



ORIGINAL FILED  
AUG 14 2006  
LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

SIERRA CLUB, et al.,	)	CASE NO. BS 098 722
Petitioner,	)	DECISION ON SUBMITTED MATTER
vs.	)	
CITY OF SANTA CLARITA, et al.,	)	
Respondent.	)	
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NEWHALL LAND AND FARMING,	)	
Real Party in Interest.	)	
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Having taken the matter under submission on May 31, 2005, having considered all the evidence admitted and the parties' oral and written arguments, the Court rules as follows:

Petitioners Sierra Club, Center for Biological Diversity, Friends of the Santa Clarita River, and California Water Impact Network ("Petitioners") seek a Writ of Mandate commanding Respondents City of Santa Clarita and Santa Clarita City Council ("City" or "Respondents") to set aside its decision certifying the Final Environmental Impact Report ("FEIR") and approving the Project known as Riverpark in favor of Real Party in Interest Newhall Land and Farming ("Newhall").

1 The Riverpark project is located on a 695.4-acre site. Originally,  
2 Riverpark proposed ~~1,183 residential units~~, consisting of 439 single-  
3 family homes and ~~744 apartments~~, and 40,000 square feet of commercial  
4 development, a ~~trail system~~, a 29-acre active/passive park along the  
5 Santa Clara River, and approximately 442 acres of open space area,  
6 including most of the Santa Clara River. (2:1 AR, Tab 4, 340-42 [Draft  
7 EIR, § 1.0, Project Description].) Through the public hearing process,  
8 the project was revised by converting the apartments to condominiums or  
9 townhouses, reducing to 1,123 the residential units and to 16,000 square  
10 feet commercial development, and preserving additional areas of the  
11 Santa Clara River and its south fork. (10 AR, Tab 12, 11742-44 [FEIR,  
12 Project Revisions and Additional Information].) Further hearings in  
13 2005 reduced the residential units to 1,089, consisting of 432 single  
14 family homes and 657 condominium/townhouses, and provided for the  
15 preservation of more land and river areas, totaling 788 acres (470-acres  
16 on-site) for recreation and open space. (10 AR 11742-44; 9 AR, Tab 11,  
17 11418-22.) Included among the 318 off-site acres are the remaining  
18 portions of the south fork of the Santa Clara River owned by RPI, and 37  
19 acres of the Santa Clara River significant ecological area ("SEA").

20 Project approvals included a General Plan Amendment, a Zone Change,  
21 a vesting tentative tract map, a conditional use permit to build in  
22 excess of two stories and a maximum of 50-feet, Hillside Innovative  
23 Application, a permit for vehicular gating, a variance to reduce setback  
24 requirements and to build sound walls in excess of 7 feet, Hillside  
25 Development Application, and an Oak Tree Permit. (1 AR, Tab 2, 9-114;  
26 2 AR 259.)

27 The Planning Commission held 9 hearings and on 12/21/04 recommended  
28 that the City Council certify the EIR and adopt a Statement of

1 Overriding Considerations for impacts that could not be mitigated to a  
2 less than significant level. (1 AR, Tab 2, 9-22 [App. Reso.]; 7:2 AR,  
3 Tab 9, 8079-81 [12/21/04 Hearing Transcript]; 73 AR, Tab 652, 51639-43  
4 [12/21/04 Staff Report].)

5 The City Council held 3 hearings and certified the EIR on 5/24/05,  
6 unanimously approving the project on 6/14/05. (1 AR, Tab 2, 22-26; 1  
7 AR, Tab 3, 115-229.)

8 Petitioner filed within Petition for Writ of Mandate alleging non-  
9 compliance with CEQA.

10 To establish violation of the California Environmental Quality Act  
11 ("CEQA"), Petitioner must show an abuse of discretion in that the County  
12 either failed to proceed in the manner required by law or the  
13 determination or decision is not supported by substantial evidence.  
14 (Code Civ. Proc., § 1094.5(b); Pub. Resources Code, §§ 21168, 21168.5.)

15 When CEQA non-compliance is alleged, the Court reviews the entire record  
16 to see if substantial evidence supports the challenged determinations.

17 "Substantial evidence" is defined as "enough relevant information  
18 and reasonable inferences from this information that a fair argument can  
19 be made to support a conclusion, even though other conclusions might  
20 also be reached." (14 Cal. Code Regs., § 15384(a); Laurel Heights  
21 Improvement Assn. v. Regents of University of California (1988) 47  
22 Cal.3d 376, 393.) Substantial evidence may include facts, reasonable  
23 assumptions predicated upon facts, and expert opinion supported by  
24 facts, but not argument, speculation, unsubstantiated opinion, or  
25 clearly erroneous evidence. (Pub. Resources Code, §§ 21080(e)(1)(2),  
26 21082.2(c).)

27 "[I]n applying the substantial evidence standard, the reviewing  
28 court must resolve reasonable doubt in favor of the administrative

1 finding and decision. As such, if there are conflicts in the evidence,  
2 their resolution is for the agency." (River Valley Preservation Project  
3 v. Metropolitan Transit Development Board (1995) 37 Cal. App. 4th 154,  
4 168.) Determinations in an EIR must be upheld if supported by  
5 substantial evidence, and the mere presence of conflicting evidence  
6 in the administrative record does not invalidate them. (Chaparral  
7 Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1143.) An  
8 agency's approval of an EIR may not be set aside on the ground that an  
9 opposite conclusion would have been equally or more reasonable. (Laurel  
10 Heights Improvement Assn. v. Regents of University of California (1988)  
11 47 Cal.3d 376, 393.) The Court's role is not to substitute its judgment  
12 for that of the local agency representatives, but to enforce  
13 legislatively mandated CEQA requirements. (Citizens of Goleta Valley v.  
14 Board of Supervisors (1990) 52 Cal.3d 553, 564.) The Court passes only  
15 upon the EIR's sufficiency as an informative document, not upon the  
16 correctness of its environmental conclusions. (Laurel Heights at 392.)

17 I. City Properly Relied on the 41,000 AFY Water Transfer for Planning  
18 Purposes

19 Petitioners contend that the City is legally precluded from relying  
20 on water from the transfer of 41,000 AFY acre feet per year ("AFY") of  
21 State Water Project ("SWP") water to the local SWP wholesaler, Castaic  
22 Lake Water Agency ("CLWA") ("41,000 AFY transfer") for planning  
23 purposes, and the EIR's reliance on water supplies is not supported by  
24 substantial evidence.

25 The water for the Riverpark project is to be supplied by CLWA.

26 In 1999, CLWA entered into a contract with the Kern Delta Water  
27 District for transfer of 41,000 acre feet per year (AFY) as part of the  
28

1 "Monterey Agreement."<sup>1</sup> The CLWA certified an EIR for the 41,000 AFY  
2 transfer tiered on the earlier program EIR that had been prepared for  
3 the Monterey Agreement.

4 In Planning and Conservation League v. Dept. of Water Resources  
5 (2000) 83 Cal.App.4<sup>th</sup> 892 ("PCL"), the PCL challenged the Monterey  
6 Agreement program EIR. The Court of Appeal held that the EIR should  
7 have been prepared by DWR as the lead agency, rather than by one of the  
8 contractors, and that a new EIR must be prepared and certified by DWR.  
9 The Court did not invalidate the Monterey Agreement or enjoin the water  
10 transfers effected thereunder, but directed the trial court to consider  
11 under CEQA section 21168.9 whether the Monterey Agreement should remain  
12 in place pending preparation of DWR's new EIR, and to retain  
13 jurisdiction pending certification of DWR's EIR.

