SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

CALIFORNIA CLEAN ENERGY COMMITTEE, Petitioner, vs. CITY OF SAN JOSE, a municipal corporation, and DOES 1-50, inclusive, Respondents.	Case No. 1-11-CV-212623 ORDER RE: PETITION FOR WRIT OF MANDATE

The Petition for Writ of Mandamus by Petitioner California Clean Energy Committee ("CCEC") came on for hearing before the Honorable Joseph H. Huber on December 12, 2014, at 9:00 a.m. in Department 21. In advance of the hearing the Court reviewed the briefs and relevant portions of the Administrative Record ("AR"). The matter having been submitted, the Court finds and orders as follows:

This is a challenge to a Program EIR prepared and adopted by Respondent City of San Jose ("City") to analyze the potential environmental effects of an update to the City's 2040 General Plan. The Court will first address the assertion by the City that one of Petitioner

CCEC's secondary arguments raised in this proceeding is barred by failure to exhaust administrative remedies.

Exhaustion of Administrative Remedies is a jurisdictional prerequisite to a CEQA action. Pub. Res. Code §21177. Under Pub Res. Code §21177(a), any alleged noncompliance must be raised either during the public comment period provided by CEQA (which CCEC participated in) or before the close of the public hearing where the project was given final approval (which here was November 1, 2011). If the issue of exhaustion is disputed, the petitioner bears the burden of demonstrating that it exhausted its administrative remedies. *Sierra Club v. City of Orange* (2008) 163 Cal App 4th 523, 536.

The determination of whether the alleged grounds for CEQA noncompliance were adequately raised depends on whether the basis for the claim was presented in a specific enough way that the lead agency had a chance to respond by either making corrections or presenting its case for why the criticism was incorrect. See *North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal App 4th 614 (comments must be sufficiently specific to allow agency to evaluate and respond to them); *State Water Resources Control Bd. Cases* (2006) 136 Cal App 4th 674, 795 (objections to modeling sufficiently specific). See also *Evans v. San Jose* (2005) 128 Cal App 4th 1123 (parties not represented by counsel still required to raise issues with sufficient specificity to allow agency to evaluate and respond); *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 107 Cal App 4th 656, 686 ("Exhaustion of administrative remedies is a jurisdictional prerequisite to a judicial action challenging any planning decision. If a party wishes to make a particular methodological challenge to a given

study relied upon in planning decisions, the challenge must be raised in the course of the administrative proceedings. Otherwise, it cannot be raised in any subsequent judicial proceedings.") Internal citation omitted.

The City in its opposition brief specifically argued that CCEC's claim that the Final EIR provides conflicting and incomplete data on transportation fuel usage was never brought to its attention before CCEC filed in its present opening brief in this matter on September 9, 2014 and that therefore CCEC is barred from raising the argument in this proceeding. The City claimed, in both its opposition brief and at the court hearing on this matter, that if the issue had been properly presented to it during the administrative process it could have explained that any perceived inconsistency was due to different methodologies being employed to measure different things.

In its Reply brief and before the Court at the hearing on the writ petition, CCEC's only response was to assert that the Court of Appeal in *Cal. Clean Energy Committee v. City of San Jose* (2013) 220 Cal App 4th 1325 already ruled that it had satisfied the administrative exhaustion requirement based in its EIR comment letter submitted to the City's Planning Commission on July 28, 2011 located in the Administrative Record "AR" at 4665-4679 (excluding appendices). This is true in general but the Court of Appeal did not rule on exhaustion of the specific fuel usage argument the City now claims is barred. What the Court of Appeal actually said was that its' "review of the comment letter and the issues raised in the petition for writ of administrative mandamus demonstrates that the issues raised in the petition are the same as the issues raised in the comment letter. . . . Accordingly, the comment letter issued by CCEC to the planning

commission during the public comment period, which specified the alleged deficiencies in the EIR, sufficiently apprised the city council of CCEC's arguments regarding the adequacy of EIR and the need for recirculation. As previously noted, a review of the contents of the letter and claims CCEC alleged in its petition . . . indicates that the claims raised in CCEC's petition were raised in its initial comment letter. Since the city council had the comment letter at the time it certified the final EIR and approved the project, it was fairly apprised of CCEC's objections. Accordingly, CCEC exhausted its administrative remedies." 220 Cal App 4th at 1348, internal citations and footnotes omitted. The Court added in a footnote (no. 11) that "[i]n CCEC's petition for writ of mandamus and its initial comment letter on the draft EIR, CCEC argues that there were deficiencies in the EIR's analysis of greenhouse gas emissions, its analysis of energy conservations, and its analysis of alternatives." *Id.*

The July 28, 2011 comment letter (and in particular the "Transportation" portion) does not assert that the EIR "provides conflicting and incomplete data on transportation fuel usage," as was argued in the current brief and at the hearing and CCEC failed to point to anything else in the record that would meet its burden to show that this specific issue was raised during the administrative process. Accordingly the Court finds that the City is correct that this secondary issue is barred by failure to exhaust.

