California Court of Appeal, Second District, Division Three,
"*Sierra Club, et al. v. City of Santa Clarita, et al.*, Case No. B194771"
(January 2008)

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SIERRA CLUB et al., Plaintiffs and Appellants, v. CITY OF SANTA CLARITA et al., Defendants and Respondents; THE NEWHALL LAND AND FARMING COMPANY, Real Party in Interest and Respondent.	B194771 (Los Angeles County Super. Ct. No. BS098722)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dzintra Janavs, Judge. Affirmed.

Law Office of Babak Naficy and Babak Naficy for Plaintiffs and Appellants.

Burke, Williams & Sorenson, Carl K. Newton and Geralyn L. Skapik for Defendants and Respondents.

Paul, Hastings, Janofsky & Walker, Robert I. McCurry and A. Catherine Norian for Real Party in Interest and Respondent.

Sierra Club, Center for Biological Diversity, Friends of the Santa Clara River, and California Water Impact Network (collectively Petitioners) challenge the certification by City of Santa Clarita (city) of an environmental impact report (EIR) and the city's approval of a mixed-use development project known as Riverpark. Petitioners appeal a judgment denying their petition for a writ of mandate and denying relief on their complaint. They challenge the adequacy of the EIR and the city's findings under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) with respect to impacts on water supply and biological resources, and the city's finding under the Planning and Zoning Law (Gov. Code, § 65000 et seq.) that the project is consistent with the city's general plan.

We conclude that the water supply analysis in the EIR, the analysis of impacts on the holly-leaf cherry and San Diego black-tailed jackrabbit, and the discussion of measures to mitigate the impacts on the western spadefoot toad were adequate, and that the city reasonably concluded that the project is consistent with the city's general plan. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Proposed Project*

The Newhall Land and Farming Company (Newhall) proposed the development of 1,183 residential units, consisting of 439 single-family homes and 744 apartment units, and 40,000 square feet of commercial space, together with trails, a 29-acre park, and open space. The proposed project site is in the central part of the city, north of Soledad Canyon Road and east of Bouquet Canyon Road, and includes a section of the

Santa Clara River running east-west through the site. The total site acreage is 695.4 acres including the river, and 357 acres excluding the river.

The Santa Clara River is the last major unchannelized river in Los Angeles County. The city has designated the Santa Clara River a Significant Ecological Area (SEA). The SEA supports a variety of natural habitats including freshwater marsh, coastal sage scrub, oak woodlands, and riparian woodlands. The 100-year storm limit line determined by the Federal Emergency Management Agency defines the boundaries of the SEA. The proposed project includes 16.9 acres of development within the 100-year storm limit line and therefore within the SEA.

The proposed project site is predominantly undeveloped, but with some disturbed areas including several buildings used for construction purposes and electrical transmission lines. Plant communities on the site include coastal sage scrub, southern riparian scrub, native and non-native grasses and ruderal vegetation, small patches of oak trees, and other native and non-native trees. To the north of the site are undeveloped property, a water treatment facility and administrative offices owned by the Castaic Lake Water Agency, and single-family residential uses. To the south of the site, across the river from the proposed development, are retail commercial uses, the Saugus Speedway, a Metrolink commuter railway station, a mobile home park, and a business park. To the east of the site are undeveloped property and a business park, and to the west are retail commercial uses and open space.

2. *Environmental Review and Project Approval*

The city circulated a draft EIR for the proposed project on March 2, 2004. Focused surveys performed on March 5 and 6, 2004, at the request of the Department of Fish and Game disclosed the presence of western spadefoot toads on the proposed project site. The city circulated a revised biological resources section of the draft EIR discussing the western spadefoot toad on March 24, 2004.

The city's planning commission conducted several public hearings on the proposed project and recommended approval of the project with certain modifications. Newhall modified the proposed project accordingly. Those modifications reduced the number of residential units to 1,123, consisting of 419 single-family homes, 380 condominium units, and 324 apartment units, and reduced the area of commercial space to 16,000 square feet, among other changes.

A final EIR was prepared in December 2004. The city council conducted a public hearing on the proposed project in January 2005, and suggested further modifications. The city council conducted additional public hearings in March and May 2005. The final EIR was revised in May 2005. On May 25, 2005, the city council certified the final EIR, made findings under CEQA and other findings, adopted a statement of overriding considerations, and approved the project. The project approvals included a vesting tentative tract map, general plan amendment, conditional use permit, oak tree permit, and setback and wall height adjustments. The city council approved a zone change on second reading, on June 14, 2005.

The project as approved includes 1,098 residential units, consisting of 439 single-family homes and 657 condominium units, and 16,000 square feet of commercial space, in addition to trails, a 29-acre park, and open space.

3. *Trial Court Proceedings*

Petitioners filed a combined petition for writ of mandate and complaint against the city and its city council in the Ventura County Superior Court in June 2005, challenging the city's certification of the EIR and project approval. The city moved for a change of venue to Los Angeles County Superior Court. The court granted the motion.

The trial court conducted a hearing on the merits in May 2006. The court rejected the Petitioners' contentions in a Decision on Submitted Matter filed on August 14, 2006, and entered a judgment denying the petition for writ of mandate. Petitioners timely appealed the judgment.

CONTENTIONS

Petitioners contend (1) the EIR failed to adequately discuss the uncertainty of the proposed water supplies; (2) due to the uncertainty of the proposed water supplies, the EIR was required to discuss alternative sources and the environmental impact of supplying water from those alternative sources, but failed to do so; (3) the Department of Water Resources rather than the Castaic Lake Water Agency should be the lead agency for environmental review of a water transfer from Kern County; (4) the EIR applied an incorrect legal standard to determine the significance of impacts on the holly leaf cherry; (5) the EIR applied an incorrect legal standard to determine the significance

of impacts on the San Diego black-tailed jackrabbit, and the evidence does not support the city's finding that the impacts on the species will be less than significant; (6) the city failed to consider project revisions or feasible alternatives to reduce the significant impacts on the western spadefoot toad to an insignificant level, and the evidence does not support the city's finding that significant impacts on the species are unavoidable; and (7) the evidence does not support the city's finding that the project is consistent with particular general plan goals and policies.

DISCUSSION

1. *CEQA Requirements*

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted 'to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112 (*Mountain Lion*).)

An EIR is required for any project that a public agency proposes to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code,

§§ 21100, subd. (a), 21151, subd. (a); Guidelines, § 15064,[1] subd. (a)(1).) An EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify and analyze alternatives to the project, among other requirements. (Pub. Resources Code, §§ 21100, subd. (b), 21151; Guidelines, §§ 15124, 15125, 15126.6.) "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code, § 21061.)

The lead agency must notify the public of the draft EIR, make the draft EIR and all documents referenced in it available for public review, and respond to comments that raise significant environmental issues. (Pub. Resources Code, §§ 21092, 21091, subds. (a), (d); Guidelines, §§ 15087, 15088.) The agency also must consult with and obtain comments from other agencies affected by the project and respond to their comments. (Pub. Resources Code, §§ 21092.5, 21104, 21153; Guidelines, § 15086.)

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[1] All references to Guidelines are to the CEQA Guidelines (Cal. Code Regs., Tit. 14, § 15000 et seq.) developed by the Office of Planning and Research and adopted by the Resources Agency. (Pub. Resources Code, §§ 21083, 21087.) "[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 (*Laurel Heights I*).)

The agency must prepare a final EIR including any revisions to the draft EIR, comments received from the public and from other agencies, and responses to comments. (Guidelines, §§ 15089, subd. (a), 15132.)