14 In Friends of Santa Clara River v. CLWA (2002) 95 Cal.App.4<sup>th</sup> 1373  
15 ("Friends I"), the Court of Appeal ordered CLWA's EIR decertified  
16 because it had been tiered from the Monterey Agreement EIR, adjudged  
17 inadequate: "We have examined all of appellant's other contentions and  
18 find them to be without merit. If the PCL/tiering problem had not  
19 arisen, we would have affirmed the judgment." (Friends, supra, at 1387.)  
20 The Court did not issue any ruling affecting CLWA's ability to continue  
21 to use and rely on water supplies from the 41,000 AFY Transfer, leaving  
22 it to the trial court's discretion whether to enjoin CLWA's use of the  
23 water pending its completion of a new EIR. (Friends, supra, at 1388.)

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27 <sup>1</sup>An excellent history of the SWP and the role of Department of Water  
28 Resources ("DWR") in the management of the SWP, the Monterey Agreement  
and amendments, and relevant litigation is set forth in Calif. Oak  
Foundation v. Santa Clarita, 133 Cal.App.4<sup>th</sup> 1219 (2005).

1 In September 2002, on remand to the Los Angeles County Superior  
2 Court, the Friends petitioners applied under CEQA section 21168.9 to  
3 enjoin CLWA from continuing to use and rely on water from the 41,000 AFY  
4 Transfer. The trial court rejected that request, and in December 2003,  
5 the Court of Appeal affirmed the trial court's ruling allowing CLWA to  
6 continue to use and rely on water from the 41,000 AFY Transfer pending  
7 completion of its new EIR. (Id.; see also, Friends of the Santa Clara  
8 River v. Castaic Lake Water Agency, 2003 WL 22839353 ("Friends II") at  
9 Tab 7, 5 AR 4180-97.)

10 Meanwhile, on 5/5/03, before the trial court acted on remand, the  
11 parties to the PCL litigation entered into the Monterey Settlement  
12 Agreement.<sup>2</sup> Section II of that agreement provides that SWP would  
13 continue to be administered and operated in accord with both the  
14 Monterey Amendments and the terms of the Monterey Settlement Agreement.  
15 (5:1 AR, Tab 7, 4367.) The Monterey Settlement Agreement did not  
16 invalidate or vacate the Monterey Amendments, or any water transfer  
17 effected under them.

18 A. *PCL, Friends of the Santa Clara River and California Oak do not*  
19 *preclude reliance on the 41,000 AFY Water Transfer*

20 Petitioners contend that legal uncertainties surrounding the 41,000  
21 AFY transfer due to the PCL and Friends lawsuits preclude the City from  
22 relying on water from that transfer for planning purposes.  
23 Specifically, Petitioners contend that because PCL requires the  
24 Department of Water Resources ("DWR") to prepare an EIR analyzing the  
25

26 <sup>2</sup>On 6/6/03, the Sacramento County Superior Court issued its Order  
27 under CEQA section 21168.9, approving both the Monterey Settlement  
28 Agreement, and the continued operation of the SWP pursuant to the  
Monterey Amendment and the approved Monterey Settlement Agreement. (See  
6 AR, Tab 8, 6557; 8 AR, Tab 10, 9775-78 [Order].)

1 effects of the eight SWP water transfers completed under the Monterey  
2 Agreement, none of those transfers, including the 41,000 AFY transfer,  
3 can be relied on for planning purposes until DWR has completed and  
4 certified that EIR. Moreover, Petitioners contend that the Court of  
5 Appeal so held in California Oak Foundation v. City of Santa Clarita  
6 (2005) 133 Cal.App.4<sup>th</sup> 1219.

7 PCL, Friends and California Oak (discussed infra) do not preclude  
8 reliance on the 41,000 AFY transfer for planning purposes.

9 While the Courts of Appeal could have simply said that all EIRs  
10 requiring reliance on the 41,000 AFY transfer, must await the  
11 certification of a new FEIR by DWR (and resolution of any litigation  
12 challenging such FEIR), they have not done that.

13 Although the Court in Friends and California Oak observed that CLWA  
14 "may be able to cure the PCL problem by awaiting action by the [DWR]  
15 complying with the PCL decision, then issuing a subsequent EIR,  
16 supplement to EIR, or addendum . . . tiering upon a newly certified  
17 Monterey Agreement EIR" (California Oak, supra, 133 Cal.App.4<sup>th</sup> at 1230,  
18 n.6), neither court said that the CLWA and City of Santa Clarita must  
19 await the DWR FEIR.

20 CLWA certified a new EIR on the 41,000 AFY Transfer on 12/22/04.  
21 (Tab 10, 8:2 AR 10441-480 [CLWA Resolution certifying the EIR]; see also  
22 Tab 637, 63 AR 43468-44683 [CLWA FEIR]; Tab 12, 10 AR 11750 [Final  
23 Riverpark EIR Project Revisions and Additional Information.]) This new  
24 EIR analyzes the effects of the 41,000 AFY Transfer without tiering from  
25 the Monterey Agreement EIR.<sup>3</sup> Although CLWA's EIR is currently being  
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27 <sup>3</sup>The CLWA EIR concludes that the Monterey Settlement Agreement  
28 neither requires that DWR's new EIR be certified before CLWA can certify  
its new EIR for the 41,000 AFY Transfer, nor requires that DWR's new EIR



1 challenged, CEQA requires that the EIR be conclusively presumed to  
2 comply with CEQA, until a court has judged it deficient. (See. e.g.,  
3 CEQA, § 21167.3(b), CEQA Guidelines, § 15231; see also, Barthelemy v.  
4 Chino Basin Water Dist., *supra*, 38 Cal.App.4th 1609, 1617.)

5 Since the prior CLWA EIR for the 41,000 AFY Transfer was overturned  
6 solely because it tiered from a later-decertified Monterey Agreement  
7 EIR, and CLWA has now certified an EIR approving the 41,000 AFY Transfer  
8 without tiering from the Monterey Agreement EIR,<sup>4</sup> the City reasonably  
9 included water from the 41,000 AFY Transfer in CLWA's supplies, after  
10 considering at length the current status of all litigation.<sup>5</sup>

11 B. The 41,000 AFY transfer is sufficiently certain and the Monterey  
12 Settlement Agreement does not preclude Respondents from relying on  
13 said transfer in its EIR pending DWR's preparation of its EIR.

14 As argued by Respondents, three provisions in the Monterey  
15 Settlement Agreement, read together, refute Petitioners' argument that  
16 the 41,000 AFY Transfer was excluded from Attachment E because it was a  
17 non-permanent transfer, which may not be used for planning purposes.

18  
19 serve as the EIR for that Transfer. (Tab 637.63 AR 43987-92 [CLWA  
20 Master Response to Comments].) These conclusions are consistent with  
21 Friends II, that the 41,000 AFY Transfer is not legally bound to the PCL  
litigation or to DWR's new EIR. (Tab 7, 5:1 AR 4195-4196.)

22 <sup>4</sup>Although DWR is in the process of certifying its own EIR pursuant  
23 to PCL and the Monterey Settlement Agreement, DWR approved CLWA's  
24 preparation of its EIR in a comment letter on the Draft EIR, and noted  
25 that CLWA's Draft EIR "adequately and thoroughly discusses the proposed  
project and its impacts," and "adequately discusses the reliability of  
the SWP, pre- and post-Monterey Amendment conditions, future conditions  
and SWP operations." (Tab 637, 63 AR 43482-83.)

26 <sup>5</sup>Respondents' Riverpark EIR discusses the prior litigation and  
27 devotes 8 pages to discussion of the litigation surrounding CLWA's EIR  
28 on the 41,000 AFY Transfer in its response to comments alone. (Tab 8, 6  
AR 6551-6559.)

