

No. S219783

**IN THE SUPREME COURT OF CALIFORNIA**

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SIERRA CLUB, REVIVE THE SAN JOAQUIN and LEAGUE OF  
WOMEN VOTERS OF FRESNO,

Plaintiffs-Appellants,

v.

COUNTY OF FRESNO  
Defendants-Respondent,

FRIANT RANCH LP, et al.,  
Real Parties in Interest-Respondent.

SUPREME COURT  
FILED

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

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

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**ANSWER BRIEF ON THE MERITS**

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## I. INTRODUCTION

Plaintiffs and Appellants Sierra Club, Revive the San Joaquin and League of Women Voters of Fresno (collectively, "Sierra Club") claim that the County of Fresno ("County") abused its discretion within the meaning of Public Resource Code § 21168.5<sup>1</sup> because it failed to prepare the environmental impact report ("EIR") for the Friant Community Plan and the Friant Ranch Specific Plan Project (the "project") in compliance with the legal standards for information disclosure mandated by the California Environmental Quality Act ("CEQA")<sup>2</sup>, and because it failed to impose enforceable mitigation as required by CEQA.

In order to avoid full compliance with CEQA, Real Party in Interest and Respondent, Friant Ranch L.P., ("Friant Ranch") has transformed this case into a vehicle for proposing a major change in the standard of review. What Friant Ranch proposes would eliminate independent judicial scrutiny when courts are asked to determine the sufficiency of an EIR as an informative document. It also proposes a major change in the legal standards for information disclosure and mitigation if a project impact cannot be mitigated to less-than-significant. Sierra Club urges this Court to reject Friant Ranch's attempt to use this Court to accomplish a major overhaul of the law that CEQA's foes have been unable to accomplish through a vote of the State Legislature.

CEQA is intended to protect, maintain, preserve and enhance the health of the environment for the people of the State of California. Pub. Resources Code §§ 21000, 21001, 21002, 21002.1; CEQA Guidelines § 15003<sup>3</sup>. CEQA's fundamental objective is to "compel government at all levels to make decisions with environmental consequences in mind." Guidelines § 15003. Of particular

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise indicated.

<sup>2</sup> Public Resources Code, section 21000 et seq.

<sup>3</sup> The CEQA Guidelines (hereafter, "Guidelines") are codified in California Code of Regulations, title 14, section 15000 et seq.



importance in this case is that the State Legislature has explicitly stated that it is the policy of the State to "[t]ake all action necessary to provide the people of this state with clean air." § 21001 (b).

CEQA's mandated procedures are intended "to assist public agencies in *systematically identifying* both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects" on the environment. § 21002 (italics added). Central to accomplishing this objective is the legislative mandate that all local agencies must prepare an environmental impact report ("EIR") on any project they intend to carry out or approve whenever a fair argument can be made that a project or activity will have a significant impact on the environment. § 21151. An EIR is an informational document. Its purpose is "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." §§ 20161, 21002.1. The EIR serves the legislative mandate "that the public be fully informed as to the environmental consequences of action by their public officials." *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 404 ("*Laurel Heights I*").

This Court's first opinion to interpret CEQA, *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247 ("*Mammoth*"), declared that the role of an independent judiciary in enforcing CEQA's legislative mandates is "to assure that important environmental purposes, heralded in legislative halls, are not lost or misdirected in the vast hallways of administrative bureaucracy." *Id.* at 254. Independent judicial scrutiny serves to ensure that CEQA is "scrupulously followed" so that "the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees." *Laurel Heights I, supra*, 47 Cal.3d at 392. Only through the exercise of independent judgment in determining whether an EIR complies with CEQA's

legal standards "can a subversion of the important public purposes of CEQA be avoided, and only by this process will the public be able to determine the environmental and economic values of their elected and appointed officials, thus, allowing for appropriate action come election day should a majority of the voters disagree." *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842; *see also Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 823 ("Santiago") ["[w]e must be satisfied that the County has fully complied with the procedural requirements of CEQA, because only in this way 'can a subversion of the important public purposes of CEQA be avoided.'"]

