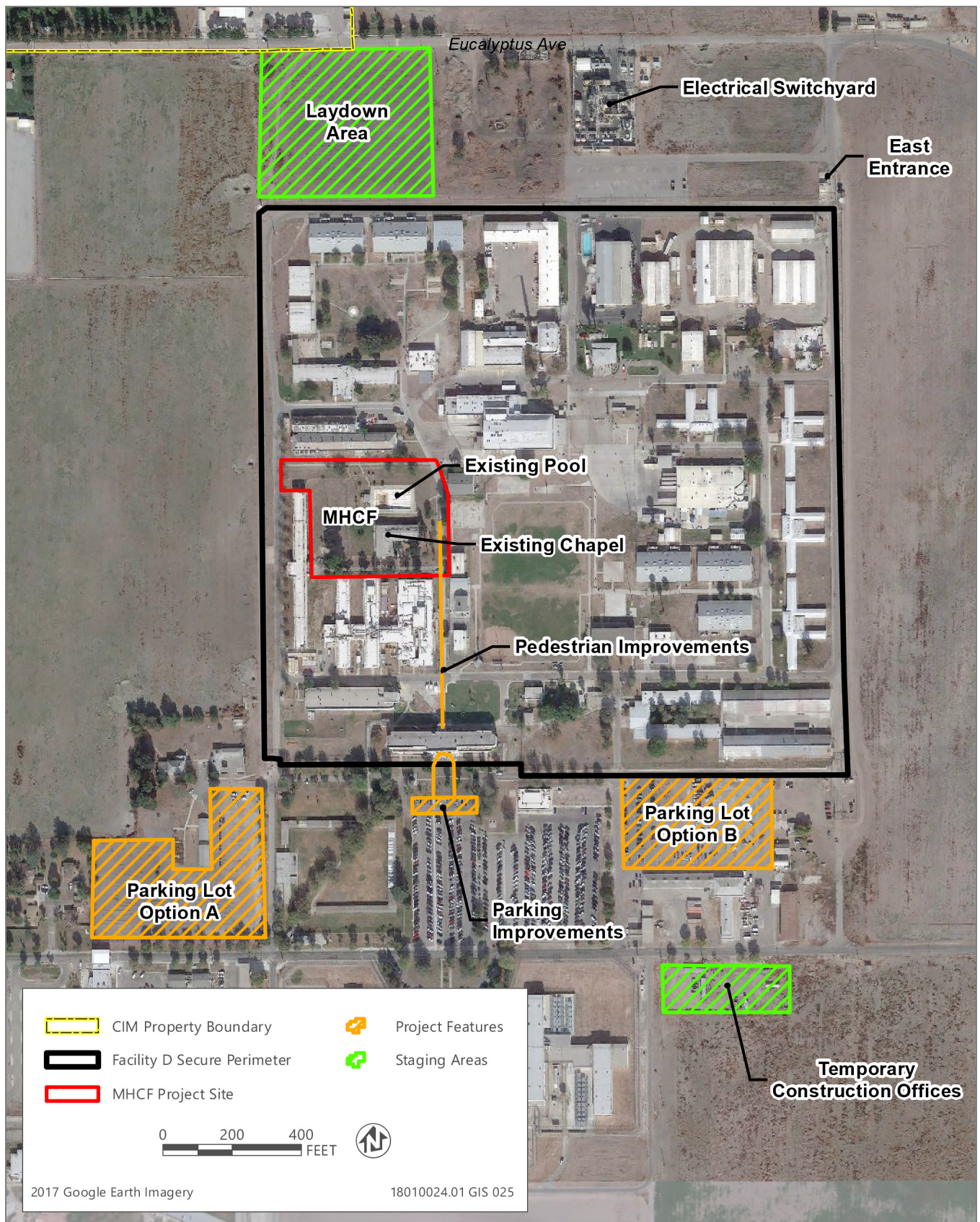






Source: Adapted by Ascent Environmental in 2018

### Exhibit 2-2 CIM and Surrounding Areas



Source: Adapted by Ascent Environmental in 2018

Exhibit 2-3 Proposed MHC Facility Site Plan



Source: Adapted by Ascent Environmental in 2018

### Exhibit 2-4 Proposed MHC Facility Site Plan – Preliminary Detail

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# 3 RESPONSE TO RULING REGARDING THE ADEQUACY OF THE ENVIRONMENTAL SETTING, PROJECT IMPACTS AND MITIGATION MEASURES

This section addresses two issues raised in the Ruling: the adequacy of the EIR's description of the project's environmental setting (or "baseline") and the adequacy of the traffic analysis.

## 3.1 ENVIRONMENTAL SETTING

As cited in the Ruling, CEQA Guidelines Section 15125(a)(1) states:

Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published ... from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported by substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

The baseline used for the analysis in the 2019 EIR are the conditions present at the time the Notice of Preparation was published – July 2018. The existing conditions relevant to the proposed project and needed to provide an accurate picture of the project's impacts do not change or fluctuate such that a historic or future condition should be addressed.

In litigation over the adequacy of the EIR, the petitioners contended that CDCR should have addressed the conditions described in the 2008 Inspector General report entitled "California Institution for Men, Quadrennial and Warden Audit" (the "2008 Audit"). The Ruling states that CDCR "contends the 2008 Audit is irrelevant because it addressed conditions a decade earlier."

The Ruling further states:

The Draft EIR provided a site map showing the *placement* of the proposed facility and existing buildings (AR 1319, 1329), but omitted any description of the *condition* of the buildings and infrastructure that are critical to the project, or a description of *specific* repairs either underway or contemplated....

...Due to the vague and undefined references to "on-going repairs and improvements," it is unclear whether the baseline describes *existing* conditions, *future* conditions, or some *combination*. The EIR's failure to state clearly and definitely what repairs and improvements have already been made and what still needs to be done renders the baseline analysis uncertain.

CEQA Guidelines Section 15125 outlines what is needed for an environmental setting, which "will normally constitute the baseline physical conditions in the vicinity of the project." The guidance further states: "The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the project and its alternatives." (CEQA Guidelines, Section 15125(a)). In order to understand the context within which the setting should be described, CEQA also provides a definition of a significant effect on the environment: "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (CEQA Guidelines Section 15382, in relevant part)

Appendix G (Environmental Checklist) of the CEQA Guidelines lists those environmental issues that could be affected by a project. Taken together, CEQA Guidelines Sections 15125 and 15382 along with Appendix G suggest that the description of the physical environmental conditions should be limited to those air, biological, geologic, noise, utility, cultural, transportation, etc., conditions upon which an environmental impact could result and should not be encyclopedic. This guidance also provides that the EIR need not (and should not) describe physical conditions that the project would not affect.

With this guidance in mind, the only physical environmental conditions that need be considered in the EIR are those that could be affected by the project. CIM includes four non-contiguous major facilities on 2,500 acres (Facilities A, B, C, and D); the project would be located within just one of these facilities (Facility D), with the closest other major facility (Facility B) well over 500 feet away. The nature of repairs or other physical conditions at these other facilities (Facilities A, B, C) is not germane to the project because these facilities do not include buildings or infrastructure upon which the project would rely. Further, none of the buildings or facilities within Facility D, other than a chapel and swimming pool, would be affected by construction of the project, as described below.

The Ruling focuses on the condition of the buildings and infrastructure that are “critical to the project.” The project is a “stand alone” facility, located on the western side of Facility D at CIM; see Exhibit 2-2 in Section 2 of this document. The project will have dedicated security fencing and parking (see Exhibit 2-4). The location of the proposed MHCF is on a site currently occupied by a vacant/unused chapel and unused swimming pool. The existing buildings and infrastructure that are critical to the project are the vacant chapel and unused/empty swimming pool, which would be demolished to construct the proposed project, and the utilities that would serve the project: a water treatment plant and wastewater treatment plant, which have available capacity and do not need to be modified to serve the MHCF. The Draft EIR assumed that an additional electrical transformer or capacity bank would also be installed at the existing electrical switchyard in a previously graded area. However, CDCR has determined since certification of the 2019 EIR that no modifications are needed at the existing switchyard or other existing electrical facilities to serve the project. The 2019 EIR did not identify any environmental effects resulting from installation of an additional electrical transformer or capacity bank at the existing electrical switchyard, so there would be no change in the environmental impacts of the project. Other than the vacant chapel and unused/empty swimming pool, the proposed MHCF site currently contains sidewalks, landscaping, and facility access (e.g., a cart path). The proposed project includes the complete removal of the chapel, the swimming pool (which would be removed, then backfilled), all existing landscaping, sidewalks, and access areas. It would not affect or rely on any other building or facilities.

The Ruling states that because of the lack of clarity regarding the condition of buildings and infrastructure that are critical to the project and the status of maintenance and repairs, “the EIR prevents an informed comparison of pre-project and post project conditions.” The condition of the buildings and infrastructure that are critical to the project is described below.

### 3.1.1 Buildings and Infrastructure Critical to the MHCF Project

#### CHAPEL

Constructed in 1949, the chapel is an approximately 7,420 square foot building that consists of red brick on a concrete slab foundation. The building has a low-sloped gabled roof of tarpaper and gravel. The roof is in poor condition and portions are covered with tarps. The two-story, running-bond brick building has an “L” shaped floorplan with a one-story extension with a shed roof located on the eastern façade. Double personnel doors with entry porches are located at the ends of each wing. Windows are aluminum-framed casement. The south wall exhibits shear cracks that have pinned an exterior door shut. The chapel was closed following a structural evaluation in 2016 that determined its structural deficiencies made it unsafe to occupy without repair (CDCR 2016). Repairs have not been made and its condition has continued to deteriorate. The pictures shown in Exhibit 3-1 were taken in 2016 and reflect the condition of this building at the time the NOP was released in July 2018. The 2019 EIR evaluated all potential impacts associated with removing the chapel. As described on page 4.3-9 of the Draft EIR, the chapel is not considered an historic resource under CEQA. It may contain hazardous materials, which are addressed on pages 4.6-9 and 4.6-10 of the Draft EIR. If present, these materials will be remediated during the site preparation phase. No other environmental issues are associated with removal of the chapel and none were raised in comments on the EIR.

As part of the proposed project, the vacant chapel and existing utility laterals (e.g., water, sewer, electric and natural gas) within the project area would be completely removed prior to construction of the MHCF.

## SWIMMING POOL

Constructed in 1942, the swimming pool is approximately 100-foot by 50-foot and is approximately 5 feet deep at the shallow end and 12 feet deep at the deep end. The pool is constructed of plaster, ceramic tile, and a fiber reinforced epoxy material coating the bottom of the pool. CDCR estimates its use ceased in or around 2006 when it was drained of water. At that time, maintenance ceased, and its condition has deteriorated. The pictures shown in Exhibit 3-1 were taken in 2016 and reflect the condition of this facility at the time the NOP was released in July 2018. The 2019 EIR evaluated all potential impacts of removing the swimming pool. As described on page 4.3-9 of the Draft EIR, the pool is not considered an historic resource under CEQA. It may contain hazardous materials, which are addressed on pages 4.6-9 and 4.6-10 of the Draft EIR. If present, the hazardous materials will be remediated during the initial site preparation phase. No other environmental issues are associated with removal of the swimming pool and none were raised in comments on the EIR.

As part of the proposed project, the swimming pool would be completely removed, and the resulting hole would be backfilled, prior to construction of the MHCF.

## WATER TREATMENT PLANT AND WASTEWATER TREATMENT PLANT

CIM, including the proposed MHCF site, is currently served by potable water as well as wastewater conveyance and treatment. The proposed project is not expected to exceed existing capacities of these utilities, and modifications to these utilities are not required or proposed.

As explained in the Draft EIR (see Section 4.11, "Utilities and Service Systems"), the water treatment plant has a maximum capacity of 3.5 million gallons per day (mgd) and, at the time the NOP was published, was producing 1.5 mgd (Barella, pers. comm., 2018, as cited in the Draft EIR), less than half the maximum capacity. The MHCF would demand approximately 7,500 gpd, which would result in a total water treatment demand of 1.5075 mgd. This would constitute a negligible, 0.5 percent increase in demand and would not exceed the 3.5 mgd water treatment capacity at CIM.

The wastewater treatment plant can process a maximum of 1.69 mgd and, at the time the NOP was published, had an average flow rate of 0.83 mgd (Barella, pers. comm., 2018, as cited in the Draft EIR), approximately half the permitted capacity. The MHCF would generate approximately 6,500 gpd, which would result in the total wastewater treatment demand to be 0.8365 mgd. This would constitute a negligible, 0.7 percent increase in demand. Because the maximum capacity of the wastewater treatment plant at CIM is 1.69 mgd, implementation of the MHCF would not cause exceedance of the wastewater treatment plant capacity.

No physical modification of the water treatment plant or wastewater treatment plant is proposed or necessary to adequately serve the project. The condition of these facilities at the time of NOP release is that they are adequate to serve the project and no repairs, upgrades, or permit changes are needed; there would be no change in the condition of these facilities resulting from implementation of the project. As correctly acknowledged by the Court in its Ruling at footnote 18:

To the extent petitioners contend the inadequate baseline description influences the adequacy of the wastewater treatment analysis, the determination that "no expansion of existing facilities is needed" suggests that the current condition of the septic system is sufficient and does not require any updates or repairs.

CDCR notes that rather than a septic system, it operates a fully permitted (by the Regional Water Quality Control Board) wastewater treatment plant. CDCR confirms that the current condition of the wastewater treatment plant, as well as the water treatment system, is sufficient to serve the project and does not require any updates or repairs.

The clarifications to the environmental setting provided in this partially revised Draft EIR do not change any of the impact significance conclusions in the Final EIR or result in new significant impacts, and no new mitigation measures are required.



Source: Ascent Environmental in 2016

Chapel, facing west.



Source: Ascent Environmental in 2016

Chapel, facing northwest.

**Exhibit 3-1      Photographs of Existing Buildings and Infrastructure Critical to the Project – Chapel & Pool (1 of 3)**





Source: Ascent Environmental in 2016

Chapel, facing south.



Source: Ascent Environmental in 2016

Chapel, primary façade, facing north.

**Exhibit 3-1      Photographs of Existing Buildings and Infrastructure Critical to the Project – Chapel & Pool (2 of 3)**



Source: Ascent Environmental in 2016  
Swimming pool, facing west.



Source: Ascent Environmental in 2016  
Swimming pool, facing northwest.

**Exhibit 3-1      Photographs of Existing Buildings and Infrastructure Critical to the Project – Chapel & Pool (3 of 3)**

### 3.1.2 Relevance of 2008 Audit

In 2008, an audit of conditions associated with the operation of facilities at CIM was conducted by the Office of the Inspector General (2008 Audit). A summary of the 2008 Audit and description of repairs and improvements to buildings and infrastructure at CIM was included in the 2019 EIR to address comments received on the NOP. The EIR explained that the condition of existing infrastructure at CIM was “identified in comments but [is] not within the scope of EIR analysis required pursuant to CEQA because [it does] not pertain to potential environmental impacts of a project such as the proposed MHCF (see 2019 Draft EIR at Section 2.3, “Scope of the Draft EIR”).

CDCR received comments about this issue during public review of the Draft EIR. Master Response 1: Condition and Maintenance of Existing Infrastructure in the Final EIR addressed these comments.

The Ruling states that the response is vague on the precise nature, extent and timing of the improvements and investment in maintenance and repair of existing infrastructure at CIM. Noting the Ruling’s emphasis on the need to understand the condition of buildings and infrastructure that are critical to the project, information is provided in this Partially Revised EIR for the chapel, swimming pool, water treatment plant, and wastewater treatment plant. As described in this Partially Revised EIR, the Project will have no impact on any other structures at CIM. Other structures would neither be affected by, nor would affect, the project in any way. The project would not require any modification of, interconnection with, demolition of, use of, or other physical change to any existing buildings and infrastructure other than those considered critical to the project, as addressed in the sections above.

The 2008 Audit does not address the condition of the chapel, swimming pool, or wastewater treatment plant. The only infrastructure critical to the MHCF Project that is addressed in the 2008 Audit is the water treatment plant. The 2008 Audit identified problems with the denitrification plant (one component of the water treatment plant) and noted (at page 19) that “...a construction project to repair the plant is currently underway...”. According to the CDCR’s Facility Planning, Construction and Management Division Director, the project was completed in 2013 (Borg, pers. comm, 2021). As stated above, CDCR confirms that the current condition of the water treatment plant (including the denitrification plant) is sufficient to serve the project and does not require any updates or repairs.

Therefore, to the degree the 2008 Audit pertains to baseline conditions and the impacts of the MHCF project, they are addressed in the 2019 EIR as supplemented herein. The only infrastructure critical to the MHCF project that was addressed in the audit (i.e., the water treatment plant) was repaired in 2013, 5 years prior to release of the NOP for the 2019 EIR. The water treatment plant is currently adequate to serve the MHCF Project without modification.

## 3.2 TRAFFIC

In its initial Ruling, the Court found the analysis of traffic impacts to be inadequate based on Petitioners’ arguments about impacts to the level of service (LOS). On this issue, the 2019 EIR evaluated 16 intersections to determine if the project would add sufficient trips to unacceptably degrade the LOS at any of them, according to the EIR’s thresholds of significance. The EIR utilized the City of Chino and the San Bernardino Associated Governments (SANBAG) Congestion Management Plan thresholds, which are focused on LOS, which is a measure of congestion. As identified by the Court, the Draft EIR included traffic generated by staff, deliveries, and service trips, but did not include traffic from patient transfers. Traffic from patient transfers was added to the Final EIR, but the Court determined that the analysis was incomplete because it was unclear whether the applicable significance threshold would be exceeded with the inclusion of this additional information and because there was no supporting evidence regarding the distribution of these patient trips on the roadway network or the schedule upon which they would travel. The Court ruled the EIR’s conclusion that the project would not result in a significant traffic impact due to a substantial increase in intersection delay was unsupported by the record. As stated in the initial Ruling:

In short, the Final EIR makes various unsubstantiated assumptions, glossing over the omission in the Transportation Impact Analysis of the trips generated by inmate-patient transportation—the very traffic that is the subject of the project—as well as an accurate assessment of how, when, and where these trips would occur—it is unclear whether the trip threshold for conducting an intersection analysis would be exceeded. Therefore, the assertion that the Project “would not result in a substantial increase in overall intersection

delay, and this issue does not warrant further study” is unsupported by the record, resulting in a failure of the Final EIR as an informational document.