1 Section III(C)(4) requires DWR to conduct an "[a]nalysis of the  
2 potential environmental impacts relating to" all eight of the completed  
3 water transfers, not just of the 41,000 AFY Transfer (Tab 7. 5:1 AR  
4 4368-69) and to analyze all of the transfers in the same manner, even  
5 though seven of them, defined in the Agreement as the "Attachment E  
6 Transfers," were beyond challenge. (Id. [Section III(C)(4)]; Tab 7, 5:1  
7 AR 4370 [Sections III(D), III(E)].) Section III(D) precludes challenges  
8 to the Attachment E Transfers, which had been litigated in other forums  
9 or had become final without challenge by the expiration of limitation  
10 periods. (Tab 7. 5:1 AR 4370.) Section III(E) acknowledges the  
11 jurisdiction of Los Angeles Superior Court over the then-ongoing Friends  
12 litigation challenging CLWA's EIR on the 41,000 AFY Transfer (Tab 7, 6  
13 5:1 AR 4370) pending completion of CLWA's new EIR, but does not  
14 distinguish the 41,000 AFY Transfer from the Attachment E transfers  
15 otherwise.

16 The Monterey Settlement Agreement does not prohibit reliance on the  
17 41,000 AFY Transfer. All of the water transfers were effected as  
18 permanent transfers under the Agreement and are to be analyzed in the  
19 same way in DWR's new EIR, as required by Section III(C)(4).

20 Petitioner contends that the continued availability of the 41,000  
21 AFY transfer is uncertain until DWR has concluded its EIR and that under  
22 California Oak, the City may not presume that the outcome of DWR's  
23 environmental review will be the continued availability of the 41,000  
24 AFY.

25 DWR, however, has recognized the 41,000 AFY Transfer as a permanent  
26 transfer under the Monterey Agreement by entering into Amendment No. 18  
27 to CLWA's agreement, which increases its Table A Amount by 41,000 AFY  
28 (Tab 10, 8:1 AR 9212-14), and has since consistently allocated water

1 supplies to CLWA based on that entitlement (Tab 4, 2:2 AR 1015-17  
2 [DEIR])). Furthermore, as noted supra, DWR also submitted positive  
3 comments on CLWA's Draft EIR. (Tab 637, 63 AR 43482-83).

4 DWR's analysis of the 41,000 AFY Transfer in its new EIR will be  
5 part of a broader analysis of past and future permanent transfers of  
6 Table A Amounts, and will not constitute the EIR for the 41,000 AFY  
7 transfer. (5:1 AR, Tab 7, 4369.) As noted supra, PCL, Friends and the  
8 Monterey Settlement Agreement do not prohibit CLWA's preparation of its  
9 new EIR addressing the impacts of the 41,000 AFY transfer. (Tab 637, 63  
10 AR 43987-92 [CLWA Master Response to Comments].)

11 California Oak, being most recent, deserves further discussion. In  
12 California Oak, the Court struck down the City's certification of an  
13 earlier EIR for an industrial project because it did not address the  
14 legal uncertainties surrounding the 41,000 AFY Transfer. California Oak  
15 did not bar the use of water from the 41,000 AFY transfer for all  
16 planning purposes. It criticized the City's failure to explain its  
17 reasoning for relying on the 41,000 AFY transfer, but held that it was  
18 up to the City to determine whether or not to rely on the 41,000 AFY  
19 transfer in its planning. The Court stated: "[T]he question is whether  
20 the entitlement should be used for purposes of planning future  
21 development, since its prospective availability is legally uncertain.  
22 Although this decision must be made by the City, the EIR is intended to  
23 serve as an informative document to make government action transparent.  
24 Transparency is impossible without a clear and complete explanation of  
25 the circumstances surrounding the reliability of the water supply."  
26 (Id. at 1237-38; emphasis supplied.) Before relying on water from the  
27 41,000 AFY transfer for planning purposes, the City must "present a  
28 reasoned analysis of the significance . . . [or insignificance] of the

1 decertification of the EIR for the Castaic purchase; how demand for  
2 water would be met without the 41,000 AFY entitlement; or why it is  
3 appropriate to rely on the 41,000 AFY transfer in any event." (Id. at  
4 1244.)

5 The Court in California Oak ruled that the EIR contained an  
6 inadequate discussion, in fact no discussion at all, of the uncertainty  
7 regarding the 41,000 AFY transfer in the EIR itself, but only references  
8 to it in the appendices, and responses to comments. The text of the EIR  
9 did not mention the decertification of the CLWA EIR, or that  
10 "entitlements are not really entitlements, but only 'paper' water."  
11 (California Oak, supra, 133 Cal.App.4th at 1236.) From the EIR, the  
12 Court could only assume that City concluded the 41,000 AFY would  
13 continue to be available, but found that the lack of a forthright  
14 discussion of a significant factor that could affect water supplies was  
15 antithetical to the purpose of an EIR to reveal to the public the basis  
16 on which officials approve or reject environmental action. (Id. at  
17 1237-38). Thus, the Court held that the EIR failed to inform the public  
18 of the litigation uncertainties surrounding the 41,000 AFY transfer, and  
19 substantial evidence did not support the City's decision to rely on  
20 water from that transfer for planning purposes.

21 Here, by contrast, the City discussed the 41,000 AFY transfer and  
22 its uncertainties at considerable length, both in the EIR and throughout  
23 the review process. (See infra, pp. 12-16.) The PCL, Friends, Friends  
24 II, and California Oak decisions were all discussed. The City concluded  
25 that it was likely that the 41,000 AFY would be available for the  
26 project. By the time the City Council held its first Riverpark hearing  
27 on 1/25/05, the City also had before it CLWA's certified new EIR for the  
28 41,000 AFY transfer, which was not the case in California Oak.

1 The Riverpark EIR adequately discloses the uncertainties regarding  
2 the 41,000 AFY transfer and discusses them forthrightly.

3 C. Substantial evidence supports reliance on 41,000 AFY water transfer  
4 and the EIR's analysis of the transfer is not flawed

5 Petitioners contend that substantial evidence does not support the  
6 City's decision to rely on water from the 41,000 AFY Transfer.

7 As noted, California Oak held that, as long as the city has  
8 analyzed the uncertainties surrounding this water supply, it is within  
9 the City's province to decide whether to rely on the 41,000 AFY Transfer  
10 for planning purposes.

11 The EIR and the Administrative Record contain substantial evidence  
12 supporting the City's decision that water from the 41,000 AFY Transfer  
13 can be relied on as part of CLWA's supplies.

14 CLWA, the SWP and the reliability of its water supplies, the  
15 Monterey Agreement, the PCL litigation, the Monterey Settlement  
16 Agreement, CLWA's Table A Amounts, and the Friends litigation are all  
17 extensively discussed in the EIR. The City specifically discloses that  
18 a future adverse judgment invalidating the Monterey Agreement could  
19 affect CLWA's ability to use water from the 41,000 AFY transfer and  
20 adversely affect CLWA's water supplies over the long term, but that,  
21 based on the information discussed, CLWA (the experts concerning water  
22 supply) believed that such a result "is unlikely to >unwind' executed  
23 and completed agreements with respect to the permanent transfer of SWP  
24 Water Amounts." (Tab 4,2:2 AR 1014-15; see also, Tab 8,6:2 AR 6551-59  
25 [TR-3].) Further, the EIR notes the 41,000 AFY Transfer was completed in  
26 1999, CLWA has paid approximately \$47 million for the additional Table  
27 A Amount, the monies have been delivered, the sales price has been  
28 financed through CLWA by tax-exempt bonds, and DWR has increased CLWA's

1 SWP maximum Table A Amount and delivered or made available to CLWA the  
2 95,200 AFY because it was a permanent transfer/reallocation of SWP Table  
3 A entitlement between SWP contractors." (Tab 4, 2:2 AR 1013.) Included  
4 in the EIR's Appendices and referenced in the EIR, are the 19 documents  
5 supporting the EIR's analyses, including the PCL decision, the Monterey  
6 Settlement Agreement, the Sacramento County Superior Court's "Order  
7 Pursuant to Public Resources Code Section 21168.9," the Friends  
8 decision, the Los Angeles County Superior Court's Judgment on remand in  
9 the Friends litigation, CLWA's final EIR for the 41,000 AFY Transfer,  
10 and CLWA's Resolution certifying that EIR.

