JOHN D. HIGGINBOTHAM (BAR NO. 204179)
Assistant City Attorney
DEAN DERLETH
City Attorney
CITY OF CORONA
400 S. Vicentia Ave.
Corona, California 92882
Telephone: (951) 279-3506
john.higginbotham@ci.corona.ca.us

Attorneys for Respondent and Defendant
CITY OF CORONA

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS (BAR NO. 149721)
HEATHER S. RILEY (BAR NO. 214482)
501 West Broadway, 15th Floor
San Diego, California 92101-3541
Phone: (619) 233-1155
Fax: (619) 233-1158
E-Mail: rfriess@allenmatkins.com
hriley@allenmatkins.com

Attorneys for Real-Party-in-Interest
ARANTINE HILLS HOLDINGS, LP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CREED-21 and DOES 1 through 10, Petitioners and Plaintiffs, vs. CITY OF CORONA and DOES 11 through 100, Respondents and Defendants.	Case No. RIC 1607635 ASSIGNED FOR ALL PURPOSES TO Judge Craig G. Riemer, Dept. 5 **JOINT OPPOSITION BRIEF OF RESPONDENT AND DEFENDANT CITY OF CORONA AND REAL-PARTY-IN-INTEREST ARANTINE HILLS HOLDINGS, LP** Complaint Filed: June 20, 2016
THE NEW HOME COMPANY, and DOES 101 through 1,000, Real-Parties-in-Interest.	

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

California Cases

JOINT OPPOSITION BRIEF

1. Introduction.

This case concerns specific plan approvals for a residential development project first granted by respondent and defendant City of Corona in 2012. The City's 2012 approvals followed a series of public hearings and the preparation and consideration of a nearly 4,500-page environmental impact report that included responses to numerous comments received about the project. Petitioner CREED-21, a self-appointed environmental watchdog, *never* commented on or objected to the 2012 approvals, *never* appeared at those hearings, and *never* sued. Now CREED-21 is hoping that some modifications to the original 2012 approvals open the door for a belated suit.

They do not.

CREED-21 fails to establish its claims both procedurally and on the merits:

(1) It fails to meet its burden of proof that it has exhausted its administrative remedies;

(2) It fails to meet its burden to show how the evidence in the thick record is insufficient to justify the City's determinations; and

(3) It fails to support its claims that (a) its due process rights have been violated; (b) a subsequent EIR was required; or (c) the City "hid[] from the public" the project's traffic or park impacts.

More specifically, while CREED-21 promises early in its brief that it will provide citations in each of its arguments evidencing that it exhausted its administrative remedies, CREED-21 actually addresses exhaustion in connection with *only* its first argument about traffic impacts. And in that one instance, the record support cited by CREED-21 is of a broad, generic objection that did not provide the City with a genuine opportunity during the administrative process to address the complaint CREED-21 now asserts and thus avoid litigation. Because CREED-21 failed to meet its burden related to its exhaustion of its administrative remedies, its suit fails on procedural grounds.

CREED-21 next fails to meet its burden to demonstrate to the Court why the evidence in the thousands of pages of the record is not sufficient to justify the City's determinations,

particularly since these determinations are presumed correct. It is fatal to CREED-21's suit that it has not walked the Court through the thick record to explain, for example, why the hundreds of pages of analysis of the traffic and park impacts do not constitute substantial evidence in support of the City's determinations.

Lastly, each of CREED-21's specific claims fails on the merits:

- **CREED-21 has dropped its due process claim:** In its petition, CREED-21 shouts that the City violated its due process rights by scheduling a City Council meeting on a night on which CREED-21 claims there were conflicting community events. Yet in its opening brief, CREED-21 drops this as a substantive argument. CREED-21 takes a slap at the City in its "Procedural History" section but provides no evidence that this purported scheduling conflict was other than a coincidence or that it prevented even one person from commenting on the project. Likewise, CREED-21 provides no law or argument in its opening brief to support any claim that the scheduling constituted a violation of due process by the City. Thus, CREED-21 has waived this argument.
- **No "subsequent" EIR was required:** CREED-21 claims that the City should have prepared a "subsequent" EIR instead of a "supplemental" EIR. But the courts have held that lead agencies, like the City, have the discretion to decide which of these two labels to use on their CEQA studies, noting that the procedural requirements are the same for either and that the courts are concerned with the substantive contents of the report, not the label. In that regard, CREED-21 has failed to identify any substantive analysis that might have been found in a "subsequent" EIR that does not exist in the supplement EIR. This qualifies as a pure form-over-substance argument.
- **The supplemental EIR served its informational purpose:** CREED-21 claims that somehow the supplemental EIR is invalid because it "hides from the public" the traffic impacts of the modifications. Specifically, CREED-21 complains that the supplemental EIR prevented the public from understanding that all of the

homes could possibly be built before the freeway interchange construction is complete. Not true. That nothing was hidden from the public is made obvious by the various commenters, including CREED-21, who remarked during the City's process on those exact traffic impacts related to the timing of the interchange improvements. For instance, CREED-21 quotes on page 5 of its opening brief an objection by a commenter to allowing "some or all of the homes to be built" before the interchange improvements are complete. If this issue were "hidden," how did this person know to comment? They knew because it is clear from the CEQA documents, which acknowledge "it is possible for the developer to construct additional residential units beyond 308 while the [interchange] project is being constructed." (AR 008757.) Moreover, CREED-21 fails to inform the Court of the context for the adjustment in the timing of the interchange improvements. Specifically, CREED-21 fails to tell the Court (1) that the City has required the developer to post bonds for the "full amount of the total estimated cost of the" interchange improvements *before* any building permits are issued, (2) that the project as modified will *reduce* by 11,000 the average daily trips as compared to the original project, (3) that the City has tied the construction of houses to specific milestones in the construction of the interchange improvements, and (4) that the City adopted a statement of overriding considerations that justifies the modifications to the approvals, even if some interim traffic impacts cannot be mitigated to a level of insignificance. With respect to these overriding considerations, the City made the policy decision that the developer's funding of 100 percent of the interchange improvements (which eliminates the need for the City and its citizens to wait on unidentified funding to materialize at an undetermined time in the future) justifies any interim traffic impacts until the interchange improvements are complete.

- **The original EIR and the supplemental EIR sufficiently address the traffic impacts:** In addition to the extensive traffic analysis in the original EIR (which

CREED-21 failed to challenge at the time), the supplemental EIR includes an extensive and detailed traffic study, along with staff and other expert analysis of the traffic implications of the modifications to the approvals. This was more than sufficient to constitute substantial evidence in the record to support the City's decisions on the traffic impacts. Additionally, as noted, the City made a finding of overriding considerations, explaining the rationale for the modifications even if all interim traffic impacts cannot be mitigated below a level of significance.