An agency may not approve a project that will have significant environmental effects if there are feasible alternatives or feasible mitigation measures that would substantially lessen those effects.[2] (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); Guidelines, § 15021, subd. (a)(2); *Mountain Lion*, *supra*, 16 Cal.4th at p. 134.) An agency may find, however, that particular economic, social, or other considerations make the alternatives and mitigation measures infeasible and that particular project benefits outweigh the adverse environmental effects. (Pub. Resources Code, § 21081, subds. (a)(3), (b); Guidelines, § 15091, subd. (a)(3).) Specifically, an agency cannot approve a project that will have significant environmental effects unless it finds as to each significant effect, based on substantial evidence in the administrative record, that (1) mitigation measures required in or incorporated into the project will avoid or substantially lessen the significant effect; (2) those measures are within the jurisdiction of another public agency and have been adopted, or can and should be adopted, by that agency; or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or alternatives identified in the EIR infeasible, and

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[2] " 'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; see also Guidelines, § 15364.)

specific overriding economic, legal, social, technological, or other benefits outweigh the significant environmental effects. (Pub. Resources Code, §§ 21081, 21081.5; Guidelines, § 15091, subds. (a), (b).) A finding that specific overriding project benefits outweigh the significant environmental effects (Pub. Resources Code, § 21081, subd. (b)) is known as a statement of overriding considerations. (Guidelines, § 15093.)

Thus, a public agency is not required to favor environmental protection over other considerations, but it must disclose and carefully consider the environmental consequences of its actions, mitigate or avoid adverse environmental effects if feasible, explain the reasons for its actions, and afford the public and other affected agencies an opportunity to participate meaningfully in the environmental review process. The purpose of these requirements is to ensure that public officials and the public are aware of the environmental consequences of decisions before they are made. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta Valley*).) The EIR process also informs the public of the basis for environmentally significant decisions by public officials and thereby promotes accountability and informed self-government. (*Laurel Heights I, supra*, 47 Cal.3d at p. 392; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936.) Before approving the project, the agency must certify that its decisionmaking body reviewed and considered the information contained in the EIR, that the EIR reflects the agency's independent judgment and analysis, and that the EIR was completed in compliance with CEQA. (Pub. Resources Code, § 21082.1, subd. (c); Guidelines, § 15090.)

"We have repeatedly recognized that the EIR is the 'heart of CEQA.' [Citations.] 'Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR "protects not only the environment but also informed self-government." [Citations.]' To this end, public participation is an 'essential part of the CEQA process.' [Citations.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*).) "The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 391-392.) For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450 (*Vineyard Area Citizens*).)

" 'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068.) The Guidelines define "significant effect on the environment" in relevant part as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals,

flora, fauna, ambient noise, and objects of historic or aesthetic significance."[3] (Guidelines, § 15382.)

"Substantial evidence" under CEQA "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code, § 21080, subd. (e)(1); see Guidelines, §§ 15384, subd. (b), 15064, subd. (f)(5).) The Guidelines define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached," and state that this determination must be made "by examining the whole record before the lead agency." (Guidelines, § 15384, subd. (a).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Pub. Resources Code, § 21080, subd. (e)(2); accord, *id.* § 21082.2, subd. (c); see also Guidelines, § 15384, subd. (a).)

2. *Standard of Review*

The standard of review of an agency's decision under CEQA is abuse of discretion. Abuse of discretion means the agency failed to proceed in a manner required

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[3] " 'Environment' means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The 'environment' includes both natural and man-made conditions." (Guidelines, § 15360; see also Pub. Resources Code, § 21060.5.)

by law or there was no substantial evidence to support its decision. (Pub. Resources Code, §§ 21168, 21168.5; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945.) Whether the agency failed to proceed in a manner required by law is a question of law. A court determines de novo whether the agency complied with CEQA's procedural requirements, " 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [276 Cal.Rptr. 410, 801 P.2d 1161])." (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 435.) The failure to provide information required by CEQA in an EIR is a failure to proceed in a manner required by law. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118.) The failure to comply with CEQA's procedural or information disclosure requirements is a prejudicial abuse of discretion if the decision makers or the public is deprived of information necessary to make a meaningful assessment of the environmental impacts. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237; *County of Amador, supra,* at p. 946; see Pub. Resources Code, § 21005.)

Findings of fact made by the agency and factual conclusions stated in an EIR are reviewed under the substantial evidence standard. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 435; *Laurel Heights I, supra*, 47 Cal.3d at pp. 392-393, 407.) Under the substantial evidence standard, the court does not determine whether the agency's factual determinations were correct, but only determines whether they were supported by substantial evidence. (*Laurel Heights I, supra*, at pp. 392-393.) On appeal, we

independently review the agency's decision under the same standard of review that governs the trial court. (*Vineyard Area Citizens, supra*, at p. 427.)

3. *Water Supply*

a. *CEQA Requirements for Water Supply Analysis*

An EIR must identify and analyze the significant environmental impacts that may result from the project. (Pub. Resources Code, § 21100, subds. (a), (b); Guidelines, §§ 15126.2, subd. (a), 15143.) It must include facts and analysis sufficient to allow the decision makers and the public to understand the environmental consequences of the project. (Guidelines, § 15151; *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356 (*Napa Citizens*).) An EIR for a large, mixed-use development project such as the present project must include an analysis of the reasonably foreseeable environmental impacts of supplying water to the project. (*Vineyard Area Citizens, supra*, 40 Cal.4th at pp. 428, 434.) The analysis must include a discussion of the planned and likely sources of water and the impacts of supplying water from those sources. (*Id.* at pp. 428, 432, 434.)

Vineyard Area Citizens involved an EIR prepared for a community plan and a specific plan for a large, mixed-use development project. The EIR stated that the project would rely on both groundwater and surface water for its water supplies. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 423.) The projected long-term water supplies consisted of an unspecified combination of groundwater and surface water in "conjunctive use." (*Id.* at p. 440.) The EIR stated that a full analysis of the

"conjunctive use" program must await the pending environmental review of a master plan update by the county water agency. (*Id.* at p. 440.) Because the project did not have legal rights to the projected water supplies, a mitigation measure provided that subdivision maps, building permits, and other entitlements would not be granted unless agreements and financing for the water supplies were in place. (*Id.* at p. 424.)

Vineyard Area Citizens discussed several opinions by the Courts of Appeal concerning the sufficiency of an EIR's analysis of water supply (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at pp. 428-430) and derived four principles from those opinions:

"First, CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.' (*Santiago County Water Dist. v. County of Orange* [(1981)] 118 Cal.App.3d [818,] 829.)

"Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information 'is not satisfied by simply stating information will be provided

in the future.' (*Santa Clarita* [*Organization for Planning the Environment v. County of Los Angeles* (2003)] 106 Cal.App.4th [715,] 723.) . . . .

"Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA. (*Santa Clarita, supra*, 106 Cal.App.4th at pp. 720-723.) An EIR for a land use project must address the impacts of *likely* future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. (*California Oak* [*Foundation v. City of Santa Clarita* (2005)] 133 Cal.App.4th [1219,] 1244.)

"Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. (*Napa Citizens, supra*, 91 Cal.App.4th at p. 373.)" (*Vineyard Area Citizens, supra*, 40 Cal.4th at pp. 430-432.)

Vineyard Area Citizens stated further: "[W]e emphasize that the burden of identifying likely water sources for a project varies with the stage of project approval involved; the necessary degree of confidence involved for approval of a conceptual plan is much lower than for issuance of building permits. The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but

whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 434.)

Vineyard Area Citizens concluded that the analysis of near-term groundwater supplies in the EIR was adequate. It stated that the county's conclusion that certain groundwater supplies would be available to the project in the near term was supported by substantial evidence, and rejected the petitioners' argument that competing uses were likely to exhaust those water supplies. (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at pp. 436-437.)[4] It stated further that the county did not fail to proceed in the manner required by law in that the EIR neither improperly deferred analysis of water supplies to future stages of the project nor relied on illusory water supplies. (*Id.* at p. 437.)