The exercise of independent judgment ensures that the public is not misled as to the reality of the impacts because a public agency has employed the wrong legal standard and chosen a methodology that precludes full consideration of actual environmental impacts. *Comtys. For A Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 322 ("CBE") ["An approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent."] Independent judicial scrutiny helps to ensure that an EIR does not simply ignore a problem with potentially catastrophic environmental consequences or assume a solution to the problem will be found. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431 ("*Vineyard*"). Review by an objective and independent judiciary increases the likelihood that data in an EIR is not only sufficient in quantity, but also "presented in a manner calculated to adequately inform the public and decision makers." *Id.* at 442.

When a petition for writ of mandamus claims that an agency has not complied with CEQA, the reviewing court must determine whether there has been a "prejudicial abuse of discretion." § 21168.5. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." *Ibid.* When determining whether an agency has proceeded in the manner required by law a

reviewing court exercises its independent judgment, because the claim presents a legal issue. *Vineyard, supra*, 40 Cal.4th at 426-427. Whether the preparer of an EIR has applied the correct legal standard presents a legal issue. *Ebbetts Pass Forest Watch v. Cal. Dep't of Forestry And Fire Prot.* (2008) 43 Cal.4th 936, 954 (“*Ebbetts Pass*”). And, it is the “*quintessential judicial duty*” of a reviewing court to apply its “independent judgment de novo to the merits of the *legal* issue before it.” *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8 (“*Yamaha*”) (italics added).

By contrast, when a petition claims that an agency's determination or decision is not supported by substantial evidence, “the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [finding].” *W. States Petroleum Ass'n v. Super. Ct.* (1995) 9 Cal.4th 559, 571 (“*WSPA*”). For CEQA purposes, “substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” § 21080 (e). “Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.” *Id.*

Sierra Club's claims present straightforward legal issues regarding whether the EIR's discussion and consideration of significant air quality impacts and measures to mitigate those impacts complies with CEQA's standards for information disclosure. Specific legal standards for these discussions are set forth in Guidelines § 15126.2 (a) (“Consideration and Discussion of Significant Environmental Impacts”) and Guidelines § 15126.4 (“Consideration And Discussion Of Mitigation Measures Proposed To Minimize Significant Effects”). Sierra Club also claims that the County impermissibly deferred the formulation of enforceable mitigation measures in violation of CEQA's standards for mitigation. § 15126.4.

The Court of Appeal exercised its independent judgment and determined that the EIR's significance analysis and its discussion and consideration of

mitigation measures did not comply with the law. The appellate court also determined that the County failed to impose enforceable mitigation and impermissibly deferred the formulation of mitigation measures without performance standards. The Court of Appeal agreed with Sierra Club that the County's failure to comply with CEQA's legal standards for information disclosure was prejudicial because it deprived the public and the Fresno County Board of Supervisors ("Board") of substantial relevant information about the magnitude of potential health problems associated with massive project-generated criteria air pollutant emissions.

Friant Ranch proposes a new interpretation of § 21168.5's abuse of discretion standard that would have this Court review the determination of a lead agency that it has proceeded in the manner required by law for substantial evidence. In other words, the same standard that applies to the agency's factual findings and factual determinations would apply to its determination that an EIR is legally sufficient as an informative document. This is contrary to the legal principle that "the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA." *Ass'n of Irrigated Residents v. County of Madera* (2003) 107 Cal. App. 4th 1383, 1392; *Vineyard, supra*, 40 Cal.4th at 426-427.

Under Friant Ranch's radical interpretation of the standard of review, a lead agency has the final say with regard to whether those who prepared an EIR complied with the legal standards for information disclosure, discussion and consideration; lead agencies interpret CEQA and its guidelines; and, when the language of a statute or regulation is subject to more than one meaning, the lead agency decides what to discuss and consider in an EIR; the Court cannot pass upon whether the EIR complies with CEQA's information disclosure requirements if the information provided is "sufficient." And, according to Friant Ranch, the courts do not have the subject matter expertise to decide what is "sufficient."