The discussion below is provided in response to the Ruling. This response is followed by a discussion of why this issue is moot, consistent with the Court’s Revised Ruling that indicates the same.

### 3.2.1 Intersection Thresholds Would Not Be Exceeded

The following discussion addresses the issues raised in the Ruling. However, as will be further discussed, this issue is moot because of changes in CEQA that have occurred since initiation of the EIR.

As disclosed in the 2018 Draft EIR, a threshold of significance for transportation impacts was established by CDCR, utilizing the City of Chino and SANBAG thresholds based on intersection congestion: if the project would add 50 or more peak hour trips to an intersection and the intersection would degrade (become more congested) from LOS D or better to LOS E or worse (see Draft EIR, pp. 4.10-10 and 4.10-13). The Draft EIR, as explained above, inadvertently did not include patient transfer trips. As shown on page 4.10-2 (page 4.10-10) of the Draft EIR, the intersection of Central Avenue/Chino Hills Parkway would receive the highest level of project-generated peak hour traffic, 39 trips in the a.m. peak hour and 40 trips in the p.m. peak hour; these numbers did not include patient transfer trips. Project effects at this intersection also are explained in response to comment A4-12 of the 2019 Final EIR (pages 3-30 and 3-31). No other intersection would experience more than 34 trips during any peak hour (Exhibit 4.10-2 of the Draft EIR).

The Final EIR addressed the inadvertent exclusion of the patient transfers associated with the project. The discussion herein addresses the concerns expressed in the Ruling and updates the discussion in the Final EIR.

In order to exceed the EIR’s peak hour threshold of significance, patient transfer trips would need to be sufficient, when added to the number of trips already included in the Draft EIR, to exceed the 50-trip intersection peak-hour threshold. Given that the highest number of peak-hour project trips at any single intersection, without patient transfer trips, is 40, the project would need to generate at least 10 peak-hour patient transfer trips (40 trips+10 trips=50 trips) to have the *possibility* that an intersection threshold could be exceeded. If 10 peak-hour patient transfer trips would result, the traffic analysis would need to take the next step and distribute them on the transportation system to determine if, indeed, they would all go through the intersection already experiencing 40 peak-hour trips. If at least 10 such peak-hour trips were generated but only 9 traveled through the most affected intersection (40 trips+9 trips=49 trips), the 50-trip threshold would not be exceeded. Therefore, at least 10 peak-hour patient transfer trips would need to be generated to even raise the possibility that any of the intersections in the project area could exceed the congestion threshold, thereby warranting additional analysis.

The determination of the number of peak-hour patient trips is based on the following substantial evidence:

- ▶ The project provides 50 beds for patients in mental health crisis, as described in Section 3, Project Description of the Draft EIR.
- ▶ The usual length of stay is approximately 10 days, based on information from the CDCR Mental Health Services Delivery System, as described on page 2-5 of the Draft EIR.
- ▶ Given the number of beds—assuming full occupancy—and average length of stay, the MHCF would accommodate an average of 5 patient arrivals per day.
- ▶ CDCR is mandated by the courts with oversight responsibility for its operations to place a patient in a MHCF bed within 24 hours of diagnosis, as described on page 2-5 of the Draft EIR.

Because patient transfers are mandated to occur within 24 hours of diagnosis, they are not scheduled in the same manner as a shift change, which generates a predictable peak of trips. The transfers are in response to a mental health crisis, not a schedule. A patient is diagnosed, then the transfer process occurs. A transfer can occur at any time. Accordingly, it is reasonable to assume that each patient has a 1/24<sup>th</sup> chance of arriving in a particular hour. It is statistically unlikely that more than 2 patient transfers would occur in any single hour; if that did occur, it would be rare, and rarer still that it would occur during the peak hour. The average gap between

patient arrivals would be approximately 5 hours (24 hours per day/5 patients per day=approximately 1 patient every 5 hours).

As stated on page 3-1 of the 2018 Draft EIR, CIM currently treats patients in mental health crisis at a 34-bed infirmary. The proposed 50-bed MHCF would add 16 new beds to the overall capacity of CIM to treat patients in mental health crisis, but the facility has operational experience receiving and processing patients in mental health crisis. According to the CIM Public Information Officer, it is rare when more than one patient arrives in the same hour and he could not recall a single time that more than two patients in mental health crisis arrived in the same hour. The Officer also stated that delivery of a high-security patient requiring two vehicles (see Response to Comment A4-12 in the 2019 Final EIR) occurs only once every one to two months. (Lopez, pers. comm., 2021a)

- ▶ Even if there were a statistically rare incident when more than 2 patients arrived in the same hour, and it was the peak hour of other traffic from the project, this would not be the basis of a traffic impact analysis. Based on the experience that a typical patient drop-off occurs in less than an hour, each patient drop off equals two peak hour trips (arrival + departure)(Lopez, pers. comm., 2021a). Even assuming the statistically rare and highly improbable instance where 2 patients arrived in the same hour, and it was the peak hour, and assuming that each of the patients was a high security patient requiring 2 vans each, and assuming that the vans delivering the patients arrived and departed in the same hour, this would add 8 peak hour trips to the roadway. (2 vans, 2 peak hour trips each way, 8 total peak hour trips).
- ▶ According to the CIM Public Information Officer, CDCR has a high degree of control over scheduling patient discharge from the MHCF and their transport to a different institution. CIM staff is notified in advance of incoming patient transport. If another patient is ready to be discharged and the bed is needed, staff can discharge the patient and make the bed available before the incoming patient arrives. Incoming patient transport does not happen within the same hour as patient discharge. Discharge patient transport is scheduled to avoid peak hours because it is a security risk for transport vans to sit in traffic. (Lopez, pers. comm., 2021b). Therefore, discharge patient transport would not add peak hour trips to the incoming patient trips described above and would never exceed the incoming patient peak hour trips.
- ▶ According to David Robinson, a traffic engineer with 27 years of CEQA traffic impact analysis experience, traffic impact analyses are typically based on normal, average traffic generation, not rare events. (Robinson, pers. comm, 2021.) "CEQA does not require an agency to assume an unlikely worst-case scenario in its environmental analysis." (*High Sierra Alliance v. County of Plumas* (2018) 29 Cal.App.5<sup>th</sup> 102, 124.) Therefore, it is reasonable to assume, for CEQA impact analysis purposes, that no more than one patient transfer would occur in a peak hour, adding 2 peak hour trips (the van would deliver or pick up the patient and return to the roadway in less than an hour).

Based on this discussion, it can be reasonably concluded that the patient transfers would likely add only 2 peak hour trips, at most, on a typical day, to the roadway system (one patient transfer during a peak hour). Assuming 2 patients arrived in the same hour would be statistically rare and highly improbable for the reasons described above. However, notwithstanding its improbability, if this instance occurred, a maximum of 8 peak hour trips could be added to the roadway system in any one hour (whether it was the peak hour of traffic or not). These additional trips would be less than the 10 peak hour trips that would be needed to consider if any single intersection would experience more than 50 peak hour trips from the project and, therefore, require additional consideration regarding the project's effect on congestion. No other reasonable conclusion based on substantial evidence could be reached. Therefore, if additional congestion were considered a significant impact under CEQA, the project would not result in such an effect, as explained in the 2019 EIR. However, as explained below, congestion is no longer permitted to be considered a significant environmental impact under CEQA.

### 3.2.2 Intersection Analysis is Moot

In its Revised Ruling, the Court concluded the issue of traffic impacts is moot for the following reasons.

Public Resources Code Section 21099, which was added to CEQA in 2013, addresses transportation analysis. It requires that the Governor's Office of Planning and Research (OPR) prepare for certification and adoption revisions to the CEQA Guidelines with respect to the significance of project transportation impacts (CEQA Section 21099(b)(1)). It specifically requires that "[u]pon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service (LOS) or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." (CEQA Section 21099(b)(2)).

OPR developed new CEQA Guidelines, which were certified by the Secretary of the Natural Resources Agency and then approved by the Office of Administrative Law on December 28, 2018. Section 15064.3, "Determining the Significance of Transportation Impacts" was added to the CEQA Guidelines.

As described in Section 21099, LOS shall not be considered a significant impact on the environment once new guidelines addressing transportation are adopted. These guidelines have now been adopted and are in full effect.

On page 24 of its Revised Ruling, the Court stated the following with respect to the argument that traffic was not properly addressed in the EIR:

This argument is moot because traffic congestion based on level of service (LOS) is no longer considered a significant impact on the environment under CEQA. Guidelines section 15064.3, subdivision (a), provides in relevant part: "Generally, vehicle miles traveled is the most appropriate measure of transportation impacts."

Section 15064.3, subdivision (c), however, provides: "The provisions of this section shall apply *prospectively* as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide." [Fn.]

The Revised Ruling cited Section 21099(b)(2), quoted above, which states that LOS shall no longer be considered a significant environmental impact following adoption of the new CEQA Guidelines.

As further stated on pages 25 through 27 of the Revised Ruling:

The Guidelines were certified on December 28, 2018, thereby abandoning LOS as the proper measure as of that date. (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 626.) In *Citizens for Positive Growth*, the Court addressed a city's adoption of a general plan in 2015. The petitioner challenged the EIR's traffic impact analysis, arguing that the EIR's analysis of the general plan's impacts on traffic congestion as measured by LOS constituted significant impacts under CEQA, and that the city failed to analyze and mitigate the impacts properly. (*Id.* at pp.616, 625.) The city argued that Public Resources Code section 21099, subdivision (b)(2), rendered the petitioner's traffic impact argument moot, because Guidelines section 15064.3 was certified in late 2018. (*Id.* at pp. 625-626.)

The Court agreed and found that even though Guidelines section 15064.3 applied prospectively, Public Resources Code section 21099, subdivision (b)(2), provided that upon certification of Guidelines, "automobile delay, as described solely by level of service or similar measures of vehicle capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." (*Citizens for Positive Growth, supra*, 43 Cal.App.5th at pp. 625-626.) The Court stated:

In mandamus proceedings like this one, "the law to be applied is that which is current at the time of judgment in the appellate court." [Citations omitted.] Under section 21099, subdivision (b)(2), existing law is that "automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment" under CEQA, except for roadway capacity projects. Accordingly, the 2035 General Plan's impacts on

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LOS (i.e., automobile delay) cannot constitute a significant environmental impact, as Citizens argues, rendering Citizens' traffic impacts argument moot.

(Citizens for Positive Growth, *supra*, 43 Cal.App.4<sup>th</sup> at p. 626)

Thus, *Citizens for Positive Growth* rejected the precise position advanced by petitioners in this litigation.

Here, the Draft EIR was drafted shortly before the revisions to Guidelines section 15064.3 were finalized and recognized the then-proposed revisions would establish new criteria to replace the LOS methodology with metrics related to vehicle miles traveled ("VMT"). (AR 1449.) However, the Draft EIR also proceeded with its use of the LOS methodology on the ground that the then-pending legislation to revise Guidelines section 15064.3 "[did] not preclude the application of local general plan policies, zoning codes, conditions of approval, or any other planning requirements." (*Id.*) The Final EIR, drafted in April 2019, did not revise the traffic analysis in the Draft EIR or otherwise address the adoption of the VMT methodology in the revision to Guidelines section 15064.3. (AR 280—297.) As a result, since the EIR evaluated traffic as an environmental impact using the LOS methodology, the court cannot make a determination regarding the traffic analysis because this methodology is no longer valid.

Here, unlike *Citizens for Positive Growth*, Guidelines section 15064.3 is now in effect statewide, mandating VMT analysis. Even so, there is no basis to apply it retroactively to the Project because Guidelines section 15064.3, subdivision (c), explicitly states that it applies prospectively." [Fn.] As a result, since Guidelines section 15064.3 is prospective and did not require CDCR to use the VMT criteria at the time the Final EIR was certified, the petition is denied as to the fifth cause of action." [Fn.]

CDCR concurs with the Court's Revised Ruling that the issue of traffic congestion is moot.

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## 4 RESPONSE TO RULING REGARDING THE ADEQUACY OF THE ALTERNATIVES

### 4.1 INTRODUCTION AND RESPONSE TO RULING

In its Ruling, the Court found the analysis of offsite alternatives at the California Rehabilitation Center at Norco (CRC) and the California State Prison, Los Angeles County at Lancaster (LAC) to be inadequate. Both alternatives were considered but eliminated from detailed consideration in the 2019 EIR because the EIR concluded neither would avoid or lessen any significant impact of the project. (See Draft EIR sections 7.4.3 and 7.4.4, discussing Environmental Considerations for each of these off-site alternatives.)

CEQA requires that an EIR identify potentially feasible alternatives that could avoid or substantially lessen a project's significant environmental impacts. (CEQA Guidelines, §15126.6(a).) "Because an EIR must identify ways to mitigate or avoid significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project . . ." (CEQA Guidelines, §15126.6(b).) (See also Pub. Resources Code, §21002, 21002.1(a), 21100(b)(4), 21150.) Regarding alternative locations, "The key question and first step in the analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR (CEQA Guidelines, Section 15126.6(f)(2)(A).) A lead agency may decide to eliminate an alternative from consideration solely on the basis of the fact that it would not avoid or substantially lessen a project's significant environmental impacts, irrespective of whether it is potentially feasible or whether it meets most project objectives. (*City of Maywood v. City of Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 419 (alternative would not reduce pedestrian safety or hazardous materials impacts); *Citizens for East Shore Parks v. State Lands Comm'n* (2011) 202 Cal.App.4th 549, 563 (alternative did not reduce any significant environmental impacts of project); *Tracy First v. City of Tracy* (2009) 177 Cal.App. 4th 912,929-930 (record did not establish that reduced size alternatives would substantially diminish any of project's significant environmental impacts); *Mann v. Community Redev. Agency* (1991) 233 Cal.App. 3d. 1143, 1150-1151 (proposed alternative not shown to be environmentally superior to project).) Because CEQA requires that an EIR's focus be on alternatives capable of reducing a project's significant impacts, the consideration of feasibility in whether to eliminate or retain an alternative for consideration in the EIR is secondary. It does not matter whether the offsite alternatives are potentially feasible; they have been eliminated from further consideration in the EIR because they are not capable of reducing any of the project's significant environmental impacts.

#### CIM's Selection as Site for the Project

In the discussion of alternatives, the Court noted the location of the site at CIM was not explained. As stated in the Ruling:

There is nothing in the record, however, explaining how or why CIM was selected, instead of a different prison complex in Southern California. While the *Coleman* court orders may have served as the impetus for deciding that a facility had to be built in Southern California, the orders do not state that the facility had to be built at CIM to the exclusion of other Southern California locations.

Section 7.1.1 of the 2018 Draft EIR has been revised to address the Ruling (see Section 4.2, below).

## California Rehabilitation Center at Norco (CRC)

The Court found the EIR's analysis of CRC to be inadequate because the 2019 EIR stated that new significant impacts to historic resources would likely result from demolition activities. The Court disagreed, stating that the demolition of NRHP-eligible structures at CRC could be determined to be less than significant with implementation of mitigation measures. As stated in the Ruling:

Although CDCR's responses to comments in the Final EIR stated that Norco was "environmentally inferior" because construction of a mental health facility would result in the demolition of structures that are eligible for listing on the National Register of Historic Places (AR 167-168, 6721-6082), this conclusion fails to take into account that under the Guidelines, a project that alters an historical resource but follows guidelines in the federal "Secretary of the Interior's Standards for the Treatment of Historic Properties" could mitigate impacts to less than significant, even if alterations to the historic resource are substantial. (Guidelines§ 15064.6(b)(3).) CDCR also ignores its own acknowledgement that building a facility at the Norco location was possible through coordination with the State Historic Preservation Office. (AR 1502.)

The 2019 EIR also determined that the CRC alternative is potentially infeasible because extensive coordination with the State Historic Preservation Office would be required; the Court found this feasibility determination was not supported with sufficient information.

Section 7.4.3 of the 2018 Draft EIR has been revised to address the Ruling (see Section 4.2, below). These revisions do not alter the conclusion that this alternative would not avoid or substantially lessen any of the significant impacts of the project and is, therefore, eliminated from consideration as specified in the CEQA Guidelines. ("Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR." CEQA Guidelines Section 15126.6(f)(2)(A).)

## California State Prison, Los Angeles County at Lancaster (LAC)

The Court found the analysis of LAC to be inadequate because the record lacked evidence supporting CDCR's finding that difficulties in recruiting medical professionals to the Lancaster location rendered the alternative unable to meet the project objective to "locate treatment services in a geographically central area of the greater southern California region to facilitate recruitment and retention of skilled medical and mental health professionals." The Court also found the LAC analysis to be inadequate because the EIR's conclusion that the alternative could result in greater biological impacts was not supported by substantial evidence in the record. As stated in the Ruling:

The substantive analysis of Lancaster as an alternative is deficient, however, because it concludes, without citation to any supporting evidence, that the location would make it difficult to recruit qualified medical professionals and it could result in new impacts to biological resources "because different or additional special-status species could be affected." The Draft EIR does not show that any research was done on the question of recruitment of medical professionals to the Lancaster location, nor does it provide any references to environmental studies analyzing the flora and fauna in the region.

Section 7.4.4 of the Draft EIR has been revised to address the Ruling (see Section 4.2, below). This revision does not alter the conclusion that this alternative would not avoid or substantially lessen the significant impacts of the project and is, therefore, eliminated from consideration as specified in the CEQA Guidelines.

## 4.2 REVISIONS TO THE 2019 EIR

The following sections present excerpted revisions to the 2019 EIR text made in response to the Ruling, as explained above. Changes in the text are signified by ~~strikeouts~~ where text is removed and by underline where text is added. Section numbers correspond to those used in the 2019 EIR.

Beginning on page 7-2 of the Draft EIR, as revised by the Final EIR, second paragraph from the bottom of the page, the 2019 EIR is revised as follows:

## 7.1.1 Summary of Alternatives Screening Criteria

...