11 The City responded to numerous comments challenging the EIR's  
12 conclusion that CLWA could rely on the 41,000 AFY Transfer for planning  
13 purposes. Due to the number of comments, and the amount of information  
14 required to respond, the City prepared a "master" response on this  
15 subject, TR-3 (Tab 8, 6:2 AR 6551-59). TR-3 reviews the information  
16 disclosed in the EIR's Water Services section regarding the 41,000 AFY  
17 Transfer and the Friends litigation, then responds to comments asserting  
18 that: (i) the PCL litigation and Monterey Settlement Agreement preclude  
19 CLWA from using or relying on that water transfer, and (ii) because the  
20 Monterey Settlement Agreement requires DWR to prepare a new EIR on the  
21 Monterey Agreement, CLWA cannot rely on the water transfer until that  
22 new EIR is completed. The City also prepared responses to individual  
23 comment letters on the 41,000 AFY Transfer<sup>6</sup> All of these comments and  
24

25  
26 <sup>6</sup>See, for example, responses to comments from the Santa Clarita  
27 Organization for Planning and the Environment (Tab 8, 6 AR 5962-66,  
28 6689-6717), Petitioners Sierra Club (Tab 8, 6 AR 6194-6201, 6370, 6737-  
66, 6829-30), California Water Impact Network (Tab 8, 6 AR 6273-74,  
6767-75), Friends (Tab 8, 6 AR 6387, 6835-36), and from a law firm  
involved in the PCL litigation (Tab 8, 6 AR 6275-78, 6776-83).

1 responses are included in the Riverpark Final EIR.

2 The City's Planning Commission also held a study session on the  
3 subject of the reliability of available water supplies. (Tab 9, 7 AR  
4 7480-92.)

5 Ultimately, the City reviewed all of this information, and the  
6 views expressed in the EIR, by CLWA, and by commentators opposed to the  
7 City considering the 41,000 AFY Transfer, and determined it was  
8 appropriate for the City to rely on those SWP supplies. (Tab 2, 1 AR 9-  
9 114 [App. Reso]; Tab 3. 1 AR 174-220 [CEQA Findings].) The City  
10 explained that its determination to allow Riverpark to rely on the  
11 41,000 AFY Transfer was supported by the information in the EIR for four  
12 main reasons: (i) nothing in the Monterey Settlement Agreement or in any  
13 court decision precludes that reliance; (ii) nothing in the Monterey  
14 Settlement Agreement precludes CLWA from preparing and certifying its  
15 revised EIR for that transfer as instructed by the Court of Appeal in  
16 the Friends decision and, in fact, the Settlement Agreement was  
17 carefully crafted to leave that EIR and any required remedies to the Los  
18 Angeles County Superior Court; (iii) the fact that DWR is preparing an  
19 EIR that will analyze all of the water transfers under the Monterey  
20 Agreement does not preclude CLWA from preparing and certifying its  
21 revised EIR, as instructed by Friends; and (iv) CLWA's Final EIR re-  
22 approving the transfer had been certified without tiering from the  
23 Monterey Agreement EIR. (Tab 8, 6:2 AR 6558-59 [TR-3]; Tab 10, 8:2 AR  
24 10441-10480; Tab 12, 10 AR 11750.)

25 As directed by California Oak, the City here has analyzed in  
26 considerable detail the uncertainties surrounding the AFY water transfer  
27 and explained the basis for its reliance on that transfer. The City's  
28 ///

1 determinations are not an abuse of discretion, but supported by  
2 substantial evidence.

3       Petitioners' contention that the City makes false statements about  
4 the transfer (OB 7-9) is not borne out by the record.

5       The City's statement reads: "Because the 41,000 AF was a permanent  
6 water transfer, because DWR includes the 41,000 AF in calculating CLWA's  
7 share of SWP Table A Amount, and because the courts have not prohibited  
8 CLWA from using or relying on those additional SWP supplies, the City  
9 has determined that it remains appropriate for the Riverpark project to  
10 include those water supplies in its water supply and demand analysis,  
11 while acknowledging and disclosing uncertainty created by litigation."  
12 (Tab 8, 6:2 AR 6768-69.)

13       This statement is qualified and explained by the City's extensive  
14 discussion of the legal uncertainties arising from litigation, supra,  
15 and is not misleading. The statement cannot be taken out of context and  
16 must be read in light of other statements and evidence in the record.  
17 As regards "reliance on the fact that DWR counts the 41,000 AFY in Table  
18 A amounts, DWR has acknowledged the 41,000 AFY Transfer by continuously  
19 delivering SWP water, including water from the Transfer, to CLWA for  
20 many years. The Monterey Settlement Agreement treats the 41,000 AFY  
21 Transfer identically to the Appendix E Transfers. The City's discussion  
22 of the reliability of SWP water supplies, including the 41,000 AFY  
23 Transfer water, is a discussion relating to the ability of the SWP to  
24 deliver only such supplies as are available on a year-to-year basis.  
25 (See, e.g., Tab 4, 2:2 AR 1022-30.) The City discussed the reliability  
26 of available SWP supplies under average, dry and critical dry years, and  
27 that there would be sufficient supplies to meet Riverpark's demand and  
28 cumulative demand. (Id. at 1051-70.)



1 Unlike California Oak, the record shows that the City considered  
2 the 41,000 AFY transfer in the EIR, including the legal uncertainties,  
3 the reliability of available supplies of SWP water in general, and  
4 concluded, based on substantial evidence, that it was appropriate to  
5 rely on those supplies for planning purposes. The City also considered  
6 and responded to numerous comments. After 12 hearings before the  
7 Planning Commission and City Council, the City certified the EIR and  
8 approved Riverpark, knowing that water supplies from the 41,000 AFY  
9 Transfer were to some degree uncertain, but explaining the reasoning for  
10 its determinations and the evidence that supported it. That is all that  
11 CEQA and California Oak require.

12 II. Impacts on Biological Resources were Appropriately Evaluated

13 Petitioner contends that the project's impact on three special-  
14 status species, the western spadefoot toad ("Toad"), the San Diego back-  
15 tailed jackrabbit ("Jackrabbit") and the holly-leaf cherry woodlands  
16 ("Holly-Leaf") must be considered significant because they are "rare"  
17 within the meaning of CEQA, the EIR's responses to comments by  
18 Department of Fish and Game ("DFG") were inadequate, as were mitigation  
19 measures for the Toad and Jackrabbit.

20 CEQA Guidelines section 15065(a) provides: "A lead agency shall  
21 find that a project may have a significant effect on the environment and  
22 thereby require an EIR to be prepared for the project where there is  
23 substantial evidence, in light of the whole record, that . . . : (1) The  
24 project has the potential to . . . substantially reduce the number or  
25 restrict the range of an endangered, rare or threatened species . . . ."  
26 (Guidelines, § 15065(a); 51 AR 33996.)