- **The original EIR and the supplemental EIR sufficiently address the park and recreation impacts:** The original EIR contained detailed analysis of the project's park impacts (which CREED-21, again, failed to challenge at the time) from a development with exactly the same number of residential units as the modified project. And the supplemental EIR thoroughly analyzes the impacts of the modifications to the project as they relate to parks. Specifically, in the original EIR the City noted that it had more parkland than it needed. In light of this excess of public parks, and with the project modified to increase the amount of open space by 20 acres and increase the amount of private parks by more than six acres, the City made the determination that its citizens would be better served if the City received additional in-lieu fees from the developer instead of more publicly maintained parkland because these fees will allow the City to ensure full development, operation, and maintenance of its existing parks. This policy decision was prudent and supported by substantial evidence.
- **The City complied with the Planning and Zoning Law:** At the end of its opening brief, CREED-21 throws in an argument that the City failed to comply with the Planning and Zoning Law. CREED-21 admits that the City made the necessary findings but claims that the City lacked substantial evidence to support its finding that the site is "suitable" for the development, arguing that the traffic impacts of the modified project make it unsuitable. CREED-21 conveniently ignores that the Planning and Zoning Law actually asks whether property is

"*physically* suitable for the type of development," i.e., can the development physically be built on the land? The answer is: "yes." A residential development can readily be built on land like this, just as neighboring properties have had houses built on them. CREED-21 points to no evidence that the development is not physically possible. In any event, the record, including the original EIR and the supplemental EIR, are full of diagrams and other evidence showing that the land is "physically suitable" for this development, so the City's decision is supported by substantial evidence.

2. Statement of Facts.

A. The Original Project.

Following years of environmental studies and administrative review, the City first approved the Arantine Hills Specific Plan and granted associated approvals in August 2012. (AR 000007-000162.) Those approvals authorized the development of up to 1,806 residential units, along with 745,300 square feet of general commercial and industrial uses. (AR 000044.)

B. The Original CEQA Review Process.

(1) The Original CEQA Studies.

The environmental processing of the Arantine Hills Specific Plan traces back to at least 2009, when the then-owner of the property made an application for the Arantine Hills Specific Plan. Recognizing that an EIR was clearly required for the project, the City circulated a notice of preparation in 2010 to solicit public comments on the scope of the issues to be examined in the EIR. (AR 000007-000008; 000923-000924.)

The draft EIR ultimately consisted of 4,249 pages and included sections on aesthetics, agricultural resources, air quality, biological resources, cultural and paleontological resources, geology and soils, climate change and greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation and parks, transportation and traffic, and utilities and service systems. (AR 000915.)

The draft EIR also referenced scores of other studies and reports, including those on air quality, biological resources, cultural resources, geotechnical issues, greenhouse gas emissions, water quality and drainage, traffic analysis, and water supply. (AR 001441-001446.)

Once the draft EIR was complete, the City circulated it for public comment. (AR 000008.) Ultimately, 15 comment letters were received, covering a range of topics. (*Ibid.*; AR 005168-005169.) Each of those comments was addressed in the final EIR. (AR 005168-005254.) The completion of the final EIR was then publically noticed. (AR 000007-000162.) That final EIR, with the incorporated draft EIR, amounted to nearly 4,500 pages, plus references to countless further analyses. (AR 000911-005343.)

(2) The City's Analysis of the Traffic Impacts.

Included in the draft and final EIR is a lengthy discussion of the traffic impacts of the project, which, in turn, is supported by two thorough traffic studies by a professional traffic engineer. (AR 001349-001386; 004037-004724; 004725-004803; 005179-005181; 005185-005186; 005192; 005200-005202; 005233; 005269-005276; 005291-005296; 005321-005327.)

Ultimately, the traffic analysis concluded that there would be significant traffic impacts, but the impacts would be mitigated through various traffic improvement projects to be completed or funded in part or in whole by the developer, including freeway interchange improvements. (AR 005179-005183.)

(3) The City's Analysis of the Park Impacts.

Included in the draft and final EIR is a detailed discussion of the impact of the project on parks and recreation. (AR 001331-001348.) The conclusion reached was that the City has adequate parks – in fact a surplus of parkland – and that the project would set aside land for public and private parks as well as open space. Paired with the fact that the developer would pay park fees, the City determined that there would be no significant impact to parks and recreation. (AR 001338.)

(4) The Hearings.

The Arantine Hills Specific Plan project was vetted through public hearings:

- Planning and Housing Commission: July 23, 2012 (AR 009740-009758); and

- City Council: August 15, 2012 (AR 010998-011007).

Ultimately, both of these bodies approved the project and the CEQA analysis. (AR 000175-00439.) And as part of that approval process, the City made specific determinations that overriding considerations justified the project. (AR 000001-000006; 000007-000162; 000789-000910.)

(5) No Participation by CREED-21 in the Original Process and No Suit Challenging the Original Approvals.

CREED-21 did not participate in any part of the 2012 approval process (see, e.g., AR 011002-011003 [minutes of City Council hearing] and did not object or otherwise comment on the original EIR (AR 005168-005169 [response to comments]). Additionally, CREED-21 never filed suit challenging the original approvals. (See, e.g., AR 010192-010199 [staff report outlining history of the project with no mention of a suit].)

C. The Modifications to the Project.

Eventually, the Arantine Hills Specific Plan project was acquired by real-party-in-interest Arantine Hills Holdings, LP (whose general partner is the New Home Company). (See AR 000440.) Real-party-in-interest then sought some modifications from the City related to the project. (*Ibid.*)

One of the most substantial modifications that real-party-in-interest sought was a huge reduction in the amount of commercial and industrial development to be built, cutting it back by nearly 90 percent, from 745,300 square feet to 80,000 square feet. (AR 005822-005823.) This resulted in a reduction in the traffic the development would generate by nearly 11,000 average trips per day. (AR 000566, 008726.) This reduction in trips enabled a first phase of the modified project (approximately 308 residential units) to be built without triggering significant impacts to the freeway interchange. (AR 005952-005953.)