In considering alternatives and their potential location, locating a MHCF in the greater southern California region is driven by two primary factors: 1) Mental health crisis facilities require specialized staffing by mental health and medical professionals. CDCR has had difficulty staffing and retaining a sufficient number of this classification of staff in non-urban or rural areas, where many CDCR facilities are located. The greater Los Angeles/Inland Empire region has a large number of people employed in the health care industry, providing a substantial pool of potential employees for a MHCF (EDD 2021a; EDD 2021b). 2) Currently, there are a limited number of MHCFs in southern California. Patients located at southern California based prisons that require mental health crisis care often must be transported to a prison in central or northern California, delaying the provision of this type of treatment. Locating additional MHCF beds in southern California is essential to quickly placing patients in mental health crisis treatment.

CDCR's reasons for selecting the CIM site for the proposed project are explained in Sections 2, 2.1.1 and 2.1.2 of the Draft EIR, as well section 2.2.1. As indicated in the project objectives, the decision to select CIM was influenced by the Legislature's appropriation of funds in the 2017-2018 State Budget Act (Act), to develop plans for a MHCF at CIM. CDCR's decision to propose the project at CIM did not constrain its consideration of alternative sites outside of CIM. As explained in Sections 7.4.3 and 7.4.4 of the Draft EIR, CDCR explained that it had considered offsite alternatives at CRC and LAC but eliminated them from detailed evaluation in the EIR because they would not avoid or substantially reduce any significant impact of the proposed project. CDCR's decision to eliminate these offsite alternatives from detailed consideration in the EIR was not influenced by the Legislature's appropriation of planning funds in the Act for a facility at CIM. In light of the current need for new mental health crisis facilities in the southern California region, and the extensive geographic area encompassed by the region, CDCR is also beginning preparation of Preliminary Plans for a proposed 50-bed MHCF within the grounds of the R. J. Donovan (RJD) Correctional Facility in San Diego County. Funding for preparing preliminary plans for the proposed RJD MHCF is appropriated in the ~~2017-2018 State Budget Act (Act)~~. The proposed 50-bed MHCF at RJD is not an alternative to, and is needed in addition to, the proposed MHCF at CIM.

For the proposed MHCF project, the consideration of alternatives that fulfill CEQA requirements is complicated by a simple factor: the proposed project would not result in any significant and unavoidable impacts. The significant impacts of the proposed project are highly limited and can be clearly mitigated. Significant impacts have been identified for special-status bird species and potentially unknown (buried) cultural and tribal cultural resources as well as localized air quality. The special-status bird species potentially impacted by proposed project construction activities are adapted to ruderal areas. Thus, the impacts of the proposed project to biological resources would occur nearly anywhere in the greater southern California region where there are mature trees within 0.5 miles of the proposed project to support Swainson's hawk and marginal open space for burrowing owls.

Proposed project impacts to cultural resources and tribal cultural resources are similarly ubiquitous. Currently unknown cultural resources that could be inadvertently discovered is a potentially significant impact in nearly all areas of ground disturbance in California, and mitigation of this impact is virtually prescribed by the State CEQA Guidelines. Additionally, tribal ancestral territories and associated tribal cultural resources extend throughout California.

Beginning on page 7-9 of the Draft EIR, as revised by the Final EIR, the 2019 EIR is revised as follows:

### 7.4.3 Offsite Alternative - California Rehabilitation Center at Norco

Under this alternative, a 50-bed MHCF would be constructed at CDCR's California Rehabilitation Center (CRC). CRC is approximately seven miles southeast of CIM on State property within the City of Norco in Riverside County (refer to Exhibit 7-1). Because CRC facilities encompass nearly all the available area within the State property on which it is located, it is assumed that some existing structures at CRC would need to be demolished to accommodate a 50-bed MHCF. Similar building dimensions, security features, parking lot and laydown areas, ADA modifications, and utility interconnections as the proposed project would be installed for this alternative. Construction methods for this alternative would be similar to the proposed project.

**Consistency with Project Objectives.** This alternative would meet most of the basic project objectives. ~~It would not fully meet the project objective to comply with the provisions of the Act to prepare preliminary construction plans for a 50-bed MHCF at CIM because it would not be at CIM~~

**Feasibility.** ~~This alternative is potentially infeasible because of the historic status of the prison property. Substantial portions of CRC have been recently designated as a State Historic District, and the property is potentially eligible for inclusion on the National Register of Historic Places (OHP 2017). Extensive coordination with the State Historic Preservation Office would be required prior to demolition of NRHP-eligible structures at CRC. This alternative would be potentially feasible as it would be similar to the proposed project.~~

**Environmental Considerations.** As described on Page 7-2 of the Draft EIR, as revised by the Final EIR and confirmed by the partially revised Draft EIR, the proposed project would not result in any significant and unavoidable impacts. Potentially significant impacts, which would be reduced to a less-than-significant level with mitigation that would be adopted by CDCR, include air quality (result in a localized violation of a South Coast Air Quality Management District threshold), biological resources (impact to Swainson's hawks and burrowing owl), and cultural and tribal cultural resources (impacts to inadvertent discoveries during excavation activities). ~~This alternative is eliminated from consideration in this EIR because it would not avoid or substantially reduce any significant impact of the proposed project. It would likely introduce new significant impacts, particularly to historic resources from demolition of NRHP-eligible structures, and to biological resources because different or additional special-status species could be affected.~~

This alternative is located in the same air basin and is subject to the same thresholds as CIM. Construction would be similar, so the same air quality impacts would be expected.

Biological resources potentially occurring at CRC were identified by querying the California Natural Diversity Database (CNDDDB) for records within the 7.5-minute quadrangle encompassing CRC as well as the 8 quads surrounding it, using Google Earth imagery to assess the presence of habitat for the species and resources identified in CNDDDB records. Like CIM, CRC has ruderal grassland areas that could be colonized by burrowing owls and nearby trees that could support nesting birds. Unlike CIM, there are aquatic habitat features near CRC that could support additional and different species than those potentially present at CIM. Lake Norconian, which is directly adjacent to CRC to the south, could provide aquatic habitat for pond turtles, and is surrounded by dense palm trees and aquatic vegetation (e.g., cattails) that could support various special-status avian species including tri-colored blackbird, yellow warbler, white-tailed kite, and Swainson's hawk, as well as various native bird species protected by California Fish and Game Code and the federal Migratory Bird Treaty Act, including raptors (e.g., red-tailed hawk, red-shouldered hawk, Cooper's hawk). A tricolored blackbird colony has been historically documented on Lake Norconian and nesting habitat suitable for the species is still present (CNDDDB 2021). The Santa Ana River is less than a mile west of CRC, and it has a riparian corridor that is within approximately 1,500 feet of CRC. There are many protected species occurrences in the CNDDDB along this section of the Santa Ana River, including Swainson's hawk and

tricolored blackbird, as well as historic occurrences of western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher (CNDDDB 2021). These species could be adversely affected by construction of this alternative; while such impacts may be capable of mitigation, the alternative would not result in fewer or less severe significant impacts than the proposed project.

Inadvertent discoveries of cultural and tribal cultural resources could similarly occur at this property as at CIM, during excavation. Therefore, none of the project's significant but mitigatable impacts would be lessened or avoided by this alternative. The CRC property is eligible for inclusion on the National Register of Historic Places (NRHP) (OHP 2017); 100-acres of CRC are part of the 390-acre Lake Norconian Club Historic District. In addition to the approximately 50 buildings that contribute to the historic district, one of the character-defining features of the historic district are the natural features and vistas that were used in the site planning. This alternative would likely introduce new significant impacts to historic resources from demolition of NRHP-eligible structures, and modification of natural features and vistas, that contribute to the NRHP-eligible historic district. Following guidelines in the federal "Secretary of the Interior's Standards for the Treatment of Historic Properties" could mitigate impacts to historic resources to less than significant, but this is not a certainty. These standards address preservation, rehabilitation, restoration and/or reconstruction. If the project would result in removal of buildings, the affected buildings would likely be the remaining original World War II era dorms and other medical facilities of this era at CRC, which contribute to the setting of the historic district. The mitigation would involve reconstruction that would need to depict or re-create these historic elements and the setting of the historic district. This is possible but may add substantial costs to the construction process. The degree to which mitigation would be needed would be speculative, as would its ability to fully mitigate any historic resource impacts. Moreover, this alternative would not avoid or substantially reduce any significant impact of the proposed project because the proposed project would not result in any significant impacts, including to historic resources. This alternative, while also capable of mitigating the same significant effects as the project, would result in an additional potentially mitigated effect (historic resources) not associated with the project, and potentially more extensive mitigated effects to biological resources. Further, there is the potential that the historic impact would not be mitigable to a less-than-significant level.

This alternative is eliminated from consideration in this EIR because it would not avoid or reduce any significant impact of the proposed project.

#### 7.4.4 Offsite Alternative - California State Prison, Los Angeles County at Lancaster

Under this alternative, a 50-bed MHCF would be constructed at CDCR's California State Prison, Los Angeles County (LAC) prison. LAC is more than 50 miles northwest of CIM on State property west of the City of Lancaster, in the Antelope Valley of the Mojave Desert (refer to Exhibit 7-1). Given the configuration of existing facilities at LAC, a 50-bed MHCF could be constructed by demolishing existing structures or developing open space within the existing secure perimeter. The same building dimensions, security features, parking lot and laydown areas, ADA modifications, and utility interconnections as the proposed project would be installed for this alternative. Construction methods for this alternative would be similar to the proposed project.

**Consistency with Project Objectives.** This alternative would ~~not~~ meet most of the basic proposed project objectives. ~~Given its geographic location, it would not facilitate the recruitment of skilled medical professionals to the degree at CIM.~~

**Feasibility.** This alternative would be potentially feasible as it would be similar to the proposed project.

**Environmental Considerations.** As described on Page 7-2 of the Draft EIR, as revised by the Final EIR and confirmed by the partially revised Draft EIR, the proposed project would not result in any significant and unavoidable impacts. Potentially significant impacts, which would be reduced to a less-than-significant level

with mitigation that would be adopted by CDCR, include air quality (result in a localized violation of a South Coast Air Quality Management District, SCAQMD, threshold), biological resources (impact to Swainson's hawks and burrowing owl), and cultural and tribal cultural resources (impacts to inadvertent discoveries during excavation activities). This alternative would not avoid or substantially reduce any significant impact of the proposed project. It could introduce new impacts, particularly to biological resources because different or additional special-status species could be affected.

With regard to air quality, the particular impact at CIM is related to a specific threshold established by the SCAQMD, which is exceedance of 6 pounds/day of particulate matter, 10 microns in diameter or less (PM<sub>10</sub>) when a project is located within 25 meters of sensitive receptors. Because incarcerated persons would be located within 25 meters of project construction, CDCR utilized this threshold of significance in the 2019 EIR (see pages 4-6 through 4-11 of the Final EIR). The project would slightly exceed this threshold (by 0.1 pounds), producing 6.1 pounds per day of PM<sub>10</sub> during site preparation. Mitigation was included and subsequently adopted by CDCR, which would reduce emissions of PM<sub>10</sub> to 4.7 pounds per day, below the SCAQMD threshold (less-than-significant after mitigation). The LAC alternative site is located in a different air basin than CIM, under the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD). The MDAQMD California Environmental Quality Act and Federal Conformity Guidelines do not contain any localized PM<sub>10</sub> thresholds of significance. MDAQMD's PM<sub>10</sub> thresholds, which are regional in nature, are 82 pounds per day (MDAQMD 2016). Nevertheless, even though this agency's threshold of significance is higher than the SCAQMD's, because the project would be located on the grounds of a prison, it is likely that incarcerated persons (sensitive receptors) would be exposed to the same level of PM<sub>10</sub> emissions as would occur at CIM. Construction activities would be the same. Therefore, while different agency thresholds may apply, the impact to sensitive receptors would be no different: sensitive receptors would be exposed to the same level of PM<sub>10</sub> at this alternative as at CIM, although mitigation would not be required. Locating the MHCFC at this alternative site would simply relocate exposure to localized levels of PM<sub>10</sub> to a different incarcerated population in an air basin where thresholds of significance are higher, but would not avoid or lessen the exposure of sensitive receptors to PM<sub>10</sub>. As stated in the 2019 Final EIR, the requirement for mitigation at CIM would reduce exposure to PM<sub>10</sub> to less than significant; therefore, the LAC alternative would not avoid or substantially reduce the significant impact of the project related to air quality.

Biologists from Ascent Environmental visit LAC three times per year to conduct inspections of the wildlife deterrents on its lethal electrified fence. A biologist visited LAC on June 21, 2018, approximately one month prior to NOP publication, and the latest visit was conducted on March 25, 2021. Based on information collected during these regular site visits to LAC and review of the results of a 9-quad search of the CNDDDB (CNDDDB 2021), biologists determined that the special-status species potentially present at CIM would also be potentially present at LAC (i.e., burrowing owl, raptors (e.g., Swainson's hawk), and nesting birds (including some special-status birds, like loggerhead shrike). Unlike CIM, LAC is surrounded by undeveloped, natural scrub habitat, and contains similar natural habitat within the prison grounds. Based on the CNDDDB 2021 records check in combination with site visits to LAC, it is evident that special-status species potentially occurring in this habitat that would not occur at CIM include Mohave ground squirrel and desert tortoise, which are listed under the California Endangered Species Act, as well as American badger, Le Conte's thrasher, tricolored blackbird, and alkali mariposa lily. These species, if present in the project area, could be adversely impacted by construction of the proposed project at LAC. Inadvertent discoveries of cultural and tribal cultural resources could similarly occur at this property as at CIM, during excavation. Therefore, none of the project's significant but mitigatable impacts would be lessened or avoided by this alternative.

This alternative is eliminated from consideration in this EIR because it ~~would not meet most of the project objectives and it~~ would not reduce any significant environmental impacts of the proposed project.

## 5 REFERENCES

- Borg, Dean, Facility Planning, Construction and Management Division Director. California Department of Corrections and Rehabilitation, Chino, CA. May 29, 2021—email to Heather Blair of Ascent Environmental regarding CIM Denitrification Plant.
- California Department of Corrections and Rehabilitation. 2016. California Institution for Men (CIM) – Facility D Chapel Structural Evaluation. Memorandum from Richard L. Traversi, Principal Architect, Design and Environmental Services Standards Branch to Michael Beaver, Associate Director, Design and Environmental Services Standards Branch. Dated June 30.
- CDCR. See California Department of Corrections and Rehabilitation.
- California Natural Diversity Database. 2021. Rarefind 5. Commercial Version dated April 2, 2021. An online subscription database application for the use of the California Department of Fish and Wildlife’s natural diversity database. California Natural Heritage Division, California Department of Fish and Wildlife, Sacramento, CA. Accessed April 6, 2021 and April 14, 2021.
- CNDDDB. See California Natural Diversity Database.
- EDD. See Employment Development Department
- Employment Development Department. 2021a. California EDD Employment by Industry Data, Los Angeles.
- . 2021b. California EDD Employment by Industry Data, San Bernardino.
- Lopez, Tom, CIM Public Information Officer. California Department of Corrections and Rehabilitation, Chino, CA. May 3, 2021—telephone discussion with Gary Jakobs of Ascent Environmental regarding transfer of patients in mental health crisis.
- Lopez, Tom, CIM Public Information Officer. California Department of Corrections and Rehabilitation, Chino, CA. June 8, 2021—telephone discussion with Heather Blair of Ascent Environmental regarding transfer of patients in mental health crisis.
- MDAQMD. See Mojave Desert Air Quality Management District.
- Mojave Desert Air Quality Management District. 2016. *California Environmental Quality Act and Federal Conformity Guidelines*. Online: <https://www.mdaqmd.ca.gov/home/showdocument?id=192>. Accessed April 14, 2021.
- Office of Historic Preservation. 2017. Lake Norconian Club Historic District. National Register Registration Form. [http://www.ohp.parks.ca.gov/pages/1067/files/CA\\_Riverside\\_Lake%20Norconian%20Club%20Historic%20District%20Amendment\\_DRAFT\\_11\\_29\\_2017.pdf](http://www.ohp.parks.ca.gov/pages/1067/files/CA_Riverside_Lake%20Norconian%20Club%20Historic%20District%20Amendment_DRAFT_11_29_2017.pdf).
- OHP. See Office of Historic Preservation.
- Robinson, David, Traffic engineer. Fehr and Peers, Roseville, CA. April 16, 2021—telephone discussion with Gary Jakobs of Ascent Environmental regarding reasonable assumptions for traffic congestion analysis.

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# Appendix A

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Ruling on the Petition for  
Writ of Mandate

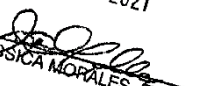
**City of Chino et al. v. California Department of Corrections and Rehabilitation**

**San Bernardino Superior Court Case No. CIVDS 1917019**

**Department S-26, Judge David Cohn**

**February 24, 2021**

**Ruling on Submitted Matter: Petition for Writ of Mandate**

**FILED**  
SUPERIOR COURT OF C  
COUNTY OF SAN BERN  
SAN BERNA RDIN  
RICT  
FEB 24 2021  
  
JESSICA MORALES, DEPUTY

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**I**

**Background**

The California Department of Corrections and Rehabilitation ("CDCR") proposes to build a fifty-bed "Mental Health Crisis Facility" at the Chino Institute for Men ("CIM"). The project is one of several mental health facilities CDCR plans to build in response to an order from the United States District Court for the Eastern District of California, which found that CDCR lacked sufficient beds to meet the needs of prisoners with serious mental health disorders<sup>1</sup>.

On July 9, 2018, CDCR, the lead agency for the project, issued a Notice of Preparation ("NOP") for an environmental impact report pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA")<sup>2</sup>. (AR 3150-3155.) The public comment period for the NOP ran through August 13, 2018. The City of Chino ("Chino"), the City of Chino Hills ("Chino Hills"), and the Chino Valley Independent Fire District ("the District") submitted oral and written comments. (AR 3108-3109; 3114-3120; 3135; 5238-5243; 5249-5253.)

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<sup>1</sup> *Coleman v. Brown*, Case No. 2:90-cv-0520-KJM-DB-P. (AR 130, 2826-2861.)