Sierra Club urges the Court to reject this reconstruction of CEQA's enforcement framework because it eliminates the vital role of an independent

judiciary in ensuring that lead agencies scrupulously comply with CEQA's information disclosure requirements. Friant Ranch's argument is not tethered to an expression of legislative intent and it ignores CEQA's fundamental purposes. The argument is based upon fundamentally flawed interpretations of many opinions wherein this Court exercised independent judgment when the issue concerned the sufficiency of an EIR as an informative document. Friant Ranch misconstrues the principles associated with the separation of powers doctrine in a manner that would have reviewing courts abdicate their constitutional judicial obligation to exercise independent judgment when determining whether a lead agency has complied with the law. *See Yamaha, supra*, 19 Cal.4th at 8.

Under Friant Ranch's proposed standard of review, the public can have no confidence that a lead agency has adopted an interpretation that ensures that an EIR serves its purpose as an informative document or that the lead agency has, "in fact, analyzed and considered the ecological implications of its action." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86. Fortunately, as discussed below, there is a wealth of California Supreme Court precedent that disposes of this attempt to subvert the authority of the both the State Legislature and State judiciary.

Sierra Club also urges the Court to reject the proposition that CEQA's legal standards for information disclosure and enforceable mitigation measures be less demanding when a significant adverse impact cannot be reduced to less-than-significant. According to Friant Ranch's interpretation of CEQA, the Legislature did not intend to protect the environment or to inform the public and decisionmakers about a project's significant adverse impacts unless those impacts can be avoided. This interpretation is unsupported. As with its standard of review argument, Friant Ranch cites no statutory language or expression of legislative intent to support such a radical policy shift.

## **II. ISSUES PRESENTED FOR REVIEW**

This Court granted review to consider the following issues regarding the standard of review for determining whether an agency has abused its discretion within the meaning of Public Resources § 21168.5:

Issue No. 1: In determining whether a general discussion of significant air quality impacts measures up to CEQA's legal standards, does the Court exercise its independent judgment or must the Court apply the deferential substantial evidence standard of review to the determination by those who prepared the EIR that a general discussion is sufficient? Summary Answer: The Court must exercise its independent judgment in determining whether a general discussion of significant air quality impacts is sufficient to comply with CEQA's legal standards.

Issue No. 2: Does a one-paragraph general discussion of the health problems typically associated with criteria air pollutant emissions satisfy CEQA's legal standard for what must be analyzed and explained in an EIR's consideration and discussion of a project's significant air quality impacts? Summary Answer: No, a general discussion of the health problems associated with criteria pollutant emissions does not satisfy CEQA's legal standards for a significance analysis.

Issue No. 3: Does a general discussion of mitigation measures without performance standards for measuring effectiveness satisfy CEQA's legal standards for what must be included in an EIR's consideration and discussion of how significant environmental effects will be mitigated? Summary Answer: No, a general discussion of mitigation measures without identifying performance standards to assess the effectiveness of mitigation does not satisfy CEQA's legal standards for the consideration and discussion of mitigation measures.

Issue No. 4: Are the legal standards for mitigation different when a significant environmental impact cannot be reduced to less-than-significant? Summary Answer: The legal standard for measuring the sufficiency of an EIR's discussion and consideration of mitigation measures and the substantive standards for mitigation are the same regardless of whether a project's significant environmental impacts will be reduced to less-than-significant.

### **III. STATEMENT OF THE FACTS**

Friant is a small, rural residential community located in the foothills nine

miles north of the city limits of Fresno, just below Friant Dam and Millerton Reservoir. AR<sup>4</sup> 798, 5367, 5369, 5372, 5614, 9490, 21860. In 2000, when there were 236 residences and 519 people living within the existing Friant Community Plan area, the County determined it was “built out.” AR 365, 1022, 5371, 14314. According to the current community plan, Friant’s urban growth area can only accommodate another 367 residents. AR 1023, 4706, 5028. On completion of the proposed project, Friant will expand from a rural village of at most 800 people to an urban village of 5,000 to 7,000 people. AR 1, 539, 5370.