Another critical modification was that the real-party-in-interest agreed to front 100 percent of the cost of the needed freeway interchange improvements, even though this developer's "fair-share" allocation of these improvements was only 32.5 percent. (AR 000566; 005929; 005957.) Specifically, the approvals required that the developer shall ensure the funding of the

improvements by making advance payments for pre-construction work, posting bonds for 100 percent of the cost of the interchange improvements prior to issuance of even the first building permit for Phase 1 of the project and making periodic payments throughout the construction of the improvements to cover all of the costs of such construction. (AR 000588-000590; 008755-008757.) This modification to the project meant that the City and its citizens would not have to wait for the funding for the interchange improvements to come from an unknown source at an unknown future time – and that the City and its citizens would not have to bear any of the costs of these improvements. (*Ibid.*; AR 000567.) For the developer, this meant that once construction on the freeway interchange improvements begins, it can begin to build, and eventually have occupied, houses, without having to wait for final completion of the interchange project. (*Ibid.*) But the timing of the housing construction is controlled by a carefully devised phasing plan to ensure that the development did not get too far ahead of the interchange improvements, with the phasing tied to specific construction milestones for the interchange improvements. (AR 000588-000590.) Specifically, the updated traffic study approved by the City concluded that Phase 1 can be built and occupied without creating an unacceptable level of service on the existing interchange. (AR 008756.) Subsequently, the City can start issuing building permits for Phase 2, which consists of up to 600 residential units, following the commencement of construction of the interchange improvements; for Phase 3, which consists of up to 390 residential units, when 50 percent of the construction contract amount has been expended; and for Phase 4, which consists of up to 508 residential units, when 95 percent of the construction contract amount has been expended. (AR 000716-000717; 000748-000749.)

Other modifications to the originally approved project included:

- A decrease in the amount of land to be developed from 206.9 acres in the original project to 194.2 acres in the modified project (AR 005817);
- An increase in the amount of private parks from 2.1 to 8.7 acres (AR 000735; 008753);

- A reduction in the amount of public parks from 13.1 acres to 1.92 acres of public trails in exchange for the payment of park in-lieu fees that the City will utilize on a number of its existing parks (AR 000735; AR 008753); and
- An increase in the amount of open space from 36.6 acres to 56.8 acres.

(AR 005817, 005823, 008697-008698.)

Totaled, the change in acres of public/private park and open space went from 51.8 acres in the original project to 65.5 acres in the modified project, a net *increase* of almost 14 acres. (AR 005817, 008697-008698.)

(1) The Additional CEQA Studies for the Modified Project.

The request for these modifications to the original project led to further CEQA analysis by the City. (See, e.g., AR 005798-008689.) Specifically, the City ultimately concluded that a supplemental EIR was required because of the changes in the project. (AR 000700; 011406.)

Work on that supplemental EIR began in 2015, with a 2,892-page draft supplemental EIR completed in 2016. (AR 005798.) The draft supplemental EIR was circulated for public comment. (AR 008748.) Numerous comments were received – but none from CREED-21. (See AR 008749-008750 [response to comments].) The comments were responded to in detail in connection with the preparation of the final supplemental EIR. (AR 008748-009027.)

With regard to traffic impacts, the final supplemental EIR concluded that many impacts would be mitigated, but others could not, and the City ultimately concluded that overriding considerations justified approval of the project even though certain interim traffic impacts could not be mitigated below a level of significance (for example, because houses beyond Phase 1 could be built before completion of the interchange improvements). (AR 000564-000567; 008755-008757.) The City found a number of specific benefits of the project with regard to traffic relief:

- The Proposed Project will provide full funding of the total cost of needed improvements to the I-15/Cajalco Road Interchange prior to the issuance of a building permit for the first production residential unit, even though the Proposed Project is only responsible for 32.5 percent of the cost associated with the construction of such improvements. (DSEIR at p. 2-17 and 2-18.)

- The Proposed Project which will result in substantial local and regional circulation benefits significantly earlier than would otherwise happen if the City were to wait for local, regional, State, or Federal funds. (DSEIR at p. 2-18.)

(AR 000566-000567.) As the final supplemental EIR further explained:

> The proposed project will facilitate a solution to the immediate concerns of the area circulation by financing improvements to the Cajalco interchange. Since it is possible for the developer to construct additional residential units beyond 308 while the Cajalco Interchange Project is being constructed and other circulation improvements are being implemented, there may be some short term significant impacts. However, the ultimate result will be an improvement in overall traffic circulation in the community sooner rather than later as a result of the Proposed Project.

(AR 008757.)

With regard to park and recreation impacts, the City ultimately concluded:

> **O. RECREATION AND PARKS**
>
> Implementation of the Proposed Project in combination with cumulative projects in the area would increase use of existing parks and recreation facilities. However, as future residential development is proposed, the City will require developers to provide the appropriate amount of parkland in addition to paying the in lieu fees, which will contribute to future recreational facilities. Payment of these fees and/or implementation of facilities on a project-by-project basis would offset cumulative parkland impacts by providing funding for new and/or renovated parks equipment and facilities. The Proposed Project, just as the Previously Approved Project analyzed in the Certified EIR, would provide park and open space amenities. In addition, the City currently has a surplus of parkland. Therefore, the Proposed Project would not have a cumulatively significant impact to park and recreation facilities. (DSEIR at p. 3-94.)

(AR 000558.)

(2) The Additional Hearings and CREED-21's Limited Participation.

Again, the City held a series of meetings and public hearings related to the modification to the project. (AR 009801-009802.) Those included:

- Infrastructure Committee: January 2015 (*ibid.*);
- City Council Study Session: May 2015 (*ibid.*);

- Community Outreach Open House: June 2015 (*ibid.*);
- Planning and Housing Commission: April 25, 2016 (AR 000441-000442; 000593; 000602; 009797-009800; 009801-009909); and
- City Council: May 19, 2016 (AR 000442; 000594; 000602-000603; 011027-011030).

Various commenters appeared at these meetings and hearings. (See, e.g., AR 010460-010466.) CREED-21 did not appear. (See, e.g., AR 011034-001 to 011034-160 [transcript of City Council hearing].) Instead, CREED-21's only participation was through the submission of two objection letters at the time of the Planning and Housing Commission public hearing on April 25, 2016 and City Council public hearing on May 19, 2016. (AR 016724 and AR 016735-017502.)

(3) CREED-21's Suit.

Almost exactly 30 days after the City filed a notice of determination related to its approval of the modifications to the project (AR 000006), CREED-21 filed this suit.

In its petition, CREED-21 purports to state the following causes of action:

- Violation of CEQA;
- Violation of the Subdivision Map Act; and
- Violation of fair hearing and due process rights.

(See CREED-21's petition, filed June 20, 2016.)