<sup>2</sup> See CEQA Guidelines, Cal. Code Regs., Title 14 ("Guidelines") §§ 15082 and 15375, governing the requirements for the NOP.

On December 6, 2018, CDCR released a draft environmental impact report ("Draft EIR")<sup>3</sup>. (AR 1289-1853.) The comment period for the Draft EIR ran through January 28, 2019. (AR 1282.) Chino, Chino Hills, and the District again submitted written comments<sup>4</sup>. (AR 140; 146-148; 154-165.)

CDCR held a public hearing on January 10, 2019<sup>5</sup>. Representatives from Chino, the District, and San Bernardino County attended and spoke. (AR 1160-1224.)

CDCR responded to the written and oral comments in an April 2019 Final Environmental Impact Report ("Final EIR")<sup>6</sup>. (AR 124-1002.) On May 8, 2019, CDCR certified<sup>7</sup> the Final EIR and filed a Notice of Determination ("NOD")<sup>8</sup>, stating that the project would not result in any unmitigated, significant, or unavoidable effects on the environment. (AR 9-14; 67.)

On June 7, 2019, petitioners filed a petition for a writ of mandate in this Court, seeking an order directing CDCR to vacate approval of the project.

## II

### Standard of Review

The standard of judicial review under CEQA is abuse of discretion. (Pub. Resources Code, §§ 21168.5, 21005, subd. (a); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) Abuse of discretion can arise in two ways-by the agency lead failing to follow the procedures required by CEQA or by reaching factual conclusions unsupported by substantial evidence. (*Ibid.*) Whether the agency followed correct

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<sup>3</sup> Guidelines, §§ 15084-15088.5 address the requirements regarding the Draft EIR.

<sup>4</sup> *Id.*, § 15087.

<sup>5</sup> *Id.*, § 15087, subd. (i).

<sup>6</sup> *Id.*, §§ 15088-15089.

<sup>7</sup> *Id.*, § 15090.

<sup>8</sup> *Id.*, § 15094.

procedures is reviewed *de novo*, but substantive factual conclusions are entitled to greater deference. (*Ibid.*) The Court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." [Citation.] (*Ibid.*) "The decisions of the agency are given substantial deference and are presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination. [Citation.]" (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.)

"The ultimate inquiry ... is whether the EIR includes enough detail to 'enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' [Citation.]" (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 516.) The EIR should provide decision makers with sufficient analysis for intelligent consideration of the environmental consequences of a project. (Guidelines, § 15151.) Perfection is not required, but only a good faith effort at full disclosure. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 331.)

### III

#### **Petitioners' Claimed Deficiencies**

##### **A. Analysis of Baseline Conditions (First Cause of Action)**

The CEQA Guidelines, section 15125, subdivision (a), provide:

An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. ...

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published ... from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported by substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

Due to the importance of the baseline for the EIR's environmental impact analysis, it must be plainly identified and not obscured. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 659.) Nevertheless, agencies have considerable flexibility in determining the baseline. The Supreme Court explained in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328:

Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide ... exactly how the existing physical conditions without the project can most realistically be measured ....

Petitioners contend that the Draft EIR failed to provide adequate disclosure and analysis of the baseline conditions, and that CDCR failed to remedy the deficiencies in the Final EIR. Specifically, petitioners contend CDCR should have addressed the conditions described in a 2008 Inspector General report entitled "California Institution for Men, Quadrennial and Warden Audit" (the "2008 Audit"), which found that CIM was in "an unacceptable state of repair due to years of neglect," with failing infrastructure and unfunded improvement projects. (AR 691, 696-698.)

CDCR, however, contends the 2008 Audit is irrelevant because it addressed conditions a decade earlier. Even so, the Draft EIR recognized that CDCR was making ongoing improvements and repairs:

Substantial investment has been made during the past five years for projects that improve health care facilities including new and renovated medical clinics, pharmacies, dental clinics, and related infrastructure including utility systems, roofs and walkways. Within approximately the last 5 years, the value of these investments has exceeded \$35 million ... Finally, while CDCR acknowledges these public comments, maintenance of existing facilities is unrelated to the proposed project. The proposed project would remove disused facilities within CIM (i.e., the chapel and swimming pool), which would eliminate the need to maintain them and avoid continued deterioration. (AR 1322.)

The Draft EIR provided a site map showing the *placement* of the proposed facility and existing buildings (AR 1319, 1329), but omitted any description of the *condition* of the buildings and infrastructure that are critical to the project, or a description of *specific* repairs either underway or contemplated. The Final EIR suffers from the same deficiencies. In "Master Response 1: Conditions and Maintenance of Existing Infrastructure," the Final EIR provides:

As it relates to CEQA, the condition of existing facilities at CIM is part of the baseline environmental conditions ... The [2008] Audit pertains only to the condition of the existing infrastructure at CIM at the time the Audit was completed. Some of the infrastructure or the conditions (such as inmate population totals) affecting the infrastructure has been improved, *some not*. These are the baseline conditions against which the impacts of the proposed project are considered, where relevant (such as water and wastewater infrastructure)...

[W]hile CDCR acknowledges that CIM requires on-going maintenance/repairs, and CDRC must work within the funds allocated by the annual State Budget, this is an issue that is separate and apart from the proposed project (unless the project results in an adverse environmental effect on these facilities) . . .

Staff at CIM have reported other improvements to the prison's operation in response to the 2008 Audit, including ... on-going repairs/renovations of facilities and infrastructure ...

Regarding the condition of CIM facilities and infrastructure, CDCR has made substantial investment in the past five years in projects that improve health care facilities including new and renovated medical clinics, pharmacies, dental clinics, and related infrastructure including utility systems, roofs and walkways. Within approximately the last 5 years, the value of these investments has exceeded \$35 million. (AR 142-143, italics added.)

This Response is vague on the precise nature and extent of the improvements and investment. The Response is *particularly* vague whether the unspecified repairs are undergoing or planned for the future: "A majority of the concerns identified in the Audit have *either* been addressed *and/or* are issues the institution continues to work on ...." (AR 142, italics added.) Read literally, this language says the repairs *have already been* addressed, *or* they are underway, *or* (inexplicably) they have been both addressed *and* somehow are still underway. Obviously, the confusing "and/or" usage is merely an example of poor writing, but it highlights the underlying vagueness in the Final EIR.

Due to the vague and undefined references to "on-going repairs and improvements," it is unclear whether the baseline describes *existing* conditions, *future* conditions, or some *combination*. The EIR's failure to state clearly and definitely what repairs and improvements have already been made and what still needs to be done renders the baseline analysis uncertain. If the findings in the 2008 Audit are no longer accurate, an adequate description of the current conditions will demonstrate that. Insofar as the 2008 Audit may still describe some existing conditions at CIM, a discussion of the intended corrective measures is required. As written, the EIR

prevents an informed comparison of pre-project and post-project conditions. The Draft and Final EIRs therefore fail as informational documents. (See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.) Therefore, the petition is granted as the first cause of action.

### **B. Description of the Project (Second Cause of Action)**

Petitioners contend the Draft and Final EIRs are inadequate because the *description* of the project is inadequate. Specifically, petitioners contend the Draft and Final EIRs present varying descriptions of the gross square footage of the facility. Additionally, petitioners contend that vague statements in the description raise a question whether the EIRs analyzed the *entire* project.

A legally sufficient EIR must include an accurate, stable, and finite project description. (See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.)

The project description must contain: (1) the precise location and boundaries of the proposed project; (2) a statement of the objectives sought by the proposed project, including the underlying purpose; (3) a general description of the project's technical, economic, and environmental characteristics; and (4) a statement briefly describing the intended uses of the EIR. (Guidelines, § 15124.) The description should not, however, "supply extensive detail beyond that needed for evaluation and review of the environmental impact." [Citation.]

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." [Citation.] "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance." [Citation.]

(*South of Market Community Action Network, supra*, 33 Cal.App.5th at p. 332.)



The description, however, need contain only a *general* description of the project's technical, economic, and environmental characteristics, including sufficient specific information about the project to allow an evaluation and review of its environmental impacts. The EIR need not contain a *design-level* description of the project. (*Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1054-1055.) A description of the project should simply identify the project's main features and other information necessary for an assessment of the project's environmental impacts. As long as these requirements are met, the description may allow for flexibility to respond to unforeseeable events or changes in conditions that may affect the final design of the project. (*Id.* at p. 1053-1054.)

Nevertheless, a project description must describe "the whole of an action"-the entire project and not some smaller portion of it. (Guidelines § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.) The description must include all relevant parts of a project, including any future expansion or later phases that will foreseeably result from the project approval. (**See**, *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376 ("Laurel Heights I".))

A project description must remain consistent throughout the EIR, but this does not mean the project cannot change as it proceeds through CEQA review and other stages of the approval process. (See, e.g., *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 292.) Changes to projections of project impacts do not necessarily indicate that the project description is inadequate. (*City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 541.) A description identifying variations in design is permissible if the variations are fully described and

separately evaluated, and the maximum possible scope of the project is clearly disclosed. (Kostka & Zischke, Practice Under the California Environmental Quality Act (2d ed. Cal. CEB), §12.7.1.); *South of Market Community Action Network, supra*, 33 Cal.App.5th at pp. 332-34.)

[W]hen assessing the legal sufficiency of an EIR, we do not look for perfection, but "adequacy, completeness, and a good faith effort at full disclosure." [Citations.] ...

"The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." [Citation.] The whole point of requiring evaluation of alternatives in the Draft EIR is to allow thoughtful consideration and public participation regarding other options that may be less harmful to the environment. [Citation.] ... We do not conclude the project description is inadequate because the ultimate approval adopted characteristics of one of the proposed alternatives; that in fact, is one of the key purposes of the CEQA process.

(*Id.* at pp. 334-336.)

#### *Increased Size of the Project*

Petitioners claim the Draft EIR was deficient because it failed to provide final detailed site plans showing the footprint of the building and adjacent structures<sup>9</sup>.

(AR 138-139, 1329.) CDCR's responses to comments in the Final EIR state that a more detailed description of the project was unnecessary because the Draft EIR "evaluated impacts based on reasonable maximum assumptions for any variables

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<sup>9</sup> Regarding the lack of a site plan or preliminary plan in the Draft EIR, petitioners state, "Final, detailed plans apparently did not exist when the [Draft] EIR was released." (Opening Brief, 12:25-26.) CDCR, however, notes that under Guidelines § 15004, an EIR should be prepared as early as possible in the planning process "to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (Guidelines, § 15004(b).) According to CDCR, at the time of the Draft EIR, the Project was sufficiently defined to allow for an adequate assessment of the environmental impacts, and CDCR properly applied the balancing test in section 15004 by issuing the Draft EIR before finalizing detailed plans. (Opp. Brief, 10:20-23.) CDCR is correct.

related to the site plan," and that further development of the plans fell within those "maximum assumptions." (AR 166.) According to petitioners, however, the Final EIR contains an entirely new project description, and accompanying graphics, changing the size of the project from 61,000 square feet to 69,000 square feet-a thirteen percent increase from the description in the Draft EIR. Petitioners argue there was nothing in the Draft EIR demonstrating that a thirteen percent increase in square footage falls within the "maximum assumptions" the environmental analysis was based on. Petitioners contend that due to the absence of a site plan in the Draft EIR, the footprint, height, and mass of the facility was unknown, and therefore, an accurate assessment of the environmental impacts of the size increase was impossible. (AR 130-131, 134-139, 166, 218, 283-284, 1170.)

Petitioners also contend that due to the failure of the EIRs to provide specific information about the improvements to an existing pedestrian pathway and parking lot, they cannot determine how much additional hardscape will be constructed. Therefore, petitioners argue, the actual impacts of the project-including impacts to groundwater and storm water runoff-cannot be fully evaluated<sup>10</sup>.

Contrary to these assertions, the project description meets the CEQA requirements set forth in the Guidelines, section 15124. The Draft and Final EIRs properly provide CIM's physical address and identify where within **CIM's** boundaries the facility will be located. Both EIRs properly include: (a) regional and detailed maps of the proposed site plan; (b) an adequate statement of the project objectives; (c) a description of the project's technical, economic, and environmental characteristics; and (d) a brief

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<sup>10</sup> See discussion infra at § 111-G.

statement of the EIR's intended uses. (AR 134, 137-138, 1298, 1327-34.)

Regarding the square footage, Section 3.4 of the Draft EIR, entitled "Description of the Proposed Project," provided:

The new ... building would be configured as *either* a single-story building with up to approximately 61,000-gross square feet (sf) of overall building footprint *or* a two-story building with up to a 35,000-sf first-floor footprint, including enclosed recreation yards. The ... building would provide space for 50 single-occupancy cells (50 beds) dedicated to inmates in mental health crisis, along with mental health care treatment space, clinical support space, housing, recreation, custody, support, and administrative services....

Other proposed project components include a new cyclone fence that would separately encircle the [facility], ... improvements to the existing pedestrian pathway between the administration building and the [facility] ... resurfacing and restriping portions of the existing administration building parking lot ... and installation of a new 360-space parking lot, at one of two optional locations, adjacent to Facility D. Exhibit 3-1 shows the proposed site plan. (AR 1328.)

The proposed site plan shows the facility will be located on the site of the current unused chapel and swimming pool. (AR 1329.) The site plan also points generally to the proposed "pedestrian Improvements," the two options for placement of the parking lot, and the area for the improvements to the existing parking lot. (AR 1329.)

In many respects, the description of the project in the Final EIR tracks the description in the Draft EIR. Additionally, the "Description of Proposed Project" in the Final EIR also states:

The new ... building would be configured as two-story building with up to approximately 69,000-gross square feet (gsf) of overall building footprint. ... *This is a refinement in project design but does not alter the capacity of the facility.* The ... building would provide space for a total of 50 beds (comprised of 46 single cells and 2 double occupancy cells) dedicated to inmates in mental health crisis, along with

mental health care treatment space, clinical support space, housing, recreation, custody, support, and administrative services... The slightly larger facility does not require additional staffing. (AR 134, italics added.)

The Draft EIR provided four options for the project, two design options for the building and two options for placement of the parking lot. An EIR's project description may present alternative development schemes for a single proposed project, and a project description that identifies variations in design is permissible if the possible variations are fully described and separately analyzed, and the maximum possible scope of the project is disclosed. (*South of Market Community Action Network, supra*, 33 Cal.App.5th at p. 332-334.) The Draft EIR contemplated that the facility *could* be a two-story building with a total square footage of up to 70,000 square feet (the 35,000-square foot first-floor footprint times two), and the Final EIR explains that this two-story option was ultimately selected. (AR 134.) Both the Draft and Final **EIRs** note the two design options contemplate a total of fifty patient beds, and that staffing requirements remained the same.

Although the Final EIR does not confirm which parking lot option will ultimately be selected, it does confirm that parking demands remained the same as analyzed in the Draft EIR. Moreover, contrary to Petitioners' assertion, the EIRs describe the total amount of new hardscape, and analyze the impact of the groundwater and storm water runoff for each of the parking lot options. (AR 166.)

CDCR also conducted a review to determine if the Final EIR needed to revise the analysis of air quality, greenhouse gas emissions, and energy impacts because of the increased square footage. Only one metric would be affected by the increase in the square footage-the amount of respirable particulate matter-and as to that metric, new

mitigation measures were included to reduce the impact below the significance threshold. (AR 131, 344-440.)

### *Future Expansion of Project*

Section 1.2.3 of the Draft EIR, entitled "Characteristics of the Project," provides that the facility "will also be designed to allow the provision of other levels of mental health care in addition to crisis." (AR 1299; *see also*, AR 1326.) Petitioners argue that this statement indicates the facility will provide services not only for inmates in acute mental health crisis, but also for inmates with chronic, non-acute conditions. Petitioners contend this additional level of care is not included in the Draft EIR's analysis of the environmental impacts, so there is a question whether the project is actually part of a larger project being analyzed in piecemeal fashion.

The Final EIR, however, states that "the project would allow flexibility such that if bed space at the [facility] is not needed for inmates in mental health crisis, other mental health treatment can be provided." (AR 167.) This flexibility does not indicate there is a different or larger project than the one analyzed in the EIRs, or that the CDCR did not include the "whole of the action" in its analysis. (AR 167.) Instead, it simply acknowledges a reasonably foreseeable use of patient beds not needed for inmates in crisis. Petitioners do not explain how the possible lower-level use of the patient beds is crucial to a review of the environmental effects of the project, or how this possible use impacted public participation in evaluating the analysis in the Draft or Final EIR.

As in *South of Market Community Action Network*, the project description in this case may not be perfect, but it is adequate. (AR 165-167, 1290, 1299, 1326-1334.)

Therefore, the petition is denied as to the second cause of action.

### **C. Analysis of Project Alternatives (Third Cause of Action)**

Petitioners contend the selection and analysis of project alternatives is inadequate and was improperly influenced by a pre-determination that the mental health facility would be located at CIM, rather than at a prison complex elsewhere.

The Guidelines provide that an EIR must describe a reasonable range of alternatives to the proposed project, or the project location, that would feasibly attain most of the project's basic objectives while reducing or eliminating any of its significant environmental effects. (Guidelines, § 15126.6; *Habitat and Watershed Caretakers*, *supra*, 213 Cal.App.4th at pp. 1302-1303.) There are four threshold tests for determining whether an alternative is suitable: (1) can it substantially reduce significant environmental impacts; (2) can it attain most of the basic project objectives; (3) is it potentially feasible; and (4) is it reasonable and realistic. Although these criteria are not exclusive, alternatives that do not satisfy all four criteria may be excluded from consideration. (Guidelines, § 15126.6(c).) Other appropriate factors may be considered as well. (*Ibid.*) In determining the nature and scope of alternatives, lead agencies must be guided by the doctrine of "feasibility." (*Citizens of Goleta Valley v. Board of Supervisors of the Cty. of Santa Barbara* (1990) 52 Cal.3d 553, 564-565.) "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (*Pub. Res. C.*, § 21061.1; Guidelines, § 15126.6, subd. (f)(1).)

"CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose ... [Citation.]" (*Habitat and Watershed Caretakers*, *supra*, 213 Cal.App.4th at pp. 1302-1303, quoting *Citizens of*

*Goleta, supra*, 52 Cal.3d at p. 566.) The EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa, supra*, 121 Cal.App.4th at p. 1504, fn. 5, italics omitted.)