CCEC's primary argument is that the City failed to proceed in the manner required by law and adopted a defective EIR that "failed to compare the GHG [Greenhouse Gas] emissions produced by its proposed general plan update to existing environmental conditions in San Jose, even though such a comparison is expressly required by the CEQA Guidelines [§15064.4(b)(1).]

Instead the City relies exclusively on comparing the emissions that will be produced by its proposed update with future regulatory guidelines." CCEC Opening Brief at 4:8-12, brackets added. As CCEC has pointed out, the standard of review in determining whether the lead agency has abused its discretion and failed to proceed in the manner required by law is de novo and not the fairly deferential substantial evidence test.

By way of background CEQA Guidelines §15064.4 became operative in March 2010 (more than a year before the Draft EIR in this matter was even made available for public review on June 17, 2011). It states in pertinent part that "(a) . . . A lead agency should make a good faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. . . . (b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment: (1) *The extent to which the project may increase greenhouse gas emissions as compared to the existing setting*; (2) Whether the project emissions exceed a threshold of significance that the lead agency applies to the project; (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. . . ." Court's emphasis.

Reading Guidelines §15064.4 in conjunction with Guidelines §15125 concerning project baselines ("An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published* . . . This environmental setting will normally constitute the baseline physical conditions by which a lead

agency determines whether an impact is significant. . . .") the City was required to include a description of the project area's greenhouse gas emissions as of July 23, 2009 when the City published its Notice of Preparation for the project, and describe the extent to which the project would increase them. As the project here is a general plan amendment the project area is the entire City.

As CCEC points out, rather than do this the City instead only compared the emissions estimated to be produced under the general plan amendment to its estimated pro rata share under the statewide emissions targets under AB 32, the "California Global Warming Solutions Act," adopted in 2006, and used that result as a basis for declaring that the project would have a less than significant cumulative impact on greenhouse gas emissions. See AR 2125.

"The City asserts that if the general plan update will not hinder the City's ability to meet the emissions limit adopted under AB 32, 'then the amount of GHG emissions associated with the General Plan would be considered less than significant, regardless of its size (and magnitude of emissions).' [See AR 2116.] . . . It begins with the 2020 statewide emission limit under AB 32, i.e., 426.5 MMT [million metric tons] of emissions annually. That number is divided by the service population of the state in 2020 or 64 million. . . . [This] yields the tons of GHG emissions per service population that could be emitted statewide per year while still meeting the AB 32 target . . . which [the City] calculates to be 6.6 metric tons (MT) of CO2e [carbon dioxide equivalent] per service population. This represents the average of GHG emissions per service population allowable under the AB 32 limit. The City then uses the 6.6 number to calculate a citywide GHG emissions target for 2020. This is done by multiplying the projected service

population of the City of San Jose [1,650,942] times 6.6 MT. . . . The City projects 10.3 MNT of GHG emissions citywide under the proposed general plan. That is less than the 10.9 target derived from AB 32. . . . The EIR then concludes that implementation of the general plan update would not constitute a cumulatively considerable contribution to climate changes in 2020. The City uses a similar analysis for year 2035 relying on a target set in Executive Order S-3-05. . . . The analysis that the City relies upon is a comparison of emissions under the proposed general plan update to a hypothetical future baseline." CCEC Brief at 7:19-9:25, internal citations omitted.

CCEC argues that the City's approach has been rejected in decisions such as *Communities for a Better Environment* (2010) 48 Cal 4th 310 (*Communities*), *Neighbors for Smart Rail v. Exposition Metro line Construction Authority* (2013) 57 Cal 4th 439 (*Smart Rail*). and *Friends of Oroville v. City of Oroville* (2013) 219 Cal App 4th 832 (*Oroville*). In the *Communities* decision, the Supreme Court ruled that a refinery's maximum allowable output under its existing permits (a level never actually reached during operation) could not be used as the sole baseline to determine that a proposed increase in output would not be a significant impact. The Supreme Court's August 5, 2013 *Smart Rail* decision did not involve a challenge to Greenhouse Gas calculations; it involved a challenge to the use of a 2023 baseline in the analysis of a proposed rail line's impacts on traffic congestion and air quality. The Court did not expressly bar the use of estimated future conditions as baselines but stated that "[p]rojected future conditions may be used as the sole baseline for impacts if their use in place of measured existing conditions—a departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions." 57 Cal 4th at 451. The