3. CREED-21 Has Waived its Due Process Argument by Failing to Support the Claim With Any Law or Argument.

In its petition, CREED-21 complains that the City violated CREED-21's due process rights by scheduling a City Council meeting on a night CREED-21 claims conflicted with other community events. (CREED-21's petition, pp. 7-8.) But in its opening brief, CREED-21 drops this as a substantive argument, thereby waiving that argument.

More specifically, CREED-21 provides some "color commentary" in the "Procedural History" section of its opening brief and complains about the date the City chose for its final City Council hearing, implying that the City purposely picked the date specifically to quash public participation. Yet CREED-21 points to nothing in the record except its own self-serving letter to

suggest that this scheduling was anything more than a coincidence. (Opening brief, pp. 5-6.) Moreover, CREED-21 offers no evidence that even a single person who wished to comment on the modifications to the project was precluded from doing so because of the purported scheduling conflict. (See, e.g., opening brief, pp. 5-6.) Of course, if the scheduling conflict had been real, any person impacted by it could have commented by email or by sending a surrogate. Moreover, dozens of citizens *did* attend, as CREED-21 notes in its opening brief on page 7 ("Nonetheless, many people spoke out in opposition to the Revised Project . . . ."). (See also AR 011034-059 to AR 011034-151.)

Further, CREED-21 provides no law or argument in its opening brief to support the claim that this scheduling conflict constituted a violation of due process by the City. (See, e.g., opening brief, pp. 10-19.) Thus, CREED-21 has waived this argument. (See *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1613, fn. 2; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1263, fn. 9.)

4. CREED-21's Argument that the City Should Have Titled its CEQA Report a "Subsequent" EIR Instead of a "Supplemental" EIR is Unfounded. The Courts Have Held the Labeling Does Not Matter; the Substance Matters.

CREED-21 briefly asserts that the City should have prepared a subsequent EIR instead of a supplemental EIR. (Opening brief, p. 17.) Recent case law easily dispatches CREED-21's claim.

As a local court of appeal explained just last year, CEQA itself "treats supplemental and subsequent EIRs in the same category . . . . One must go to regulations . . . to find the distinction between 'supplemental' and 'subsequent' EIRs." (*City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 538.) With that in mind, a review of CEQA Guidelines section 15163 reveals that a lead agency "*may* choose to prepare a supplement to an EIR rather than a subsequent EIR" if "only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." (CEQA Guidelines, § 15163(a)(2); emphasis added.) The *City of Irvine* court, noting that the petitioner in that case failed to cite to a case "that actually holds a lead agency's choice to prepare a supplemental EIR, when a subsequent EIR might arguably have been more appropriate, was fatal to the supplemental EIR," determined that:

> Two points are salient, though. One, as CEQA Guidelines section 15162's "may choose" language shows, the choice to proceed by way of a supplemental as distinct from a subsequent EIR is a discretionary one with the lead agency, thus tested under a reasonableness standard. Two, as shown recently by *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1047–1048 . . . the appropriate judicial approach is to look to the substance of the EIR, not its nominal title.

(*City of Irvine*, *supra*, 238 Cal.App.4th at pp. 539-540.)

Here, CREED-21 fails to identify a single piece of analysis or a single procedural step that would have been different in any meaningful way had the City titled its CEQA report "subsequent" instead of "supplemental." Thus, the City was reasonable in its choice to use the "supplemental" label. CREED-21's argument is purely form over substance – and thus fails.

5. CREED-21 Has Failed to Exhaust its Administrative Remedies. This Deprived the City of a Fair Opportunity to Address These Issues at the Administrative Level. And This is Fatal to CREED-21's Suit.

A CEQA challenge is not preserved "unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing . . .." (Pub. Resources Code, § 21177, subd. (a).) "Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199.) And the exhaustion doctrine "precludes judicial review of issues, legal and factual, which were not first presented at the administrative agency level." (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197.)

Moreover, "[i]t was never contemplated that a party to an administrative hearing should . . . make only a perfunctory or 'skeleton' showing in the hearing and thereafter obtain unlimited trial *de novo*, on expanded issues, in the reviewing court." (*Ibid.*; see also *Save Our Heritage*

Organization v. City of San Diego (2015) 237 Cal.App.4th 163, 181.) Instead, an objection or issue needs to be clearly called out so the agency can address the objection during the administrative process and avoid being pulled into litigation later. (*North Coast Rivers Alliance v. Marin Municipal Water District* (2013) 216 Cal.App.4th 614). As another court explained:

> "To advance the exhaustion doctrine's purpose '[t]he "exact issue" must have been presented to the administrative agency.' While "'less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding" because, . . . parties in such proceedings generally are not represented by counsel . . .", 'generalized environmental comments at public hearings,' 'relatively . . . bland and general references to environmental matters', or 'isolated and unelaborated comment[s]' will not suffice. The same is true for "'[g]eneral objections to project approval . . .."'"[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them."'"

(*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527, citations omitted.) Moreover, "'[t]he petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level. [Citation.]'" (*Ibid.*)

Notably, *Citizens for Responsible Equitable Environmental Development* involved CREED-21's sister entity and its same counsel. There the exasperated court said: "It appears from CREED's haphazard approach that its sole intent was to preserve an appeal." (*Id.* at p. 528.)

That "haphazard approach" occurred again here. As noted, CREED-21 did *not* comment on the draft supplemental EIR and only submitted two generic comment letters just before the public hearing. Under a brief heading "Petitioner Exhausted Administrative Remedies," CREED-21 asserts that "the alleged grounds for non-compliance" with CEQA "were asserted prior to the City's approval of the Revised Project" . . .[and t]hose assertions will be cited in the next

part of this brief as they become relevant to the discussion." (Opening brief, pp. 11-12.) But then, the *only* citation CREED-21 provides to an assertion made at the administrative level is in connection with CREED-21's first argument about traffic impacts. (Opening brief, p. 12, fn. 6.) CREED-21 fails to cite "to the assertion of an issue" at the administrative level in any other instance. Since CREED-21 had the burden of proof on exhaustion but did no more than make a conclusory statement on the point, it did not meet its burden. That error is fatal to its suit.

Additionally, CREED-21 *never* submitted formal comments to the draft supplemental EIR (AR 008749-008750), and the limited objections CREED-21 did raise administratively (AR 016724 and 016730-016734) are not specific to the issues it now argues, as detailed next.