"An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making. [Citation.] ... "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." [Citations.] An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. [Citation.]"

(*Habitat and Watershed Caretakers, supra*, 213 Cal.App.4th at p. 1303, quoting *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405.)

If an EIR concludes that no environmentally superior alternatives are available, it must provide sufficient facts and analysis to allow the decision-maker to determine whether that conclusion is correct. (*Id.* at p. 1305.)

"[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ... [I]n the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

(*Id.* at p. 1302, quoting *Citizens of Goleta Valley, supra*, 52 Cal.3d at pp. 564-565.)

Therefore, "an EIR should not exclude an alternative from detailed consideration merely because it 'would impede to some degree the attainment of the project objectives.' [Citation.] But an EIR need not study in detail an alternative that is infeasible or that the lead agency has reasonably determined cannot achieve the project's underlying fundamental purpose. [Citation.]" (*In re Bay-Delta Programmatic*



*Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165.)

The Draft EIR included a discussion of alternatives to the project—a "no project" alternative, alternative locations within CIM, a reduced-size alternative, and alternative locations at the California Rehabilitation Center at Norco and the California State Prison at Lancaster. CDCR evaluated each alternative using three screening criteria: (a) does the alternative accomplish all or most of the project's objectives, (b) is the alternative potentially feasible from economic, legal, regulatory, and technological standpoints; and (c) does the alternative avoid or substantially lessen any significant environmental impacts of the proposed project, including whether the alternative could create significant effects that are potentially greater. (AR 1495.) In considering the alternatives, the Draft EIR noted:

Locating a [mental health facility] in the greater southern California region is driven by two primary factors: 1) Mental health crisis facilities require specialized staffing by mental health and medical professionals ... 2) Currently, there are a limited number of [facilities] in southern California. (AR 1495.)<sup>11</sup>

There is nothing in the record, however, explaining how or why *CIM* was selected, instead of a different prison complex in Southern California. While the *Coleman* court orders may have served as the impetus for deciding that a facility had to be built in Southern California, the orders do not state that the facility had to be built at CIM to the exclusion of other Southern California locations. (AR 2826-2861.) The State Budget Act allocated funds for CDCR to prepare working drawings for a facility at CIM (AR 3174, 4415-4416, 4418), and CDCR seems to interpret this as a mandate to *build*

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<sup>11</sup> The Draft EIR noted that *Coleman* required inmates experiencing a mental health crisis to be placed in a mental health crisis facility as quickly as possible, within 24 hours of diagnosis. Compliance with the *Coleman* court orders also required distribution of mental health crisis beds throughout California, as well as the recruitment of sufficient qualified staff to avoid delays in treatment. (AR 1298, see also, AR 2826-2861.)

the facility at CIM, such that any other location would necessarily be deemed an inferior alternative simply because the facility "would not be at CIM," and therefore would not meet the project objective. (AR 1502-1503.) Of course, both the preparation of working drawings, and ultimately the building of a facility, depend on an allocation of funding, but that does not mean, necessarily, that a different location should not be considered as an alternative.

#### *The San Diego Alternative*

Petitioners contend the Draft EIR should have considered the feasibility of a larger facility at R.J. Donovan Correctional Facility in San Diego. The Draft EIR, however, states, "The proposed 50-bed [mental health facility in San Diego] is not an alternative to, and *is needed in addition to*, the proposed [facility] at CIM." (AR 1495, italics added.) CDCR is already committed to building a mental health facility at the San Diego prison as part of its compliance with the *Coleman* court order<sup>12</sup>. (AR 156, 1495-1496.) Funding for the San Diego facility is appropriated through the 2017-2018 State Budget Act. (*Ibid.*) Therefore, the EIR adequately explains why the San Diego location is not an *alternative* location for the project. (AR 156, 1318, 1320, 1326-1327, 1495.)

#### *The Lancaster Alternative*

The Draft EIR provides that the alternative location at the California State Prison at Lancaster "would also not meet the project objective to comply with the provisions of the [State Budget] Act to prepare preliminary construction plans for a 50-bed [facility] at CIM *because it would not be at CIM.*" (AR 1503, italics added.) Such circular reasoning is nonsense.

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<sup>12</sup> See fn. 1, *supra*.

The substantive analysis of Lancaster as an alternative is deficient, however, because it concludes, without citation to any supporting evidence, that the location would make it difficult to recruit qualified medical professionals and it could result in new impacts to biological resources "because different or additional special-status species could be affected." (AR 1502-1503.) The Draft EIR does not show that any research was done on the question of recruitment of medical professionals to the Lancaster location, nor does it provide any references to environmental studies analyzing the flora and fauna in the region. (AR 1068, 1502-1503.)

CDCR's responses to comments in the Final EIR do not remedy this deficiency. In response to Petitioners' concerns regarding analysis of the Lancaster alternative, CDCR stated:

The alternative location at [Lancaster] could result in biological effects that are additional to what would occur (and be mitigated) at CIM; for instance, while the burrowing owl is common to both CIM and [Lancaster], [Lancaster] is located in the Antelope Valley, an area with sensitive habitat that could support sensitive species including alkali mariposa lily, Le Conte's thrasher, tricolored blackbird, and others. While the [Lancaster] site was not surveyed for potential presence of these or other sensitive species, [Lancaster] would not avoid any project impacts and may increase them. Although not discussed in the Draft EIR, it is also noted that the [Lancaster] site is already spatially constrained by existing facilities including recently constructed medical treatment buildings. (AR 168.)

Therefore, although CDCR surmised that certain plant and bird species could be present in and near the Lancaster location, no environmental survey or analysis was performed. (AR 168.)

### *The Norco Alternative*

The analysis of the alternative location at the California Rehabilitation Center at Norco is similarly inadequate. The Draft EIR rejected the location based on an incomplete analysis of Norco's status as an historic place and whether the State Historic Preservation Office might consider the demolition of some of the structures<sup>13</sup>. (AR 1502.) Although CDCR's responses to comments in the Final EIR stated that Norco was "environmentally inferior" because construction of a mental health facility would result in the demolition of structures that are eligible for listing on the National Register of Historic Places (AR 167-168, 6721-6082), this conclusion fails to take into account that under the Guidelines, a project that alters an historical resource but follows guidelines in the federal "Secretary of the Interior's Standards for the Treatment of Historic Properties" could mitigate impacts to less than significant, even if alterations to the historic resource are substantial. (Guidelines § 15064.6(b)(3).) CDCR also ignores its own acknowledgement that building a facility at the Norco location was possible through coordination with the State Historic Preservation Office. (AR 1502.)

While an EIR's discussion and analysis of alternatives need not be exhaustive, it nevertheless must be specific enough to allow informed decision making and public participation. A conclusory discussion of alternatives is not adequate. (*Laurel Heights I, supra*, 47 Cal.3d 376, 406.) Instead, the Guidelines require an EIR to evaluate the comparative merits of the alternatives in a manner that allows a meaningful evaluation and comparison with the proposed project. (Guidelines § 15126.6(a), (d).) The CDCR rejected the Lancaster and Norco alternative locations as infeasible, though neither the

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<sup>13</sup> Petitioners do not challenge CDCR's analysis of the "no project" alternative, the "reduced size" alternative, or the "alternate location on CIM property" alternative. (AR 1497-1502.)

EIRs nor the rest of the administrative record contained sufficient information to support the findings. (See, e.g., *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1355.)

For these reasons, CDCR failed to proceed in the manner required by law resulting in a prejudicial abuse of discretion. Therefore, the petition is granted as to the third cause of action.

**D. Analysis of Public Security and Emergency and Fire Protection Issues(Fourth and Ninth Causes of Action)**

Petitioners contend the Draft and Final EIRs do not adequately analyze security issues at CIM, and fail to address an increased need in the surrounding community for fire protection and emergency services that would arise from the presence of a mental health facility at CIM. Neither contention is subject to CEQA review. (AR 1321.)

Public Resources Code sections 21100 and 21151 require an EIR for any project that "may have a significant effect on the environment. ... " (*Pub. Res. C.* §§ 21100, 21151.) The phrase "significant effect on the environment" is limited to substantial, or potentially substantial, adverse changes in *physical* conditions in the environment. (Guidelines, § 15358(b).) Only changes to the *physical* environment trigger the need for an EIR; social or economic impacts alone are insufficient because they are not physical changes to the environment. (Guidelines, §§ 15064(e), 15382.) Moreover, evidence of social or economic impacts that do not contribute to, or are not caused by, physical

impacts on the environment is not substantial evidence of a significant effect on the environment. (*Pub. Res. C.*, §§ 21080(e), 21082.2(c); Guidelines §15064(f)(6)<sup>14</sup>.

Nevertheless, a lead agency may consider economic or social changes when evaluating whether a project's changes to the *physical* environment should be considered significant. Section 15064, subdivision (e) of the Guidelines provides:

... Where a *physical* change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project.

Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.<sup>15</sup>

### *Security Issues*

The facility will be built within a "Level II" security area of the **CIM**. Nevertheless, the facility will accept inmates from all security levels. Petitioners contend, therefore, that the facility should be built to the maximum Level IV security standards. (AR 1196, 1321-1322, 1330.) Petitioners imply that cyclone fencing topped with razor wire will be insufficient, and that an electric fence should be installed. (AR **144-145**, 168.)

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<sup>14</sup> See also *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 843 (Increased demand for fire protection and emergency medical services is a socioeconomic impact, not an environmental impact); *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 576 (social and psychological effects of a project's change to community character are not environmental impacts subject to CEQA); *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1469, n.2 (claim that expansion of residential addiction treatment facility will increase crime is not subject to CEQA review).

<sup>15</sup> See also, *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.* (2013) 215 Cal.App.4th 1013, 1052 (social impact of parking related to environmental impacts); *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 (evidence that new solid waste management facilities at landfill would disturb activities at nearby religious retreat showed secondary social impact, demonstrating that project's impacts were potentially significant.)

But Petitioners do not establish how these security issues would impact the *physical* environment, requiring CEQA review. Even so, the Draft and Final EIR still address these concerns. The building will be built pursuant to CDCR security and design standards traditionally used for securing and housing Level IV (maximum security) inmates-including an enhanced design of all entrances, windows, ventilation and fire control systems, observation posts, and security access to the roof of the building. (AR 143-145, 1321-1322, 1330.) In addition, although CIM recently improved security measures around Facility D-the area of CIM where the facility will be located-additional security fencing will encircle the new facility, providing an additional measure. (*Ibid.*)

Petitioners also raise security concerns arising from the transportation of additional inmates to and from the facility. Approximately 1,800 inmates will be transported annually. Addressing the increase, the Draft EIR stated that the project contemplates the construction of a perimeter road and an "additional vehicular secure entrance." (AR 1330.) The Final EIR explains that CDCR's transportation division has the responsibility for transporting inmates, and uses specially-outfitted secure vans for transporting mentally ill inmates. In addition, the Final EIR notes that only specially-trained, armed officers operate and provide security support in **these** vehicles, that inmates are fully secured in the special security enclosures in the **vans** for the duration of their transportation to and from the facility, and that a second vehicle will escort the van when inmates pose a higher security risk. Moreover, the current 34-bed mental health program located in CIM's infirmary already deals with inmates transported from other facilities. (AR 144.) Therefore, Petitioners have not met their burden to show that

these security issues constitute a matter for CEQA review. (See, *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 586-587.)

### *Fire Protection and Emergency Services*

Petitioners similarly fail to meet their burden to establish that additional inmates at CIM will increase the demand on fire protection and emergency services in the community, subject to CEQA review. CIM's on-site fire department does not provide emergency medical care for resident inmates. The District handles these calls. (AR 149, 1444). The Draft EIR, however, explains that there are seven District fire stations, eight medic engines, and one ladder truck, all within approximately three miles of CIM. In 2016, the District responded to 196 incidents at CIM; in 2017, it responded to 174. (AR 1444.) Due to the security issues arising from non-CDCR personnel responding to CIM, the District deploys a disproportionately large contingent of personnel to the facility when responding to emergency calls. (*ibid.*) Nevertheless, the District's calls to CIM represented only 1.4 percent of the fire department's overall responses in 2017, with a rate of 0.05 calls per inmate at CIM. The Final EIR notes that fifty additional inmates are projected to result in only 2.5 additional calls to the District annually. (AR 149.) Therefore, substantial evidence establishes that the facility will not result in a meaningful impact to the provision of fire and emergency services in the surrounding community. (See, *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 842-843.)

Therefore, the petition is denied as to the fourth and ninth causes of action.



### **E. Analysis of Traffic Impacts (Fifth Cause of Action)**

Petitioners contend CDCR's analysis of traffic impacts arising from the Project is based on incorrect and incomplete assumptions and, therefore, the findings are not supported by substantial evidence. According to petitioners, the traffic analysis in the Draft EIR does not evaluate traffic at all the surrounding intersections, and only considers traffic generated by CIM staff, but not trips generated by deliveries, visitors, or the annual transport of up to 1,800 inmates to and from the facility. (AR 162-163, 169-170.) In addition, petitioners claim the additional traffic analysis provided in the Final EIR is flawed because the Transportation Impact Analysis was not revised and made available for public comment, and is not based on the actual transport of inmates to and from other mental health facilities.

The Draft EIR sets forth the trip generation assumptions of the project and states that these estimates include daily deliveries and service trips. It also provides that the Transportation Impact Analysis assumed visitors to the facility would not result in new trips during weekday morning or evening peak hour study periods-the periods the transportation analysis and conclusions are based on-because visitor hours at CIM are limited to weekends and holidays. (AR 169, 1450-1457, 1639.) CDCR concedes the transportation of inmates to and from the facility was inadvertently excluded from the trip generation estimates in the Draft EIR, but the Final EIR states the facility could accommodate up to 1,800 inmate-patients per year, and this estimate is based on the occupancy and re-occupancy of every bed in the facility every ten days-a worst-case scenario. (AR 169-170.)

Therefore, the Final EIR estimates that since inmate transfers can occur every day and that the average number of trips would be approximately five per day, then transport of inmate-patients to and from the facility could result in up to twenty trips per day, with the gap between each arrival averaging almost five hours<sup>16</sup>. (AR 169-170.)

The Draft and Final EIRs note that under the Chino's General Plan guidelines, a traffic study is required for a project if it would generate more than fifty two-way peak hour trips at one intersection. (AR 170, 1449.) Sixteen intersections were analyzed in the Draft EIR, and the analysis distributed project-generated traffic "to the external roadway network and study intersections based on recent employee zip code data provided by CDCR and traffic counts at the driveway of the existing facility." (AR 1455.) In addition, the analysis added project-generated traffic to the existing traffic volumes to estimate "Existing Plus Project" traffic volumes, and estimated the percentage of project-generated traffic that would enter through each gate, based on counts collected at the two project driveways. (AR 1457.) Although the Project would generate an estimated seventy-two trips during the weekday morning and weekday evening "peak hour of adjacent street traffic," none of the study intersections would experience an increase of fifty or more peak-hour trip, and, therefore, did not warrant further study. (AR 1450, 1455.)

This analysis, however, did not include trips generated by inmate-patient transportation to and from the facility. Therefore, the analysis is incomplete because it is unclear whether the stated threshold would be exceeded with the inclusion of this information. Although the Final EIR does discuss the number of estimated trips for

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<sup>16</sup> Five inmates per day, two vans per inmate, two trips per van (one trip in, one trip out) equals twenty trips per day. (AR 169.)

inmate-patient transport, it assumes, without support, that these trips "would generally be distributed to the external roadway network and study intersections consistent with the trip distribution patterns detailed ... [in] the Draft EIR." (AR 169-170.) The Final EIR also states, without support, that these inmate-patient trips will not **be** scheduled for specific times, and therefore, will not necessarily follow a regular traffic pattern like that generated by CIM staff. (AR 170.) While inmates are required to be delivered to the facility within twenty-four hours of their diagnosis, this does not necessarily equate to a lack of scheduled trips or that inmate-patient transport would occur at all hours of the day and night. (See, AR 169-170.)

In short, the Final EIR makes various unsubstantiated assumptions, glossing over the omission in the Transportation Impact Analysis of the trips generated by inmate-patient transportation-the very traffic that is the subject of the project. Absent a proper analysis that includes these inmate-patient trips-as well as an accurate assessment of how, when, and where these trips would occur-it is unclear whether the trip threshold for conducting an intersection analysis would be exceeded. Therefore, the assertion that the Project "would not result in a substantial increase in overall intersection delay, and this issue does not warrant further study" (AR 170) is unsupported by the record, resulting in a failure of the Final EIR as an informational document. Therefore, the petition is granted as to the fifth cause of action.

**F. Opportunity for Comment on Air Quality Analysis (Sixth Cause of Action)**

Petitioners contend the Draft EIR should have been recirculated because the public did not have an opportunity to comment on a new analysis of air quality issues included in the Final EIR. (AR 285-291.) According to petitioners, CDCR's analysis

results in two newly identified significant impacts and a new mitigation measure. (AR287-290, 1360-1361.)

If significant new information is added to an EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for review and comments. (*Pub. Res. C. § 21092.1*; Guidelines § 15088.5; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447.) New information is considered "significant" if it would change an EIR "in a way that deprives the public of meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (Guidelines § 15088.5(a).) Nevertheless, "[r]ecirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Guidelines § 15088.5(b).)

Examples of "significant new information" requiring recirculation include disclosures showing: (1) a new significant environmental impact would result from the project or from a new proposed mitigation measure; (2) a substantial increase in the severity of an impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure that is considerably different from those previously analyzed would clearly lessen the significant impacts of the project, but the project proponents decline to adopt it; or (4) the draft EIR was so fundamentally inadequate that it precluded meaningful public review and comment. (Guidelines § 15088.5(a); see

also *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1130 ("*Laurel Heights*"/").)

"A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record." (Guidelines § 15088.S(e).) Therefore, in deciding whether the CDCR properly determined recirculation of the Final EIR was unnecessary, the Court must determine whether the record as a whole contains substantial evidence to support CDCR's conclusion that "significant new information" was not added to the document. Substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384(a).) Under this standard, CDCR's decision is presumed to be correct, and petitioners bear the burden of demonstrating that the determination is not supported by substantial evidence. (*Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 903.)