Vineyard Area Citizens concluded that the analysis of long-term water supplies in the EIR was inadequate. It stated that the county's conclusion that surface water supplies would satisfy the project's long-term demands was not supported by substantial evidence because the EIR failed to explain inconsistencies in the figures provided on total demand and supply, failed to identify the intended and likely long-term water sources, relied on "vague and unquantified" water supplies (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 440), and failed to identify competing uses. (*Id.* at pp. 439-442.)[5]

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[4] "While much uncertainty remains, then, the record contains substantial evidence demonstrating a reasonable likelihood that a water source the provider plans to use . . . will indeed be available at least in substantial part to supply the Sunrise Douglas project's near-term needs." (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 437.)

[5] "Factual inconsistencies and lack of clarity in the FEIR leave the reader—and the decision makers—without substantial evidence for concluding that sufficient water is, in

It stated further that the county failed to proceed in the manner required by law by deferring environmental review of the conjunctive use program to a future EIR (*id.* at pp. 440-441), failing to properly incorporate information or tier from a prior EIR regarding surface water supplies on which the project relied (*id.* at pp. 442-443), failing to include enforceable mitigation measures for those surface water diversions (*id.* at p. 444), and by relying on a provision precluding further development in lieu of identifying and analyzing the project's intended and likely water sources (*ibid.*) *Vineyard Area Citizens* stated that there was "no plainly stated, coherent analysis of how the supply is to meet the demand." (*Id.* at p. 445.)

b. *Background of the State Water Project*

The State Water Project is a water storage and delivery system operated by the Department of Water Resources. It includes reservoirs, dams, power plants, pumping plants, canals, aqueducts, and other facilities. (See *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 898-899 (*PCL*).) California voters approved a bond measure in 1960 to fund its construction. (Stats. 1961, p. cxliii; Wat. Code, § 12930 et seq.) Although the system was designed to deliver 4.23 million acre-feet of water annually, for many years it delivered significantly less than that amount. (See *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1227-1228 (*California Oak*); *PCL*, *supra*, at pp. 898-899.)

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fact, likely to be available for the Sunrise Douglas project at full build-out." (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 439.)

The Department of Water Resources is a party to 29 long-term contracts with local water agencies. Under the original contracts, each agency had the right to receive a proportionate share of the 4.23 million acre-feet of water per year that was projected to be supplied by the State Water Project. (See *PCL, supra*, 83 Cal.App.4th at p. 899; Wat. Code, § 12937, subd. (b).) The agencies were required to pay for their contractual entitlements of water regardless of whether they actually received the water. (See *PCL, supra*, 83 Cal.App.4th at p. 899.) Article 18(a) of the water supply contracts provided that in times of temporary shortage, the agricultural water agencies would receive a reduced allocation. Article 18(b) provided that in times of permanent water shortage, the allocations of all contracting agencies would be reduced proportionately. (See *id.* at pp. 899-900.)

After several years of drought in the late 1980's and early 1990's resulting in disputes between agricultural and urban water agencies, several contracting agencies and the Department of Water Resources entered into an agreement known as the Monterey Agreement. (See *PCL, supra*, 83 Cal.App.4th at pp. 897, 901.) The Monterey Agreement is a statement of 14 principles designed to govern revisions to the water supply contracts. It calls for the elimination of the provision requiring agricultural agencies to absorb the first deficiency and provides that in times of shortage, deliveries to all contracting agencies will be reduced in proportion to their entitlements. (See *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1376 (*Friends*).) The Monterey Agreement also provides for the agricultural agencies to permanently transfer to the urban agencies 130,000

acre-feet of annual water entitlements. (See *id.* at pp. 1376-1377; *PCL, supra*, 83 Cal.App.4th at pp. 901-902.) The Monterey Agreement provides for its implementation through amendments to the long-term water supply contracts. (See *PCL, supra*, at p. 902.) Table A of those contracts states the amount of each agency's annual water allocation from the State Water Project. The amendments pursuant to the Monterey Agreement are known as the Monterey Amendments.

Pursuant to the Monterey Agreement, the Castaic Lake Water Agency entered into an agreement with the Kern County Water Agency in 1999 for the permanent transfer of 41,000 acre-feet of annual State Water Project water entitlement from the Kern County Water Agency to the Castaic Lake Water Agency (Kern-Castaic transfer). The Department of Water Resources approved the transfer in March 1999, and the long-terms water supply contracts between the two water agencies and the Department of Water Resources were amended accordingly.

The Central Coast Water Agency as lead agency prepared a program EIR for the Monterey Agreement and certified the EIR in October 1995.[6] The Department of Water Resources as a responsible agency also made findings and adopted the EIR. (*PCL, supra*, 83 Cal.App.4th at p. 902.) The Sacramento County Superior Court denied a petition for writ of mandate challenging the EIR. In September 2000, the Court of

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[6] A program EIR may be prepared for a series of related actions that can be characterized as one large project. (Guidelines, § 15168, subd. (a).) Subsequent program activities that would cause environmental impacts not analyzed in the program EIR require additional environmental review. (*Id.*, subd. (c).)

Appeal in *PCL* reversed the judgment by the trial court with directions to grant the petition. (*Id.* at pp. 903, 926.) *PCL* held that the Department of Water Resources rather than the Central Coast Water Agency was the proper lead agency, and that the EIR failed to provide a sufficient analysis of the no project alternative. (*Id.* at pp. 907, 916.) *PCL* directed the trial court to vacate the certification of the EIR and make any other order appropriate under Public Resources Code section 21168.9, subdivision (a), but did not direct the court to vacate the project approval, and declined to stay the implementation of the Monterey Agreement. (*PCL*, *supra*, at p. 926 & fn. 16.)

The Castaic Lake Water Agency as lead agency prepared an EIR for the Kern-Castaic transfer in March 1999. It was a project EIR that tiered from three other EIR's, including the Monterey Agreement program EIR.[7] (*Friends*, *supra*, 95 Cal.App.4th at pp. 1379-1380.) The Los Angeles County Superior Court denied a petition for writ of mandate challenging the Castaic Lake Water Agency's EIR. (*Id.* at p. 1381.) The appellate opinion invalidating the Monterey Agreement EIR (*PCL*, *supra*, 83 Cal.App.4th 892) was filed while the appeal in *Friends* was pending. (*Friends*, *supra*, at p. 1382.) In January 2002, the Court of Appeal in *Friends* reversed the

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[7] A project EIR "examines the environmental impacts of a specific development project." (Guidelines, § 15161.) " 'Tiering' or 'tier' means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report." (Pub. Resources Code, § 21068.5.)

judgment by the trial court with directions to grant the petition. (*Id.* at p. 1388.) *Friends* concluded that the Castaic Lake Water Agency's EIR relied on the analysis of environmental impacts in the Monterey Agreement EIR and that the decertification of the Monterey Agreement EIR precluded reliance on that analysis. (*Id.* at pp. 1384-1387.) *Friends* directed the trial court to vacate the certification of the EIR and make any other order appropriate under Public Resources Code section 21168.9, but did not direct the court to vacate the project approval, and stated that the trial court should determine whether to enjoin the project. (*Friends*, *supra*, at p. 1388.) The trial court entered a judgment on remand in October 2002 vacating the certification of the EIR but not the project approval. The trial court declined the petitioners' request to enjoin the use of water received pursuant to the transfer. The Court of Appeal in an unpublished opinion affirmed the judgment, rejecting the petitioners' challenge to the denial of an injunction (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (Dec. 1, 2003, B164027)).

The parties to the proceeding involving a challenge to the Monterey Agreement EIR (*PCL*, *supra*, 83 Cal.App.4th 892) entered into a settlement agreement in May 2003 specifying certain subjects to be discussed in a new Monterey Agreement EIR to be prepared by the Department of Water Resources. Those subjects included the environmental impacts relating to the transfers of water rights effected pursuant to the Monterey Agreement. The settlement agreement included an Attachment E listing certain transfers other than the Kern-Castaic transfer. The settlement agreement separately identified the Kern-Castaic transfer, and stated that the new Monterey

Agreement EIR would include an analysis of the impacts of both the Attachment E transfers and the Kern-Castaic transfer.