A. CREED-21 Failed to Exhaust its Administrative Remedies Regarding its "Hides From the Public" Traffic-Impact Claim.

CREED-21 makes the internally inconsistent claim that (1) the supplemental EIR "fails as an informational document because it hides from the public that the Revised Project's 1,806 dwelling units may be fully occupied before completion of the Interchange Project" and (2) "[t]his issue was raised at the administrative level." (Opening brief, p. 12 and fn. 6.) If this information was "hidden," then how did CREED-21 find it and raise the issue in the administrative proceedings in order to exhaust its administrative remedies?

The answer is that the issue was *not* hidden *and* that CREED-21 did *not* raise this "hides from the public" claim. Instead, CREED-21's record citation is to a general objection to the modifications of the project to allow certificates of occupancy prior to the completion of the interchange project. (AR 016731.) That objection never mentions that the development agreement purportedly has hidden in it important provisions not discussed in the supplemental EIR nor any claim that the development agreement purportedly allows "the Developer to fill every one of the 1,806 dwelling units under the Revised Project prior to completion of the Interchange Project." (Opening Brief, p. 13.)

Had CREED-21 actually raised this "hides from the public" argument at the administrative level, the City could have directed CREED-21 to the places in the supplemental EIR that do talk about the potential that the developer can construct additional units before the interchange

improvements are complete. (See, e.g., AR 005953, 005965-005966, 008756-008757.) For example, in the "Master Response to Comments" concerning traffic, the supplemental EIR explains:

> The proposed project will facilitate a solution to the immediate concerns of the area circulation by financing improvements to the Cajalco interchange. Since it is possible for the developer to construct additional residential units beyond 308 while the Cajalco Interchange Project is being constructed and other circulation improvements are being implemented, there may be some short term significant impacts. However, the ultimate result will be an improvement in overall traffic circulation in the community sooner rather than later as a result of the Proposed Project.

(AR 008757.) And the City could have also responded, for example, with the context for the timing changes associated with interchange improvements, including the fact that the City has ensured completion of the interchange improvements (1) by requiring that the developer post a bond for 100 percent of the cost of the improvements before the developer can even pull its first building permit and (2) by putting in place required milestones in the construction of the interchange improvements that trigger work on various phases of the housing construction. (See, e.g. AR 000716; 000748-000749, and discussion below in sections 6C and 6D.)

B. CREED-21 Failed to Exhaust its Administrative Remedies Regarding its Park-Impact Claim.

CREED-21 makes two arguments related to parks, and it failed to exhaust its administrative remedies as to either.

As noted, CREED-21 failed to provide the Court with the citations to the "assertions" about parks through which CREED-21 purportedly exhausted its administrative remedies. (Compare opening brief, p. 11 to pp. 14-17 [no citation to the record given].) This is not an accident; the only "assertion" about parks that CREED-21 made is broad and generic:

III. Recreation

3.01 There is no substantial evidence supporting the SEIR's conclusion that there are no changes or new information requiring major or minor revisions to the EIR as it relates to recreation space. The SEIR should have analyzed the project's impact on recreation space. The project not only eliminates 6 acres of overall park space, it is eliminating all 13.1 acres of the public park space that was previously approved. The SEIR contends that the impact on park space will be addressed through the creation of private parks within the development. However, that conclusion is premised on the faulty assumption that new residents will not utilize other public park space near the project.

(AR 016731-016732.) This "assertion" does *not* address either of the two specific park-related arguments that CREED-21 makes in its brief.

CREED-21's first argument is that "common sense tells us that relying solely on the Department of Finance factor for determining the number of people likely to live in a particular number of homes is inappropriate since the homes in the modified project will be spread over an additional 55 acres." (Opening brief, pp. 15-16.) But as can be seen from the quote above, CREED-21 does *not* mention (1) the Department of Finance factor, or (2) the effect of spreading of the housing units over an additional 55 acres of land. (AR 016731-016732.) Thus, the City had *no* opportunity to address this issue before being sued, and CREED-21 failed to exhaust its administrative remedy on this issue.

Likewise, CREED-21 never mentioned its second park-related argument at the administrative level. That argument is that the supplemental EIR "does not address the Revised Project's impact on the two parks that exist in the same neighborhood as the Project: Spyglass Park and Eagle Glen Community Park." (Opening brief, p. 16.) Again, the quote above shows that CREED-21 did *not* mention either Spyglass Park or Eagle Glen Community Park at the administrative level. If CREED-21 had, the City could have provided a specific response before

being sued. But since CREED-21 did not do so, CREED-21 failed to exhaust its administrative remedies.

C. CREED-21 Failed to Exhaust its Administrative Remedies Regarding its Planning and Zoning Law Claim.

Again, CREED-21 failed in its promise to the Court that it would "cite in . . . [its] brief" where in the record there is evidence that it exhausted its administrative remedies related to this claim. (Compare opening brief, pp. 11-12 to pp. 17-19 [containing no discussion or citation regarding exhaustion].)

In any event, CREED-21's Planning and Zoning Law claim is premised on the argument that the property is not "suitable" for the proposed development. (Opening brief, pp. 17-18.) Yet, in its objection letter, CREED-21 only generically claimed that the City "had not made all necessary findings under the Subdivision Map Act to approve the tract map. To the extent the findings were made under Government Code sections 66473.5 and 66474, the findings are not supported by substantial evidence." (AR 016733.) CREED-21 *never mentions* "suitability" of the site. Again, CREED-21 prevented the City from addressing this issue at the administrative level and accordingly failed to exhaust its administrative remedies on this point.

6. CREED-21 Fails to Apply the Required Substantial Evidence Test as the Standard of Review.

A. The Substantial Evidence Test Gives Deference to the City's Determinations, Which are Presumed Correct.

In CEQA litigation, the courts are asked to determine whether a lead agency prejudicially abused its discretion by: (1) failing to proceed in a manner required by law, or (2) making a determination that is not supported by substantial evidence. (Pub. Resources Code, §§ 21168, 21168.5.) The law is well settled that when reviewing an agency's compliance with CEQA, the deferential substantial evidence standard of review applies. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132-1133; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 486.)

In fact, CREED-21 agrees that the deferential substantial evidence standard applies in this case. (Opening brief, p. 10.) CREED-21 also agrees that substantial evidence includes "facts, reasonable assumptions predicated upon facts and expert opinion supported by facts," but it does not include "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate." (CEQA Guidelines, § 15384; opening brief, p. 10, fn. 4.) As explained in a leading CEQA treatise, "[c]omplaints, fears and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence" and "[s]peculation about a project's impacts also has no evidentiary value." (Kostka and Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2d ed.) § 6.42; see also *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1020.)