CDCR was not required to recirculate the EIR. The Final EIR included updated modeling for air quality and other analyses based on the project's increased square footage to determine whether revisions to the impact determinations were warranted. (AR 131, 344-440.) In applying the updated modeling, CDCR found that site preparation for the project will generate 6.1 pounds per day of respiratory particulate matter emissions, slightly exceeding the 6 pounds per day localized threshold of significance. (AR 131, 152.) As a result, the revised air quality analysis also contains a new mitigation measure suggested by the Southern California Air Quality Management District (SCAQMD). This mitigation measure would reduce the new impact below the

level of significance to 4.7 pounds per day of emissions. (AR 150-153, 280-295, 1302.)

The Final EIR states that CDCR will implement the mitigation measure. (AR 153.)

Although the Final EIR includes a new impact in the air quality analysis, the Guidelines state that recirculation is required "*unless mitigation measures are adopted that reduce the impact to a level of significance.*" (Guidelines § 15088.5(a)(2).)

Recirculation is required only if the mitigation measure meets all of the following criteria:

(1) it is feasible, (2) it is considerably different from the mitigation measures already evaluated in the draft EIR, (3) it would clearly lessen the project's significant environmental impacts, and (4) it is not adopted. (See, *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330.) Petitioners have failed to meet their burden to show that recirculation was required.

Therefore, the petition is denied as to the sixth cause of action.

## **G. Analysis of Water and Wastewater Issues<sup>17</sup>**

### *Waste Water*

Petitioners claim the inadequate baseline description makes it impossible to determine if the facility will be connected to CIM's on-site septic system or to the public sewer system operated by Chino and the Inland Empire Utilities Authority. There are only limited connections to the sewer system, and CDCR did not evaluate additional service options. Petitioners also claim CDCR did not address existing deficiencies in CIM's septic system.

The arguments are unsupported. The Draft EIR states, "CIM, including the proposed [facility] site, is currently served by potable water, wastewater conveyance and

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<sup>17</sup> The Opening Brief does not address the Eighth Cause of Action (inadequate analysis of stormwater impacts). The issue is apparently abandoned.

treatment ... and solid waste services." (AR 1328.) Wastewater treatment is handled by CIM's on-site wastewater treatment plant, which is operated in accordance with the applicable waste discharge requirements adopted by the Santa Ana Regional Water Quality Control Board. (AR 1466.) Treated wastewater is discharged to percolation ponds, where water is reclaimed for irrigation of on-site agricultural fields. (AR 1466.)

The Final EIR's response to comments states that there is adequate capacity in CIM's existing wastewater treatment plant, CIM is in compliance with all applicable waste discharge requirements, and therefore, "[t]here would be no need to connect [the facility] to the [sewer system] ... " (AR 172.)

While the Draft EIR acknowledges that construction of the facility would result in "increased generation of wastewater flows associated with 50 inmate-patients and associated staff" (AR 1428), the proposed facility "would have separate service lines connecting to existing domestic water and sanitary sewer lines, each located within Facility D ...." (AR 1330.) The Summary of Impacts and Mitigation Measures states that based on wastewater generation rates at other CDCR facilities, CDCR concluded the CIM facility would generate approximately 6,500 gallons per day, resulting in a total wastewater treatment demand of 0.8365 million gallons per day. (AR 1312 (Impact 4.11-2).) Since the maximum capacity of CIM's wastewater treatment plant is 1.69 million gallons per day and currently has an average flow rate that is approximately half the permitted capacity, the summary concludes that the project "would not cause exceedance of the [Waste Water Treatment Plant] treatment capacity." (AR 1312; *see a/so*, AR 1328, 1466.)

The Draft EIR also determines that continued compliance with the applicable waste discharge requirements "would ensure that water from the proposed [facility] would not enter surface waters and any entering the groundwater basin would not contaminate aquifers," and therefore, no mitigation was required. (AR 1428.) The Draft EIR also concludes that "no construction of new wastewater treatment facilities or expansion of existing facilities would be needed."<sup>18</sup> (AR 1469.)

Based on this discussion in the record, there is substantial evidence showing that the analysis of the current wastewater capacity and the project's wastewater impacts is adequate.

#### *Water Needs and Impacts to Groundwater*

Petitioners claim the analysis of additional water needs due to the project is insufficient, and that the analysis of potential groundwater impacts had too short a time-horizon.

CDCR, however, explains that CIM overlays the adjudicated Chino Groundwater Basin. The State and petitioners are parties to that judgment. As a member of the Overlying Agricultural Pool, CDCR shares rights to the Basin's annual "Safe Yield" of 82,800 acre-feet, and any additional water needs generated by the facility would be met through groundwater produced pursuant to these rights. (AR 1424-1425, 14405-14407, 14454.) CDCR explains that the Basin's governance documents, including the judgment parties' "Peace Agreement," the "Optimum Basin Management Plan," and the "State of the Basin Reports" dictated the EIR's Year 2035 time-horizon. (AR 1429-

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<sup>18</sup> To the extent petitioners contend the inadequate baseline description influences the adequacy of the wastewater treatment analysis, the determination that "no expansion of existing facilities is needed" suggests that the current condition of the septic system is sufficient and does not require any updates or repairs.



1430, 5911-5989, 11419, 11498-11571.100.) Because the facility would not adversely affect the Basin's annual Safe Yield, the project would not cause substantial depletion of groundwater resources through 2035. (AR 1429-1430, 5911-5989, 11419, 11498-11571.100.)

CDCR concluded that projection *beyond* 2035 would be too speculative. (AR 172, 1429-1430.) When no accepted methodology exists to assess an environmental impact, the lead agency may properly conclude that that the impact is too speculative to reliably evaluate it. (See, e.g., *Laurel Heights II, supra*, 6 Cal.4th 1112, 1137.) Courts should uphold EIRs if the failure to analyze future long-term impacts is due to unknown or unknowable factors. (See, e.g., *Alliance of Small Emitters/Metals Industry v. South Coast Air Quality Mgmt. Dist.* (1997) 60 Cal.App.4th 55, 67.)

Petitioners have failed to demonstrate that it was improper for CDCR to rely on the detailed findings in the Basin's governance documents by refusing to speculate beyond the 2035 time-horizon. The analysis of the water and wastewater issues in the EIRs is adequate. Therefore, the petition is denied as to the seventh cause of action.

#### **H. Decision to Locate the Project at the CIM (Tenth Cause of Action)**

Petitioners contend CDCR's decision to locate the project at CIM was "arbitrary and capricious" because it "disregards public safety and peace of mind" due to the changed character of the surrounding community and continuing infrastructure and security issues. (Opening Brief, 27:10-14.) Petitioners cite no authority and provide no substantive argument in support of this assertion. A point merely asserted without authority for the proposition is deemed without foundation and requires no discussion.

(See *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1281.)<sup>19</sup> Therefore, the petition is denied as to the tenth cause of action.

**IV**  
**Conclusion**

For the reasons explained above, the petition is granted on three grounds: (a) The description of baseline conditions is inadequate; (2) The analysis of alternatives is inadequate; and (3) The analysis of impacts on traffic conditions is inadequate. All other grounds for the petition are denied. Counsel for the City of Chino is ordered to prepare and circulate a proposed writ and judgment to all counsel, and then submit it to the Court along with any objections to the wording.

  
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Dated: February 24, 2021

David Cohn

Judge of the Superior Court

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<sup>19</sup> Despite being the subject of a separate cause of action, it may be that the issue is subsumed in the analysis of alternatives, discussed *supra* at § 111-C.

# **Appendix B**

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Revised Ruling on the Petition for  
Writ of Mandate

**City of Chino et al. v. California Department of Corrections and Rehabilitation  
San Bernardino Superior Court Case No. CIVDS 1917019**

**Department S-26, Judge David Cohn**

**June 24, 2021**

**Revised Ruling on Submitted Matter: Petition for Writ of Mandate**

(Replaces Ruling Dated February 24, 2021)

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**I  
Background**

The California Department of Corrections and Rehabilitation (“CDCR”) proposes to build a fifty-bed “Mental Health Crisis Facility” at the Chino Institute for Men (“CIM”). The project is one of several mental health facilities CDCR plans to build in response to an order from the United States District Court for the Eastern District of California, which found that CDCR lacked sufficient beds to meet the needs of prisoners with serious mental health disorders.<sup>1</sup>

On July 9, 2018, CDCR, the lead agency for the project, issued a Notice of Preparation (“NOP”) for an environmental impact report pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* (“CEQA”).<sup>2</sup> (AR 3150-3155.) The public comment period for the NOP ran through August 13, 2018. The City of Chino (“Chino”), the City of Chino Hills (“Chino Hills”), and the Chino Valley Independent Fire District (“the District”) submitted oral and written comments. (AR 3108-3109; 3114-3120; 3135; 5238-5243; 5249-5253.)

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<sup>1</sup> *Coleman v. Brown*, Case No. 2:90-cv-0520-KJM-DB-P. (AR 130, 2826-2861.)

<sup>2</sup> See CEQA Guidelines, Cal. Code Regs., Title 14 (“Guidelines”) §§ 15082 and 15375, governing the requirements for the NOP.

On December 6, 2018, CDCR released a draft environmental impact report (“Draft EIR”).<sup>3</sup> (AR 1289-1853.) The comment period for the Draft EIR ran through January 28, 2019. (AR 1282.) Chino, Chino Hills, and the District again submitted written comments.<sup>4</sup> (AR 140; 146-148; 154-165.)

CDCR held a public hearing on January 10, 2019.<sup>5</sup> Representatives from Chino, the District, and San Bernardino County attended and spoke. (AR 1160-1224.)

CDCR responded to the written and oral comments in an April 2019 Final Environmental Impact Report (“Final EIR”).<sup>6</sup> (AR 124-1002.) On May 8, 2019, CDCR certified<sup>7</sup> the Final EIR and filed a Notice of Determination (“NOD”),<sup>8</sup> stating that the project would not result in any unmitigated, significant, or unavoidable effects on the environment. (AR 9-14; 67.)

On June 7, 2019, petitioners filed a petition for a writ of mandate in this Court, seeking an order directing CDCR to vacate approval of the project.

## II

### Standard of Review

The standard of judicial review under CEQA is abuse of discretion. (Pub. Resources Code, §§ 21168.5, 21005, subd. (a); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) Abuse of discretion can arise in two ways—by the agency lead failing to follow the procedures required by CEQA or by reaching factual conclusions unsupported by substantial evidence. (*Ibid.*) Whether the agency followed correct

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<sup>3</sup> Guidelines, §§ 15084-15088.5 address the requirements regarding the Draft EIR.

<sup>4</sup> *Id.*, § 15087.

<sup>5</sup> *Id.*, § 15087, subd. (i).

<sup>6</sup> *Id.*, §§ 15088-15089.

<sup>7</sup> *Id.*, § 15090.

<sup>8</sup> *Id.*, § 15094.

procedures is reviewed *de novo*, but substantive factual conclusions are entitled to greater deference. (*Ibid.*) The Court “ ‘may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable.’ [Citation.]” (*Ibid.*) “The decisions of the agency are given substantial deference and are presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination. [Citation.]” (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.)

“The ultimate inquiry . . . is whether the EIR includes enough detail to ‘enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’ [Citation.]” (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 516.) The EIR should provide decision makers with sufficient analysis for intelligent consideration of the environmental consequences of a project. (Guidelines, § 15151.) Perfection is not required, but only a good faith effort at full disclosure. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 331.)

### III

#### **Petitioners’ Claimed Deficiencies**

##### **A. Analysis of Baseline Conditions (First Cause of Action)**

The CEQA Guidelines, section 15125, subdivision (a), provide:

An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. . . .

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published . . . from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported by substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

Due to the importance of the baseline for the EIR's environmental impact analysis, it must be plainly identified and not obscured. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 659.) Nevertheless, agencies have considerable flexibility in determining the baseline. The Supreme Court explained in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328:

Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide . . . exactly how the existing physical conditions without the project can most realistically be measured . . . .

Petitioners contend that the Draft EIR failed to provide adequate disclosure and analysis of the baseline conditions, and that CDCR failed to remedy the deficiencies in the Final EIR. Specifically, petitioners contend CDCR should have addressed the conditions described in a 2008 Inspector General report entitled "California Institution for Men, Quadrennial and Warden Audit" (the "2008 Audit"), which found that CIM was in "an unacceptable state of repair due to years of neglect," with failing infrastructure and unfunded improvement projects. (AR 691, 696-698.)

CDCR, however, contends the 2008 Audit is irrelevant because it addressed conditions a decade earlier. Even so, the Draft EIR recognized that CDCR was making ongoing improvements and repairs:

Substantial investment has been made during the past five years for projects that improve health care facilities including new and renovated medical clinics, pharmacies, dental clinics, and related infrastructure including utility systems, roofs and walkways. Within approximately the last 5 years, the value of these investments has exceeded \$35 million . . . . Finally, while CDCR acknowledges these public comments, maintenance of existing facilities is unrelated to the proposed project. The proposed project would remove disused facilities within CIM (i.e., the chapel and swimming pool), which would eliminate the need to maintain them and avoid continued deterioration. (AR 1322.)

The Draft EIR provided a site map showing the *placement* of the proposed facility and existing buildings (AR 1319, 1329), but omitted any description of the *condition* of the buildings and infrastructure that are critical to the project, or a description of *specific* repairs either underway or contemplated. The Final EIR suffers from the same deficiencies. In "Master Response 1: Conditions and Maintenance of Existing Infrastructure," the Final EIR provides:

As it relates to CEQA, the condition of existing facilities at CIM is part of the baseline environmental conditions. . . . The [2008] Audit pertains only to the condition of the existing infrastructure at CIM at the time the Audit was completed. Some of the infrastructure or the conditions (such as inmate population totals) affecting the infrastructure has been improved, *some not*. These are the baseline conditions against which the impacts of the proposed project are considered, where relevant (such as water and wastewater infrastructure). . . .

[W]hile CDCR acknowledges that CIM requires on-going maintenance/repairs, and CDRC must work within the funds allocated by the annual State Budget, this is an issue that is separate and apart from the proposed project (unless the project results in an adverse environmental effect on these facilities). . . .



Staff at CIM have reported other improvements to the prison's operation in response to the 2008 Audit, including . . . *on-going repairs/renovations of facilities and infrastructure*. . . .

Regarding the condition of CIM facilities and infrastructure, CDCR has made *substantial investment* in the past five years in projects that improve health care facilities including new and renovated medical clinics, pharmacies, dental clinics, and *related infrastructure including utility systems, roofs and walkways*. Within approximately the last 5 years, the value of these investments has exceeded \$35 million. (AR 142-143, italics added.)

This Response is vague on the precise nature and extent of the improvements and investment. The Response is *particularly* vague whether the unspecified repairs are undergoing or planned for the future: "A majority of the concerns identified in the Audit have *either* been addressed *and/or* are issues the institution continues to work on . . . ." (AR 142, italics added.) Read literally, this language says the repairs *have already been* addressed, *or* they are underway, *or* (inexplicably) they have been both addressed *and* somehow are still underway. Obviously, the confusing "and/or" usage is merely an example of poor writing, but it highlights the underlying vagueness in the Final EIR.

Due to the vague and undefined references to "on-going repairs and improvements," it is unclear whether the baseline describes *existing* conditions, *future* conditions, or some *combination*. The EIR's failure to state clearly and definitely what repairs and improvements have already been made and what still needs to be done renders the baseline analysis uncertain. If the findings in the 2008 Audit are no longer accurate, an adequate description of the current conditions will demonstrate that. Insofar as the 2008 Audit may still describe some existing conditions at CIM, a discussion of the intended corrective measures is required. As written, the EIR

prevents an informed comparison of pre-project and post-project conditions. The Draft and Final EIRs therefore fail as informational documents. (See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.) Therefore, the petition is granted as the first cause of action.

### **B. Description of the Project (Second Cause of Action)**

Petitioners contend the Draft and Final EIRs are inadequate because the *description* of the project is inadequate. Specifically, petitioners contend the Draft and Final EIRs present varying descriptions of the gross square footage of the facility. Additionally, petitioners contend that vague statements in the description raise a question whether the EIRs analyzed the *entire* project.

A legally sufficient EIR must include an accurate, stable, and finite project description. (See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.)

The project description must contain: (1) the precise location and boundaries of the proposed project; (2) a statement of the objectives sought by the proposed project, including the underlying purpose; (3) a general description of the project's technical, economic, and environmental characteristics; and (4) a statement briefly describing the intended uses of the EIR. (Guidelines, § 15124.) The description should not, however, "supply extensive detail beyond that needed for evaluation and review of the environmental impact." [Citation.]

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." [Citation.] "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance." [Citation.]

(*South of Market Community Action Network, supra*, 33 Cal.App.5th at p. 332.)

The description, however, need contain only a *general* description of the project's technical, economic, and environmental characteristics, including sufficient specific information about the project to allow an evaluation and review of its environmental impacts. The EIR need not contain a *design-level* description of the project. (*Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1054-1055.) A description of the project should simply identify the project's main features and other information necessary for an assessment of the project's environmental impacts. As long as these requirements are met, the description may allow for flexibility to respond to unforeseeable events or changes in conditions that may affect the final design of the project. (*Id.* at p. 1053-1054.)

Nevertheless, a project description must describe “the whole of an action”—the entire project and not some smaller portion of it. (Guidelines § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.) The description must include all relevant parts of a project, including any future expansion or later phases that will foreseeably result from the project approval. (See, *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376 (“*Laurel Heights I*”.)

A project description must remain consistent throughout the EIR, but this does not mean the project cannot change as it proceeds through CEQA review and other stages of the approval process. (See, e.g., *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 292.) Changes to projections of project impacts do not necessarily indicate that the project description is inadequate. (*City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 541.) A description

identifying variations in design is permissible if the variations are fully described and separately evaluated, and the maximum possible scope of the project is clearly disclosed. (Kostka & Zischke, Practice Under the California Environmental Quality Act (2d ed. Cal. CEB), §12.7.1.); *South of Market Community Action Network, supra*, 33 Cal.App.5th at pp. 332-34.)