The project is located far from employment centers and is not served by public transit because its remote location makes transit economically infeasible. AR 1041, 4677. Consequently, residents, employees and visitors will rely on their cars to commute to and from the project area. AR 5389. It is undisputed that the project will generate criteria air pollutant emissions far in excess of the standards set by the San Joaquin Valley Air Pollution Control District (“Air District”), primarily as a result of the increased vehicle trip length and number of vehicle miles traveled (“VMT”) associated with the project.

Using URBEMIS software to estimate area and operational emissions for the project, the draft EIR (“DEIR”) forecast that the project will generate over 190 tons every year of reactive organic gases (“ROGs”). AR 818, 821, 4619. The Project’s ROG emissions are 19 times above the Air District thresholds, which conclude that a project will have a significant adverse impact on air quality if ROG emissions exceed just 10 tons per year. AR 807. The DEIR also forecast that the project will generate more than 102 tons of nitrogen oxides (“NOx”), over 10 times above the Air District’s NOx significance threshold of 10 tons per year. AR 818, 821, 807. NOx and ROGs are precursor emissions to the formulation of ozone. AR 802. Finally, a comment letter from the Air District pointed out that the threshold of significance for fine particulates (“PM10”) is 15 tons per year. AR 4296. The project will generate over 117 tons of PM10 per year at build out,

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<sup>4</sup> Citations to the Administrative Record are designated “AR”.

over 7 times above the PM10 threshold. AR 807.

Based upon the fact that emissions will violate Air District standards, the DEIR concludes that the project “will create a significant impact in regards to the area and operational emission content.” AR 824. The DEIR lists community and specific plan policies and goals that it claims will reduce the number and length of vehicle trips, but concludes there are no known additional feasible mitigation measures which will reduce the project’s air quality impacts to a less-than-significant level. AR 824.

The DEIR purported to address air quality impacts with proposed Mitigation Measure 3.3.2 (“MM 3.3.2”), which provides “guidelines” to be used by the County when approving future “non-residential development” in the project area “with intent that specified measures be required where feasible and appropriate.” AR 824. The guidelines provide for the careful selection and location of shade trees; utilization of efficient HVACs “if economically feasible”; and installation of two 110/ 208 volt power outlets for every two loading docks. AR 824-825. According to MM 3.3.2, the County, in consultation with the Air District, will implement several measures “or equivalent measures” to reduce residential energy consumption by 10-20% and to promote bicycle usage. Additionally, “transportation related mitigation” in MM 3.3.2 includes providing trail maps, information about “commute options,” and information about Air District programs to “reduce county-wide emissions.” AR 172-73, 824-26, 4816-18. According to the DEIR, MM 3.3.2 will “substantially reduce air quality impacts related to human activity within the entire Project area, *but not to a level that is less than significant*” (AR 824 (emphasis added)), and not below the Air District’s thresholds. AR 826 (Effectiveness of Mitigation). Therefore, the project’s impacts on air quality would remain significant and unavoidable. AR 826.

The DEIR provided a one paragraph description of the typical adverse health effects associated with ozone and fine particulate matter (PM10 and PM2.5) emissions. AR 802-803. The DEIR’s analysis of the significance of the project’s air quality impacts does not discuss the connection between the high



levels of these pollutants that would be generated by the completed project and potential adverse health effects. AR 818-824. The DEIR's discussion of mitigation measures similarly failed to consider mitigating adverse health effects associated with project-generated emissions. AR 824-825.

During the public comment period, the DEIR's discussion of air quality impacts was criticized for failing to disclose the human health-related effects of the project's air pollution impacts as required by Guidelines § 15126.2(a). AR 4602. In response to this criticism, the final EIR ("FEIR") claims that the discussion complies with § 15126.2 (a) because it "provides a general discussion of adverse health effects associated with certain development related pollutants." *Ibid.*

The DEIR's discussion of mitigation and the measures proposed in MM 3.3.2 were criticized for being ambiguous, unenforceable and deferred. AR 4620, 4371. While seeming to concede the point, the FEIR claims that mitigation is not improperly deferred because *future applicants for development in the project area will be required to consult with the Air District and to comply with its requirements for mitigation.* AR 4621. The FEIR also seems to imply that measurable and enforceable mitigation is not required because criteria air pollutant emissions cannot be reduced to less-than-significant levels. *Ibid.*