27 Here, an EIR was prepared and the impacts on the Toad, Jackrabbit,  
28 and Holly-Leaf considered. Petitioner contends that, to assess the

1 significance of the project impacts on the Toad, Holly-Leaf, and  
2 Jackrabbit, the EIR was required to determine whether the species are  
3 "rare" under Guidelines section 15380(b)(2)(A), which defines "rare" as  
4 "[a]lthough not presently threatened with extinction, the species is  
5 existing in such small numbers throughout all or a significant portion  
6 of its range that it may become endangered if its environment worsens."

7 The EIR's conclusions with regard to these species are supported by  
8 substantial evidence.

9 Toad

10 The EIR concluded that impacts on the Toad would be significant and  
11 unavoidable (Tab 7, 5:2 AR 5774, 5827).

12 The EIR describes the Toad as a special-status species (Tab 7, 5:2  
13 AR 5720-5730, 5737, 5831-36; see also Tab 9, 7:2 AR 8572 [Revised Draft  
14 EIR ("RDEIR")]), and defines "special-status wildlife" to include rare  
15 species, that is, State Species of Special Concern and Federal Species  
16 of Concern. (Tab 7, 5:2 AR 5728.) The EIR notes that Toads were found  
17 in three seasonal rainpools created by human disturbances in the middle  
18 of areas planned for development: in the right-of-way for the extension  
19 of Newhall Ranch Road, in the middle of Planning Area A-1, and in the  
20 middle of Planning Area B (Tab 7, 5:2 AR 5832-34). The potential impacts  
21 on the Toad were analyzed in accordance with CEQA and City thresholds  
22 and found to be significant (*id.* at 5750-53, 5774). Mitigation was  
23 recommended in the form of pre-construction surveys, preparation of a  
24 Resource Management and Monitoring Plan ("RMMP"), design and  
25 construction of new enhanced Toad habitat and implementation of a  
26 capture and relocation and monitoring program. Ultimately the EIR  
27 concluded that the impacts would remain significant and unavoidable,  
28 because such measures have not yet been proven to be highly effective,

1 and because of the possibility that not all of the individual Toads  
2 could be successfully captured and relocated (id. at 5811).

3 The City's responses to comments and its actions addressed DFG's  
4 concerns (Tab 8, 6:1 AR 5880-86 [DFG letter], Tab 8, 6:2 AR 6621-30  
5 [response]), and those of other commentators (see, e.g., Tab 8, 6:1 AR  
6 5876-77 [Santa Monica Mountains Conservancy letter], Tab 8, 6:2 AR 6610-  
7 14 [response]). The City followed DFG's recommendations, the City's  
8 "Western Spadefoot Toad Habitat Enhancement and Mitigation Plan" ("Toad  
9 Plan") was created by the City's expert biologist in consultation with  
10 DFG and was ultimately approved by DFG.

11 Substantial evidence in the record supports the City's decision to  
12 mitigate the impacts on the Toad rather than reconfigure the Project.  
13 Such evidence included opinion of City's expert biologist that the Toad  
14 Plan was likely to succeed, and DFG's approval of that Plan. It  
15 properly exercised its discretion to consider the remaining impacts on  
16 the Toad to be significant and unavoidable, and adopted a Statement of  
17 Overriding Considerations for the Toad. (Tab 3, 1 AR 145-150, 155-163,  
18 esp. 159 [SOC].) Arguments similar to Petitioners' arguments here were  
19 rejected in Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th  
20 1261, 1276-77.

#### 21 *Jackrabbit*

22 For the Jackrabbit, the Revised DEIR determined that "[b]ecause  
23 this species is not state or federally listed as Endangered or  
24 Threatened, because it is considered relatively abundant in suitable  
25 habitat areas within its range, and because the direct loss of  
26 individual jackrabbits is expected to be low, it is expected that the  
27 regional population would not drop below a self-sustaining level with  
28 the implementation of this project," the loss of any individual

1 jackrabbits would not be considered a significant impact. (Tab 7, 5:2  
2 AR 5775.)

3 The EIR identifies the Jackrabbit as a State and federal special-  
4 status species, and determined the significance of impacts on that  
5 species based on CEQA and City thresholds that recognize substantial  
6 adverse effects on special-status species and substantial reduction of  
7 habitat as being significant impacts (Tab 7, 5:2 AR 5750-53). Based on  
8 field surveys (see, e.g., Tab 7, 5:2 AR 5707-08 [RDEIR, § 4.6; Tab 6, 4  
9 AR 4153-54), the EIR reported that Jackrabbits, which occur in a variety  
10 of habitats, had been sighted on-site in the riverbed, open terraces and  
11 disked fields, but that because those areas are disturbed, the overall  
12 quality of the habitat on site suitable for Jackrabbits was only  
13 moderate. (Tab 7, 5:2 AR 5735, 5739, 5775; Tab 9, 7:2 AR 8572 [RDEIR].)  
14 The EIR noted that the Project had been designed to include all NRMP  
15 applicable mitigation measures for the areas in and adjacent to the  
16 Santa Clara River (Tab 7, 5:2 AR 5754-61, and 5789-5800 [RDEIR, § 4.61;  
17 Tab 9, 7:2 AR 8576 [RDEIR]]), including preconstruction surveys, capture  
18 and relocation, and riparian habitat creation enhancement. (*Id.* at 5757-  
19 5759, and 5793-95 [RDEIR, § 4.6]; see also, Tab 9, 7:2 AR 8541-42  
20 [RDEIR]).

21 The EIR concluded that project-level impacts would be less than  
22 significant, not just because Jackrabbit is not a listed species and  
23 does not require heightened protection, but also because the species is  
24 abundant where it occurs, and, since it is mobile and would likely  
25 disperse to nearby better habitat rather than be killed as the site is  
26 developed, few individuals would be lost due to development of the site.  
27 (Tab 7, 5:2 AR 5775.) Nevertheless mitigation including preparation of  
28 an RMMP and preconstruction surveys of areas outside the NRMP areas for

1 the potential capture and relocation of special-status species was  
2 recommended. (Tab 7, 5:2 AR 5800-01, 5809-10; Tab 9, 7:2 AR 8543-45,  
3 8584-85 [RDEIR pages].) The EIR also concluded that the project-level  
4 and cumulative impacts on an aggregate of 280 acres of habitat, in  
5 general, necessarily including that for Jackrabbits, would be  
6 significant and unavoidable even after mitigation (Tab 7, 5:2 AR 5761-  
7 62, 5811, 5825-26, 5827). A Statement of Overriding Considerations was  
8 adopted for these impacts. (Tab 3, 1 AR 145-163.)

9 The City did not ignore DFG's comments, but in response to DFG,  
10 stated that it had considered the NRMP and its EIS/EIR, which had  
11 earlier analyzed impacts on the Jackrabbit within the NRMP area (in and  
12 adjacent to the Santa Clara River), and found those impacts to be  
13 significant and imposed mitigation to reduce them to a less than  
14 significant level. (Tab 8, 6:2 AR 6622-23.) Those mitigation measures,  
15 the City explained, had been incorporated into the Project as design  
16 features, and that Riverpark scaled back the activities permitted by the  
17 NRMP, so that the activities within the NRMP area would have even less  
18 of an impact on the Jackrabbit than the NRMP EIS/EIR had determined.  
19 (Tab 8, 6:2 AR 6622-24.)