[W]hen assessing the legal sufficiency of an EIR, we do not look for perfection, but “adequacy, completeness, and a good faith effort at full disclosure.” [Citations.] . . .

“The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” [Citation.] The whole point of requiring evaluation of alternatives in the Draft EIR is to allow thoughtful consideration and public participation regarding other options that may be less harmful to the environment. [Citation.] . . . We do not conclude the project description is inadequate because the ultimate approval adopted characteristics of one of the proposed alternatives; that in fact, is one of the key purposes of the CEQA process.

(*Id.* at pp. 334-336.)

#### *Increased Size of the Project*

Petitioners claim the Draft EIR was deficient because it failed to provide final detailed site plans showing the footprint of the building and adjacent structures.<sup>9</sup> (AR 138-139, 1329.) CDCR’s responses to comments in the Final EIR state that a more detailed description of the project was unnecessary because the Draft EIR “evaluated

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<sup>9</sup> Regarding the lack of a site plan or preliminary plan in the Draft EIR, petitioners state, “Final, detailed plans apparently did not exist when the [Draft] EIR was released.” (Opening Brief, 12:25-26.) CDCR, however, notes that under Guidelines § 15004, an EIR should be prepared as early as possible in the planning process “to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” (Guidelines, § 15004(b).) According to CDCR, at the time of the Draft EIR, the Project was sufficiently defined to allow for an adequate assessment of the environmental impacts, and CDCR properly applied the balancing test in section 15004 by issuing the Draft EIR before finalizing detailed plans. (Opp. Brief, 10:20-23.) CDCR is correct.

impacts based on reasonable maximum assumptions for any variables related to the site plan,” and that further development of the plans fell within those “maximum assumptions.” (AR 166.) According to petitioners, however, the Final EIR contains an entirely new project description, and accompanying graphics, changing the size of the project from 61,000 square feet to 69,000 square feet—a thirteen percent increase from the description in the Draft EIR. Petitioners argue there was nothing in the Draft EIR demonstrating that a thirteen percent increase in square footage falls within the “maximum assumptions” the environmental analysis was based on. Petitioners contend that due to the absence of a site plan in the Draft EIR, the footprint, height, and mass of the facility was unknown, and therefore, an accurate assessment of the environmental impacts of the size increase was impossible. (AR 130-131, 134-139, 166, 218, 283-284, 1170.)

Petitioners also contend that due to the failure of the EIRs to provide specific information about the improvements to an existing pedestrian pathway and parking lot, they cannot determine how much additional hardscape will be constructed. Therefore, petitioners argue, the actual impacts of the project—including impacts to groundwater and storm water runoff—cannot be fully evaluated.<sup>10</sup>

Contrary to these assertions, the project description meets the CEQA requirements set forth in the Guidelines, section 15124. The Draft and Final EIRs properly provide CIM’s physical address and identify where within CIM’s boundaries the facility will be located. Both EIRs properly include: (a) regional and detailed maps of the proposed site plan; (b) an adequate statement of the project objectives; (c) a description

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<sup>10</sup> See discussion *infra* at § III-G.

of the project's technical, economic, and environmental characteristics; and (d) a brief statement of the EIR's intended uses. (AR 134, 137-138, 1298, 1327-34.)

Regarding the square footage, Section 3.4 of the Draft EIR, entitled "Description of the Proposed Project," provided:

The new . . . building would be configured as *either* a single-story building with up to approximately 61,000-gross square feet (sf) of overall building footprint *or* a two-story building with up to a 35,000-sf first-floor footprint, including enclosed recreation yards. The . . . building would provide space for 50 single-occupancy cells (50 beds) dedicated to inmates in mental health crisis, along with mental health care treatment space, clinical support space, housing, recreation, custody, support, and administrative services. . . .

Other proposed project components include a new cyclone fence that would separately encircle the [facility], . . . improvements to the existing pedestrian pathway between the administration building and the [facility] . . . resurfacing and restriping portions of the existing administration building parking lot . . . and installation of a new 360-space parking lot, at one of two optional locations, adjacent to Facility D. Exhibit 3-1 shows the proposed site plan. (AR 1328.)

The proposed site plan shows the facility will be located on the site of the current unused chapel and swimming pool. (AR 1329.) The site plan also points generally to the proposed "pedestrian Improvements," the two options for placement of the parking lot, and the area for the improvements to the existing parking lot. (AR 1329.)

In many respects, the description of the project in the Final EIR tracks the description in the Draft EIR. Additionally, the "Description of Proposed Project" in the Final EIR also states:

The new . . . building would be configured as two-story building with up to approximately 69,000-gross square feet (gsf) of overall building footprint. . . . *This is a refinement in project design but does not alter the capacity of the facility.* The . . . building would provide space for a total of 50 beds (comprised of 46 single cells and 2 double occupancy cells) dedicated to inmates in mental health crisis, along with mental health care treatment space, clinical support space, housing, recreation, custody, support, and

administrative services. . . The slightly larger facility does not require additional staffing. (AR 134, italics added.)

The Draft EIR provided four options for the project, two design options for the building and two options for placement of the parking lot. An EIR's project description may present alternative development schemes for a single proposed project, and a project description that identifies variations in design is permissible if the possible variations are fully described and separately analyzed, and the maximum possible scope of the project is disclosed. (*South of Market Community Action Network, supra*, 33 Cal.App.5th at p. 332-334.) The Draft EIR contemplated that the facility *could* be a two-story building with a total square footage of up to 70,000 square feet (the 35,000-square foot first-floor footprint times two), and the Final EIR explains that this two-story option was ultimately selected. (AR 134.) Both the Draft and Final EIRs note the two design options contemplate a total of fifty patient beds, and that staffing requirements remained the same.

Although the Final EIR does not confirm which parking lot option will ultimately be selected, it does confirm that parking demands remained the same as analyzed in the Draft EIR. Moreover, contrary to Petitioners' assertion, the EIRs describe the total amount of new hardscape, and analyze the impact of the groundwater and storm water runoff for each of the parking lot options. (AR 166.)

CDCR also conducted a review to determine if the Final EIR needed to revise the analysis of air quality, greenhouse gas emissions, and energy impacts because of the increased square footage. Only one metric would be affected by the increase in the square footage—the amount of respirable particulate matter—and as to that metric, new

mitigation measures were included to reduce the impact below the significance threshold. (AR 131, 344-440.)

#### *Future Expansion of Project*

Section 1.2.3 of the Draft EIR, entitled “Characteristics of the Project,” provides that the facility “will also be designed to allow the provision of other levels of mental health care in addition to crisis.” (AR 1299; *see also*, AR 1326.) Petitioners argue that this statement indicates the facility will provide services not only for inmates in acute mental health crisis, but also for inmates with chronic, non-acute conditions. Petitioners contend this additional level of care is not included in the Draft EIR’s analysis of the environmental impacts, so there is a question whether the project is actually part of a larger project being analyzed in piecemeal fashion.

The Final EIR, however, states that “the project would allow flexibility such that if bed space at the [facility] is not needed for inmates in mental health crisis, other mental health treatment can be provided.” (AR 167.) This flexibility does not indicate there is a different or larger project than the one analyzed in the EIRs, or that the CDCR did not include the “whole of the action” in its analysis. (AR 167.) Instead, it simply acknowledges a reasonably foreseeable use of patient beds not needed for inmates in crisis. Petitioners do not explain how the possible lower-level use of the patient beds is crucial to a review of the environmental effects of the project, or how this possible use impacted public participation in evaluating the analysis in the Draft or Final EIR.

As in *South of Market Community Action Network*, the project description in this case may not be perfect, but it is adequate. (AR 165-167, 1290, 1299, 1326-1334.) Therefore, the petition is denied as to the second cause of action.



### **C. Analysis of Project Alternatives (Third Cause of Action)**

Petitioners contend the selection and analysis of project alternatives is inadequate and was improperly influenced by a pre-determination that the mental health facility would be located at CIM, rather than at a prison complex elsewhere.

The Guidelines provide that an EIR must describe a reasonable range of alternatives to the proposed project, or the project location, that would feasibly attain most of the project's basic objectives while reducing or eliminating any of its significant environmental effects. (Guidelines, § 15126.6; *Habitat and Watershed Caretakers*, *supra*, 213 Cal.App.4th at pp. 1302-1303.) There are four threshold tests for determining whether an alternative is suitable: (1) can it substantially reduce significant environmental impacts; (2) can it attain most of the basic project objectives; (3) is it potentially feasible; and (4) is it reasonable and realistic. Although these criteria are not exclusive, alternatives that do not satisfy all four criteria may be excluded from consideration. (Guidelines, § 15126.6(c).) Other appropriate factors may be considered as well. (*ibid.*) In determining the nature and scope of alternatives, lead agencies must be guided by the doctrine of "feasibility." (*Citizens of Goleta Valley v. Board of Supervisors of the Cty. of Santa Barbara* (1990) 52 Cal.3d 553, 564-565.) "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (*Pub. Res. C.*, § 21061.1; Guidelines, § 15126.6, subd. (f)(1).)

"CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose. . . . [Citation.]" (*Habitat and*

*Watershed Caretakers, supra*, 213 Cal.App.4th at pp. 1302-1303, quoting *Citizens of Goleta, supra*, 52 Cal.3d at p. 566.) The EIR “is required to make an in-depth discussion of those alternatives identified as at least potentially feasible.” (*Sierra Club v. County of Napa, supra*, 121 Cal.App.4th at p. 1504, fn. 5, italics omitted.)

“An EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making. [Citation.] ... “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.” [Citations.] An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. [Citation.]”

(*Habitat and Watershed Caretakers, supra*, 213 Cal.App.4th at p. 1303, quoting *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405.)

If an EIR concludes that no environmentally superior alternatives are available, it must provide sufficient facts and analysis to allow the decision-maker to determine whether that conclusion is correct. (*Id.* at p. 1305.)

“[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.... [I]n the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

(*Id.* at p. 1302, quoting *Citizens of Goleta Valley, supra*, 52 Cal.3d at pp. 564-565.)

Therefore, “an EIR should not exclude an alternative from detailed consideration merely because it ‘would impede to some degree the attainment of the project objectives.’ [Citation.] But an EIR need not study in detail an alternative that is infeasible or that the lead agency has reasonably determined cannot achieve the project’s

underlying fundamental purpose. [Citation.]” (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165.)

The Draft EIR included a discussion of alternatives to the project—a “no project” alternative, alternative locations within CIM, a reduced-size alternative, and alternative locations at the California Rehabilitation Center at Norco and the California State Prison at Lancaster. CDCR evaluated each alternative using three screening criteria: (a) does the alternative accomplish all or most of the project’s objectives, (b) is the alternative potentially feasible from economic, legal, regulatory, and technological standpoints; and (c) does the alternative avoid or substantially lessen any significant environmental impacts of the proposed project, including whether the alternative could create significant effects that are potentially greater. (AR 1495.) In considering the alternatives, the Draft EIR noted:

Locating a [mental health facility] in the greater southern California region is driven by two primary factors: 1) Mental health crisis facilities require specialized staffing by mental health and medical professionals. . . . 2) Currently, there are a limited number of [facilities] in southern California. (AR 1495.)<sup>11</sup>

There is nothing in the record, however, explaining how or why *CIM* was selected, instead of a different prison complex in Southern California. While the *Coleman* court orders may have served as the impetus for deciding that a facility had to be built in Southern California, the orders do not state that the facility had to be built at CIM to the exclusion of other Southern California locations. (AR 2826-2861.) The State Budget Act allocated funds for CDCR to prepare working drawings for a facility at CIM

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<sup>11</sup> The Draft EIR noted that *Coleman* required inmates experiencing a mental health crisis to be placed in a mental health crisis facility as quickly as possible, within 24 hours of diagnosis. Compliance with the *Coleman* court orders also required distribution of mental health crisis beds throughout California, as well as the recruitment of sufficient qualified staff to avoid delays in treatment. (AR 1298, *see also*, AR 2826-2861.)

(AR 3174, 4415-4416, 4418), and CDCR seems to interpret this as a mandate to *build* the facility at CIM, such that any other location would necessarily be deemed an inferior alternative simply because the facility “would not be at CIM,” and therefore would not meet the project objective. (AR 1502-1503.) Of course, both the preparation of working drawings, and ultimately the building of a facility, depend on an allocation of funding, but that does not mean, necessarily, that a different location should not be considered as an alternative.

#### *The San Diego Alternative*

Petitioners contend the Draft EIR should have considered the feasibility of a larger facility at R.J. Donovan Correctional Facility in San Diego. The Draft EIR, however, states, “The proposed 50-bed [mental health facility in San Diego] is not an alternative to, and *is needed in addition to*, the proposed [facility] at CIM.” (AR 1495, italics added.) CDCR is already committed to building a mental health facility at the San Diego prison as part of its compliance with the *Coleman* court order.<sup>12</sup> (AR 156, 1495-1496.) Funding for the San Diego facility is appropriated through the 2017-2018 State Budget Act. (*Ibid.*) Therefore, the EIR adequately explains why the San Diego location is not an *alternative* location for the project. (AR 156, 1318, 1320, 1326-1327, 1495.)

#### *The Lancaster Alternative*

The Draft EIR provides that the alternative location at the California State Prison at Lancaster “would also not meet the project objective to comply with the provisions of the [State Budget] Act to prepare preliminary construction plans for a 50-bed [facility] at

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<sup>12</sup> See fn. 1, *supra*.

CIM *because it would not be at CIM.*" (AR 1503, italics added.) Such circular reasoning is nonsense.

The substantive analysis of Lancaster as an alternative is deficient, however, because it concludes, without citation to any supporting evidence, that the location would make it difficult to recruit qualified medical professionals and it could result in new impacts to biological resources "because different or additional special-status species could be affected." (AR 1502-1503.) The Draft EIR does not show that any research was done on the question of recruitment of medical professionals to the Lancaster location, nor does it provide any references to environmental studies analyzing the flora and fauna in the region. (AR 1068, 1502-1503.)

CDCR's responses to comments in the Final EIR do not remedy this deficiency. In response to Petitioners' concerns regarding analysis of the Lancaster alternative, CDCR stated:

The alternative location at [Lancaster] could result in biological effects that are additional to what would occur (and be mitigated) at CIM; for instance, while the burrowing owl is common to both CIM and [Lancaster], [Lancaster] is located in the Antelope Valley, an area with sensitive habitat that could support sensitive species including alkali mariposa lily, Le Conte's thrasher, tricolored blackbird, and others. While the [Lancaster] site was not surveyed for potential presence of these or other sensitive species, [Lancaster] would not avoid any project impacts and may increase them. Although not discussed in the Draft EIR, it is also noted that the [Lancaster] site is already spatially constrained by existing facilities including recently constructed medical treatment buildings. (AR 168.)

Therefore, although CDCR surmised that certain plant and bird species could be present in and near the Lancaster location, no environmental survey or analysis was performed. (AR 168.)

### *The Norco Alternative*

The analysis of the alternative location at the California Rehabilitation Center at Norco is similarly inadequate. The Draft EIR rejected the location based on an incomplete analysis of Norco's status as an historic place and whether the State Historic Preservation Office might consider the demolition of some of the structures.<sup>13</sup> (AR 1502.) Although CDCR's responses to comments in the Final EIR stated that Norco was "environmentally inferior" because construction of a mental health facility would result in the demolition of structures that are eligible for listing on the National Register of Historic Places (AR 167-168, 6721-6082), this conclusion fails to take into account that under the Guidelines, a project that alters an historical resource but follows guidelines in the federal "Secretary of the Interior's Standards for the Treatment of Historic Properties" could mitigate impacts to less than significant, even if alterations to the historic resource are substantial. (Guidelines § 15064.6(b)(3).) CDCR also ignores its own acknowledgement that building a facility at the Norco location was possible through coordination with the State Historic Preservation Office. (AR 1502.)

While an EIR's discussion and analysis of alternatives need not be exhaustive, it nevertheless must be specific enough to allow informed decision making and public participation. A conclusory discussion of alternatives is not adequate. (*Laurel Heights I, supra*, 47 Cal.3d 376, 406.) Instead, the Guidelines require an EIR to evaluate the comparative merits of the alternatives in a manner that allows a meaningful evaluation and comparison with the proposed project. (Guidelines § 15126.6(a), (d).) The CDCR rejected the Lancaster and Norco alternative locations as infeasible, though neither the

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<sup>13</sup> Petitioners do not challenge CDCR's analysis of the "no project" alternative, the "reduced size" alternative, or the "alternate location on CIM property" alternative. (AR 1497-1502.)

EIRs nor the rest of the administrative record contained sufficient information to support the findings. (See, e.g., *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1355.)

For these reasons, CDCR failed to proceed in the manner required by law resulting in a prejudicial abuse of discretion. Therefore, the petition is granted as to the third cause of action.

**D. Analysis of Public Security and Emergency and Fire Protection Issues  
(Fourth and Ninth Causes of Action)**

Petitioners contend the Draft and Final EIRs do not adequately analyze security issues at CIM, and fail to address an increased need in the surrounding community for fire protection and emergency services that would arise from the presence of a mental health facility at CIM. Neither contention is subject to CEQA review. (AR 1321.)

Public Resources Code sections 21100 and 21151 require an EIR for any project that “may have a significant effect on the environment...” (*Pub. Res. C.* §§ 21100, 21151.) The phrase “significant effect on the environment” is limited to substantial, or potentially substantial, adverse changes in *physical* conditions in the environment. (Guidelines, § 15358(b).) Only changes to the *physical* environment trigger the need for an EIR; social or economic impacts alone are insufficient because they are not physical changes to the environment. (Guidelines, §§ 15064(e), 15382.) Moreover, evidence of social or economic impacts that do not contribute to, or are not caused by, physical

impacts on the environment is not substantial evidence of a significant effect on the environment. (*Pub. Res. C.*, §§ 21080(e), 21082.2(c); Guidelines §15064(f)(6)).<sup>14</sup>

Nevertheless, a lead agency may consider economic or social changes when evaluating whether a project's changes to the *physical* environment should be considered significant. Section 15064, subdivision (e) of the Guidelines provides:

. . . Where a *physical* change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.<sup>15</sup>

#### *Security Issues*

The facility will be built within a "Level II" security area of the CIM. Nevertheless, the facility will accept inmates from all security levels. Petitioners contend, therefore, that the facility should be built to the maximum Level IV security standards. (AR 1196, 1321-1322, 1330.) Petitioners imply that cyclone fencing topped with razor wire will be insufficient, and that an electric fence should be installed. (AR 144-145, 168.)