During the Board's hearing on the project, a Supervising Air Quality Specialist with the Air District, Dan Barber, spoke at length to "reinforce" Air District concerns about the EIR and the magnitude of the project's violations at 10 and 20 times above the significance thresholds set by the Air District for an individual project. AR 8862-8864. Mr. Barber's objections included the County's failure to consider and require specific mitigation measures to reduce project-related impacts, as previously recommended by the Air District; the failure to consider the magnitude of potential health impacts from the development; the failure to adopt recommended design features that would reduce impacts; the lack of specificity for implementing mitigation measures; and the absence of a mechanism to trigger actual enforcement of mitigation measures. AR 8862-8867. Mr. Barber advised the County that several other development projects within the

San Joaquin Valley had been approved with mitigation measures imposed by the land use agency that required essentially *net zero air quality impacts*. He concluded that "it is feasible to do much better than what's being proposed here." AR 8866.

Mr. Barber encouraged the County to reconsider requiring specific design elements and enforceable mitigation measures to reduce project-generated emissions. AR 8863. He invited the County and Friant Ranch to meet with Air District staff to discuss how this could be accomplished. *Ibid*. Finally, contrary to the FEIR's contention, Mr. Barber explained to the Board that the Air District had no independent authority to impose mitigation measures on the project. "Earlier in the discussion, it was mentioned that the project would be subject to District Rule 9510 ISR and the district would... impose additional mitigation measures. *The district has no land use authority; has no ability to impose additional design elements and mitigation measures on the project.*" AR 8862-8863 (emphasis added).

The Board approved the project and certified the FEIR without any additional mitigations. The Board resolution certifying the FEIR includes a finding that "the FEIR is adequate and has been prepared and completed in compliance with CEQA and the State CEQA Guidelines." AR 8. The Board also found that "the FEIR reflects the independent judgment of the County." AR 9. With respect to the project's violations of Air District air quality standards, the Board simply made a finding that "there are no other feasible mitigation measures or alternatives that could be adopted that would reduce this impact to a less-than-significant level." AR 24. The Board adopted a statement of overriding considerations for the project's air quality impacts, citing the following "facts":

This mitigation measure would reduce the Project's potential to result in a significant impact on air quality to the greatest extent feasible by encouraging bicycle use and commute alternatives, and design guidelines encouraging reduced generation of air pollutants. However, this measure will not reduce this impact to a less-than significant level.....There are no additional feasible mitigation

measures or alternatives that could avoid or substantially lessen this impact. The County therefore finds that this impact is both significant and unavoidable. AR 24.

#### IV. STATEMENT OF THE CASE

Friant Ranch appeals from a judgment of the Court of Appeal ruling that the County abused its discretion within the meaning of § 21168.5 because (1) the EIR did not include a significance analysis that correlated the project's emissions of air pollutants to its impact on human health; (2) the mitigation measures are "vague, unenforceable and lack specific performance criteria"; and (3) the statement that the air quality mitigation provisions will *substantially* reduce air quality impacts is "unexplained and unsupported." Opinion p. 1.

The appellate court granted Sierra Club's petition for writ of mandate and directed the County to set aside its approval of the project and to prepare a revised EIR that "(1) contains an analysis of the adverse human health impacts that are likely to result from the air quality impacts identified in the EIR; (2) addresses the deficiencies concerning vagueness, enforceability and lack of specific performance standards in MM 3.3.2; and (3) addresses the issues related to the statement that those mitigation provisions will *substantially* reduce air quality impacts." Opinion, p. 65.

#### V. DISCUSSION

##### A. The Court Must Exercise Its Independent Judgment When Determining The Sufficiency Of An EIR As An Informative Document.