The settlement agreement stated with respect to the Attachment E transfers: "[N]otwithstanding the analysis of the potential impacts of the Attachment E Transfers in the New EIR and without specifically endorsing or opposing those transfers or any prior environmental assessments of them, the Parties recognize that such water transfers are final. Each of the Parties agrees not to, and it shall be a condition to the initial and continuing effectiveness of this Settlement Agreement that Plaintiffs do not, hereafter challenge the effectiveness or validity of such water transfers." It stated with respect to the Kern-Castaic transfer: "[R]egarding the Kern-Castaic Transfer, the Parties recognize that such water transfer is subject to pending litigation in the Los Angeles County Superior Court following remand from the Second District Court of Appeal (*See* Friends of the Santa Clara River v. Castaic Lake Water Agency, 95 Cal.App.4th 1373, 116 Cal.Rptr.2d 54 (2002); *review denied* April 17, 2002). The Parties agree that jurisdiction with respect to that litigation should remain in that court and that nothing in this Settlement Agreement is intended to predispose the remedies or other actions that may occur in that pending litigation."

The settlement agreement included certain proposed amendments to the long-term water service contracts, known as the Attachment A amendments. The settlement agreement stated that the parties would request an order authorizing the operation of the State Water Project on an interim basis in accordance with the Monterey Agreement, the

Attachment A amendments, and other terms of the settlement. The trial court approved the settlement and issued the requested order.

The Castaic Lake Water Agency prepared a second EIR for the Kern-Castaic transfer and certified the EIR in December 2004. The Los Angeles County Superior Court granted a petition for writ of mandate challenging the second EIR for the Kern-Castaic transfer in May 2007 (*Planning and Conservation League v. Castaic Lake Water Agency* (Super. Ct. L.A. County No. BS098724)).[8] The court concluded that although the EIR analyzed the environmental impacts of the project assuming three different State Water Project water allocation scenarios, it failed to adequately explain how those scenarios could result from the pending environmental review of the Monterey Amendments and any challenge to the new Monterey Agreement EIR. The court rejected all other challenges to the EIR. The petitioners, the Castaic Lake Water Agency, and the Kern County Water Agency appealed the judgment. That appeal is currently pending in the Second District Court of Appeal (No. B200673).

c. *Petitioners' Specific Contention*

Petitioners contend the ongoing environmental review of the Monterey Agreement and the possibility that the Department of Water Resources ultimately will exercise its discretion to disapprove or modify the Kern-Castaic transfer render the

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[8] We granted a joint request by the city and Newhall to judicially notice the judgment filed on May 22, 2007, and the statement of decision filed on April 2, 2007, in *Planning and Conservation League v. Castaic Lake Water Agency*, *supra*, No. BS098724.

transfer uncertain. They argue that the EIR fails to acknowledge that uncertainty. Petitioners cite a statement by the department in *Planning and Conservation League v. Castaic Lake Water Agency, supra*, No. BS098724, that, "[T]he contract amendments that effectuated the transfers under the Monterey Amendment do not preclude DWR in its choice of alternatives in the Monterey Amendment EIR or mitigation measures that may need to be imposed to reduce significant impacts to less than significant. Any contractual agreement to transfer SWP water from one contractor to another is always subject to possible changes or curtailments."[9]

d. *Draft EIR, Response to Comments, and the City's Findings*

The draft EIR here stated that the Castaic Lake Water Agency serves the proposed project area and relies on imported water from the State Water Project. It described the State Water Project and the Monterey Agreement. It stated that the agency's total annual water allocation from the State Water Project is 95,200 acre-feet and that the Kern-Castaic transfer represents 41,000 acre-feet of that amount. It explained that the amounts requested by the contracting agencies from the State Water Project and the amounts actually delivered to the agencies by the State Water Project vary from year to year and can be less than the maximum amounts allocated. It projected that 59.7 percent of the State Water Project water allocation would be available to the city in average years, and that 20 to 39.8 percent would be available in

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[9] We granted Petitioners' request for judicial notice of the Department of Water Resource's opposition brief filed on December 6, 2006, in *Planning and Conservation League v. Castaic Lake Water Agency, supra*, No. BS098724.

dry years. It stated that water transfer agreements made pursuant to the Monterey Agreement "are effective upon execution . . . and, therefore, are considered permanent water reallocations of SWP Table A water."

The draft EIR stated that the agency had completed an EIR for the Kern-Castaic transfer, that the trial court had rejected the petitioners' challenges to the EIR, and that the Court of Appeal had reversed the judgment on the sole ground that the EIR tiered from another EIR (the Monterey Agreement EIR) that had been decertified. It stated that neither the Court of Appeal nor the trial court had ordered the agency to vacate its approval of the transfer agreement pending completion of a new EIR, and that the trial court on remand had allowed the agency to continue to operate under the agreement. It stated that the agency was in the process of preparing a new EIR for the transfer.

The draft EIR stated further that the Court of Appeal had ordered the decertification of the Monterey Agreement EIR on the grounds that the Department of Water Resources should have been the lead agency and that the analysis of the no project alternative was inadequate. It stated that the Court of Appeal had directed the trial court to order the preparation of a new EIR and that neither the Court of Appeal nor the trial court had stayed the implementation of the Monterey Agreement.

The draft EIR stated that the Kern-Castaic transfer could have taken place even without the Monterey Agreement, "under existing SWP water supply contract provisions, subject to appropriate environmental review." It stated that the Kern-Castaic transfer "has been completed, CLWA has paid approximately $47 million for the additional Table A Amount, the monies have been delivered, . . . and DWR has

increased CLWA's SWP maximum Table A Amount to 95,200 AFY because it was a permanent transfer/reallocation of SWP Table A entitlement between SWP contractors." It stated further, "an adverse outcome in the Monterey Agreement litigation is not likely to adversely affect CLWA's water supplies over the long term because CLWA believes that such a result is unlikely to 'unwind' executed and completed agreements with respect to the permanent transfer of SWP Water Amounts."

Thus, the draft EIR characterized the Kern-Castaic transfer as "permanent" and downplayed the likelihood that the "permanent transfer" could be affected by the Monterey Agreement litigation. The draft EIR did not acknowledge the possibility that the environmental review of the Monterey Agreement by the Department of Water Resources could result in the modification of the Kern-Castaic transfer and a reduced allocation to the Castaic Lake Water Agency.

The draft EIR estimated the amounts of groundwater and imported water supplies that would be available in the project area. The estimate of imported water supplies was based on different percentages of the total Table A amount for average years and dry years. The draft EIR also estimated the demand for water and concluded that the supplies would be sufficient to meet the demand.

Several comments to the draft EIR objected to its reliance on the Kern-Castaic transfer and stated that the transfer was uncertain due to pending litigation and the absence of a certified EIR for either the transfer or the Monterey Agreement. The city in a "topical response" to the comments reiterated the discussion in the EIR of the reasons that it considered the transfer reliable "despite potential uncertainty arising from

litigation." The topical response stated, "Because the 41,000 AFY was a permanent water transfer, because DWR includes the 41,000 AFY in calculating CLWA's share of SWP Table A Amount, and because the courts have not prohibited CLWA from using or relying on those additional SWP supplies, the City has determined that it remains appropriate for the Riverpark project to include those water supplies in its water supply and demand analysis, while acknowledging and disclosing the potential uncertainty created by litigation." It stated further that the ongoing environmental review by the Department of Water Resources of the Monterey Agreement, including the Kern-Castaic transfer, did not preclude the city's reliance upon the transfer in these circumstances.