Contrary to the remainder of CREED-21's standard of review recital, however, "CEQA challenges concerning the amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology are factual determinations reviewed for substantial evidence." (*Santa Monica Baykeeper v. City of Santa Monica* (2011) 193 Cal.App.4th 1538, 1546.) The substantial evidence test applies to "conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data used upon which the EIR relied because these types of challenges involve factual questions . . . . It also applies to factual disputes over whether adverse effects have been mitigated or could be better mitigated." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898; see also *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 468; CEQA Guidelines, § 15384.)

Important to this case, a "public agency's decision to certify the EIR is presumed correct, and the challenger has the burden of proving the EIR is legally inadequate." (*Santa Monica Baykeeper*, *supra*, 193 Cal.App.4th at p. 1546.) Thus, CREED-21 "bears the burden of demonstrating that the record does not contain sufficient evidence justifying a contested project approval," and a failure to make the requisite showing "is deemed a concession that the evidence supports the findings." (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.) Thus, a CEQA challenger "must lay out the evidence favorable to the other side and show

why it is lacking. Failure to do so is fatal." (*Bay Area Clean Environment, Inc. v. Santa Clara County* (2016) 2 Cal.App.5th 1197, 1212.) This error is deemed fatal because "support for [the agency's] decision may lie in the evidence [petitioner] ignore[d]." (*Latinos Unidos*, *supra*, 221 Cal.App.4th at p. 206; see also *Citizens for Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1064.)

It is not a reviewing court's job to "independently review the record to make up for [a petitioner's] failure to carry [its] burden." (*Latinos Unidos, supra*, 221 Cal.App.4th at p. 206; *Bay Area Clean Environment, Inc.*, *supra*, 2 Cal.App.5th at p. 1212.) Nor is it a court's job to "weigh conflicting evidence and determine who has the better argument . . . . [Courts] have neither the resources nor the scientific expertise to engage in such an analysis. . . . " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393; *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 102.) Instead, a reviewing court should focus on "adequacy, completeness and a good faith effort at full disclosure." (CEQA Guidelines, § 15151; see also *San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202, 216.)

Finally, an alleged omission in an EIR is prejudicial only "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 Construction Authority* (2013) 57 Cal.4th 439, 463; see also *Bay Area Citizens v. Association of Bay Area Governments* (2016) 248 Cal.App.4th 966, 1021.) "[U]nder CEQA, there is no presumption that error is prejudicial. Insubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 439, citations omitted.)

CREED-21 gives lip service to the substantial evidence standard but fails to actually apply it in this case. The application of the appropriate standard of review demonstrates that the City's CEQA documents easily pass muster.

B. CREED-21 Failed to Meet its Burden of Demonstrating to the Court That The Voluminous Record Does Not Contain Sufficient Evidence to Justify the City's Decisions. This is Fatal to CREED-21's Case.

Despite having the burden to do so, nowhere in its opening brief does CREED-21 make any effort to lay out the evidence that supports the City's determinations about traffic or park impacts. (AR 000469-000474; 000533-000552; 000558-000560.) This qualifies as an independent reason for the Court to deny CREED-21's petition.

The original EIR fills at least 38 pages addressing the traffic impacts of the Arantine Hills Specific Plan project and 18 pages addressing the project's park impacts. (AR 001349-001386.) And the Supplemental EIR fills at least 42 pages addressing traffic impacts (AR 005928-005933; 005946-005966; 008705-00712; 008726-008729; 008755-008757) and at least 5 pages on park impacts (AR 005924-005927; 008753). Similarly, the City's findings on these topics fill dozens of pages. (See, e.g., AR 000558-000591.) Yet CREED-21 makes no effort to walk the Court through this evidence in order to show why it does not amount to "substantial" evidence in support of the City's decisions. It is not the Court's job to wade into this evidence unguided. And CREED-21's "[f]ailure to [provide this guidance] is fatal" to its case. (*Bay Area Clean Environment, Inc. v. Santa Clara County*, *supra*, 2 Cal.App.5th at p. 1212.) Thus, the Court can and should deny CREED-21's petition on this basis.

C. Substantial Evidence Supports the City's Conclusions on Traffic Impacts.

Again, as noted above, CREED-21 failed to exhaust its administrative remedies on this issue since it presented the City with only a broad, generic objection at the administrative level.

In addition to the extensive traffic analysis in the original EIR (which CREED-21 failed to challenge at the time), the supplemental EIR includes an extensive and detailed traffic study and other expert analysis of the traffic implications of the modifications to the approvals. (AR 00622-00762.) This was more than sufficient substantial evidence in the record to support the City's decision on the traffic impacts.

Additionally, as noted, the City adopted a statement of overriding considerations, explaining the rationale for the modifications even if all traffic impacts could not be mitigated.

(AR 000564-000567.) As part of the modified project, the developer has agreed to fund 100 percent of the construction of the freeway interchange, and the City has concluded that having the funds to actually build the interchange, thereby eliminating the existing and future traffic congestion, is better than waiting indefinitely for an unidentified funding source. (AR 000566-000567.)

CREED-21 does not explain why the City's reasoning on this is faulty. How is it bad for the City to want to speed up and ensure the funding of much-needed traffic improvements? And why is it improper for the City to make the policy decision that having these traffic improvements guaranteed – and built sooner – is worth some temporary, interim increase in traffic congestion? CREED-21 presents no evidence to counter the City's well-reasoned analysis and subsequent policy decision.

CREED-21 makes much of its claim that the City "deleted 20 traffic mitigation measures." (Opening brief, p. 14.) But CREED-21's claim is misleading. It is accurate that many of the traffic measures were changed, but these were organizational changes, including re-ordering and re-numbering to reflect the developer's commitment to fund 100 percent of the interchange improvements, which means that those improvements will be built sooner and on a definable schedule. (AR 000533-000552; 008721–008746; 008755-008757.) Thus, it was necessary to adjust, including removing and adding, various mitigation measures to account for these timing changes. (*Ibid.*) Contrary to the impression CREED-21 tries to create, these changes did not eliminate any substantive traffic relief measures; in fact, the changes ensure traffic relief by funding the interchange improvements instead of forcing the City's citizens to wait for indefinite future funding. (*Ibid.*; 000566-000567.)

D. The Supplemental EIR Served its Purpose as an Informational Document.

CREED-21 also argues that the supplemental EIR is defective because it fails as an informational document regarding the project's traffic impacts. The crux of this argument is that the supplemental EIR "hides from the public" the possibility that, under the related development agreement, the modified project's 1,806 residential units could be occupied prior to the time the interchange is completed. (Opening brief, p. 12.)