current EIR does not contain any express explanation of the failure to include a comparison of existing GHG emissions to those projected under the General Plan update. Furthermore, Guidelines §15064.5 appears to establish a presumption that a comparison of expected Project impacts to the existing setting's Greenhouse Gas emissions has informational value for the public and decision makers, as lead agencies are instructed that they "should consider" whether a proposed project increases or decreases such emissions "as compared to the existing environmental setting."

The Third District Court of Appeal's *Oroville* decision involved a challenge to an EIR prepared for the relocation of a Wal-Mart and its expansion to a "supercenter" on several grounds, including the greenhouse gas emissions analysis. Citing the Third District's decision in *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal App 4th 327, the *Oroville* court found that the City of Oroville had failed to proceed in the manner required by law because, among other things, it failed "to ascertain the *existing* Wal-Mart's GHG emissions and the impact from the Project's mitigation measures. . . . The EIR quantified the GHG emissions for the *proposed* project . . . and the sources comprising those emissions in percentage terms . . . but failed to do so for the *existing* Wal-Mart store. . . . Consequently the EIR does not sufficiently show whether Assembly Bill 32's target reductions are being met. These calculations were done in *Citizens*. Such calculations and estimates, or a reasonable equivalent, must be done here." 219 Cal App 4th at 842-834, internal citations omitted, emphasis in original.

CCEC argues that the EIR here fails as an informational document for the same reason as the EIR in *Oroville* did; it fails to include a comparison of the project's emissions to existing Greenhouse Gas emissions. CCEC argues this is a prejudicial failure to proceed in the manner required by law because the EIR "obscures the fact that under the proposed general plan, GHG emissions in San Jose will increase considerably over existing environmental conditions. Citywide GHG emission will increase from 7.6 MNT to 10.3 MNT by 2020 under the proposed plan. Instead of considering whether that increase constitutes a considerable contribution to cumulative climate impacts, the City compared the 10.3 MNT of projected emissions under the plan to the 10.9 MNT of supposedly allowable emissions derived from AB 32. Based on that legally-erroneous comparison, the City concluded that the impact would be less than significant. . . . The EIR obscures the fact that by 2020 under the proposed general plan update, there will be a citywide increase in GHG emissions of 2.7 MNT or 36 percent. It obscures the fact that there will be a 91 percent increase in emissions by 2035 . . ." CCEC Brief at 14:25-15:10, internal citations to record omitted but citing among others AR 2112 (estimate of 2008 emissions of 7.61 MNT), AR 2124 (2020 estimate of 10.3 MNT), AR 2125 (EIR's conclusion that GHG emissions would be a "Less Than Significant Impact" because projected 2020 emissions would be less than estimated maximum allowed and AR 2131 (significant GHG impact projected in 2035).

CCEC has also pointed out that whether the Greenhouse Gas analysis has been performed correctly in this EIR is particularly important because it is the City's express intent "that future projects that conform to the Envision General Plan may make use of the Envision General Plan Greenhouse Gas Reduction Strategy in lieu of performing an individual project analysis." AR

3831. Thus, any errors in the current EIR's Greenhouse Gas analysis will be compounded for years to come as later projects tier-off this EIR.

The City all but concedes that it did not proceed in the manner required by law in preparing and approving this Program EIR by asking the Court not to apply the law as it currently exists. It claims that "[b]ecause standards for evaluating GHG continue to get adopted and evolve, CEQA documents should not be reviewed based on standards adopted after their preparation. Therefore, the City's EIR should not be held up to standards enacted after 2011, such as any new law set out in CCEC's cases [Oroville and Smart Rail.] Opposition Brief at 11:11-19, internal citations omitted but citing *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal App 4th 899, 937.

The City's reliance on *Rialto* as excusing its failure to compare expected Greenhouse gas emission under the general plan update to existing emissions in 2009 is unpersuasive and disingenuous, as the City and its attorneys could not reasonably believe that this situation and EIR are analogous to *Rialto*. *Rialto* concerned a review of an EIR approved on July 15, 2008 and its lack of meaningful GHG analysis was only given a pass because the anticipated regulations were not in place. The Fourth District expressly noted that "[i]n 2010 new Guidelines were adopted which provide lead agencies with critical guidance in calculating and determining the significance of [GHG] emissions (Guidelines §15064.4) and in formulating feasible mitigation measures to reduce their impacts (Guidelines §15126.4(c)). But none of these Guidelines were in effect when the EIR was certified in July 2008 . . . Given the absence of legal or regulatory standards or accepted methodologies for gauging the project's cumulative impact

on global climate change at the time the EIR was certified in July 2008, the City reasonably concluded that the impact was too speculative to determine." *Rialto*, *supra*, 208 Cal App 4th at 940-941, brackets added.