The city's findings under CEQA stated that the project would have no significant impacts on water supply and that no mitigation was required.

e. *The EIR Adequately Analyzed the Uncertainty of the Kern-Castaic Transfer*

We repeat with emphasis, "An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. (*California Oak, supra*, 133 Cal.App.4th at p. 1244.)" (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 432.) The sufficiency of an analysis in an EIR is measured by reference to a practical standard that demands neither technical perfection nor full disclosure of all information available on a subject. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1355; *Al Larson Boat Shop, Inc. v. Board of*

Harbor Commissioners (1993) 18 Cal.App.4th 729, 748.) "The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151.) " 'To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.' [Citations.] An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 404-405.) The role of a reviewing court is not to determine whether the EIR's conclusions are correct, but only whether they are supported by substantial evidence and sufficient analysis to serve the EIR's informational purposes. (*Id.* at p. 407.)

The absence of relevant information from an EIR does not necessarily constitute a prejudicial abuse of discretion. Rather, a prejudicial abuse of discretion occurs only if the absence of relevant information precludes informed decisionmaking and informed public participation and thereby thwarts the statutory goals of the EIR process. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, *supra*, 91 Cal.App.4th at p. 1355.)

The draft EIR and the final EIR, including the responses to comments, explained at length and in detail the reasons for the city's conclusion that water provided by the State Water Project pursuant to the Kern-Castaic transfer would continue to be available to serve the area of the proposed project. The analysis provided was incomplete because it failed to acknowledge the possibility that the environmental review of the Monterey Agreement by the Department of Water Resources could result in the

modification of the transfer and a reduced allocation to the Castaic Lake Water Agency. In our view, the analysis nonetheless was "a reasoned analysis" (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 432) that was adequate in these circumstances. This is true particularly in light of the indications that the Department of Water Resources, Castaic Lake Water Agency, and Kern County Water Agency did not wish to disturb the transfer and the fact that the trial courts and Courts of Appeal in the litigation directly involving the Monterey Agreement and the Kern-Castaic transfer never vacated the approval of either of those projects or enjoined the flow of water. These circumstances do not compel the conclusion that the transfer will be "permanent," but they support our conclusion that the failure to acknowledge the uncertainty of the transfer arising from the department's ongoing environmental review of the Monterey Agreement was not so momentous as to render the analysis provided in the EIR inadequate for its informational purposes.

The water supply analysis here did not rely on inconsistent figures or "vague and unquantified" water supplies (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 440), or fail to provide a complete and coherent analysis of water supply and demand as did the analysis of long-term water supply in *Vineyard Area Citizens*. Moreover, the city did not fail to comply with procedures required by law by, for example, deferring environmental review to a future EIR (*id.* at pp. 440-441), relying on a prior EIR without proper incorporation or tiering (*id.* at pp. 442-443), or relying on a provision precluding further development in lieu of identifying and analyzing the project's intended and likely water sources (*id.* at p. 444).

California Oak, *supra*, 133 Cal.App.4th 1219 is distinguishable. *California Oak* involved a proposed industrial/business park in Santa Clarita. (*Id.* at p. 1224.) The city certified an EIR and approved the project in June 2003. (*Id.* at p. 1225.) The primary dispute on appeal concerned the same 41,000 acre-feet of State Water Project water allocation at issue here. The text of the EIR failed to mention the January 2002 invalidation of the Castaic Lake Water Agency's EIR for the Kern-Castaic transfer and offered no explanation for the city's continued reliance on the transfer (*id.* at p. 1236), and apparently also failed to mention the invalidation of the Monterey Agreement EIR. The city's response to comments was "completely devoid of any direct discussion of the 41,000 AFY" (*id.* at p. 1237) and only referred obliquely to litigation "challenge[s]" (*id.* at pp. 1232-1233). The only mention of the invalidation of the Castaic Lake Water Agency's EIR was in an appendix to the final EIR. (*Id.* at p. 1239.) *California Oak* stated that the issue should be discussed, or at least referenced, in the text of the EIR and that the brief mention of the invalidation in the appendix with no meaningful and forthright discussion was insufficient in any event.[10] (*Ibid.*) Absent a reasoned analysis in the EIR of the uncertainty created by the invalidation of the EIR for the Kern-Castaic transfer, *California Oak* concluded that there was no substantial evidence to support the

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[10] *Vineyard Area Citizens* later endorsed this view, stating, " '[I]nformation "scattered here and there in EIR appendices," or a report "buried in an appendix," is not a substitute for "a good faith reasoned analysis . . . ." ' (*California Oak*, *supra*, 133 Cal.App.4th at p. 1239, quoting *Santa Clarita*, *supra*, 106 Cal.App.4th at pp. 722-723." (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 442.)

conclusion that the water supplies for the project were sufficient. (*Id.* at pp. 1226, 1240.)

Here, in contrast to *California Oak*, *supra*, 133 Cal.App.4th 1219, the EIR contains a reasoned analysis of the circumstances affecting the availability of the 41,000 acre-feet of water allocation. The analysis is supported by facts and discloses pertinent facts, including the invalidation of both the Castaic Lake Water Agency's EIR for the Kern-Castaic transfer and the Department of Water Resource's EIR for the Monterey Agreement. The city's EIR neither relegates that discussion to an appendix to the final EIR nor assumes without analysis that the 41,000 acre-feet of water allocation will be available. In light of that discussion, the EIR's failure to acknowledge the particular uncertainty arising from the Department's ongoing environmental review of the Monterey Agreement stands in stark contrast to the complete failure to offer any reasoned analysis of the circumstances affecting the availability of the transferred water in *California Oak*.

Petitioners also argue that the EIR for the Kern-Castaic transfer should tier from the Monterey Agreement EIR and that absent a proper EIR for the transfer, the present EIR cannot rely on the transfer. The question whether the EIR for the Kern-Castaic transfer complies with CEQA is beyond the scope of this appeal. The EIR for the Kern-Castaic transfer is the subject of a separate mandamus proceeding and a separate appeal (No. B200673). Absent a judgment determining that the EIR for the Kern-Castaic transfer fails to comply with CEQA in the manner asserted, we will not determine in this appeal the merits of a separate proceeding.

Petitioners argue further that due to the uncertainty of the Kern-Castaic transfer, the EIR here was required to discuss alternative sources of water and the environmental impact of supplying water from those alternative sources. *Vineyard Area Citizens* stated, "[W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. (*Napa Citizens*, *supra*, 91 Cal.App.4th at p. 373.)" (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 432.) "If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact. ([Pub. Resources Code,] § 21100, subd. (b).)" (*Id.* at p. 434.)

Napa Citizens, *supra*, 91 Cal.App.4th 342, involved a subsequent EIR for an updated specific plan providing for the industrial development of a formerly agricultural area. (*Id.* at pp. 352-353.) The EIR stated that the City of American Canyon supplied water to the project area and would continue to do so in the future. The EIR acknowledged that American Canyon's current water supply would be inadequate in the longer term, but stated that American Canyon was in the process of reaching an

agreement with another municipality that would provide additional water. The EIR assumed that an agreement would be reached and therefore concluded that the project would have no significant impact on long-term water supply. (*Id.* at p. 372.) *Napa Citizens* concluded that the EIR could not rely on the uncertain water supplies without identifying alternative water sources and analyzing the environmental impacts of supplying water from those sources. *Napa Citizens* stated: "Because of the uncertainty surrounding the anticipated sources for water . . . , the FSEIR also cannot simply label the possibility that they will not materialize as 'speculative,' and decline to address it. The County should be informed if other sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resources. Without either such information or a guarantee that the resources now identified in the FSEIR will be available, the County simply cannot make a meaningful assessment of the potentially significant environmental impacts of the Project. [Citation.]" (*Id.* at pp. 373-374.)

We conclude that whether an EIR can "confidently determine that anticipated future water sources will be available" (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 432; see also *id.* at p. 434) is a question of fact. If the EIR confidently concludes that future water supplies will be sufficient to serve the project, and if that conclusion is supported by reasoned analysis and facts stated in the EIR, the EIR satisfies its informational purposes and a reviewing court must defer to the EIR's conclusion. (See *Laurel Heights*, *supra*, 47 Cal.3d at pp. 404-405, 407.) In those circumstances, the EIR need not evaluate alternative water sources and the environmental impacts of supplying

water from those sources. On the other hand, if the EIR reveals a substantial degree of uncertainty as to the availability of future water supplies, as in *Napa Citizens*, *supra*, 91 Cal.App.4th 342, the EIR must discuss alternative sources of water or alternatives to use of the water and the environmental impacts of those contingencies. (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 432 ["[W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies"].)