20 Development was moved further back from the Santa Clara River to  
21 protect riparian resources, including Jackrabbit habitat (including bank  
22 stabilization in a portion of the site). A public trail that had been  
23 proposed in the riverbed was moved out to join the pedestrian/bike  
24 bridge over the Aqueduct. (Tab 8, AR 6623-24; see also Tab 2, Tab 4, Tab  
25 12 [FEIR, Final Project Revisions]; Tab 11) The City also explained  
26 that the mitigation requiring preconstruction surveys and capture and  
27 relocation was more definitive than DFG described B more than simply  
28 forcing individuals to disperse. As to cumulative impacts, the City

1 noted that because the NRMP's mitigation measures had been imposed on  
2 all of the land between the eastern border of Riverpark vest to Castaic  
3 Creek, and because Riverpark had been revised to preserve even more  
4 upland, the EIR had concluded that cumulative impacts on the species  
5 would be less than significant. (Tab 8, AR 6624.)

6 DFG disputed the EIR's conclusions without challenging the City's  
7 survey methodology. (Tab 8, AR 5882.) As the City's response to DFG's  
8 comment letter shows, the City considered DFG's comments, but disagreed  
9 with them. The City's response did not assert that the EIR relied  
10 solely upon the NRMP EIS/EIR's analysis of impacts on the Jackrabbit.  
11 (Tab 8, AR 6622-24.) Rather, the EIR conducted its own independent  
12 analysis. (Tab 7 [RDEIR, § 4.6]; Tab 6 [survey report]; Tab 9 [RDEIR].)  
13 The City's responses to DFG contained a reasoned explanation based on  
14 scientific information. (See CEQA Guideline ' 15088.) The City was not  
15 required to accept DFG's opinions over those of its own expert. (Assn.  
16 of Irrigated Residents, supra, at 1394-97; Laurel Heights I, supra, 47  
17 Cal.3d at 393-93.)

18 Substantial evidence supports the EIR's conclusions on the  
19 Jackrabbit. The evidence shows the EIR conducted its own analysis of  
20 the impacts on the Jackrabbit, and did not rely solely upon the NRMP  
21 EIS/EIR for that analysis.

#### 22 *Holly-Leaf Cherry Scrub*

23 The surveys conducted by the Project's expert botanist concluded  
24 that the plant community identified was not "holly-leaf cherry  
25 woodlands," but "holly-leaf cherry scrub" ("HLCS"), which is different  
26 and one not specified in DFG's List of California Terrestrial Natural  
27 Communities recognized by the California Natural Diversity Data Base  
28 (i.e. without any State or federal protection). (Tab 7, AR 5716-17; Tab

1 416, 53 AR 37223, 37247 and Tab 6, 4 AR 3363, 3387 [DEIR appendices,  
2 2003 and 2002 rare plant surveys Tab 8, 6:2 AR 6627 [response to DFG  
3 comments].)

4 Based on the evidence, including the rare plant surveys conducted  
5 in 2002 and 2003, and supporting evidence (Tab 6, AR 3359-82, 3383-95),  
6 the EIR reported the expert botanist's identification of the plant  
7 community on-site as HLCS (Tab 7, 5:2 AR 57 16-17). The EIR properly  
8 defined the class of plants that were considered to be "special status  
9 plants" (Tab 7, 5.2 AR 5722), and did not include HLCS within that class  
10 based on the botanist's expert opinion. Based on CEQA and City  
11 thresholds, the EIR concluded that the permanent disturbance of 3.6  
12 acres of HLCS, which did not support special-status plant or wildlife  
13 species and is not considered to be sensitive by the resource agencies,  
14 was not significant (Tab 7. 5.2 AR 5767). As noted before, the EIR  
15 concluded that the project-level and cumulative impacts from disturbing  
16 an aggregate of 280 acres of habitat, in general, necessarily including  
17 HLCS, would be a significant impact, and unavoidable even after  
18 mitigation, and, a Statement of Overriding Considerations was adopted as  
19 to this impact (Tab 3, AR 145-163).

20 The City's response to DFG's comments on the HLCS was not  
21 "dismissive." The City responded that based on scientific and other  
22 information the identified plant community was not "holly-leaved cherry  
23 woodland," but HLCS, because the canopy did not amount to a woodland  
24 canopy, and that DFG does not include HLCS within its list of special  
25 status plant communities. Also because only 3.6 acres of habitat would  
26 be permanently impacted by the Project, and HLCS "stand of trees" was  
27 not considered a sensitive plant community as identified by the DFG, the  
28 ///

1 loss of the 3.6 acres would be less than significant under CEQA. (Tab  
2 8, AR 6627.)

3 Substantial evidence supports the conclusions that the HLCS on site  
4 was not a special status species, and that impacts to it alone would not  
5 be significant.

6 III. Description of the Project and Mitigation Measures

7 Petitioners contend that the EIR fails as an informational document  
8 to adequately describe the project or the mitigation measures, misstates  
9 the public and agency concerns raised in comment letters, and fails to  
10 meaningfully respond to them.

11 *The EIR adequately describes impact on the Santa Clara River and is*  
12 *not misleading*

13 Petitioners contend the project will damage the river and the EIR  
14 and the City's staff reports mislead by "perpetuat[ing] the myth that  
15 the project will improve the condition of the river," (OB 16-17) and by  
16 the statement in Final EIR that the project "has been designed to  
17 preserve the Santa Clara River corridor." (AR 28.)

18 A review of the record discloses extensive discussion in the EIR  
19 and staff reports concerning the encroachment into the Santa Clara River  
20 and the impacts to it. Among other things, the EIR discloses that the  
21 Project would install buried bank stabilization in the western portion  
22 of the site, but not the eastern portion where the river corridor would  
23 remain substantially undisturbed up to the eastern boundary where the  
24 Newhall Ranch Road Golden Valley Road Bridge would be built. (See Tabs  
25 4, 5, 7, 11, 12.) There is evidence that buried bank stabilization is  
26 less harmful to the river and its resources than traditional cement  
27 stabilization, yet protects adjacent development adequately (Tab 11, 9  
28 AR 10739-47 [FEIR, App. C. Functional AssessmentC Summary], 10877-90



1 [id., Hybrid Functional Assessment/Riverpark], 11180-97 [FEIR, App. G,  
2 Additional Hydrology and Water Quality Analyses], 11202-19 [id.,  
3 Addendum No. 1], 11405-17 [id., App. J, Additional Flood and Floodplain  
4 Modifications data]]. Furthermore, revisions to the Project would  
5 lessen intrusion into the SEA and protect mature riparian resources that  
6 serve as habitat (id., esp. Tab 11, 9 AR 11419-22, 11516 [FEIR App. K.  
7 Project Revisions and Additional Information]; Tab 12, 10 AR 11741-61  
8 [FEIR Final Project Revisions]; Tab 11, 9 AR 11224-35 [FEIR App. 1.  
9 7/20/04 Staff Report]). Other evidence shows that the overall  
10 (temporary and permanent) intrusion into the SEA was reduced from the  
11 original 37 acres to 32.1 acres, and the permanent intrusion from 24 to  
12 16.9 acres. (Tabs 11, 12.) The Project was also revised to dedicate  
13 approximately 318 off-site acres, including the approximately 141-acre  
14 "Round Mountain" site containing 37 acres of Santa Clara River SEA,  
15 which will in part further offset the Project's impacts on biological  
16 resources and the floodplain (Tab 12). The City nevertheless still  
17 considered the Project's intrusion into the Santa Clara River SEA to be  
18 a significant and unavoidable impact, and included it in the Statement  
19 of Overriding Considerations (Tab 7.)

20 Thus, the City did not "ignore Riverpark's encroachment into the  
21 river." It considered at great length the Project's impacts on the  
22 river and adjacent areas and required changes in the Project to reduce  
23 those impacts.