##### 1. **Whether An Agency Has Complied With CEQA's Information Disclosure Requirements Presents A Legal Issue.**

As stated previously, it is settled that a reviewing court exercises its independent judgment when determining whether an agency has proceeded in the manner required by law, because the claim presents a legal issue. *Vineyard*, supra, 40 Cal.4th at 426-427. More specifically, whether the preparer of an EIR has applied the correct legal standard presents a legal issue. *Ebbetts Pass*, supra, 43 Cal.4th at 954. It is the "quintessential judicial duty" of a reviewing court to

apply its "independent judgment de novo to the merits of the *legal* issue before it." *Yamaha, supra*, 19 Cal.4th at 8.

As noted above and discussed in more detail below, CEQA provides standards for determining whether an EIR is sufficient as an informative document. In determining that the County abused its discretion in this case, the Court of Appeal measured the EIR against those standards.

Friant Ranch eliminates any reference to the applicable legal standard and re-characterizes Sierra Club's claim as raising the issue of whether the information is "sufficient." Opening Brief On The Merits ("OBM") p. 11. From the outset, the argument is confusing and difficult to understand because it uses the quality of being "sufficient" without reference to a purpose or standard. The word "sufficient" has no meaning without a related purpose or standard. For example, a reviewing court determines the sufficiency of an EIR *as an informative document*. *Laurel Heights I, supra*, 47 Cal.3d at 392. An EIR is sufficient *as an informational document* if it complies with CEQA's information disclosure requirements, which presents a question of law. *Ibid*. Friant Ranch does not frame the issue as whether the EIR is sufficient as an informational document.

Instead, Friant Ranch proposes that when the sufficiency of an EIR's discussion of a required subject is challenged, the challenger should have the burden of proving: (1) that substantial evidence in the record as a whole does not support the agency's determinations and actions, including the choice of analytical methodologies; and (2) that any additional information the challenger insists should have been included was necessary for informed decisionmaking and public participation. OBM pp. 16-17. The second part of Friant Ranch's proposed test appears to be consistent with the standard of review in that the abuse of discretion by omission of required information in an EIR's significant impacts analysis "is deemed prejudicial if it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts." *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 463.

However, to the extent Friant Ranch contends that a claim concerning the omission of required information from an EIR should be treated as an inquiry into

whether there is substantial evidence supporting the decision to omit the information in the first place, their proposed test is inconsistent with the established standard of review. Friant Ranch conflates the two distinct inquiries a reviewing court makes when determining whether a lead agency has abused its discretion: (1) whether the agency failed to proceed in a manner required by law, and (2) whether the agency made a determination or decision that is not supported by substantial evidence. § 21168.5.

According to Friant Ranch's interpretation of the standard of review, whether the EIR's air quality analysis fails to comply with CEQA's legal standard as set forth in § 15126.2 (a) is irrelevant if the decision to provide a general explanation of adverse health effects typically associated with criteria air pollutants is supported by substantial evidence in the record. Friant Ranch cites the seminal discussion regarding the standard of review in *Laurel Heights I*, *supra*, 47 Cal.3d at 392-393, as support for this construction of § 21168.5. However, it fails to identify any language in that discussion that can be construed as requiring a reviewing court to defer to a lead agency's determination that an EIR is sufficient as an informative document. To the contrary, the *Laurel Heights I* court explains that "[a]s a result of [§ 21168.5], 'The court does not pass upon the correctness of the EIR's environmental conclusions, *but only upon its sufficiency as an informative document.*'" 47 Cal.3d at 392-393.

Friant Ranch's argument presumes that a court reviews *an agency's judgment or determination* that an EIR is sufficient. OBM, p. 12, 16. In point of law, the court reviews *the EIR de novo* to determine whether the agency has complied with CEQA's legal standards. *Vineyard, supra*, 40 Cal.4th at 435; *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1355 ("*Berkeley Jets*"), 91 Cal.App.4th at 1355 [inadequate or unsupported EIR studies entitled to no judicial deference]. Friant Ranch cites no authority for the proposition that the court reviews the agency's determination that the EIR is adequate and legally compliant.

Friant Ranch also cites no authority to support its assertion that reviewing courts consider the record as a whole to determine whether an EIR complies with