After explaining in detail the circumstances affecting the availability of the imported water, the EIR here confidently concluded that water provided by the State Water Project pursuant to the Kern-Castaic transfer would continue to be available to serve the proposed project area despite the pending Monterey Agreement environmental review and litigation challenges. The EIR did not reveal a substantial degree of uncertainty as to the continued availability of the transferred water, unlike the situation in *Napa Citizens*, *supra*, 91 Cal.App.4th 342, where no agreement had been reached to secure the water transfer and no deliveries had occurred. We conclude that the facts stated in the EIR, including the executed agreements effecting the transfer, the implementation of those agreements and delivery of water for several years, and the absence of any court order vacating the approval of the transfer or the Monterey Agreement or staying the implementation of those agreements, constitute substantial evidence supporting the EIR's conclusion. Accordingly, we conclude that the EIR need

not identify alternative water sources or other alternatives to use of the anticipated water.

4. *Holly-Leaf Cherry*

Petitioners contend the EIR applied an incorrect legal standard in determining that the impacts on the holly-leaf cherry would be insignificant. They argue that in evaluating the impact of the proposed elimination of 3.6 acres of the species on the project site, the EIR failed to apply the Guidelines definition of "rare" (Guidelines, § 15380, subd. (b)(2)). We conclude that they have not shown a prejudicial abuse of discretion.

a. *CEQA Requirements*

A project will have a significant effect on the environment if it will cause "a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068; see also Guidelines, § 15382.) The "environment" means the existing physical conditions in the area of the proposed project, including flora, fauna, and other conditions. (Pub. Resources Code, § 21060.5; Guidelines, § 15360.) "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting." (Guidelines, § 15064, subd. (b).)

An EIR must identify and analyze the significant environmental effects of a project. (Pub. Resources Code, § 21100, subd. (b)(1); Guidelines, § 15126.2.) An

EIR must identify mitigation measures for each significant effect and discuss alternatives to the project that would avoid or substantially lessen the significant effects, and the lead agency must make detailed findings on the infeasibility of any mitigation measures and alternatives rejected as infeasible. (Pub. Resources Code, §§ 21100, subd. (b)(3), (4), 21081, subd. (a)(3); Guidelines, §§ 15126.4, subd. (a)(1)(A), 15126.6, subd. (a), 15091, subd. (a)(3).) If an EIR determines that particular environmental impacts are insignificant, it must "contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report." (Pub. Resources Code, § 21100, subd. (c); see also Guidelines, § 15128.)

Guidelines section 15065 describes certain impacts that necessarily are significant and therefore require the preparation of an EIR and must be analyzed in an EIR. (*Id.* subds. (a), (c).) These are known as mandatory findings of significance. A project necessarily will have a significant effect on the environment if it will "substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or *restrict the range of an endangered, rare or threatened species*; or eliminate important examples of the major periods of California history or prehistory." (Guidelines, § 15065, subd. (a)(1), italics added; see *Mountain Lion, supra*, 16 Cal.4th at p. 124 [equating "range" with "habitat"]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 792 (*Endangered Habitats*).)

Guidelines section 15065 describes impacts that must be considered significant, but "an impact need not satisfy the requirements of a mandatory finding of significance to be considered a significant impact." (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 338, fn. 9.)

A species is "rare" under the Guidelines if "[a]lthough not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or [¶] [t]he species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered 'threatened' as that term is used in the Federal Endangered Species Act."[11] (*Id.*, § 15380, subd. (b)(2).) A species also is "presumed to be endangered, rare or threatened, as it is listed in" federal regulations under the Federal Endangered Species Act and California regulations under the Fish and Game Code. (Guidelines, § 15380, subd. (c).) "A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b)." (*Id.*, subd. (d).)

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[11] A species is "endangered" under the Guidelines if "its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors." (Guidelines, § 15380, subd. (b)(1).)

b. *Draft EIR, Response to Comments, and the City's Findings*

A rare plant survey conducted in the spring of 2003 and attached as an appendix to the draft EIR described "a unique stand of holly-leaf cherry scrub" on the project site. The survey stated, "The stand is dominated by relatively large, mature shrubs of holly-leaf cherry (*Prunus ilicifolia* ssp. *ilicifolia*), 3 to 5 m in height." It stated that although "mainland cherry forest" is ranked "very threatened" by the California Natural Diversity Database, "[t]he canopy cover of the holly-leaf cherry shrubs at this site did not amount to a forest canopy. Holly-leaf cherry scrub, as identified in this survey, is not defined in Holland (1986), and therefore, it has no assigned ranking. However, it should be recognized as a unique and sensitive community at the site."

The draft EIR described the holly-leaf cherry on the project site and stated that the project would result in the direct and permanent loss of 3.6 acres of holly-leaf cherry, which it quantified as approximately 67.9 percent of the holly-leaf cherry on the site. It stated further, "Because holly-leaf cherry scrub on the project site is not known to support special-status plant or wildlife species, and because this plant community is not considered to be sensitive by resource agencies, the loss of 3.6 acres of this habitat type is not considered a significant impact." The draft EIR defined "special-status plant or wildlife species" as "those species considered Rare, Threatened, Endangered, or otherwise sensitive by various state and federal resource agencies," and identified several published listings used as references.

The Department of Fish and Game stated in a comment letter: "The Department considers holly-leafed cherry woodland a declining vegetative community the loss of

which would be considered a significant adverse impact to wildlife habitat. This vegetative community is being systematically eliminated and/or degraded within the Santa Clara River watershed by development. . . . All holly-leafed cherry habitat should be avoided by project alternatives." The comment stated further that even temporary impacts to the plant community involving removal and replanting "will still result in an unacceptable impact to this resource."

The city responded: "The holly-leaf cherry habitat on-site is considered scrub habitat because the canopy cover of this habitat did not amount to a woodland canopy. According to the CDFG's [California Department of Fish and Game] List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Data Base (September 2003 Edition), holly-leaf cherry scrub is not considered a special-status plant community. As stated in Revised Riverpark Draft EIR Section 4.6, Biological Resources, p. 4.6-65, because of the relatively small amount of habitat (3.6 acres) to be lost and because this stand of trees was not considered a sensitive plant community as identified by CDFG, the loss of the 3.6 acres was not considered a significant impact under CEQA."

The city's findings under CEQA stated that the impacts of the proposed project on the holly-leaf cherry would be less than significant.

c. *The EIR Adequately Analyzed the Impacts on the Holly-Leaf Cherry*

The draft EIR described the holly-leaf cherry on the project site and explained the impact of the project on the species. It stated that holly-leaf cherry scrub was not

a designated special status species and was not considered to be sensitive by the resource agencies, and that the loss of 3.6 acres of the species was not a significant impact. The response to the comment explained that the holly-leaf cherry on the project site was in scrub habitat rather than woodland, and therefore was different from the holly-leaf cherry woodland noted by the Department of Fish and Game to be in decline. We conclude that the information provided in the EIR supports the conclusion that the holly-leaf cherry on the project site is not "rare" as defined in Guidelines section 15380(b)(2) because it is not existing in such small numbers that it may become endangered, and that it does not otherwise satisfy the Guidelines definition. The EIR provided information and analysis sufficient to serve the EIR's informational purposes, and Petitioners have shown no abuse of discretion.