24 The EIR adequately describes the project setting and is not  
25 misleading

26 The City found that "the proposed project is appropriate for the  
27 subject property," "proposes considerably lower densities than existing  
28 nearby developments," and that "[b]y proposing a maximum of 1,089

1 residential units and approximately 16,000 square feet of commercial  
2 space, the project proposes development that would be substantially less  
3 dense and less intense than those that both the current and the proposed  
4 land use classifications would allow." (1 AR 30.)

5 Petitioners contend the finding is incorrect, because the City  
6 "never actually calculated the number of residential units that can  
7 actually be built on the site," and the site's physical characteristics,  
8 such as topography, constrain the number of units that can be built on  
9 any given parcel.

10 The findings relating to the project setting are adequate under  
11 CEQA and not misleading. Prior to the approval of the General Plan  
12 Amendment and Zone Change proposed by the Project, the City's General  
13 Plan designations for the site permitted development more dense and  
14 intense than the now-approved designations. (See, e.g., Tab 4, 2:1 AR  
15 346-48 [DEIR, § 1.0, Project Description], 830-837 [Id., § 4.7, Land  
16 Use]; Tab 4, 18 2:2 AR 947-52.)

17 There is no requirement the City must calculate exact number of  
18 units which actually can be built.

19 *The EIR adequately describes on-site and off-site dedications to*  
20 *the City*

21 Petitioners contend the EIR does not "adequately describe both the  
22 on-and off-site [land] dedications, which the City considers a  
23 significant benefit, and has identified as one main bases [sic] for  
24 over-riding the project's significant adverse impacts," and City staff  
25 and the EIR do not discuss in an Agenda Report to the City Council a  
26 Planning Commissioner's comments during a debate on whether the  
27 Commission would consider the Project's proposed dedication of portions  
28 of the South Fork of the Santa Clara River to be a benefit under the

1 City's Ridgeline Preservation and Hillside Development Ordinance (OB 24-  
2 28.)

3 Preliminarily, these issues were not raised during the  
4 administrative process and, consequently, are now barred. (CEQA,  
5 § 21177(a); see Park Area Neighbors v. Town of Fairfax (1994) 29  
6 Cal.App.4th 1442, 1447-48.) Moreover, the dedications were not offered  
7 as mitigation measures, but as benefits in connection with the City's  
8 issuance of a Statement of Overriding Considerations and the Hillside  
9 Development Application. (Tab 3. 1 AR 147-1 50.)

10 In any case, CEQA requires that an EIR analyze a project's adverse  
11 environmental impacts, not its benefits. (See, e.g., CEQA,  
12 § 21002.1(a).) Dedication of on-site and off-site open space to the  
13 City to be preserved in perpetuity does not create adverse environmental  
14 impacts. Even so, the EIR does discuss the attributes of these land  
15 dedications. The on-site land to be dedicated was discussed extensively  
16 in the Draft EIR (see, e.g., Tab 4, AR 367 [DEIR, § 1.0, Project  
17 Description]; Tab 4, 2:2 AR 1214-44 [id., § 4.12, Parks and Recreation];  
18 Tab 7, 5:2 AR 5689-5827 [RDEIR, § 4.6, Biological Resources]), as well  
19 as in City staff reports (Tab 604, 61 AR 42947-42953; Tab 652, 73 AR  
20 51639-51650; Tab 652, 73 AR 51651-51811; Tab 666, 74 AR 51913-51925; Tab  
21 674, 74 AR 52073-52085; Tab 2-3, 1 AR 9-227) and in Planning Commission  
22 hearings (Tab 3, 1 AR 147-150). The attributes and benefits of the off-  
23 site land dedications are discussed in the Final EIR (see, e.g., Tab 12.  
24 10 AR 11742-61 [FEIR. Final Project Revisions]; Tab 11, 9 AR 11419-22,  
25 11516 [FEIR. App. K, map, land use table, new SEA chart]).

26 Failure to discuss comments in the agenda report is not fatal here.  
27 The Planning Commission debated which Project attributes should be  
28 considered as benefits in connection with their decision whether to

1 recommend approval of the Hillside Development Application, for which  
2 Newhall had submitted its Innovative Application Compliance Report. The  
3 EIR analyzed the land being dedicated to the extent necessary to inform  
4 the City and the public, and based on that information, the Planning  
5 Commission ultimately voted on which Project benefits it viewed as  
6 supporting the Hillside Development Application, including, without  
7 limitation, the on- and off-site land dedications (Tab 9, 7:2 AR 8079-81  
8 [12/21/04 HT]; Tab 652, 73 AR 51639-45, esp. 51643 [12/21/04 Staff  
9 Report]; Tab 2, 1 AR 15-18 [App. Reso.]). All of this information was  
10 before the City Council.

11 The EIR adequately describes on and off-site dedications and does  
12 not fail as an informational document in other respects.

13 IV. Alternatives Were Considered as Required by CEQA

14 An EIR's alternatives analysis must include a reasonable range of  
15 alternatives to the project that would feasibly obtain the basic  
16 objectives of the project and evaluate the comparative merits of the  
17 alternatives. (Guidelines, § 15126.6(a).)

18 Petitioners contend that the City's rejection of Alternative 2, the  
19 Santa Clara River Reduced Bank Stabilization Alternative, in the EIR and  
20 in its Findings was "disingenuous and pretextual, and therefore contrary  
21 to the mandates of CEQA" and not supported by substantial evidence.

22 Substantial evidence supports the determinations made by the City  
23 in rejecting Alternative 2 and finding that, due to the revisions to the  
24 Project, that alternative was no longer environmentally superior.

25 The City rejected Alternative 2 for multiple reasons.

26 After analyzing Alternative 2's impacts as compared to those of the  
27 Project as originally proposed, the EIR concluded that, while this  
28 alternative would reduce impacts in certain environmental areas

1 (including biological resources) and create similar impacts in other  
2 areas, ~~it would create greater impacts on population/housing/employment~~  
3 ~~and parks and recreation, and would not meet five of the project~~  
4 ~~objectives.~~ (Tab 4, 2:2 AR 1490-1500.) The EIR noted that the project  
5 objectives of (1) providing a substantial number of new housing units  
6 adjacent to existing and planned infrastructure, service, transit and  
7 ~~transportation corridors and employment~~ areas to accommodate projected  
8 growth, and (2) developing a range of housing types accommodating a  
9 range of incomes and commercial opportunities, would not be met due to  
10 the reduction in residential units (all of which were single-family  
11 units). (Tab 4, AR 1499.) The objective of providing adequate flood  
12 protection, including bank stabilization where necessary, would not be  
13 met because the alternative does not provide for bank stabilization.  
14 The objectives of providing sufficient parks to satisfy park dedication  
15 requirements and meet regional needs, and of providing a range of  
16 active/passive recreational opportunities, would not be met due to the  
17 reduction in the size of the flatter, active portion of the proposed 29-  
18 acre park. (Id.; see also 1497.)