The City here has no such excuse and the EIR will be judged against existing standards. CEQA Guidelines §15064.4 came into effect in March 2010; the Draft EIR was released for comment in June 2011 and the Final EIR was not approved until Nov. 1, 2011. The City should have been aware of §15064.4 from the beginning of its preparations and was undoubtedly made aware of it once comments on the Draft EIR were submitted. It was obligated to comply with it, even if that meant adjusting work already done, amending the EIR a second time or recirculating it when the failure to provide a comparison to existing conditions was pointed out in CCEC's comment letter.

Next the City argued that it was sufficient that data from which "present" emissions (present here meaning 2008 rather than 2009—the year the Notice of Preparation was issued and the year which should have been used as the project baseline under Guidelines §15125(a)) could be determined and the §15064.4(b) comparison performed was included in Appendix K to the EIR. This argument is also unpersuasive. Requiring the public and decision makers to dig for data buried in appendices and to perform their own calculations to determine if significant impacts are disclosed by such data renders an EIR insufficient as an informational document.

The City also argues that its decision not to include a comparison to present day emissions is justified because "the Update is a long-term endeavor with a 25-year horizon, that

will not be fully implemented until 2035. The environment itself will gradually change—independently of the General Plan Update—during the project's implementation. Therefore, it is reasonable and meaningful to forecast the environmental conditions that would exists at full implementation of the Update in 2035. A mid-term check-in in 2020 is appropriately selected to assess consistency with statewide AB 32 targets. This approach has recently been sanctioned by the Supreme Court in *Neighbors for Smart Rail*." Opposition Brief at 16:20-26.

This argument is also unpersuasive, and misrepresents the *Smart Rail* decision. The Supreme Court in *Smart Rail* expressly stated that: "Even when a project is intended and expected to improve conditions in the long-term—20 or 30 years—after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. . . . An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not 'giv[e] due consideration to both the short-term and long-term' effects of the project [Guidelines §15126.2(a)] and does not serve CEQA's informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term. In addition, existing environmental conditions have the advantage that they can generally be directly measured and need not be projected through a predictive model. . . . [U]se of existing conditions as a baseline makes the analysis more accessible to decision makers and especially to members of the public, who may be familiar with the existing environment but not technically

equipped to assess a projection into the distant future. . . . Quantitative and technical descriptions of environmental conditions have a place in CEQA analysis, but an agency must not create unwarranted barriers to public understanding of the EIR by unnecessarily substituting a baseline of projected future conditions for one based on actual existing conditions." 57 Cal 4th, *supra*, at 455-456, internal citations omitted.

The applicable standard of review here is the abuse of discretion standard. "An agency abuses its discretion by failing to proceed in the manner required by law if its action or decision does not substantially comply with the requirements of CEQA. This test applies when the petitioner claims that the agency filed to comply with CEQA's procedural requirements. Judicial review under the compliance with law prong of the abuse of discretion standard differs significantly from review under the substantial evidence standard. . . . [T]he court determines 'de novo' whether an agency has complied with CEQA's legal requirements, 'scrupulously enforcing all legislatively mandated CEQA requirements.' . . . When determining whether the agency proceeded in the manner required by law, a reviewing court may not impose procedural or substantial requirements beyond those explicitly stated in the statutes and the CEQA Guidelines." Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont. Ed. Bar 2d ed. 2013) §23.35 ("Failure to Proceed in Manner Required By Law), internal citations omitted.

Judged by the legal standard in effect since March 2010, CEQA Guidelines §15064.4, the City failed to proceed in the manner required by law by not including any comparison of Project GHG emissions with "current" (2009) GHG emissions. Burying the data from which such a

comparison could be made in appendices is not an acceptable substitute for preparing the comparison to existing conditions. CCEC is correct that this is fairly similar to the situation in *Oroville*, where emissions for the existing Wal-Mart store were not included in the EIR, and the Court of Appeal found that "[w]ithout these determinations, ascertaining whether Assembly Bill 32's target reductions are being met is difficult if not futile." *Friends of Oroville*, *supra*, 219 Cal App 4th at 842.