5. *San Diego Black-tailed Jackrabbit*

Petitioners contend the EIR failed to apply the correct legal standard to determine the significance of impacts on the San Diego black-tailed jackrabbit, and the evidence does not support the city's finding that the impact on the species will be less than significant. We conclude that they have not shown a prejudicial abuse of discretion.

a. *Draft EIR, Response to Comments, and the City's Findings*

The draft EIR stated that the San Diego black-tailed jackrabbit is designated by California as a species of special concern and is designated by the federal government as a species of concern. It stated that several San Diego black-tailed jackrabbits had been observed on the project site in areas that are subject to natural or manmade disturbances and that the species' habitat on site is considered to be of moderate quality.

It stated: "Where this species occurs within the region, it is common and found in relatively high numbers in some locations (e.g., coastal Orange County and the high desert of northern Los Angeles County). The habitat on the project site for this species is considered of moderate quality. Most individual jackrabbits are expected to disperse to remaining open space areas and the actual number of individual animals that would be lost due to grading and/or construction activities is expected to be low. Because this species is not state or federally listed as Endangered or Threatened, because it is considered relatively abundant in suitable habitat areas within its range, and because the direct loss of individual jackrabbits is expected to be low, it is expected that the regional population would not drop below a self-sustaining level with the implementation of this project. Therefore, the loss of any individual jackrabbits associated with the implementation of this project would not be considered a significant impact."
A biology report in the appendix stated that the species was "relatively common in the project area."

The draft EIR also described the Natural River Management Plan (NRMP), a long-term management plan for projects and activities potentially affecting the Santa Clara River and San Francisquito Creek. It stated that a certified combined EIR and federal environmental impact statement (EIS) for the NRMP had analyzed impacts associated with various proposed infrastructure improvements along the Santa Clara River, including bank stabilization, bridges, utility crossings, and storm drain outlets, and that the United States Army Corps of Engineers, Department of Fish and Game, and California Regional Water Quality Control Board had approved the NRMP. It also

stated that certain proposed infrastructure improvements on the project site (including two bridges, bank stabilization, and outlets) were governed by the NRMP and were subject to mitigation requirements imposed by the NRMP, including the capture of San Diego black-tailed jackrabbits and their relocation "to nearby undisturbed areas with suitable habitat," and the creation or enhancement of habitat for jackrabbits and other species. The draft EIR stated that those mitigation measures had been incorporated into the proposed project.

The draft EIR concluded that although the project impacts to the San Diego black-tailed jackrabbit would be insignificant, cumulative impacts to biological resources, apparently including the San Diego black-tailed jackrabbit, from the proposed project and related projects would be significant due to loss of habitat and increased human activities.

The Department of Fish and Game stated in a written comment: "The DEIR states that the San Diego black-tailed jackrabbit is common where it occurs in the region and abundant in coastal Orange County and the high deserts of Los Angeles County; that displaced individuals of this jackrabbit species will disperse to remaining open space; and that individuals lost i.e. killed by the project is expected to be low. This conclusion is difficult to draw since population estimates were not submitted with the DEIR.

"It is the Department's opinion that the project will result in a cumulative adverse impact to San Diego black-tailed jackrabbit, a California Species of Special Concern. This subspecies is localized within the coastal plains of southern California

including the Santa Clara River Valley. These areas have been and are continuing to be heavily developed and degraded. Jackrabbits do not adapt well to habitat losses and associated disturbances from human proximity. . . . The assumption that displaced jackrabbits will somehow survive by dispersing into remaining degraded open areas of uncertain protected status does not meet the mitigation requirements set forth and described under Section 15021 of CEQA. Insufficient mitigation measure for this subspecies will further assist its decline and may in the future cause more restrictive regulatory measures to protect this resource. The Department recommends a more detailed discussion in the EIR of the project related impacts to San Diego black-tailed jackrabbit with a tangible habitat avoidance and/or preservation element."

The city responded that because the habitat on site is "moderate in quality," "the Riverpark site is not considered to be occupied by a significant population of San Diego black-tailed jackrabbits." The response stated that NRMP mitigation measures had been incorporated into the proposed project with respect to infrastructure improvements governed by the NRMP. It stated that the EIR/EIS for the NRMP had analyzed in detail the impacts on the San Diego black-tailed jackrabbit and had concluded that certain NRMP mitigation measures "requiring capture and relocation of sensitive species including the San Diego black-tailed jackrabbit, and . . . replacement of habitat . . . reduced the impacts to less than significant." The response stated further that some of the infrastructure improvements in the proposed project were less extensive than those contemplated in the NRMP. The response also noted that the draft EIR had

concluded that cumulative impacts due to the loss of habitat were significant and unavoidable.

The city's findings under CEQA stated that the cumulative impacts on biological resources were unavoidable, and the city adopted a statement overriding considerations with respect to that cumulative impact.

b. *The EIR Adequately Analyzed the Impacts on the San Diego Black-tailed Jackrabbit*

The draft EIR explained its conclusion that the project's impacts on the San Diego black-tailed jackrabbit would be insignificant. It stated that the jackrabbit habitat on site was only moderate in quality, that the species is relatively common in other areas within the region, that most individuals of the species are expected disperse to other areas, and that the species is not designated endangered or threatened. The draft EIR also stated that mitigation measures from the NRMP had been incorporated into the project, including the capture and relocation of individual jackrabbits to suitable habitat nearby and the creation or enhancement of habitat for the species. The response to the comment explained further that the jackrabbit population on the site was low.

The statement that the species is relatively common in the region is supported by the statement in the biology report to that effect. The characterization of the habitat on site as only moderate in quality and the statement that individual jackrabbits are likely to disperse to other areas also are supported by substantial evidence, which "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" (Pub. Resources Code, § 21080, subd. (e)(1)).

We conclude further that the information provided in the EIR supports the conclusion that the San Diego black-tailed jackrabbit is not "rare" as defined in Guidelines section 15380(b)(2) because it is not existing in such small numbers that it may become endangered, and that it does not otherwise satisfy the Guidelines definition. The EIR provided information and analysis sufficient to serve the EIR's informational purposes, and Petitioners have shown no abuse of discretion.

Endangered Habitats, supra, 131 Cal.App.4th 777, is distinguishable. The EIR in *Endangered Habitats* stated that an environmental impact was considered significant only if it caused the population of a species to drop below a self-perpetuating level or caused the species to become threatened or endangered. (*Id.* at pp. 792-793.) *Endangered Habitats* concluded that that was an impermissibly lenient standard and that the county failed to proceed in the manner required by law. (*Id.* at p. 793.) Here, in contrast, the statement in the EIR, "it is expected that the regional population would not drop below a self-sustaining level with the implementation of this project" was not the sole reason provided for the conclusion that the project's impacts on the San Diego black-tailed jackrabbit would be insignificant. Rather, the EIR also explained that the impacts would be insignificant because the jackrabbit population on the site was low, the habitat on site was only moderate in quality, and because individual jackrabbits were likely to disperse to other areas.

6. *Western Spadefoot Toad*

Petitioners challenge the EIR's failure to discuss project revisions or alternatives that would reduce the significant impacts on the western spadefoot toad to an

insignificant level. They argue that the proposed mitigation of constructing ponds and relocating the toads is inadequate and the city was required to consider more effective feasible mitigation. We conclude that Petitioners have not shown an abuse of discretion.

a. *Draft EIR, Response to Comments, and the City's Findings*

The city circulated a revised biological resources section of the draft EIR in March 2004 after the discovery of western spadefoot toads on the project site. The western spadefoot toad is designated by California as a species of special concern and by the federal government as a species of concern. The draft EIR estimated that 16 to 20 pairs of breeding western spadefoot toads were present in three seasonal rainpools on the site, all of which were located in areas of proposed development. A biology report in the appendix described the three seasonal rainpools. The draft EIR stated that the potential loss of that population of toads and their eggs would be a significant impact.