That development agreement provides carefully devised controls that tie scheduling of the construction of the houses to milestones in the construction of the interchange improvements. (000748-000749.) And that development agreement *is* discussed in in the supplemental EIR. (See, e.g., AR 005828-005829; 008696; 008704; 008777; 008941.) Section 2.5.4, for example, clearly states that the development agreement will allow the developer to construct additional units beyond Phase 1 in exchange for the advance of fees to construct the interchange improvements and explains that the prior condition prohibiting issuance of building permits until after completion of the interchange improvements was no longer applicable. (AR 005828-005829.) Specifically, the supplemental EIR states:

> A key provision of the DA is the advanced funding of the improvements to the Interstate 15 and Cajalco Interchange listed above. The developer is only responsible for 32.5 percent of the cost associated with the construction of the interchange, but is proposing to advance the funds to the City for the remaining 67.5 percent of the total cost. The advance of these funds will allow the interchange to be constructed earlier than originally scheduled because the funding for the interchange will become available with this project. In return, the Developer would be allowed to construct additional residential units beyond Phase 1 in accordance with the terms of the DA. The DA changes a prior traffic mitigation measure from the Certified EIR that prohibited issuance of any building permits until after the I-15/Cajalco Road interchange improvements were constructed and in operation.

(AR 005829.)

In addition, section 4.1.3 of the supplemental EIR provides a detailed discussion of the development agreement relative to the interchange improvements; references the new obligation to post a bond for 100 percent of the costs; references the elimination of the prior condition restricting issuance of building permits until completion of the interchange improvements; and identifies the possibility that more than Phase 1 of the modified project could be completed prior to completion of the interchange improvements and, thus, the need for a statement of overriding considerations. (AR 005952-005961.) This is *not* "hid[ing] from the public" any information.

Further, numerous members of the public, including CREED-21, were clearly aware of this fact because they made comments relative to the possibility of having the project occupied before completion of the interchange improvements. (See opening brief, pp. 4-5.) These comments include the comment CREED-21 quotes on page 5 of its opening brief objecting to allowing

"some or all of the homes to be built" before the interchange improvements are complete. If the issue were "hidden," how did this person know to comment?

Moreover, CREED-21 fails to inform the Court of the context for the project modifications related to when some houses can be built in relation to the timing of the interchange improvements, including (1) that the City has required the developer to post bonds for the "full amount of the total estimated cost of the" interchange improvements *before* any building permits are issued; (2) that the project as modified will *reduce* by 11,000 the average daily trips as compared to the original project; (3) that the City tied construction of various phases of house development to the achievements of milestones in the construction of the interchange improvements; and (4) that the City specifically adopted a statement of overriding considerations that justifies the modifications to the approvals, even if some interim traffic impacts could not be mitigated to a level of insignificance. (AR 000564-000567.) Specifically, with respect to the overriding considerations, the City made the policy decision that the developer's funding of 100 percent of the interchange improvements (which eliminates the need for the City and its citizens to wait on unidentified funding to appear at an undetermined time in the future) justifies any interim traffic impacts until the improvements are complete. (AR 000566-000567.)

And, again, "CEQA challenges concerning the amount or type of information contained in the EIR . . . are factual determinations reviewed for substantial evidence." (*Santa Monica Baykeeper v. City of Santa Monica, supra*, 193 Cal.App.4th at p. 1546). CREED-21 fails to explain how the voluminous record does not contain substantial evidence to support the City's determinations about the amount and type of information contained in the supplemental EIR regarding the timing of the interchange improvements. This is fatal to CREED-21's claim.

E. Substantial Evidence Supports the City's Conclusions That the Revised Project Will Not Result in New or More Significant Park Impacts.

CREED-21 contends that there is no substantial evidence to support the supplemental EIR's conclusion that the modified project will result in less than significant park impacts. (Opening brief, p. 16.) CREED-21's claim has no merit.

First, as noted, CREED-21 did not properly exhaust its administrative remedies on this issue.

Second, to support its claim, CREED-21 relies almost entirely on an inapplicable case: *City of Hayward v. Trustees of the California State University* (2015) 242 Cal.App.4th 833, 858-859. Legally and factually, that reliance is misplaced. This is not like the situation presented in *City of Hayward* where the record contained "no factual evidence to support [the EIR's] assumption" that students would not use the neighboring parks. (*City of Hayward, supra*, 242 Cal.App.4th at p. 859.) Here, the City recognized there would be increased use of existing parks, but properly determined that the modified project would not result in new or more significant park impacts based on a number of facts, including the City's "net surplus of park lands" and the unchanged number of residential units between the original and the modified project. (AR 5926; 000558.) The supplemental EIR also explained that:

> several private parks are proposed as part of the project to provide on-site recreational opportunities for future residents. Furthermore, impact fees will be assessed by the City of Corona to offset [the] use of existing facilities or develop additional parks within the City. Therefore, the development associated with the Specific Plan and the proposed project would not result in a net deficit of parklands for the City that could increase the use of existing parks or accelerate their deterioration. Therefore, no new or substantially greater impacts would occur with implementation of the proposed project when compared to those identified in the Certified EIR.

(AR 005926; opening brief, pp. 16-17.)

Moreover, the "City has determined that any new park funding would be better spent on new park facilities within existing underdeveloped public park facilities and public park maintenance rather than the creation of additional surplus parks." (AR 005927.) And CREED-21 also fails to point out that the modifications to the project result in a net increase of 14 acres when public and private parks and open space are considered together. (AR 005817.)