19 As noted above, the original Project was substantially revised over  
20 the course of the 24 public hearings. The Project as revised and  
21 approved: (1) Moved all development back to the resource line  
22 established by the Planning Commission, which reduced the Project's  
23 intrusion into the SEA and protected mature riparian resources that  
24 serve as habitat (Id.. esp. Tab 11, 9 AR 11419-22, 11516 [FEIR App. K,  
25 Project Revisions and Additional Information]; Tab 12, 10 AR 11741-61  
26 [FEIR, Final Project Revisions]; Tab 11, 9 AR 11224-35 [FEIR App.  
27 1, 7/20/04 Staff Report] ), (2) Moved the equestrian trail out of the  
28 river (Id. esp. Tab 12, 10 AR 11741-61 [FEIR, Final Project Revisions]),

1 (3) Reduced the Project's overall (temporary and permanent) intrusion  
2 into the SEA from the original 37 acres to 32.1 acres, and its permanent  
3 intrusion from 24 to 16.9 acres, 7.5 of which are attributable to the  
4 construction of Newhall Ranch Road and one of which is attributable to  
5 the Santa Clara River Trail (Id. esp. Tab 11, 9 AR 11516 [FEIR App. K,  
6 new SEA chart]; Tab 12, 10 AR 11741-61 [FEIR. Final Project  
7 Revisions]), (4) Was conditioned on an absolute prohibition of  
8 construction of any lots within the new FEMA floodplain boundaries (Tab  
9 11, 9 AR 11406-09 [CLOMR]; Tab 12, 10 AR 11756, 11757-58 [FEIR, Final  
10 Project Revisions].) (5) Relocated the Newhall Ranch Road/Golden Valley  
11 Road Bridge abutments farther out of the active channel of the river,  
12 resulting in reduced impacts to biological resources in those riparian  
13 areas (Tab 11, 9 AR 11410-17 [FEIR App. J, Technical Memorandum  
14 Hydraulic Design and Analysis]; Tab 12, 10 AR 11758 [FEIR, Final Project  
15 Revisions]) and (6) Dedicated approximately 318 off-site acres,  
16 including, inter alia, the ARound Mountain" site containing 37 acres of  
17 Santa Clara River SEA, which further offset the Project's impacts on  
18 biota and the floodplain (Tab 12, 10 AR 11741-58 [FEIR, Final Project  
19 Revisions]).

20 Based on the evidence as regards the revised project, the City  
21 Council found that, as compared with the Project as approved,  
22 Alternative 2 was no longer environmentally superior because the new  
23 Project design reduced development, and thus impacts, in areas not  
24 affected by the revisions contemplated by Alternative 2, that although  
25 the approved Project would afford the City 94 fewer residential units,  
26 it still preserved a greater mix of housing opportunities than did  
27 Alternative 2, which reduced the number of single-family lots, and that  
28 ///

1 the approved Project would donate substantial off-site acreage. (Tab 3,  
2 AR 139-140 [Alternatives Findings]; see also 156 & 3,156-159.)

3 The findings as to Alternative 2 are supported by substantial  
4 evidence and the record shows that the City Council considered and  
5 balanced all of the competing factors, and chose to approve the Project  
6 with those factors in mind.

7 V. City Properly Found that the Project is Consistent with General  
8 Plan Goals and Policies of Protecting Significant Natural Resources

9 Government Code section 66473.5 provides that "[n]o local agency  
10 shall approve a tentative tract map . . . unless . . . [it] is  
11 consistent with the general plan."

12 It is within the City's province, to balance the competing  
13 interests reflected in its General Plan policies, and the City has broad  
14 discretion to construe those policies in light of the plan's purposes.  
15 (San Franciscans Upholding the Downtown Plan, supra, at 678.) A  
16 reviewing court, therefore, may only ascertain whether the lead agency  
17 "considered the applicable policies and the extent to which the proposed  
18 project conforms with those policies" (id.) by considering whether, as  
19 a whole, the "project is compatible with, and does not frustrate, the  
20 general plan's goals and policies" (Napa Citizens for Honest Government  
21 v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 355.) A  
22 project must be in agreement or in harmony with the applicable General  
23 Plan, "not in rigid conformity with every detail thereof." (San  
24 Franciscans Upholding the Downtown Plan, supra.)

25 A lead agency's determination that a project is consistent with its  
26 general plan "can be reversed only if based on evidence from which no  
27 reasonable person could have reached the same conclusion." (A Local and  
28 Regional Monitor v. City of Los Angeles (1993) 16 Cal.App.4th 630, 648;

1 see also San Franciscans Upholding the Downtown Plan v. City and County  
2 of San Francisco (2002) 102 Cal.App.4th 656, 6771.) In approving the  
3 Project, the City considered its General Plan policies and the Project  
4 conformance to them.

5 Petitioners contend that the Project is inconsistent with the  
6 City's General Plan goals and policies to protect significant natural  
7 resources because its intrusions into the SEA and the floodplain are  
8 inconsistent with the General Plan requiring the developer to "enhance  
9 and preserve the SEA," and the EIR's conclusion that the project is  
10 consistent with Land Use Policy Element 5.3 by "not proposing  
11 development within the river" (2 AR 891) is not supported by the  
12 evidence in the record.

13 The EIR analyzes the original Project's consistency with the City's  
14 General Plan and concludes that the Project as originally proposed was  
15 consistent with Policy 1.1 of Goal I of the City's Open Space and  
16 Conservation Element because the Project preserves the Santa Clara River  
17 and much of its significant vegetation as open space (Tab 4, 2:2 AR 859-  
18 60) as shown by evidence noted above as to other issues. Furthermore,  
19 as discussed supra, the Project was later revised, further reducing the  
20 Project's overall intrusion into the SEA from 37 to 32.1 acres, and  
21 dedicating 37 undeveloped acres of SEA in the Round Mountain property.

22 The EIR also concludes that the Project as originally proposed was  
23 consistent with Policies 3.3 and 3.7 of Goal 3 of the City's Open Space  
24 and Conservation Element, because the EIR identifies areas of  
25 significant ecological value and natural riparian habitat and mitigates  
26 impacts to the extent possible (Tab 4, 2:2 AR 861-62: see also Tab 7.  
27 5:2 AR 5689-5827 [RDEIR, § 4.6, Biological Resources]). Also, as

28 ///



1 discussed supra, the Project as approved further reduces impacts to the  
2 SEA and other sensitive resources.

3 The original Project was also found to be consistent with Policy  
4 5.3 of Goal 5 to require new development to be sensitive to SEAs through  
5 creative planning techniques that avoid and minimize disturbance in  
6 these areas for these same reasons (Tab 4, 2:2 AR 890-91), a conclusion  
7 supported by the same substantial evidence that supports consistency  
8 with Goal 1, Policy 1.1 of the Open Space and Conservation Element.

9 Petitioners' arguments that the Project impermissibly intrudes into  
10 the SEA restate their CEQA arguments. The same evidence in the record  
11 supports the consistency findings. The Project was revised to limit  
12 intrusion into the SEA. The City's decision after circulation of the  
13 Draft EIR to protect the riparian resources and habitat by setting the  
14 resource line in the western portion of the site and moving the  
15 equestrian trail out of the river bed further ensured that the Project  
16 as approved was consistent with the General Plan policies. The Project  
17 always proposed placing 15 lots within the already disturbed SEA area  
18 next to Planning Area A-2. (See, e.g., Tab 7, 5:2 AR 5785.) Also, as  
19 revised Section 4.6 explains, even the permanent loss of 24 acres of  
20 habitat, now reduced to 16.9, is not expected to detract from the  
21 overall integrity and value of the SEA, and the Project will preserve  
22 and enhance various amounts of upland habitat in Planning Area B to  
23 serve as a buffer between the riparian habitat and development and to  
24 mitigate adverse impacts to riparian plant communities within the SEA.  
25 (Id.) The benefits of the Project's enhancements to the banks of the  
26 Santa Clara River and to its main drainage in the 29-acre park are  
27 confirmed by the Final EIR's Hybrid Functional Assessment for Riverpark  
28 (Tab 11, 9 AR 10877-90).

1 Substantial evidence supports the finding of consistency with the  
2 City's General Plan.

3 The Petition for Writ of Mandate is denied.

4 Counsel for Respondent is ordered to prepare, serve and lodge in  
5 Department 85 a proposed Judgment Denying the Petition for Writ of  
6 Mandate on or before August 21, 2006.

7 DATED: August 14, 2006

**DZINTRA I. JANAVS**

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Dzintra I. Janavs  
Judge of the Superior Court