The draft EIR recommended several mitigation measures described in the biology report, including the construction of ponds, of a design and location to be approved by the Department of Fish and Game, and the capture and relocation of western spadefoot toads and their eggs to the new ponds. The biology report stated that although very few attempts had been made to relocate western spadefoot toads, there was "a very good possibility of success." The draft EIR concluded nonetheless that the impacts would remain significant despite mitigation: "While mitigation measures can be implemented to create habitat and relocate individuals observed on the project site, these measures are not considered highly effective. It is expected that not all individual

toads would be captured and relocated and that the created habitat might not meet the specific requirements for this species, thus, not supporting the relocated individuals. The loss of those individuals that are not captured and relocated, and those that are not adaptable to the created habitat, would be considered a significant and unavoidable impact."

The Department of Fish and Game stated in a written comment: "The continual loss of western spadefoot habitat within the Santa Clarita Valley, and Southern California as a whole, concerns the Department. The seasonal pools and associated uplands and floodplains habitats associated with the species are often lost with project development. Mitigation measures for this species are often experimental, and not always successful. The recent discovery of western spadefoot on the project site, despite past negative survey results for this species suggests the potential undocumented loss of occupied habitat for this species in the Santa Clarita area. These potential undocumented losses increase the importance of the known populations on the project site. The preservation, avoidance and protection of all existing seasonal pools which support or could support western spadefoot should be accomplished on the project site." The department stated further that if habitat avoidance is not feasible, breeding pools should be created away from areas of human activity and at least 150 feet away from any road or recreational trail.

The city responded that the existing seasonal pools were in disturbed areas and cited a discussion in another EIR stating that the western spadefoot toad " 'is apparently capable of adapting to a variety of artificial habitats in which to breed.' " The response

stated that this "illustrates that the species adapts well to disturbed environments." It also stated: "[W]estern spadefoot toads have no federal or State protected status, but are classified only as California Species of Special Concern and as a federal Species of Concern, which indicates that the species warrants monitoring due to population decline. Therefore, the species is not entitled to legal protection and a project redesign to preserve existing habitat is not required." The Department of Fish and Game later approved a habitat enhancement and relocation plan for the western spadefoot toad on the site.

The city's findings under CEQA stated that the proposed project's impacts on the western spadefoot toad cannot feasibly be mitigated to a level of insignificance and therefore are considered unavoidable, and the city adopted a statement of overriding considerations with respect to those impacts.

b. *The Discussion of Measures to Mitigate the Impacts on the Western Spadefoot Was Adequate*

CEQA does not require the avoidance of all significant environmental impacts or ensure that an approved project will minimize environmental harm. Rather, an adequate EIR that complies with CEQA's procedural requirements and serves its purpose as an informational document, together with appropriate findings by the lead agency, can support an agency's decision to approve the project despite adverse environmental consequences.

An EIR must discuss mitigation measures designed to avoid or reduce each significant impact, but need not discuss project alternatives that would avoid each

significant impact. (*Big Rock Mesas Property Owners Assn. v. Board of Supervisors* (1977) 73 Cal.App.3d 218, 227; see 1 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2006) § 15.15, p. 745.) Rather, an EIR must discuss a reasonable range of alternatives to the proposed project as a whole. (*Big Rock Mesas*, *supra*, at p. 227.) The draft EIR discussed several project alternatives, including a no project alternative that would not disturb the existing seasonal rainpools. Petitioners do not challenge the reasonableness of the range of alternatives. We conclude that the discussion of measures to mitigate the significant impacts on the western spadefoot toad was sufficient to serve CEQA's informational purposes and therefore was adequate, that the EIR need not discuss either a project revision or alternative (other than the no project alternative) that would reduce the impacts to the species to an insignificant level, and that Petitioners have shown no abuse of discretion in this regard.

Petitioners challenge the statement in the city's response to comments that "the species is not entitled to legal protection and a project redesign to preserve existing habitat is not required." They argue that the city declined to consider any project revision or alternative to avoid significant impacts to the western spadefoot toad and therefore could not reasonably conclude that the significant impacts to the species are unavoidable. We construe the statement to mean not that the city believed that it had no obligation to avoid or reduce the significant impacts to the western spadefoot toad, if feasible, but that the city understood that it had the discretion to determine that the

benefits of the project outweighed the significant impacts to the species. Petitioners have not shown an abuse of discretion.

7. *Consistency with the General Plan*

Every county and city must adopt a "comprehensive, long-term general plan" for its physical development. (Gov. Code, § 65300.) A general plan must include "a statement of development policies and . . . objectives, principles, standards, and plan proposals." (*Id.*, § 65302.) A general plan embodies fundamental policy decisions (*Goleta Valley*, *supra*, 52 Cal.3d at p. 571) and serves as a "charter for future development" (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540). "The policies in a general plan typically reflect a range of competing interests. [Citation.]" (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1194.)

A subdivision must be consistent with applicable general and specific plans. (Gov. Code, §§ 66473.5, 66474.) A subdivision is consistent with an adopted plan only if "the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan." (*Id.*, § 66473.5.)

Consistency does not require full compliance with all general and specific plan policies. Rather, "[o]nce a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.]" (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 (*Sequoyah Hills*).) A local agency has unique competence to interpret the policies of its own

general plan and weigh competing interests in determining how to apply those policies. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, *supra*, 87 Cal.App.4th at p. 142; *Sequoyah Hills*, *supra*, at p. 719.) "It is, emphatically, *not* the role of the courts to micromanage these development decisions." (*Sequoyah Hills*, *supra*, at p. 719.)

We review the city's finding that the subdivision is consistent with its general plan under the abuse of discretion standard. (Code Civ. Proc., § 1094.5, subd. (b); *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 651, fn. 2; *Sequoyah Hills*, *supra*, 23 Cal.App.4th at p. 717.) To prevail on their contention that the project is inconsistent with the general plan, Petitioners must show that there is no substantial evidence to support the city's finding. (Code Civ. Proc., § 1094.5, subd. (b); *Sequoyah Hills*, *supra*, at p. 717.) In other words, Petitioners must show that no reasonable decision maker could conclude that the project is in harmony with the stated policies. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243.)

The Open Space and Conservation Element of the city's general plan states several goals and policies promoting the protection of natural features, significant ecological resources, and SEA's. The general plan goals cited by Petitioners include: "To preserve the special natural features which define the Santa Clarita planning area and give it its distinct form and identity," and, "To protect significant ecological resources and ecosystems, including, but not limited to, sensitive flora and fauna habitat areas." The general plan policies cited by Petitioners include: "Utilize major environmental features (significant landforms, significant ridgelines, significant

vegetation, ecologically significant areas, other natural resources) as open space within the planning area," "Identify and protect areas of significant ecological value, including, but not limited to, significant ecological habitats . . . and preserve and enhance existing Significant Ecological Areas (SEAs)," and "Preserve to the extent feasible natural riparian habitat and ensure that adequate setback is provided between riparian habitat and surrounding urbanization." Petitioners also cite a Land Use Element policy that "New development must be sensitive to the Significant Ecological Areas (SEAs) through utilization of creative site planning techniques to avoid and minimize disturbance of these and other sensitive areas."

The draft EIR discussed these general plan goals and policies. It stated that the proposed project would preserve the Santa Clara River and much of the significant vegetation on the site, restrict development on the steepest slopes on the site, and mitigate impacts on the portions of the SEA located on the project site, and concluded that the project was consistent with these goals and policies. The draft EIR also discussed numerous other general plan goals and policies and the project's consistency with them. The city in approving the project found that the project would preserve large areas of open space, including the river, and that the project was consistent with the general plan.

Petitioners' argument that the project is inconsistent with the cited general plan goals and policies is based on the presumption that any development incursion within the SEA necessarily would be inconsistent with those goals and policies. The argument largely disregards the city's considerable discretion to determine that the project, on

balance, is in harmony with those goals and policies, and merely expresses Petitioners' contrary point of view. Moreover, Petitioners focus only on particular goals and policies and do not attempt to show, and have not shown, that the project necessarily is inconsistent with the general plan as a whole. We conclude that they have not shown an abuse of discretion.

DISPOSITION

The judgment is affirmed. The city and Newhall are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.