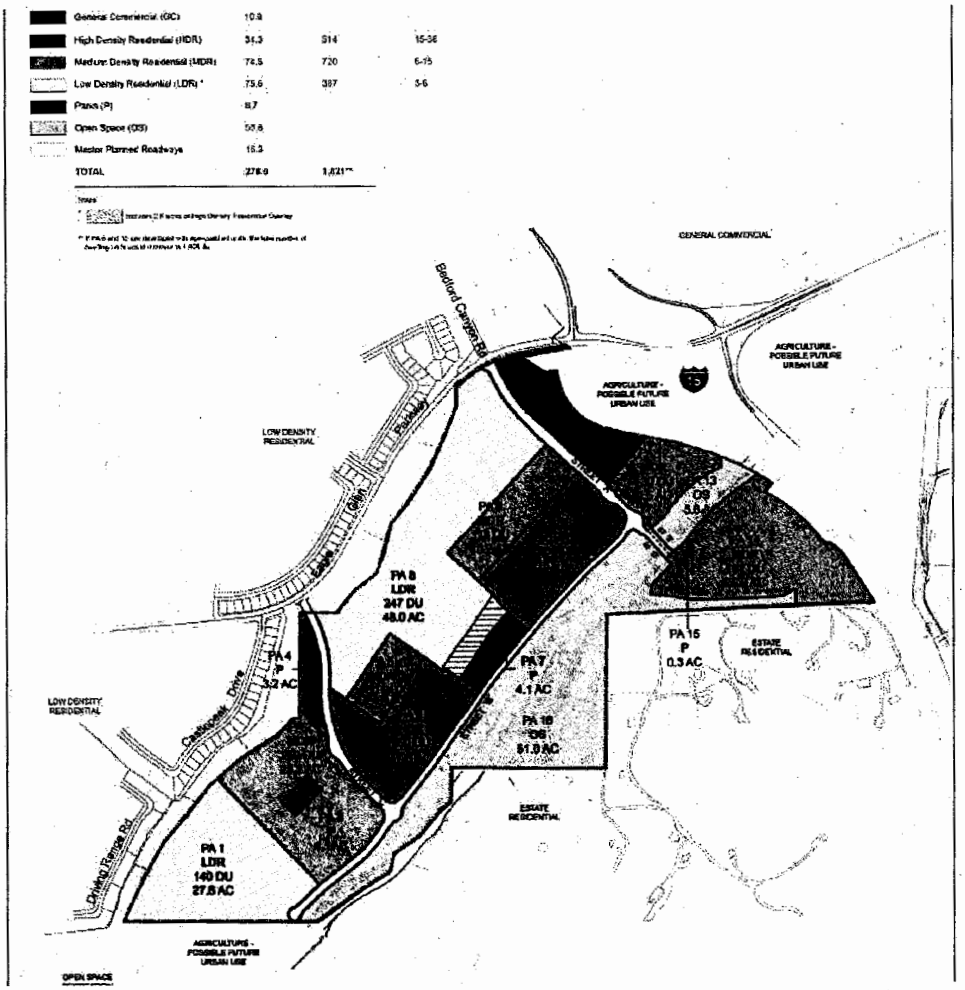
CREED-21's failure to inform this Court of the full reasoning behind the City's park-impact determination is, again, a fatal flaw. (*Latinos Unidos*, *supra*, 221 Cal.App.4th at p. 206.) By not showing the substantial evidence in the record that supports the City's conclusion, CREED-21 improperly attempts to misdirect the Court. And the Court can and should reject CREED-21's park-impact argument on procedural and substantive grounds.

7. The Planning And Zoning Law Was Not Violated. CREED-21 Has Misapplied the Statute.

At the end of its brief, CREED-21 throws in an argument that the City failed to comply with the Planning and Zoning Law, arguing that the site is not "suitable" for the modified project because of the need for the interchange improvements because of increased traffic. CREED-21's claim is flawed in several ways.

First, CREED-21 again failed to exhaust its administrative remedies, as discussed above.

Second, CREED-21 conveniently ignores that the Planning and Zoning Law actually references "*physically* suitable for the type of development," i.e., can the development physically be built on the land? The answer is: "yes." A residential development can readily be built on land like this, just as neighboring properties have had houses built on them. (See, e.g., AR 005814.) And there is plenty of evidence in the record, for example, diagrams in the original EIR and the supplemental EIR, that prove that this land is "physically suitable" for this development. (See, e.g., AR 005824.) For example:



(AR 005824.)

Third, CREED-21's argument turns Government Code section 66474 on its head. CREED-21 argues that under that statute "the City was required to deny the Revised Project unless it made [listed] findings." But the statute actually contains a list of findings that, if made, allow the City to deny the project: the City "should deny approval of a tentative map . . . if it makes any of the following findings." The significance of this is that the City does *not* make each of the findings to *approve* a tract map. Instead, the City would only deny a tract map if, for example, the City found the "site not physically suitable for the type of development." Thus, CREED-21's argument that the City's "finding that the Project site is suitable for the Revised Project is not supported by substantial evidence" is nonsensical; this was not the finding the City was required to make.

8. Conclusion.

In modifying its original approvals for the Arantine Hills Specific Plan, the City recognized the practical realities that (1) no funding source existed to complete the much-needed freeway interchange and (2) the City had more than enough park land for its citizens, but not enough money to properly maintain the existing parks. So the City pragmatically approved modifications to the project that would allow the funding for the interchange and the maintenance of the existing parks. In doing this, the City carefully studied the impacts of what it was doing (including *reducing* the size of the project's commercial and residential development by nearly 90 percent and eliminating 11,000 daily trips) in a lengthy (2,500-plus-page) supplemental EIR. And the City ultimately found that overriding considerations justified the modifications to the earlier approvals. In short, the administrative process worked. The City and the public were fully informed, and the City carefully weighed the benefits and burdens of the proposed development and struck the balance that the City felt was appropriate – a balance the City, not the Court, is charged with making. Thus, the purpose and procedures of CEQA were achieved. CREED-21's suit is baseless. And the Court can and should deny CREED-21's petition. The City and the real-party-in-interest respectfully request that the Court do so.

Dated: December 1, 2016

CITY ATTORNEY'S OFFICE

By: _____
JOHN D. HIGGINBOTHAM
Attorneys for Respondent and Defendant
CITY OF CORONA

Dated: December 2, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS
HEATHER S. RILEY

By: _____
K. ERIK FRIESS
Attorneys for Real-Party-in-Interest
ARANTINE HILLS HOLDINGS, LP

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On December 2, 2016, I served the within document(s) described as:

JOINT OPPOSITION BRIEF OF RESPONDENT AND DEFENDANT CITY OF CORONA AND REAL-PARTY-IN-INTEREST ARANTINE HILLS HOLDINGS, LP

on the interested parties in this action as stated below:

Cory J. Briggs, Esq. Briggs Law Corporation 99 East "C" Street, Suite 111 Upland, CA 91786 Phone: (619) 221-9280 Fax: (909) 949-7121	Attorneys for Petitioner and Plaintiff CREED 21
John Higginbotham City of Corona City Attorney Department 400 South Vicentia Avenue Corona, CA 92882 Phone: (951) 279-3506	Attorneys for Respondent and Defendant CITY OF CORONA

☒ **BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

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

Executed on December 2, 2016, at Irvine, California.

Karrle Preston
(Type or print name)

Karle Preston
(Signature of Declarant)