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<sup>14</sup> See also *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 843 (increased demand for fire protection and emergency medical services is a socioeconomic impact, not an environmental impact); *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 576 (social and psychological effects of a project's change to community character are not environmental impacts subject to CEQA); *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1469, n.2 (claim that expansion of residential addiction treatment facility will increase crime is not subject to CEQA review).

<sup>15</sup> See also, *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.* (2013) 215 Cal.App.4th 1013, 1052 (social impact of parking related to environmental impacts); *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 (evidence that new solid waste management facilities at landfill would disturb activities at nearby religious retreat showed secondary social impact, demonstrating that project's impacts were potentially significant.)



But Petitioners do not establish how these security issues would impact the *physical* environment, requiring CEQA review. Even so, the Draft and Final EIR still address these concerns. The building will be built pursuant to CDCR security and design standards traditionally used for securing and housing Level IV (maximum security) inmates—including an enhanced design of all entrances, windows, ventilation and fire control systems, observation posts, and security access to the roof of the building. (AR 143-145, 1321-1322, 1330.) In addition, although CIM recently improved security measures around Facility D—the area of CIM where the facility will be located—additional security fencing will encircle the new facility, providing an additional measure. (*Ibid.*)

Petitioners also raise security concerns arising from the transportation of additional inmates to and from the facility. Approximately 1,800 inmates will be transported annually. Addressing the increase, the Draft EIR stated that the project contemplates the construction of a perimeter road and an “additional vehicular secure entrance.” (AR 1330.) The Final EIR explains that CDCR’s transportation division has the responsibility for transporting inmates, and uses specially-outfitted secure vans for transporting mentally ill inmates. In addition, the Final EIR notes that only specially-trained, armed officers operate and provide security support in these vehicles, that inmates are fully secured in the special security enclosures in the vans for the duration of their transportation to and from the facility, and that a second vehicle will escort the van when inmates pose a higher security risk. Moreover, the current 34-bed mental health program located in CIM’s infirmary already deals with inmates transported from other facilities. (AR 144.) Therefore, Petitioners have not met their burden to show that

these security issues constitute a matter for CEQA review. (See, *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 586-587.)

### *Fire Protection and Emergency Services*

Petitioners similarly fail to meet their burden to establish that additional inmates at CIM will increase the demand on fire protection and emergency services in the community, subject to CEQA review. CIM's on-site fire department does not provide emergency medical care for resident inmates. The District handles these calls. (AR 149, 1444). The Draft EIR, however, explains that there are seven District fire stations, eight medic engines, and one ladder truck, all within approximately three miles of CIM. In 2016, the District responded to 196 incidents at CIM; in 2017, it responded to 174. (AR 1444.) Due to the security issues arising from non-CDCR personnel responding to CIM, the District deploys a disproportionately large contingent of personnel to the facility when responding to emergency calls. (*Ibid.*) Nevertheless, the District's calls to CIM represented only 1.4 percent of the fire department's overall responses in 2017, with a rate of 0.05 calls per inmate at CIM. The Final EIR notes that fifty additional inmates are projected to result in only 2.5 additional calls to the District annually. (AR 149.) Therefore, substantial evidence establishes that the facility will not result in a meaningful impact to the provision of fire and emergency services in the surrounding community. (See, *City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 842-843.)

Therefore, the petition is denied as to the fourth and ninth causes of action.

### **E. Analysis of Traffic Impacts (Fifth Cause of Action)**

Petitioners contend CDCR's analysis of traffic impacts arising from the Project is based on incorrect and incomplete assumptions and, therefore, the findings are not supported by substantial evidence. According to petitioners, the traffic analysis in the Draft EIR does not evaluate traffic at all the surrounding intersections, and only considers traffic generated by CIM staff, but not trips generated by deliveries, visitors, or the annual transport of up to 1,800 inmates to and from the facility. (AR 162-163, 169-170.) In addition, petitioners claim the additional traffic analysis provided in the Final EIR is flawed because the Transportation Impact Analysis was not revised and made available for public comment, and is not based on the actual transport of inmates to and from other mental health facilities.

This argument is moot because traffic congestion based on level of service (LOS) is no longer considered a significant impact on the environment under CEQA. Guidelines section 15064.3, subdivision (a), provides in relevant part: "Generally, vehicle miles traveled is the most appropriate measure of transportation impacts." Section 15064.3, subdivision (c), however, provides: "The provisions of this section shall apply *prospectively* as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide."<sup>16</sup>

Public Resources Code section 21099, subdivision (b)(2), provides:

*Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion,*

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<sup>16</sup> See also § 15007, subd. (b), which provides in relevant part: "Amendments to the guidelines apply prospectively only."

*shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.*

(Italics added.)

The Guidelines were certified on December 28, 2018, thereby abandoning LOS as the proper measure as of that date. (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 626.) In *Citizens for Positive Growth*, the Court addressed a city's adoption of a general plan in 2015. The petitioner challenged the EIR's traffic impact analysis, arguing that the EIR's analysis of the general plan's impacts on traffic congestion as measured by LOS constituted significant impacts under CEQA, and that the city failed to analyze and mitigate the impacts properly. (*Id.* at pp. 616, 625.) The city argued that Public Resources Code section 21099, subdivision (b)(2), rendered the petitioner's traffic impact argument moot, because Guidelines section 15064.3 was certified in late 2018. (*Id.* at pp. 625-626.)

The Court agreed and found that even though Guidelines section 15064.3 applied prospectively, Public Resources Code section 21099, subdivision (b)(2), provided that upon certification of Guidelines, "automobile delay, as described solely by level of service or similar measures of vehicle capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." (*Citizens for Positive Growth, supra*, 43 Cal.App.5th at pp. 625-626.) The Court stated:

In mandamus proceedings like this one, "the law to be applied is that which is current at the time of judgment in the appellate court." [Citations omitted.] Under section 21099, subdivision (b)(2), existing law is that "automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be considered a

significant impact on the environment” under CEQA, except for roadway capacity projects. Accordingly, the 2035 General Plan's impacts on LOS (i.e., automobile delay) cannot constitute a significant environmental impact, as Citizens argues, rendering Citizens’ traffic impacts argument moot. ...

(*Citizens for Positive Growth, supra*, 43 Cal.App.4th at p. 626.)

Thus, *Citizens for Positive Growth* rejected the precise position advanced by petitioners in this litigation.

Here, the Draft EIR was drafted shortly before the revisions to Guidelines section 15064.3 were finalized, and recognized the then-proposed revisions would establish new criteria to replace the LOS methodology with metrics related to vehicle miles traveled (“VMT”). (AR 1449.) However, the Draft EIR also proceeded with its use of the LOS methodology on the ground that the then-pending legislation to revise Guidelines section 15064.3 “[did] not preclude the application of local general plan policies, zoning codes, conditions of approval, or any other planning requirements.” (*Id.*) The Final EIR, drafted in April 2019, did not revise the traffic analysis in the Draft EIR or otherwise address the adoption of the VMT methodology in the revision to Guidelines section 15064.3. (AR 280-297.) As a result, since the EIRs evaluated traffic as an environmental impact using the LOS methodology, the court cannot make a determination regarding the traffic analysis because this methodology is no longer valid.

Here, unlike *Citizens for Positive Growth*, Guidelines section 15064.3 is now in effect statewide, mandating VMT analysis. Even so, there is no basis to apply it retroactively to the Project because Guidelines section 15064.3, subdivision (c), explicitly states that

it applies prospectively.<sup>17</sup> As a result, since Guidelines section 15064.3 is prospective and did not require CDCR to use the VMT criteria at the time the Final EIR was certified, the petition is denied as to the fifth cause of action.<sup>18</sup>

#### **F. Opportunity for Comment on Air Quality Analysis (Sixth Cause of Action)**

Petitioners contend the Draft EIR should have been recirculated because the public did not have an opportunity to comment on a new analysis of air quality issues included in the Final EIR. (AR 285-291.) According to petitioners, CDCR's analysis results in two newly identified significant impacts and a new mitigation measure. (AR 287-290, 1360-1361.)

If significant new information is added to an EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for review and comments. (*Pub. Res. C. § 21092.1*; Guidelines § 15088.5; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447.) New information is considered "significant" if it would change an EIR "in a way that deprives the public of meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible

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<sup>17</sup> This conclusion begs the question about what traffic impact analysis, if any, should be provided in the eighteen-month gap between December 28, 2018, the date of certification of Section 15064.3, and July 1, 2020, the date of mandatory prospective application. Nevertheless, binding precedent has concluded that as a result of certification of Guidelines section 15064.3, traffic congestion "shall not be considered a significant impact on the environment" for purposes of CEQA except as specifically identified in the Guidelines, which only permits the analysis for roadway capacity projects. (*Citizens for Positive Growth, supra*, 43 Cal.App.5th at p. 626.)

<sup>18</sup> Public Resources Code section 21099, subdivision (b)(3), provides that subdivision (b) does not relieve a public agency of analyzing a project's "potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation." Therefore, the traffic analysis may still be relevant to these other issues. However, petitioners' challenge regarding air quality impacts did not pertain to the substantive analysis, but rather, to the question of whether the Final EIR should have been recirculated so the public could have had an opportunity to comment on a new analysis of air quality issues. (AR 285-291; see, *infra*, Ruling, Section III.F.) But in and of itself, the traffic analysis cannot serve as an environmental impact for this Project.

way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (Guidelines § 15088.5(a).)

Nevertheless, "[r]ecirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Guidelines § 15088.5(b).)

Examples of "significant new information" requiring recirculation include disclosures showing: (1) a new significant environmental impact would result from the project or from a new proposed mitigation measure; (2) a substantial increase in the severity of an impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure that is considerably different from those previously analyzed would clearly lessen the significant impacts of the project, but the project proponents decline to adopt it; or (4) the draft EIR was so fundamentally inadequate that it precluded meaningful public review and comment. (Guidelines § 15088.5(a); see also *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1130 ("*Laurel Heights II*").)

"A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record." (Guidelines § 15088.5(e).) Therefore, in deciding whether the CDCR properly determined recirculation of the Final EIR was unnecessary, the Court must determine whether the record as a whole contains substantial evidence to support CDCR's conclusion that "significant new information" was not added to the document. Substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a

conclusion, even though other conclusions might also be reached.” (Guidelines, § 15384(a).) Under this standard, CDCR’s decision is presumed to be correct, and petitioners bear the burden of demonstrating that the determination is not supported by substantial evidence. (*Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 903.)

CDCR was not required to recirculate the EIR. The Final EIR included updated modeling for air quality and other analyses based on the project’s increased square footage to determine whether revisions to the impact determinations were warranted. (AR 131, 344-440.) In applying the updated modeling, CDCR found that site preparation for the project will generate 6.1 pounds per day of respiratory particulate matter emissions, slightly exceeding the 6 pounds per day localized threshold of significance. (AR 131, 152.) As a result, the revised air quality analysis also contains a new mitigation measure suggested by the Southern California Air Quality Management District (SCAQMD). This mitigation measure would reduce the new impact below the level of significance to 4.7 pounds per day of emissions. (AR 150-153, 280-295, 1302.) The Final EIR states that CDCR will implement the mitigation measure. (AR 153.)

Although the Final EIR includes a new impact in the air quality analysis, the Guidelines state that recirculation is required “*unless mitigation measures are adopted that reduce the impact to a level of significance.*” (Guidelines § 15088.5(a)(2).)

Recirculation is required only if the mitigation measure meets all of the following criteria: (1) it is feasible, (2) it is considerably different from the mitigation measures already evaluated in the draft EIR, (3) it would clearly lessen the project’s significant environmental impacts, and (4) it is not adopted. (See, *South County Citizens for Smart*



*Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330.) Petitioners have failed to meet their burden to show that recirculation was required.

Therefore, the petition is denied as to the sixth cause of action.

### **G. Analysis of Water and Wastewater Issues<sup>19</sup>**

#### *Waste Water*

Petitioners claim the inadequate baseline description makes it impossible to determine if the facility will be connected to CIM's on-site septic system or to the public sewer system operated by Chino and the Inland Empire Utilities Authority. There are only limited connections to the sewer system, and CDCR did not evaluate additional service options. Petitioners also claim CDCR did not address existing deficiencies in CIM's septic system.

The arguments are unsupported. The Draft EIR states, "CIM, including the proposed [facility] site, is currently served by potable water, wastewater conveyance and treatment ... and solid waste services." (AR 1328.) Wastewater treatment is handled by CIM's on-site wastewater treatment plant, which is operated in accordance with the applicable waste discharge requirements adopted by the Santa Ana Regional Water Quality Control Board. (AR 1466.) Treated wastewater is discharged to percolation ponds, where water is reclaimed for irrigation of on-site agricultural fields. (AR 1466.)

The Final EIR's response to comments states that there is adequate capacity in CIM's existing wastewater treatment plant, CIM is in compliance with all applicable

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<sup>19</sup> The Opening Brief does not address the Eighth Cause of Action (inadequate analysis of stormwater impacts). The issue is apparently abandoned.

waste discharge requirements, and therefore, “[t]here would be no need to connect [the facility] to the [sewer system] ....” (AR 172.)

While the Draft EIR acknowledges that construction of the facility would result in “increased generation of wastewater flows associated with 50 inmate-patients and associated staff” (AR 1428), the proposed facility “would have separate service lines connecting to existing domestic water and sanitary sewer lines, each located within Facility D ....” (AR 1330.) The Summary of Impacts and Mitigation Measures states that based on wastewater generation rates at other CDCR facilities, CDCR concluded the CIM facility would generate approximately 6,500 gallons per day, resulting in a total wastewater treatment demand of 0.8365 million gallons per day. (AR 1312 (Impact 4.11-2).) Since the maximum capacity of CIM’s wastewater treatment plant is 1.69 million gallons per day and currently has an average flow rate that is approximately half the permitted capacity, the summary concludes that the project “would not cause exceedance of the [Waste Water Treatment Plant] treatment capacity.” (AR 1312; see *also*, AR 1328, 1466.)

The Draft EIR also determines that continued compliance with the applicable waste discharge requirements “would ensure that water from the proposed [facility] would not enter surface waters and any entering the groundwater basin would not contaminate aquifers,” and therefore, no mitigation was required. (AR 1428.) The Draft EIR also concludes that “no construction of new wastewater treatment facilities or expansion of existing facilities would be needed.”<sup>20</sup> (AR 1469.)

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<sup>20</sup> To the extent petitioners contend the inadequate baseline description influences the adequacy of the wastewater treatment analysis, the determination that “no expansion of existing facilities is needed” suggests that the current condition of the septic system is sufficient and does not require any updates or repairs.

Based on this discussion in the record, there is substantial evidence showing that the analysis of the current wastewater capacity and the project's wastewater impacts is adequate.

*Water Needs and Impacts to Groundwater*

Petitioners claim the analysis of additional water needs due to the project is insufficient, and that the analysis of potential groundwater impacts had too short a time-horizon.

CDCR, however, explains that CIM overlays the adjudicated Chino Groundwater Basin. The State and petitioners are parties to that judgment. As a member of the Overlying Agricultural Pool, CDCR shares rights to the Basin's annual "Safe Yield" of 82,800 acre-feet, and any additional water needs generated by the facility would be met through groundwater produced pursuant to these rights. (AR 1424-1425, 14405-14407, 14454.) CDCR explains that the Basin's governance documents, including the judgment parties' "Peace Agreement," the "Optimum Basin Management Plan," and the "State of the Basin Reports" dictated the EIR's Year 2035 time-horizon. (AR 1429-1430, 5911-5989, 11419, 11498-11571.100.) Because the facility would not adversely affect the Basin's annual Safe Yield, the project would not cause substantial depletion of groundwater resources through 2035. (AR 1429-1430, 5911-5989, 11419, 11498-11571.100.)

CDCR concluded that projection *beyond* 2035 would be too speculative. (AR 172, 1429-1430.) When no accepted methodology exists to assess an environmental impact, the lead agency may properly conclude that that the impact is too speculative to reliably evaluate it. (See, e.g., *Laurel Heights II*, *supra*, 6 Cal.4th 1112, 1137.) Courts

should uphold EIRs if the failure to analyze future long-term impacts is due to unknown or unknowable factors. (See, e.g., *Alliance of Small Emitters/Metals Industry v. South Coast Air Quality Mgmt. Dist.* (1997) 60 Cal.App.4th 55, 67.)

Petitioners have failed to demonstrate that it was improper for CDCR to rely on the detailed findings in the Basin's governance documents by refusing to speculate beyond the 2035 time-horizon. The analysis of the water and wastewater issues in the EIRs is adequate. Therefore, the petition is denied as to the seventh cause of action.

#### **H. Decision to Locate the Project at the CIM (Tenth Cause of Action)**

Petitioners contend CDCR's decision to locate the project at CIM was "arbitrary and capricious" because it "disregards public safety and peace of mind" due to the changed character of the surrounding community and continuing infrastructure and security issues. (Opening Brief, 27:10-14.) Petitioners cite no authority and provide no substantive argument in support of this assertion. A point merely asserted without authority for the proposition is deemed without foundation and requires no discussion. (See *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1281.)<sup>21</sup> Therefore, the petition is denied as to the tenth cause of action.

## **IV**

### **Conclusion**

For the reasons explained above, the petition is granted on two grounds: (a) The description of baseline conditions is inadequate; and (2) The analysis of alternatives is inadequate. All other grounds for the petition are denied. Counsel for the City of Chino

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<sup>21</sup> Despite being the subject of a separate cause of action, it may be that the issue is subsumed in the analysis of alternatives, discussed *supra* at § III-C.

is ordered to prepare and circulate a proposed writ and judgment to all counsel, and then submit it to the Court along with any objections to the wording.

Dated: June 24, 2021

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David Cohn  
Judge of the Superior Court