The City also failed to proceed in the manner required by law in that the failure to present information on present GHG emissions also renders the Project baseline inadequate as the City concluded the General Plan update has a significant cumulative impact on projected 2035 GHG emissions (See AR 14). See Guidelines §15125(a) ("An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published*, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. . . ." Emphasis added.) and §15126.2(a), stating in pertinent part that an EIR shall identify significant impacts and those impacts "shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." See also *Smart Rail*, *supra*, at 455: "The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term."

The question then becomes whether the City's failure to comply with Guidelines §§ 15064.4 and 15125(a) was a prejudicial error. Such error is not presumed simply from the failure to proceed in the manner required by law.

"Under Pub. Res. Code §21005, noncompliance with the information disclosure provisions of CEQA, 'which precludes relevant information from being presented to the public agency,' and noncompliance with the 'substantive requirements' of CEQA may be found by a reviewing court to be a prejudicial abuse of discretion whether or not a different outcome would have resulted if the agency had complied. In applying the CEQA standard of review, however, courts are instructed 'to follow the established principle that there is no presumption that error is prejudicial.' This statute . . . [H]as generally be interpreted to mean that a determination of prejudice depends on whether legal error hindered accomplishment of CEQA's objectives, rather than whether the error might have affected the outcome of the process." Kostka & Zischke, *supra*, at §23.36, internal citations omitted.

When applying §21005 Courts "focus on whether the violation of CEQA *prevented informed decision making or public participation*. Decisions applying this principle to claims that an EIR is deficient state that it must be shown that the agency abused its discretion by omitting information required by law and that the error was prejudicial because 'it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts.' [*Smart Rail, supra*, at 463.] 'Insubstantial or merely technical omissions are not grounds for relief.' [*Id.*] A failure to comply with CEQA's substantive requirements is not prejudicial error if there is no basis to conclude that a properly conducted analysis 'would have

produced any substantially different information.' [*Id.*] . . . Noncompliance with procedural requirements has been found to be prejudicial error when the failure to comply thwarted CEQA's objective to allow comments from other agencies and the public during the environmental review process." Kostka & Zischke, *supra*, at §23.37, internal citations omitted, emphasis and brackets added.

Applying this standard to the facts here the Court is compelled to find that the City's failure to proceed in the manner required by law was prejudicial error. While the City is correct that this EIR is a general plan update and will not be used as the sole CEQA document for the construction of any specific project, it also true that this is a program EIR that the City will be "tiering" projects off of for many years to come and will be pointing to as containing the supposedly valid Greenhouse Gas emissions analysis for those projects. When those projects undergo CEQA review it will be too late for anyone to challenge the flawed Greenhouse Gas analysis contained in this General Plan update. Letting this error go may result in the Greenhouse Gas emission impacts from development in San Jose being underestimated for years to come.

CCEC has argued (and the City did not dispute the calculations) that if present emissions data is compared to that allowed by the proposed General Plan update as required by Guidelines §15064.4, GHG emissions will increase by 2.7 MNT or 36 percent by 2020 (from the approximate 2008 figure of 7.6 to the estimated 10.3). This is "substantially different information" that was not provided to the public. This failure to provide relevant information

was prejudicial as the failure "deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts." *Smart Rail*, *supra*, at 463.

The Court has discretion under Pub. Res. Code §21168.9 to tailor its order in appropriate circumstances, and the Court would prefer not to void the City's approval of both the Program EIR (Council Resolution 76041) and the General Plan amendment (Resolution 76042) in their entirety. That said, given that the failure to state the "present" GHG emissions affects the Project baseline and all comparisons and determinations made using the baseline, and the City's stated intention to tier other projects off this defective EIR, a limited order may not be possible.

To determine if a limited order is possible the Court will hear further argument from the parties, limited to the issue of the scope of the proposed order. The findings that the City failed to proceed in the manner required by law and that the error was prejudicial will not be the subject of further argument. The parties are directed to meet and confer and communicate with the Dept. 21 Court Clerk a proposed date for this further argument, subject to the Court's availability.

Dated: 1-23-15

Joseph H. Huber
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

(ENDORSED)
FILED
JAN 27 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY S. ROMAN DEPUTY

TO: FILE COPY

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RE: California Clean Energy Committee Vs City Of San Jose
Case Nbr: 1-11-CV-212623

PROOF OF SERVICE

ORDER RE: PETITION FOR WRIT OF MANDATE

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Margo Laskowska , City Attorney's Office - SJ
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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 01/27/15. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Sylvia Roman, Deputy